

**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 : 19.06.2014

Date of Judgment : 27.06.2014

G.R. No. 411/2010
Trial Case No. 649/2011

S t a t e

v r s

1. Rabi Narayan Parida, aged about 27 years,
S/o- Banamali Parida
2. Birendra Kumar Parida, aged about 25 years,
S/o- Bipin Bihari Patra,
Both are of Village-Deuliapatna, P.S.-Jatni
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 : Nalini Kanta Mohanty &
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, abusing him and uttering obscene word in public place and for committing criminal intimidation by issuing threats to the informant.

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

That on 10.05.2010 at about 11.00 A.M while the informant, Nilamani Sahoo was sitting under a banyan tree at village-Deulia Patna along with his friend Yogendra Sahoo at that time accused persons reached there and abused the informant in obscene languages. When the informant protested the accused persons assaulted the informant by means of an iron rod as a result the informant sustained bleeding injuries on his head. The accused persons also threatened the informant to face dire consequences. The informant was shifted to Hospital for his treatment. It is also alleged that the accused persons had taken away a sum of Rs.2,600/- from the possession of informant. On the written report of informant on the same day at 8.00 P.M Jatni PS Case No. 78/10.05.2010 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 one of complete denial of occurrence and false implication.

4. The points to be determined are as follows ;

(i) Whether on 10.05.2010 at about 11.00 A.M at village Deulia Patna, 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 same date and place of occurrence, the accused persons, in furtherance of their common intention, voluntarily caused hurt to the informant ?

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

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

5. In order to prove its case, prosecution has examined four witnesses in all out of whom PW.1. Nilamani Sahoo is the informant and victim of this case. P.W.2, Jogendra Sahoo, P.W.3, Dillip Kumar Jayasingh are witnesses to occurrence and P.W.4, Ramesh Chandra Sahoo is the brother of the informant and a post-occurrence witness. Examination

of the rest witnesses has been declined by the prosecution. Defence has examined three witnesses on its behalf out of whom D.W.1 and D.W.2 are the accused persons and D.W.3 is a sales man working under accused, Rabi Narayan Parida.

6. PW.1, the informant has deposed that on 10.05.2010 at about 12.00 Noon he was sitting beneath one Banyan tree of his village. The accused persons came there, abused him in obscene languages and assaulted him by means of an iron rod and as a result of which he fell down on the ground and lost his sense. He failed to say what happened thereafter. P.W.-1 also stated that the accused persons had taken away a sum of Rs.2000/- from his pocket. He deposed that the accused persons are threatened him to face dire consequence. P.W.2 has stated that on 10.05.2010 at about 10.00 AM while he was returning from his work near banyan tree of village-Deuliapatna, he found the informant and accused, Birendra Parida were abusing each other. They engaged in tussle with each other. When P.W.2 intervened the accused, Birendra Parida pushed him. He also pushed the informant as a result he fell down. Thereafter, the accused, Birendra Parida assaulted by means of a broom all over his body. Thereafter, the accused, Birendra Parida went away and after sometime the accused came with his brother-accused, Rabi Narayan Parida armed with iron rod and assaulted the informant by means of such iron rod as a

result the informant sustained bleeding injuries on his person and lost his sense. The accused persons fled away from the spot. P.W.2 testified that the informant was shifted to Hospital.

P.W.3 has deposed that on the date of occurrence at about 9.30 A.M he found the accused persons and some other co-villagers were sitting beneath the banyan tree of their village. He along with informant and P.W.2 went there. The accused Birendra Parida started abusing in obscene words. When the informant protested the accused Birendra Parida assaulted the informant by means of one iron rod. He along with P.W.2 intervened and snatched away the iron rod from the hand of accused. Thereafter, the accused Birendra Parida assaulted the informant by means of one broom. Due to assault by iron rod the informant had sustained injury on his person and lost his sense at the spot. P.W.3 deposed to have shifted P.W.1 to Sandhapur Hospital with the help of P.W.4 the brother of the informant.

P.W.4 has deposed that on the date of occurrence he got informant that his brother P.W.1 has been assaulted by the accused persons. Hearing such occurrence he came to spot and shifted his brother to Sandhapur Hospital.

7. Regarding the offence U/s. 341 of IPC prosecution must establish that the informant was proceeding to certain direction or he was in moving

condition and the accused persons obstructed him from moving to such direction. From the evidence on record, it is admitted by the witnesses that the informant and the accused persons were sitting beneath a banyan tree where the occurrence took place. There is no evidence that the accused persons obstructed the informant from proceeding to any direction which the informant was willing to proceed. As such the offence of unlawful restrained is not established.

8. Regarding offence U/s. 294 of IPC P.W.1, P.W.2 and P.W.3 have deposed that the accused Birendra Parida had abused the informant. None of such witness has disclosed the actual words used by the accused during occurrence. Without disclosing the words used by the accused persons it cannot safely be accepted that the words were obscene in nature. P.W.4 has deposed that the accused persons had also abused him while he asked about the occurrence. He is also silent about the words used by the accused persons. Under the above circumstances, the prosecution has failed to establish that the accused persons had used obscene words. Moreover, in order to prove an offence U/s. 294 of IPC it must be established that some other persons were annoyed by the words used. No such material is forthcoming from the evidence of witnesses. As such the prosecution has also failed to establish and prove the offence U/s. 294 of IPC beyond doubt.

9. Regarding voluntarily causing hurt to the informant, the informant himself has contradicted his own FIR story. While he has mentioned in his FIR which he proved vide Ext.-1 that after assault he could able to escape from the spot. During examination in chief as well as in cross-examination P.W.1 has deposed that after assault he lost his sense and fell down at the spot. He regained his sense at Hospital. He has also contradicted regarding the presence of weapon of offence at spot. While in his FIR he has mentioned that the accused, Birendra Parida picked up one iron rod which was laying at the spot and assaulted him, during his cross-examination in Para-16 he deposed that the accused persons had come to spot armed with iron rod. He has also failed to disclose the size of iron rod. While the informant has mentioned in FIR that the accused persons took away a sum of Rs.2,600/- from his pocket, during cross-examination in Para-23 he deposed that the accused persons had taken away a sum of Rs.2000/-. Such evidence of the informant is also lacking corroboration, for which no offence has been made out during investigation for offence U/s. 379 of IPC. While the informant has mentioned in FIR that he along with P.W.2 were sitting beneath the tree the accused persons arrived there, P.W.2 has deposed that while he was passing through the spot he found the informant and accused Birendra Parida were engaged in tussle. While P.W.2 has deposed that the accused Birendra first assaulted the informant by means

of broom and thereafter other accused arrived there and thereafter the accused Birendra assaulted informant by means of iron rod, on the other hand P.W.3 has deposed that the accused first assaulted by means of iron rod and when the informant fell down, accused Birendra assaulted him by means of broom. Moreover, the informant himself is silent about any assault by accused by means of broom. The evidence of the witnesses seems not to be clear and cogent. Under the face of aforesaid contradictory evidence of P.W.1, P.W.2 and P.W.3, their evidence cannot be relied upon beyond doubt.

Regarding injury on the person of informant although the witnesses have deposed that the informant sustained bleeding injury on his head, the M.O who examined the informant has been declined by the prosecution to be examined for the reasons better known to prosecution. Hence, the oral evidence of the witnesses regarding injury remained uncorroborated by medical evidence. The I.O of this case has also been declined to be examined for the prosecution on the prayer of prosecution. The contradiction pointed out during cross-examination of the witnesses could not be confronted to the I.O. Hence, non-examination of I.O in this case has become fatal to prosecution.

10. While the evidence of witnesses are not worthy to be relied upon the allegation of committing criminal intimidation has failed. Moreover, there

is no allegation of intention to cause alarm while issuing threats. As such the offence U/s. 506 of IPC is also not established beyond doubt.

11. Defence has taken plea of aliebe. The accused Rabi Narayan Parida who deposed as D.W.1 has stated that he was absent at the spot at the time of occurrence and he was present in his shop near Gita College, Bhubaneswar. The accused Birendra Parida who deposed as D.W.2 has stated that at the time of occurrence he had been to Village-Ainia to do his job. D.W.3 has corroborated the evidence of D.W.1 and D.W.2. Nothing has been elicited from their mouth to disbelieve their version. While the evidence of prosecution witnesses is not clear and cogent, the plea of the defence has got some force and can be relied upon.

12. In view of my discussions made in the foregoing paragraphs, I am at conclusion that the prosecution has measurably failed to prove its case against the accused persons beyond all reasonable doubt. In the result, I hold the accused persons not guilty of the offences punishable u/s 341/323/294/506/34 of IPC and acquit them there from u/s 255(1) of Cr.PC. The accused persons be set at liberty forthwith and they are discharged from their bail bonds.

Enter the case as mistake of fact.

Sd-

27.06.2014
J.M.F.C.(O), Bhubaneswar

Dictated, corrected and pronounced in the open court on this the 27th day of June, 2014 under my hand signature and seal of this court.

Sd-
27.06.2014
J.M.F.C.(O), Bhubaneswar

List of witnesses examined for prosecution

P.W.1	Nilamani Sahoo
P.W.2	Jogendra Sahoo
P.W.3	Dillip Kumar Jayasingh
P.W.4	Ramesh Chandra Sahoo

List of witnesses examined for defence

D.W.1	Rabi Narayan Parida
D.W.2	Birendra Parida
D.W.3	Sukumar Sahu

List of documents admitted in evidence for prosecution

Ext.-1	FIR.
Ext.-1/1	Signature of P.W.1 on Ext.-1.
Ext.-2	Signature of P.W.1 on injury report.

List of documents admitted in evidence for defence

N I L

Sd-
27.06.2014
J.M.F.C.(O), Bhubaneswar