

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BANPUR**

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

Date of Argument : 27.06.2014
Date of Judgment : 10.07.2014

L.CC No.35/2008
T.R. No. 630/2010

Laxmi Mansingh, aged about 22 years,
D/o Jhari Mansingh.
Vill: Kimbhirpada, Po: Singheswar,
P.S: Balugaon, Dist: Khurda

.... Complainant

-Versus-

1. Bahadur Mansingh, aged about 45 years, S/o Late Hari Mansingh.
2. Goli Mansingh, aged about 60 years, W/o Late Hari Mansingh.
3. Ahalya Mansingh, aged about 40 years, W/o Bahadur Mansingh.
All are of Vill: Kimbhirpada, Po: Singheswar, P.S:Balugaon, Dist: Khurda.

.... Accused persons.

Offence : U/s 451/323/427/506/34 of IPC.
For the Complainant : Sri S.K.Pattnaik & his associates.
For the Defence. : Sri A.K.Swain & his associates.

J U D G M E N T

01. The above named accused persons stands prosecuted for the offence punishable Under Sections 451/323/427/506/34 of IPC.

02. The brief facts of the complainant as per the complaint case is that:-

On 06.05.2008 at about 10 AM Bahadur Mansingh started demolishing the westernside wall of the complainant's house. So the complainant and her family members requested the accused persons not to demolish the wall. Then all the accused persons forcibly entered into the house of the complainant,

the accused Goli Mansingh and Ahalya Mansingh dragged her by holding her hair and dealt pushes to her as a result of which the complainant fell on the ground. When Batakrushna Mansingh and Saila Mansingh attempted to lift the complainant from the ground accused Bahadur Mansingh dealt kick blows on back of Saila Mansingh and he also dealt slaps and fist blows on cheek and back of Batakrushna Mansingh. The witness Batakrushna Mansingh and other co-villagers intervened and pacified the matter. Hence this case.

03. The plea of accused persons are one of complete denial and false implication.

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

- (i) Whether on 06.05.2008 at 10AM at Kimbhiripada the accused persons in furtherance of their common intention committed house trespass after preparation for causing hurt?
- (ii) Whether on the same date, time and place of occurrence in furtherance of their common intention voluntarily caused hurt to the complainant and her family members?
- (iii) Whether on the above noted date, time and place the accused persons in furtherance of their common intention damaged the wall of the complainant amounting more than or Rs.50/-?
- (iv) Whether on the above noted date, time and place the accused persons in furtherance of their common intention committed criminal intimidation caused alarm to the complainant?

05. In order to prove its case, complainant has examined two witness in her favour. Out of which C.W.1 is the complainant and C.W. 2 is an independent witness to the occurrence, whereas defence has examined none.

06. On perusal of the evidence available on record it is found that C.W.1 in her evidence stated that the accused persons are her eastern side neighbour. On the

alleged date the accused persons damaged the eastern side wall of their house so she along with her brother and mother made protest, then all the accused persons forcibly entered into her house and dragged from the house and they also assaulted her mother by giving fist and kick blows. Then accused Bahadur assaulted Batakrushna by giving fist and kick blows when she tried to protest the complainant. Then the people intervened the matter and she along with her brother had gone to P.S and presented a written report but police did not listen them. So she filed the complaint petition. She said that due to assault she and her family members sustained pain. The accused persons also filed the case against them. C.W.2 the witness to the occurrence in his evidence stated that from the alleged date the accused persons came to their house and accused Bahadur destroyed the eastern side wall of their house, when the complainant protested them the accused persons came to their house and dragged the complainant then pulled her and assaulted her. Then the accused persons assaulted her by giving fist and kick blows. The accused persons also destroyed their wall and took away the bricks. The villagers were seen the incident. He said that he came to the spot when the accused persons were dragging the hair of the complainant and then assaulted her and he was assaulted on his left waste and other 2/3 parts of his body but he had not sustained any injury due to the assault. He said that due to the dragging the complainant feeling pain in her head. After the incident they have under gone treatment. He said that he can not say the exact number of assault given to him. Several villagers had gathered at the spot but he could not say their names. The accused persons also filed a case against them.

07. On careful scrutinization of the evidence it is found that except the complainant and her brother none of the complainant witnesses came forward to depose their evidence in this court. The complainant and her brother have categorically stated that the accused persons assaulted the complainant by pulling

her hair and the victim by giving fist and kick blows. But neither the complainant nor the victim categorically stated that which accused assaulted them in which manner. Though it is the version of the complainant that she felt pain after assault but she has also not stated in which part of her body he sustained pain and no where the victim stated that the accused persons assaulted the complainant on her head. Though the victim stated that the accused persons also assaulted him but at the same time he admitted that he had not sustained any injury due to any assault and they have undergone treatment but they have not filed any medical certificate in their favour. Hence in the absence of any cogent, reliable and trust worthy evidence on the record the accused persons are entitled for an acquittal.

07. In the result of the above discussions and the reasons recorded it can be concluded that no ingredients of the alleged offence against the accused could be proved. Hence I hold the accused persons are found not guilty of the offence U/s 451/323/427/506/34 of IPC and acquitted them thereof U/s.255(1) of Cr.P.C. They be set at liberty forthwith and their bail bond stands cancelled.

As there is no seizure no order passed for its disposal.

Enter the case as mistake of fact.

Judicial Magistrate First Class,
Banpur

This judgment is typed out as per my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, on this the 10th day of July, 2014.

Judicial Magistrate First Class,
Banpur

List of witnesses examined for Prosecution.

C.W.1 Laxmipriya Mansingh

C.W.2 Batakrushna Mansingh
List of witnesses examined for defence.

None

List of Exhibits marked for Prosecution.

Nil

List of Exhibits marked for defence.

Nil

List of MOs marked for Prosecution.

Nil

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