

IN THE COURT OF NYAYADHIKARI, GRAMA NYAYALAYA, TANGI.

Present:-

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

GR Case No.48/10
TR No.523/13(GN)

State

.....Prosecution

Vrs

1. Minaketan Pradhan @ Gandhia aged about 49 yrs
S/o- Banshidhar Pradhan
2. Banshidhar Pradhan aged about 69 yrs
S/o-Late Balunki Pradhan
3. Pradip Pradhan aged about 46 yrs
S/o- Banshidhar Pradhan
4. Kanaka Pradhan aged about 42 yrs
W/o-Pradip Pradhan
5. Jayanti Pradhan aged about 42 yrs
W/o-Minaketan Pradhan
6. Madan Mohan @ Pandu Sahu aged about 29 yrs
S/o-Mania Sahu
All are of vill-Ujjalagopinathpur
PS-Tangi, Dist-Khurda

.....Accused Persons

Offence U/s 341/342/294/323/379/506/34 of Indian Penal Code

Date of Judgment: 26 .8.2014

Date of Argument: 26.8.2014

Counsel for Prosecution: A.P.P

Counsel for Defence: Sri Surendra Kumar Pradhan & Associates

J U D G M E N T

1. The accused persons stand charged for having committed offence punishable U/s 341/342/294/323/379/506/34 of Indian Penal Code.
2. The case of the prosecution is that one Sanatan Rautray S/o Dukhishyam Rautray of village Ujjalagopinathpur presented a written report before Bhusundapur outpost alleging that on dtd 12.1.10 at about 4.30 pm his son Mrutunjaya Rautray was going near his friend namely Premananda Pradhan. While his son was the sarpanch accused Minaketan used to protest him regarding that. On the date of occurrence Minaketan saw Mrutunjaya and abused her in obscene languages saying 'Sala, Madurchod'. In the meantime the younger brother of Minaketan namely Pradeep and Pandu Sahu started argument with Mrutunjaya. The informant went to the spot and when started to settle the matter Bansidhar Pradhan and Kanak Pradhan abused both Minaketan and the informant and all the accused persons assaulted them and threatened them to kill. In the meantime Kanak Pradhan and Jayanti Pradhan armed with rope and paniki ran towards them and tied both Mrutunjaya and the informant with that rope. They snatched away Rs 1400/- from the pocket of the informant. The other co villagers intervened into the matter and rescued their life. This report was entered in station dairy of Bhusundapur outpost on 12.1.10 and on 13.1.10 it was registered at Tangi Police Station by IIC Tangi vide PS case no 11 dtd 13.1.10. SI S. Kallo

investigated the case and after completion of investigation 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 the entire 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 and his son while he was proceeding in certain direction in which he had the right to proceed
- (ii) Whether the accused persons in furtherance of common intention voluntarily confined the son of the informant and wrongfully prevented him from proceeding
- (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 voluntarily caused bodily pain the informant and his son with intention of causing hurt
- (v) Whether the accused persons in furtherance of common intention removed the moveable property of the informant without his consent with a dishonest intention
- (vi) Whether the accused persons in furtherance of common intention threatened the informant and his son to kill

5. To prove its case 7 witnesses have been examined from the side of the prosecution. PW 3 is the informant, PW 4 is the son of PW 3, PW 1 and 2 are the independent witnesses, PW 5 is the medical officer, PW 6 is an

independent witness, PW 7 is the investigating officer, one witness has been declined by the prosecution and defence has examined none.

6. It is revealed from the evidence of PW 3 that in the year 2010 at 4.30 pm the occurrence took place in front of the house of the accused persons happens to be the co villagers of the informant. At the time of incident PW 3 and PW 4 were going by a motor cycle. PW 3 sent PW 4 to his relation's house situated adjacent to the house of the accused and PW 3 waited for him. After some time PW 4 told PW 3 that accused assaulted him to which PW 4 want to report before the Police. Thereafter PW 3 went near the accused persons and asked them as to why they assaulted PW 4. In the meantime the wife of accused Pradeep assaulted PW 3 by a kick to which PW 3 fell down and became unconscious. He regained his sense at Kantalabai Hospital. At 10 pm PW 3 was discharged from the hospital and went to his house. He lodged the FIR marked Ext 1 and Ext 1/1 is his signature. In the cross examination of PW 3 it is found that the occurrence took place dtd 12.1.10 and on the next day he signed on the FIR as per the instruction of his brother. He accompanied his brother to police. PW 3 further adduced that PW 4 had not sustained any injuries. PW 3 further adduced that he do not know the scriber of the FIR as well as the contents of it. As per the evidence of PW 4 it is found that on 12.1.10 at 4 to 5 pm the occurrence took place near the house of one Premananda Pradhan. At that time PW 4 was the sarpanch of the village. He was going to call his friend and heard that accused Minaketan was abusing him. PW 4 asked about the reason of abusing to which the younger brother of Minaketan also abused him. Thereafter PW 3 arrived at the spot and all the accused started abusing both of them and tied PW 4 and 3 by a rope. Accused Kanak assaulted PW 3 by a kick to which he became unconscious and PW 4 took PW 3 to hospital

and subsequently the matter was reported before the police. PW 4 stated that accused Pradeep, Minaketan, Pandu and Bansidhar tied him by a plastic rope. The accused persons tied PW 4 and 3 and they were standing side by side to each other and it is found from the statement of PW 4 that there is a counter case to this case. PW 1 at the time of adducing evidence stated that PW 3 is his cousin uncle and all the accused persons are his co villagers. It is only found from his statement that there was a dispute between both the parties and all the accused had tied PW 3 and 4 by a rope. Thereafter he left the spot. From the cross examination of PW 1 it is found that on 12.10.10 the occurrence took place and about 100 to 150 persons were gathered at the spot prior to his arrival. Accused Pradeep Pradhan, Gandhia Pradhan, Pandu Sahu and Bansidhar Pradhan tied the hands of PW 3 and PW 4 by a plastic rope. It is also found from his statement that there is a counter case to this case. PW 2 while adducing evidence stated that PW 3 is his cousin uncle and accused persons are his co villagers. PW 2 heard some noise and saw PW 3 and 4 were tied in a rope. Accused Kanak assaulted PW 3 by a kick to which he fell down and PW 2 intervened into the matter and rescued him and left him at his resident. It is also found from the evidence of PW 2 that accused Jayanti was holding a paniki and while PW 3 and 4 were tied in a rope, PW 2 opened the rope from their hands. In connection to this case PW 2 was not examined by the police. The statement of PW 6 is of no help to the prosecution as he deny knowing anything in connection to this case. On verifying the statement of PW 5 it is found that on dtd 15.1.10 he examined PW 3 and found (i) Abrasion on right side of abdomen of size $\frac{1}{2}$ inch x $\frac{1}{4}$ inch (ii) Abrasion on forearm of below right shoulder joint of size $\frac{1}{4}$ inch x $\frac{1}{8}$ inch (iii) Abrasion on left side forearm below shoulder joint of size $\frac{1}{4}$ inch X $\frac{1}{8}$ inch (iv) Swelling and tender on right side scrotum. PW 5 opined that all the injuries are simple in nature and caused by blunt weapon. The report is

marked as Ext 2 and Ext 2/1 is his signature. From the cross examination of PW 5 it comes to the notice that PW 5 admitted that his report does not reflect regarding the duration of his treatment. During the investigation PW 7 on dt 12.1.10 started preliminary enquiry after receiving the report. On 13.1.10 after registration of the FIR PW 7 issued injury requisition in respect of PW 3 and on the same day visited the spot. On 15.3.10 he received injury opinion and submitted charge sheet against the accused persons. Ext 1/2 is the endorsement along with the signature of IIC. Ext 3 is the spot map and Ext 3/1 is the signature of PW 7. It is also found from the statement of PW 7 that immediately after receipt of written intimation he sent the injured for treatment and it is also clear from the statement that there is a counter case to this case. As per the statement of PW 3 he stated that the occurrence took place on dtd 12.1.10 which is well corroborated from the evidence of PW 4 as well as the FIR story but this type of corroboration from the side of prosecution is not sufficient to prove the ingredients of the offences charged against the accused persons. When the occurrence took place on dt 12.1.10 and accused persons assaulted PW 3, on going through the evidence of PW 5 it is found that as per his statement he examined PW 3 on dt 15.1.10 which is 4 days gap from the date of occurrence. In this point sec 323 of Indian Penal Code (in short IPC) is not made out due to the contradictions. PW 3 has also not specifically averred anything regarding his injury. Sec 294 IPC is also not made out as because there is no specification regarding any obscene words abused by the accused persons from the statement of the witnesses. Though the investigating officer has not seized anything and his investigation does not disclose about the theft Sec 379 IPC is also not made out in this case against the accused persons. On going through the ingredients of Sections 341, 342 and 506 and basing upon the statement of the witnesses it is found that there are full of contradictions

for which these offences are also not made out against the accused persons. The most important aspect regarding the investigation of the investigating officer is that, his investigation found to be full of lacunas for which prosecution failed to prove this case against the accused persons.

From the above discussion as well as evidence on hand it is made clear that the materials available on record is not sufficient against the accused persons to take any adverse step against them.

7. It is clear from the statement of the witnesses that accused persons are not found guilty so they are acquitted U/s 248 (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 26.8.2014. Under my hand and seal of the Court.

Nyayadhikari, Tangi

List of Witness for Prosecution:

PW 1- Ananta Narayan Rautray

PW 2-Nityananda Sahu

PW 3- Sanatan Rautray

PW 4-Mrutyunjaya Rautray

PW 5-Dr. Banamali Jena

PW 6-Laxmidhar Pradhan

PW 7-Sankar Kallo

List of Witness for Defence:

Nil

List of Ext for Prosecution:

Ext 1-FIR

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

Ext 1/2-Endorsement

Ext 2- injury report

Ext 2/1-Sign of PW 5 on Ext 2

Ext 3-Spot Map

Ext 3/1-Sign of PW 7 on Ext 3

List of Ext for Defence

Nil

Nyayadhikari, Tangi

