

IN THE COURT OF 2ND ADDL.SESIONS JUDGE, KHURDA.

Present:

Sri A.K.Sahoo, LL.M.,
2nd Addl. Sessions Judge, Khurda.

S.T 57 of 14

(Arising out of G.R. No. 246/09 corresponding to Tangi P.S.Case No. 60/09)

S T A T E **Prosecution.**
...Vrs...

1. Subash Ch.Sethi, aged about 30 yrs S/o Sanatan Sethi
2. Gopal Pradhan, aged 34 yrs S/o Kela Pradhan
3. Rabi Bijuli, aged 45 yrs S/o Bula Bijuli
4. Ramesh Ch.Pradhan aged 30 yrs S/o Matia Pradhan
5. Krushna Behera aged 27 yrs S/o Rama Ch.Behera
6. Kelu Behera aged about 32 yrs S/o Subala Behera
7. Naba Behera aged about 27 S/o Rama Ch. Behera

All of vill. Singarama (Godisahi), P.S. Tangi, Dist. Khurda.

.....**Accused persons.**

**OFFENCE U/S. U/s. 147, 148, 294, 324, 307/149 I.P.C and Sec.9(b) of
Indian Explosive Act and 4/5 of Explosive Substance Act.**

Counsel for the prosecution : Sri A.K.Pattnaik,Adv

Counsel for the defence : Sri A.K.Pattnaik & S. Baliarsingh.Adv

Date of argument : 2.9.2014

Date of Judgment: 6.9.2014

J U D G M E N T

The above named accused persons stand charged U/s. 147, 148, 294, 324, 307/149 I.P.C and Sec.9-B of Indian Explosive Act and 4/5 of Explosive Substance Act.

2. On 12.3.09 noon at about 1 p.m, the day of holy, the accused persons had been to the village Badhisahi, the village of the informant to play holy. It is alleged that all the accused persons rebuked the villagers telling obscene words and when the villagers of Badhisahi protested to it, all of them rebuked them telling obscene words and assaulted them with fist blows, slaps and kicks. Further the accused persons threw three nos. of bombs to the informant Sudhakar, Adai Bijuli and Roul Bijuli, causing injuries on their body. Police registered the case soon after the occurrence at 3 p.m of the same day and conducted investigation. During investigation one Tata Sumo vehicle bearing Regd No. OR 02E 873, its documents and some particles of the cracker lying at the spot were seized. Thereafter, on completion of investigation police launched prosecution against the accused persons on 10.7.2009, hence this case.

3. The plea of the accused persons is denial simplicitor.

4. The points for determination in this case are;

- i) Whether accused persons had formed an unlawful assembly with common object to rebuke, intimidate, assault and use force and violence to the villagers of Badhisahi?
- ii) Whether the accused persons in prosecution of such common object were armed with deadly weapons like explosive?
- iii) Whether the accused persons in prosecution of such common object uttered obscene words in a public place causing annoyance to others?

- iv) Whether the accused persons in prosecution of such common object caused hurt to informant, Adyota Bijuli and Roul Bijuli by using explosive substance?
- v) Whether the accused persons in prosecution of such common object exploded bombs, causing injuries to Sudhakar, Adoyata and Roul Bijuli with knowledge that if death is caused they would be guilt of murder?
- vi) Whether the accused persons in prosecution of such common object had used explosive by exploding bombs?
- vii) Whether the accused persons had kept explosive substance with intention to endanger life and property?
- viii) Whether the accused persons had knowingly possessed explosive substance under suspicious circumstances?

5. Prosecution has examined 5 villagers of vill. Badhisahi and then considering their evidence prosecution closed its case.

6. P.w.1 the informant testifies in court that 5-6 years back in one noon, the accused persons had come to his village and asked for a mike set during holy time. Further that accused Gopal and Ramesh rebuked him telling obscene words, for which the villagers of Badhisahi assaulted them. Further he says to have been medically examined at Tangi Hospital. He has proved the F.I.R lodged by him vide Ext.1 and voluntarily stated that he can not say who assaulted in the crowd. Prosecution has declared the informant hostile to it and has suggested the F.I.R story, but the witness denied to it. He failed to say the contents of the F.I.R, rather says that the dispute has been settled outside court in his village. P.w.2 the injured also stated nothing except that the accused persons had exploded bombs in his village and he had sustained injury. But during cross-examination he failed to say as to who had threw bombs and denies to have been examined by police during investigation. P.w.3 another injured testifies that there was quarrel in the village for renting of mike set

during holy time and that the accused persons had threw bombs. At the same time he says that he can not say as to who assaulted whom and who among the accused persons threw bombs. P.ws.4 and 5 had stated their ignorance about the incident. It appears from the material in record that there was a quarrel between the accused persons and the villagers of Badhisahi relating to giving of mike set on rent during holy time. The F.I.R contain that the accused persons had come to play holy. Therefore, prior intention to commit any crime is not forthcoming. It is clear from the testimony of witnesses that villagers of Badhisahi had also assaulted the accused persons and subsequently the dispute has been decided and both the villagers are living in peace and harmony. There is no evidence in record as to who threw the bombs at the spot, so also none of the witnesses have stated as to who rebuked or threatened them. At the same time there is no evidence of causing annoyance to any body or that any of the accused was possessing explosive or explosive substance, since bombs were exploded. On surmises and conjunctures all the accused persons can not be held guilty. Jumping to a conclusion in this regard without admissible evidence shall be redundant. At the same time mere statement that P.ws.1,2 and 3 had sustained injuries is not sufficient to draw a conclusion regarding complicity of all the accused persons U/s.307 and 324 I.P.C. For committing of such offence by any of the assembled members all accused persons if present are liable for punishment. In the present case none of the P.ws have stated anything against any particular member of the unlawful assembly i.e implicating any accused. Therefore, I found when overt act of any of the members of the accused persons stated to have formed an unlawful assembly at the spot is not forthcoming, no conclusion can be drawn against any of the accused persons U/s. 147, 148 I.P.C or Sec.149 I.P.C, rather it appears that the villagers of the informant had assaulted the accused persons at the spot of occurrence. Therefore, F.I.R lodged is not free from concoction and embellishment. In view of such testimony of the injured persons, prosecution has not proved the injuries to them. At the same time no evidence is adduced corroborating

testimony of P.w.s regarding explosion of bombs or using of explosive substance by any of the accused persons.

7. In view of such analysis of evidence when the ingredients of the offences levelled against the accused persons U/s. 147, 148, 294, 324, 307/149 I.P.C and U/s.9-B of Indian Explosive Act and U/s.4/5 of Explosive Substance Act, has not been proved by the prosecution its case beyond all reasonable doubt U/s.147, 148, 294, 324, 307/149 I.P.C and U/s.9-B of Indian Explosive Act and U/s.4/5 of Explosive Substance Act against the accused persons, they are held not guilty and acquitted there from U/s.235(1) Cr. P.C.

They be set at liberty and discharged from their bail bonds.

The zimanama be cancelled and other articles, if any, be destroyed, after four months expiry of appeal period, if no appeal is preferred, and as per the order of appellate court, if an appeal is preferred.

2nd Addl. Sessions Judge, Khurda.

The judgment is dictated, corrected and pronounced by me in the open court today i.e 6th day of September,2014 under my hand and seal of this court.

2nd Addl. Sessions Judge, Khurda.

List of P.w.s examined for prosecution.

P.w.1	Sudhakar Bijuli
P.w.2	Aditya Bijuli
P.w.3	Rahul Bijuli
P.w.4	Chaitanya Barik
P.w.5	Jagannath Behera

List of Dws examined for defence.

N i l.

List of exhibits marked for prosecution.

Ext.1 F.I.R

Ext.1/1 Signature of P.w.1 on F.I.R

List of Exhibits marked for defence.

N i l.

List of M.Os marked for prosecution.

N i l.

2nd Addl. Sessions Judge, Khurda.