

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS(O),
BHUBANESWAR, DIST-KHURDA**

Present : Sk. Md. Quais, M.A., LL.M.
J.M.F.C.(O), BHUBANESWAR

Date of conclusion
of argument : 02.09.2014

Date of Judgment : 04.09.2014

G.R. No. 136/2009
Trial Case No. 332/2011

S t a t e

vrs

1. Bhagaban Behera, aged about 61 years,
S/o. Nata Behera
 2. Harsamani Behera, aged about 57 years,
W/o- Bhagaban Behera
 3. Prafulla Behera, aged about 30 years,
S/o- Bhagaban Behera
- All are of Village: Ranapur, PS-Balianta, Dist- Khurda.

... Accused Persons

For offences punishable u/s 341/323/294/506/34 of IPC

For the Prosecution : A.P.P

For the Defence : B. R. Sahoo & his Associate Advocates.

J U D G M E N T

The accused persons stand prosecuted for offences punishable u/s. 341/323/294/506/34 of IPC for allegedly, wrongfully restraining the informant, voluntarily causing hurt, uttering obscene words in a public place and for committing criminal intimidation by issuing threats to the informant in furtherance of their common intention.

2. The case of the prosecution shortly runs as hereunder ;

That on 01.07.2009 at about 9.00 A.M the informant Raghunath Behera appeared at Baliana PS and presented a written report to the effect that there was dispute regarding land between the informant and the accused persons since long. On 29.06.2009 at about 5.30 P.M while the informant was returning from Bhubaneswar to his village-Ranapur on the way near village-Saba Nagar, the accused persons obstructed the informant on the road being armed with thenga, crow bar and tada (wooden stick), abused him in obscene languages and assaulted the informant by means of crow bar on his leg and by means of tada all over his body, as a result the informant sustained bleeding injuries on his person. The accused persons threatened the informant to face dire consequences. Hearing hullah, some local people rushed to the spot and rescued the informant from clutches of the accused persons. Basing upon such report of the informant Baliana PS Case No. 75 dtd. 01.07.2009 was registered and the matter was investigated into. After completion of investigation, charge sheet u/s 341/323/294/506/34 of IPC was submitted against the accused persons to face their trial in court of law. Hence this case.

3. The plea of the accused persons is complete denial of occurrence and false implication.

4. The points to be determined are as follows ;

(i) Whether on 29.06.2009 at about 5.30 P.M at village- Saba Nagar the accused persons in furtherance of their common intention wrongfully restrained the informant from proceeding to any direction which he had got right to proceed ?

(ii) Whether on the aforesaid date, time and place of occurrence, the accused persons in furtherance of their common intention voluntarily

caused hurt to the informant ?

(iii) Whether on the aforesaid date, time and place of occurrence, the accused persons in furtherance of their common intention abused the informant by uttering any obscene words in or near a public place causing annoyance to the informant and others ?

(iv) Whether on the aforesaid date, time and place of occurrence, the accused persons in furtherance of their common intention committed criminal intimidation by issuing threats to the informant with injury to his person with intent to cause alarm in his mind ?

5. In order to prove its case, prosecution has examined five witnesses in all out of whom P.W.1, Raghunath Behera is the informant and victim of this case. P.W.2, Smt. Binodini Behera is the wife of the informant and a post occurrence witness. P.W.3, Kalandi Dalua and P.W.4, Dillip Kumar Behera are both witnesses to the occurrence. P.W.5, Pradyumna Kumar Majhi is the I.O of this case. Examination of the rest witnesses has been declined by the prosecution. Defence has examined five witnesses namely, D.W.1, Sarata Bhoi, D.W.2, Kabi Bhoi, D.W.3, Narayan Parida, D.W.4, Narendra Nayak and D.W.5, KailashChandra Khuntia on its behalf.

6. PW.1, the informant has deposed that on 29.06.2009 at about 5.30 PM while he was returning from Bhubaneswar to his village-Ranapur on the way near village-Saba Nagar under Mouza-Luna, the accused persons obstructed him being armed with thenga, crow bar and tada. Thereafter, accused, Prafulla Behera assaulted him by means of a crow bar on his leg, as a result he fell down. Thereafter, the accused persons

Bhagaban Behera and Harsamani Behera assaulted him by means of thenga. He testified that due to assault the accused persons he sustained pain on his person and cried for help. Hearing his cry, some local people arrived at the spot and the accused persons fled away from the spot. He further deposed that the witnesses Kalandi Dalua of village-Purunapradhan took him to Balakati Hospital where he was medically treated and took medicines. Thereafter, on the next day he lodged FIR vide Ext.-1 at Baliana P.S. During cross-examination in Para-10 P.W.1 has deposed that about 5 to 7 witnesses had gathered at the spot including one Kalandi Dalua (P.W.3), Dillip Behera (P.W.4), Basanta Parida and Bairagi Mahakud.

Corroborating the evidence of P.W.1, P.W.3 has deposed that on 29.06.2009 at about 5.00 P.M he was proceeding on the road running from Anjara to Ranapur and on the way he found all three accused persons were assaulting the informant on road. The informant had sustained bleeding injuries on his leg. He testified that the accused persons Bhagaban Behera and Prafulla Behera were holding thenga and crow bar respectively. He deposed that he took the informant to Police Station first where Police advised him to get the informant medically treated first then to come to P.S. Accordingly, he took the informant to Hospital.

P.W.4, Dillip Kumar Behera has also corroborated the evidence of P.W.1 regarding assault on P.W.1 by the accused persons. He deposed that on 29.06.2009 in between 5.00 to 5.30 P.M while he was returning near village Saba Nagar, found the accused persons were assaulting the

informant by means of tada and crow bar. The informant was crying for help. PW.4 intervened and snatched away the crow bar from the hand of accused, Prafulla Behera. He also snatched away the tada from the hand of accused, Bhagaban Behera. He deposed to had taken away the informant to Hospital.

PW.2, the wife of informant has deposed that on the date and time of occurrence she was present in her house. Hearing the occurrence from others she had been to the spot and found the informant was lying on the ground, sustaining injuries. She took him to Hospital. The informant told her that the accused persons being armed with crow bar and thenga, obstructed him at the spot and assaulted him. In Para-6 PW.2 has deposed that at the time of her arrival at the spot the accused persons were present being armed with crow bar and thenga and after her arrival they fled away from the spot. She has deposed in Para-4 that it will take 10 minute to reach at the spot from her house.

PW.5, the I.O of this case has deposed that on 30.06.2009 on the written report of PW.1 Baliana PS Case No. 75/2009 was registered and he took up the investigation of this case. He has proved the endorsement and signature of IIC on the FIR vide Ext.-1/2 and has proved the registration of F.I.R. During investigation, he deposed to have sent PW.1 to Balakati C.H.C for medical examination. He has also testified to have received the opinion of Medical Officer and has deposed that the M.O had opined that the injuries on the person of informant were found to be simple in nature and caused by hard and blunt weapon.

7. From the aforesaid evidence of prosecution witnesses, it appears

that the occurrence witnesses like PW3 and PW.4 have corroborated the evidence of PW.1 regarding presence of all three accused persons at the scene of crime armed with crow bar and sticks. PW.2 has also deposed to have arrived at the spot just after occurrence and had seen the accused persons at the spot holding weapons. PW.3 and PW.4 have corroborated the evidence of PW.1 regarding their presence at the spot and witnessing assault on PW.1 by accused persons by means of crow bar and thennga. PW.1 has deposed that due to assault by accused persons he fell down and sustained injuries and pain on his leg and other parts of his body. PW.3 has deposed that PW.1 had sustained bleeding injuries on his leg. PW.4 has deposed that after occurrence he had taken the informant to Hospital. PW.2 and PW.3 have also corroborated the evidence of PW.1 that after occurrence PW.1 was taken to Hospital. The I.O of this case has also proved the medical examination of PW.1. Moreover, he has deposed to had received the injury report from the M.O Balakati C.H.C. Referring the opinion of M.O he deposed that the M.O had opined that there were injuries on the person of PW.1 and those were simple in nature caused by hard and blunt weapon. He has also deposed in Para-8 that during lodging of FIR he had noticed injuries on the person of PW.1. PW.3 and PW.4 are chance witnesses having no previous enmity with the accused persons. Nothing has also being elicited from the mouth of such witnesses for having any interestedness in deposing against the accused persons. The evidence of PW.1 regarding obstruction by the accused persons on the way while he was returning to his house and assaulting by the accused persons to him by means of crow bar and sticks has been

well corroborated by the witnesses like PW3 and PW4. Their evidence seems to be clear, cogent and reliable.

8. Defence has assailed the prosecution evidence on the ground that the oral evidence of the witnesses has not been corroborated by medical evidence and the M.O has been declined to be examined by the prosecution. Hence, it is argued that the prosecution case is not established in absence of medical evidence. Admittedly, the M.O has not been examined. The evidence of M.O is a corroborative one. While the oral evidence of witnesses including the victim is clear, cogent and reliable regarding the pain and injury sustained by PW.1, non-examination of M.O in such case will not wipe out the prosecution case. As such, non-examination of M.O in this case has got no impact and prosecution case where the opinion of the M.O is established by the I.O and the evidence of other witnesses are clear cogent and reliable.

Defence has also took plea and proved that there was long standing dispute between the parties relating to joint property. Prosecution witnesses have also admitted that there was dispute relating to land between the parties prior to occurrence. Previous enmity also may lead to false implication. At the same time previous enmity leads to commission of crime. In the present case in hand while the independent witness like PW.4 has deposed in clear manner, corroborating the evidence of victim, I find the occurrence has been established and the previous enmity is the motive of the crime. Hence, the plea of false implication taken by the defence has got no force.

9. From my discussions made in the forgoing paragraphs, I am at

conclusion that the accused persons in order to satisfy their previous grudge and in furtherance of their common intention, remaining present at the spot and taking part in the occurrence have obstructed the informant on the road, from proceeding to his house which he had got right to proceed and have voluntarily assaulted him causing hurt and injuries on his person. As such the prosecution has successfully established its case for offences U/s. 341/323/34 of IPC beyond all reasonable doubt.

10. Regarding the offences U/s. 294 and 506 of IPC P.W.1 has deposed that the accused Prafulla Behera abused him in obscene language saying “Madarchod Ama Sangare Kali Karuchu”. He further deposed that the accused persons abused and threatened him saying “Maghia Madarchod Eaku Jibanare Sesa Karidebi”. P.W.3 and P.W.4 who are witnesses to occurrence have not corroborated the evidence of P.W.1 regarding uttering of the aforesaid words by the accused persons. In order to establish an offence U/s. 294 of IPC it is necessary for the prosecution to prove that by use of the obscene words some other person than the victim was annoyed. In the present case, none of the witness has come forward to depose that he was annoyed or ashamed by the words used by the accused persons. As such the prosecution has failed to bring home the charge U/s. 294 of IPC. At the same time, in order to establish an offence U/s. 506 of IPC prosecution has to prove that the accused persons were having intention to cause alarm in the mind of the victim. It is evident that after arrival of witnesses the accused persons fled away from the spot. Such conduct of fleeing from spot by the

accused persons leads to presume the intention of the accused persons for not causing alarm to the victim or witnesses. Moreover, the victim is himself silent whether he was alarmed by the acts done by the accused persons. Moreover, the witnesses like P.W.3 and P.W.4 have not corroborated the evidence of P.W.1 regarding any issuance of threat by the accused persons. Under the above circumstances, it is unsafe to hold that the accused persons have committed an offence U/s. 506 of IPC.

11. In the result, I hold the accused persons guilty of the offences punishable U/s. 341/323/34 of IPC and convict them thereunder. At the same time, I hold the accused persons not guilty of the offences U/s. 294/506 of IPC and acquit them therefrom.

12. Having regard to the facts and circumstances of this case including the nature of offence committed, the socio economic condition of the convicts, two of whom are more than 60 years of age, as the convicts are first offenders as per report of S.D.P.O., Bhubaneswar, I am of the opinion that instead of sentencing the convicts to any punishment, it is expedient to release the convicts on probation of good conduct under the provisions of P.O. Act. Accordingly, let the convicts be released u/s 4(1)(3) of P.O. Act on each entering into a bond of Rs.5,000/- (Rupees five thousand) without surety for a period of one year and in the mean time, the convicts shall keep peace in the locality and be of good behavior. During the aforesaid period, the convicts shall remain under the supervision of S.D.P.O., Bhubaneswar.

Dictated, corrected and pronounced in the open court on this the 4th day of September, 2014 under my hand signature and seal of this court.

J.M.F.C.(O), Bhubaneswar

List of witnesses examined for prosecution

PW.1	Raghunath Behera
PW.2	Smt. Binodini Behera
PW.3	Kalandi Dalua
PW.4	Dillip Kumar Behera
PW.5	Pradyumna Kumar Majhi

List of witnesses examined for defence

D.W.-1	Sarata Bhoi
D.W.-2	Kabi Bhoi
D.W.-3	Narayan Parida
D.W.-4	Narendra Nayak
D.W.-5	Kailash Chandra Khuntia

List of documents admitted in evidence for prosecution

Ext.-1	FIR
Ext.-1/1	Signature of P.W.1 on Ext.-1.
Ext.1/2	Endorsement and signature of IIC.
Ext.-2	Spot Map
Ext.-2/1	Signature of P.W.5 on Ext.-2.

List of documents admitted in evidence for defence

N I L

J.M.F.C.(O), Bhubaneswar

