

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.B.,  
Judicial Magistrate First Class,  
Banpur

Date of argument. : 24.06.2014

Date of Judgment. : 02.07.2014

G.R. No. 348/2013

T.R. No. 154/2014

State .....Prosecution.

-Versus-

Govinda Nayak, aged about 31 years,

S/o Hadu Nayak.

Vill: Ankulachati, P.S: Balugaon,

Dist: Khurda.

..... Accused.

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Offence: Under Sections 452/354(A)/294/323/427/506 of the I.P.C.

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For the Prosecution. :Sri J.Pradhan, APP.

For the Defence. :Sri S.K.Pattnaik & others.

## J U D G M E N T.

01. The accused stands prosecuted for the offence punishable Under Sections 452/354(A)/294/323/427/506 of the Indian Penal Code.

02. The case of the prosecution in brief is that on 22.09.2013 one Jhunu Nayak appeared before the I.I.C. Balugaon P.S with a written report alleging therein that on the previous evening while she was cooking inside in her house at that time all of a sudden the accused Gobinda Nayak entered into her house and caught hold her by saying “ AJI TU CHHODIKU RAPE KARIBI TU BEDHIE KANA PAIN MORE STREE KU BATAIE SIKHIE KUADE PATHAIE DEICHHU”. He also fell on the ground and tried to pull her wearing apparels. At that time her husband came there and tried to caught hold him, the accused pushed the towards the informant's husband as a result the T.V was broken and the accused fled away through the back door of the informant and tried to kill her husband.

Upon such report P.S. Case No.118/2013 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused, the I.O. submitted charge sheet against him. Hence this trial.

03. The plea of defence is one of complete denial and false implication.

04. The point for determination in this case emerges as follows:

- (i) Whether on 21.09.2013 at about 7.pm the accused committed house trespass by entering into the house of the informant to commit an offence?

- (ii) Whether on the aforesaid date, time and place the accused voluntarily caused hurt to the informant?
- (iii) Whether on the same date, time and place of occurrence assaulted or used criminal force to the informant to outrage her modesty?
- (iv) Whether on the same date, time and place of occurrence the accused damaged the property of the informant more than Rs.50/-?
- (v) Whether on the aforesaid date, time and place the accused abused the informant in obscene language in or near public place causing annoyance to others?
- (vi) Whether on the aforesaid date, time and place the accused committed criminal intimidation and caused alarm to the informant?

05. In order to prove its case, prosecution has examined as many as 9 P.Ws in its favour where as defence has examined none. Out of which P.W.1 is the informant, P.W.2 is the husband of the informant, P.W.7 is the I.O of this case and rest of the witnesses are independent witnesses to the occurrence.

06. On perusal of the evidence available on record, it is found that the P.W.1 the informant of this case in her evidence stated that on the alleged date the accused came to their house in a drunken stage, abused her and threatened to kidnap her. So she ran away then her husband came there and obstructed him, so a quarrel took place between them. Then they tied the accused in a rope and go to P.S. In the mean time the accused had broken the DVD player. So she lodged the FIR. She states that the accused is her younger brother in-law. She admitted that she had not scribed the F.I.R, and can not who scribe the F.I.R. say the contents of the F.I.R. P.W.2 the husband of the informant in his evidence stated that on the alleged day the accused came to their house in a drunken stage and broken their house and assaulted his wife and on his protest the accused also assaulted him. P.W.3 another witness to the occurrence in his

evidence stated that on the alleged day the accused came to the house of the informant by holding a knife and entered into her house so a quarrel took place between both the parties. The informant and her husband tied the accused in a rope and go to P.S. When they returned they saw the accused already fled away by broken the door and other articles. She states that she has not seeing the occurrence. P.W.4 in his evidence stated that on the alleged date the accused came to the house of informant and assaulted them. He states that the occurrence took place inside the house of the informant, he only heard hulla and not seen the occurrence. P.W.5 in his evidence said that the accused made a quarrel between the informant. P.W.6 in his evidence stated that on the alleged date the accused made a hulla there then police came to the spot. P.W.8 another witness stated that he only saw that the accused was shouted in the house of the informant. P.W.7 the I.O of this case in his evidence stated that after the F.I.R has been lodged he took up the investigation. During course of investigation he examined the witnesses and informant, visited the spot, prepared spot map, seized the articles and arrested the accused and forwarded him to the court. He said that he has not ascertained who has scribed the F.I.R.

On careful scrutinization of evidence available on record it is found that there are several numbers of contradictions and discrepancies in the evidence of the witnesses. The F.I.R story is quite different from the evidence of the witnesses P.Ws. 1 and 2 i.e. the informant and victim. Though the informant alleged that the accused abused her in obscene language and assaulted her and tried to out rage her modesty but no where in her evidence she said anything about it. So also she has not stated any assault by the accused to her so her husband. Rather it is her story that when the accused abused her, her husband

came and quarrel took place between them, then they tied the accused in a rope. P.W.2 also supported the evidence of P.W.1 to the some extent. Though P.W. 1 & 2 stated that the accused assaulted the informant no where P.W.2 stated that in which manner the accused assaulted the informant. The informant also remained silent about the assault made by the accused. Though P.W.3 supported the evidence of P.Ws 1 and 2 but her statement quite different from the F.I.R story. P.Ws 4,5,6,8 though stated about the occurrence but they also said that they only heard it but not seen the occurrence. Hence considering the above aspects, I am of the view that prosecution failed to prove it's case beyond all reasonable doubt. Hence it is a fit case in which the accused is entitled to an acquittal.

In the result, of the above discussion and reasons recorded, I hold that the accused is found not guilty of the offences U/s 452/354(A)/294/323 /427/506 of IPC and acquitted him there from U/s.248(1) of Cr.P.C. He be set at liberty forthwith and his bail bond stands cancelled.

The zimanama be cancelled after expiry of four months of the appeal period if no appeal is preferred and in case of appeal as per the direction of Appellate court.

Enter this case as mistake of fact.

Judicial Magistrate First Class,

Banpur.

This judgment is typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 2<sup>nd</sup> day of July, 2014.

Judicial Magistrate First Class,

Banpur

List of witnesses examined for Prosecution.

PW.1	Jhunu Nayak
PW.2	Prafulla Nayak
P.W.3	Suni Nayak
P.W.4	Rekha Nayak
P.W.5	Jamuna Nayak
P.W.6	Banchha Nayak
P.W.7	Debendra Dora
P.W.8	Geeta Nayak.
P.W.9	Tukuna Nayak

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Ext.1	F.I.R.
Ext. 1/1	Signature of the I.I.C on Ext.1.
Ext.2	Zimanama

- Ext. 2/1      Signature of P.W.6 on Ext.2.
- Ext. 2/2      Signature of P.W.7 on Ext.2.
- Ext.3          Signature of P.W.6 on the Seizure list.
- Ext.3/1        Seizure list.
- Ext. 3/2        Signature of P.W.7 on Ext.3/1.
- Ext. 3/3        Signature of P.W.9 on the seizure list.
- Ext.4          Spot map.
- Ext.4/1        Signature of P.W.7 on Ext.4.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

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Banpur

