

IN THE COURT OF NYAYADHIKARI, GRAMA NYAYALAYA, TANGI.

Present:-

Smt.Pranati Pattanaik, B.A LL.B.,
Nyayadhikari, Tangi

GR Case No.167/11
TR No.597/13(GN)

State

.....Prosecution

Vrs

1. Matia Nayak aged about 49yrs
S/o- Late Bansidhar Nayak
2. Merechha @ Kelu Nayak aged about 28 yrs
S/o-Matia Nayak
3. Ananta Nayak aged about 43 yrs
S/o- Bimbadhar Nayak
All are of Vill-Kuhudi College Sahi, Po-Kuhudi
PS-Tangi, Dist-Khurda

.....Accused Persons

Offence U/s 341/323/294/354/34 of Indian Penal Code

Date of Judgment: 18.8.2014

Date of Argument: 18.8.2014

Counsel for Prosecution: A.P.P

Counsel for Defence: Sri Nakula Kumar Nayak & Associates

J U D G M E N T

1. The accused persons stand prosecuted for having committed offence punishable U/s 341/323/294/354/34 of Indian Penal Code.
2. The case of the prosecution is that one Chhaila Nayak W/o Bharat Nayak of village Kuhudi presented a written report alleging that on 31.1.10 at about 5 pm her co villagers namely Matia Nayak, Merechha Nayak and Ananta Nayak abused her in obscene languages saying ' Sali, Bedhei, Beshya' while she was returning from jungle to which the informant protested. Due to the protest all the accused persons assaulted her by blows and kicks. In the meantime Merechha torn her sari and blouse. Merechha also throttled her neck. By the arrival of local people informant rescued her life. On this report this case was registered vide PS case no 33 of dt 11.2.11 and ASI P K Lenka took up investigation into the case. After completion of the investigation he submitted charge sheet against the accused persons.
3. Plea of defence is complete denial. Accused persons in their statement U/s 313 Cr.Pc deny all the allegations levelled against them.
4. The points for determination in this case are:-
 - (i) Whether the accused persons in furtherance of common intention restrained the informant while she was proceeding in certain direction in which she had the right to proceed
 - (ii) Whether the accused persons in furtherance of common intention voluntarily caused bodily pain to the informant with intention of causing hurt

- (iii) Whether the accused persons in furtherance of common intention uttered any obscene words in a public place causing annoyance
- (iv) Whether the accused persons in furtherance of common intention used criminal force to outrage the modesty of the informant

5. To prove its case 10 witnesses have been examined from the side of the prosecution. PW 6 is the informant, PW 3 is the husband of PW 6, PW 7 is the daughter of PW 6, PW 8 is the son of PW 6, PW 9 is the medical officer, PW 1, 2, 4, 5 are the independent witnesses, PW 10 is the investigating officer and defence has examined none.

6. It is revealed from the evidence of PW 6 that 3yrs back one day at about 4 to 5 pm PW 6 was bringing fire woods on his head. All the accused assaulted her by hands and throttled her neck. PW 6 further adduced that the accused persons dragged her sari and make her naked and she became senseless. Thereafter she reported the matter before the police. On going through the cross examination PW 6 it is found that she cannot say the exact date of occurrence as well as the name of the scribe and the date of submission of the FIR. It is found from the statement of PW 6 that she was not examined by the police. PW 3 in his statement adduced that all the accused persons assaulted PW 6 for which she sustained injuries on her body. PW 3 saw the injuries after he arrived at the spot. PW 3 in his cross examination clearly stated that he had not examined by the police and had not seen the occurrence. On going through the evidence of PW 7 it is found that while PW 6 was bringing fire woods all the accused assaulted her to which PW 6 became senseless and she was shifted to hospital for treatment but she was not examined by the police to which she admitted in her cross examination. PW 8 happens to be the son of PW 6 also adduced his

statement in the same manner as stated by PW 7 admitting her statement that the accused persons assaulted PW 6 while she was bringing fire woods and became senseless due to the assault. The only statement between PW 7 and 8 contradicts is that PW 8 was not examined by the police during investigation. PW 9 examined PW 6 on 15.2.11 at 7.45 pm on police requisition and found (i) Abrasion of ½ inch diameter on left shoulder (ii) Abrasion of ½ inch diameter on left knee. PW 9 opined both the injuries to be simple in nature and the report is marked as Ext 2 and Ext 2/1 is his signature. In cross examination PW 9 stated that on dtd 31.1.11 he examined the injured and submitted report on dtd 15.2.11. The statement of PW 1, 2, 4 and 5 are of no help to the prosecution as because all of them happens to be the independent witnesses deny knowing about the facts of this case. PW 10 during course of his investigation examined the complainant visited the spot and searched for the accused persons. On dtd 4.3.11 PW 10 arrested all the accused persons and forwarded them to the court after receiving of opinion of PW 9. On dtd 4.3.11 PW 10 submitted charge sheet against the accused persons. Ext 1/1 is the endorsement along with the signature of IIC, Ext 2/2 is the signature of PW 10 on injury requisition, Ext 3 is the spot map and Ext 3/1 is his signature. In cross examination PW 10 stated that PW 6 has not stated before him that she got senseless and regained her sense when PW 7 and 8 put some water on her mouth. As per the statement of PW 10, PW 7 and 8 have also not stated before him that PW 6 became senseless. In this case the vital witnesses deny regarding their examination by the investigating officer and there is no corroboration between the statement of PW 6 and Ext 1. Regarding assault there is no specific allegations alleged by PW 6 and PW 6 has also not stated anything about her injury due to the assault by the accused persons.

From the above discussion as well as evidence on hand it is found that from the statement of the prosecution witnesses who adduced in favour of the prosecution story that the occurrence as alleged by the informant might have been true but there is no sufficient incriminating material against the charge sheeted accused persons. Looking to the evidentiary point of view, there is found many contradictions for which the offences levelled against the accused persons are not proved. Though the offences are not proved there is no option to take any adverse steps against the accused persons for which this case against them is doubtful and benefit of doubt goes in favour of them.

7. It is clear from the statement of the witnesses that accused persons are not found guilty so they are acquitted U/s 255 (1) of Cr.Pc. Their bail bonds stand cancelled and they be set as liberty forthwith.

Enter the case as a mistake of Fact

Judgment is dictated, corrected by me and pronounced in the Open Court today i.e. on 18.8.2014. Under my hand and seal of the Court.

Nyayadhikari, Tangi

List of Witness for Prosecution:

PW 1- Jogi Nayak

PW 2- Amuli Nayak

PW 3- Bharat Nayak

PW 4-Rohini Jagadev

PW 5-Parama Nayak

PW 6-Chhaila Nayak

PW 7-Sita Nayak

PW 8-Susanta Nayak

PW 9-Dr.Shyamprakash Das

PW 10-Prasanna Kumar Lenka

List of Witness for Defence:

Nil

List of Ext for Prosecution:

Ext 1-FIR

Mark X-LTI of PW 6

Ext 2-Injury report

Ext 2/1-Sign of PW 9 on Ext 2

Ext 1/1-Endorsement

Ext 2/2-Sign of PW 10 on Ext 2

Ext 3-Spot Map

Ext 3/1-Sign of PW 10 on Ext 3

List of Ext for Defence

Nil

Nyayadhikari, Tangi

