

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 : 26.11.2014

Date of Judgment : 27.11.2014

**G.R. No. 22/2013**  
**Trial Case No. 403/2013**

**S t a t e**

**vrs**

Parikhita Jena, aged about 49 years,  
S/o. Late Kulamani Jena,  
Village: Purohitpur, PS- Balipatna, Dist-Khurda.

... Accused

**For offences punishable u/s 341/323/294 of IPC**

For the Prosecution : A.P.P

For the Defence : Manoj Nayak & his Associate Advocates.

**J U D G M E N T**

The accused stands prosecuted for offences punishable u/s. 341/323/294 of IPC for allegedly wrongfully restraining the informant, voluntarily causing hurt and for uttering obscene words in a public place to the informant.

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

That on 09.01.2013 at about 8.00 PM the informant Tapan Kumar Nayak appeared at Balipatna PS and presented a written report to the effect that on the same day at about 5.20 PM at Jhinti Sasan, while the informant had been to the society to deliver paddy, the accused wrongfully restrained the informant.

The accused abused the informant in obscene languages and also assaulted the informant by means fist blows and kicks, as a result he sustained bleeding injuries on his nose. Basing upon such report of the informant Balipatna PS Case No. 5 dtd. 09.01.2013 was registered and the matter was investigated into. After completion of investigation, charge sheet u/s 341/323/294 of IPC was submitted against the accused to face his trial in court of law. Hence, this case.

3. The plea of the accused could not be recorded due to want of incriminating material.
4. The points to be determined are as follows ;
  - (i) Whether on 09.01.2013 at about 5.20 PM at Jhinti Sasan the accused 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 voluntarily caused hurt to the informant ?
  - (iii) Whether on the aforesaid date, time and place of occurrence, the accused abused the informant by uttering any obscene words in or near a public place causing annoyance to others ?
5. In order to prove its case, prosecution has examined two witnesses in all out of whom P.W.1, Tapan Kumar Nayak is the informant and victim of this case. P.W.2, Sarat Kumar Nayak is a witness to occurrence. Examination of the rest witnesses has been declined by the prosecution. Defence has examined none on its behalf.
6. P.W.1, the informant has deposed that due to some misunderstanding there was some dispute with accused which he has settled amicably. He doesn't want to proceed further with this case. During cross-examination,

PW.1 admitted to have got no allegation against the accused. PW.2 stated that he was not examined by Police. Examination of rest of the witnesses was declined by the prosecution.

7. From the aforesaid evidence of PW.1, it appears that he has not whispered a single word against the accused. He has not corroborated his own FIR story. Although FIR has been marked as Ext.-1, the FIR is not a substantive piece of evidence but it can be used only to corroborate and contradict the maker thereof, while the informant (PW.1) being the maker of the FIR (Ext.1) does not corroborate the FIR story, Prosecution cannot take any benefit out of the FIR (Ext.-1). Under the above circumstances, I find no incriminating material against the accused.

In the result, I hold the accused not guilty of the offences punishable u/s 341/323/294 of IPC and acquit him there from u/s 255(1) of Cr.PC. The accused be set at liberty forthwith and he is discharged from his bail bond.

Enter the case as mistake of fact.

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

Dictated, corrected and pronounced in the open court on this the 27<sup>th</sup> day of November, 2014 under my hand signature and seal of this court.

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

List of witnesses examined for prosecution

PW.1	Tapan Kumar Nayak
PW.2	Sarat Kumar Nayak

List of witnesses examined for defence

N o n e

List of documents admitted in evidence for prosecution

Ext.-1	FIR
Ext.-1/1	Signature of P.W.1 on Ext.-1.

List of documents admitted in evidence for defence

N I L

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