

IN THE COURT OF THE ADDL.C.J.M, B H U B A N E S W A R.

Present:
Sri P.L.Satpathy,LL.B.,
Addl.C.J.M,Bhubaneswar.

G.R.CASE NO.2196/01

(Arising out of Airfield P.S. Case No.130 dtd.7.7.01)

S T A T E Prosecution.
.....Versus.....

1. Narottam Kar, aged about 65 years,
S/o Alekha Ch. Kar,
2. Niharranjan Kar, aged about 32 years,
S/o- Narottam Kar
3. Kanchanbala Kar, aged about 61 years
W/o- Narottam Kar
4. Mandakini Kar, aged about 30 years,
D/o-Narottam Kar
Are of At Plot No.1658, Mahatab Road, PS:Airfield,
Dist: Khurda
5. Simantini Kar, aged about 35 years,
W/o-Sudhansumohan Mohapatra
At plot No.2931, Lewis Road,PS:Lingaraj, Bhubaneswar
Dist: Khurda

..... Accused person.

OFFENCE U/S.341,323,427,34 I.P.C

Counsel for the prosecution : Sri B.R Misra A.P.P, Bhubaneswar.

Counsel for the defence : Sri P.K. Pattnaik & Associates, Advs, BBSR.

Date of argument: 20.11.2013Date of judgment: 21.11.2013**J U D G M E N T**

1. In this case the five accused persons named above jointly stand trial
U/s.341,323,427/34 IPC
2. The prosecution case, in short, is that:
On 7.7.01 in between 4 pm to 4.30 pm the accused persons jointly assaulted
the informant (PW.2) and his three children with Katari and crowbar. By the
time the husband of PW.2 namely Narottam Kar (PW.1) returned back to home
from his office and when he confronted the matter to the accused persons the

accused persons also assaulted him. Besides that the accused persons destroyed the tape recorder of PW.2. PW.2 reported the matter on the same date at around 7.45 pm at Airfield PS. On the basis of the Fir (Ext.2) lodged by PW.2 Airfield PS Case No.130 dtd. 7.07.01 U/s.341,323,427/34 IPC was registered against the accused persons and investigation was undertaken there of. In the course of investigation PW.2 was sent for medical examination. The broken tape recorder was seized in separate seizure list (Ext.1) and left the zima of PW.2 by executing a zimaname (Ext.4). The accused persons were arrested and released on police bail. After receipt of injury report of PW.2 police submitted charge sheet against the above named 5 accused persons U/s.341,323,427/34 IPC to face their trial in the court of law.

3. The case of the defence is one of complete denial to the prosecution allegations and false implication due to prior enmity.

4. The points for determination in this case are as follows:

- i) Whether on 7.7.01 in between 4 to 4.30 pm over Plot No.1658 near Dakabangla Chhak, BBSR the accused persons, in furtherance of their common intention wrongfully restrained PW.1,2 and their three children ?
- ii) Whether on the alleged date, at time and at place the accused persons in furtherance of their common intention voluntarily caused hurt to PW.2 and her husband (PW.1) and her three children?
- iii) Whether on the alleged date, at time and at place the accused persons in furtherance of their common intention committed mischief by causing damage of the tape-recorder seized under seizure list (Ext.1) amounting not less than Rs.50 ?

5. To prove its case prosecution examined 2 witnesses, in all. PW.2 is the informant cum injured . PW.1 is the husband of PW.2 . On the other hand defence adduced no evidence on its side.

6. Admittedly PW.1 and accused Narottam Kar are two brothers. PW.2 is the wife of PW.1. Accused Kanchanabala is the wife of accused Narottama Kar and the other three accused persons are the children of accused Narottama and Mandakini. It is also the admitted fact that prior to there was civil litigation over the plot where occurrence took place is pending in between the parties. Besides that several other criminal cases are also pending against

each other. PW.1 in his evidence has stated that he had not seen the occurrence. His evidence about the occurrence was based on the information narrated by his family members. PW.2 is the informant. This witness in his cross examination has stated that the accused Niharranjan had not dealt slaps on her. It is also stated by her that neither the accused persons had obstructed her family members nor destroyed her any property. According to the case of the prosecution PW.2 was a witness to the occurrence as well as the injured in this case. The other children of PW.1 and PW.2 have also not examined in this case. From the evidence of PW.1 and 2 it is clear that since they and the accused persons belongs to one family the matter has been compromised outside of the court by intervention of their well wishers and now they are living peacefully and happily. Considering the prosecution evidence available on record I am of the opinion that the prosecution has failed to bring home the charge leveled against the accused persons and, as such, the accused persons are entitled to be acquitted .

In the result, I hold the accused persons are not guilty U/Ss.341,323,427/34 IPC and acquit them therefrom U/s.255(1) CrPC. The accused persons are on court bail and they be discharged from their bail bonds.

Enter this case as “Mistake of Fact”

ACJM,Bhubaneswar.

The zimanama (Ext.4) is here by cancelled and the tape recorder seized under Ext.1 be retained with the zimadar after four months of the appeal period is over, if there will be no appeal.

ACJM,Bhubaneswar.

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 21st day of November, 2013 under my hand and seal of this court.

ACJM,Bhubaneswar.

List of P.w.s. examined for prosecution.

P.w.1	Dhiresch Chandra Kara
P.w.2	Sabitarani Kar

List of D.ws.examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1 Seizure list dated 7.7.01
Ext.1/1 Signature of p.w.1 on Ext.1
Ext.2 Written FIR
Ext.2/1 Signature of PW.2 in Ext.2
Ext.3 Signature of PW.2 in medical examination report
Ext.4 Zimanama dated 20.7.01
Ext.4/1 Signature of PW.2 in Ext.4

List of exhibits marked for defence.

N i l.

List of M.Os.

Nil

AC.J.M,Bhubaneswar.