

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, BANPUR
PRESENT:

Sri Satya Ranjan Pradhan
Asst..Sessions Judge, Banpur

S.T. Case No. 35/17/106 of 2014/2002

(Arising out of G.R. Case No. 34/2001
to Banpur P.S. Case No. 13/2001)

State. ... Prosecution.

-Versus-

1. Sarat Naik, aged about 40 years, S/o Hari Naik of Vill: Sala-
padiha, P.S: Banpur, Dist: Khurda.

2. Naresh Bisoi, aged about 41 years, S/o Bichitra Bisoi of Vill:
Subudhipatna, P.S: Balugaon, Dist: Khurda.

... Accused.

For the Prosecution : Sri R.K. Bisoi, Addl. P.P.

For the accused Sarat Naik : Sri B.K. Paikray Advocates.

For the accused Naresh Bisoi: Sri S.K.Lenka Advocate.

Date of Argument : 15.01.2015

Date of Judgment : 30.01.2015

Offence U/s 333/224/307 I.P.C R/W Section 3 & 4 of the Explosive
Substances Act.

JUDGMENT

1. The above named accused Sarat Naik stand charged U/s
333/307/224/109/34 I.P.C, read with Section 3 & 4 of the Explosive
Substances Act whereas the accused Naresh Bisoi stand charged U/s
224/333/307/34 I.P.C read with Section 3 & 4 of the Explosive
Substance Act.

2. The brief facts of the prosecution story as narrated in the F.I.R is
that:

On 09.02.2001 at about 12.30 pm seven U.T.Ps namely Matia @ Pankaja Bhola, Naresh Bisoi, Ramesh Reddy, Kalu @ Gundicha Parida, Ajit Kumar Sarangi, Bijay Kumar Pradhan and Kishore Lenka were brought to C.S.I office Banpur from Sub Jail Khurda for their production before the Court of J.M.F.C., Banpur in connection with G.R. Case No.88/2000, 316/1999, 301/2000, 625/1991 and 134/2000. After their arrival C.S.I Satyabadi Mohapatra had received the I.C. Warrants and kept the U.T.Ps in the Hazat situated adjacent to the C.S.I office. During the course of the day the said U.T.Ps were produced before the J.M.F.C., Banpur and again were kept in the said hazat room. After their production the escort personnels were getting ready to take the U.T.Ps back to the court van so as to bring them again to the Sub-Jail Khurda. At about 3.30 Pm the informant heard the sound of bomb explosion as well as the shout of escort personnels who were saying 'Paleigale paleigale'. Hearing such shout he along with other persons such as Balunki Charan Das, Raula Das & Prafulla Maharana came out of the C.S.I office and found the front of the C.S.I office filled with smoke. He also noticed some of the U.T.Ps to be missing from the hazat and the Escort personnels who were deployed at the spot were chasing the U.T.Ps. While trying to escape one of the accused B.Ramesh Reddy had dealt a blow on the back of constable Mujibur Rehman by means of a knife causing bleeding injury.

Further more the said accused along with accused Pankaja Bhola had exploded bombs for their escape. Due to the bravery shown by the police personnels the accused persons namely Ramesh Reddy, Naresh Bisoi, Pankaja Bhola and Ajit Sarangi could be apprehended. However one of the accused Kalia @ Gundicha Parida could able to escape. Due to the said attack of the accused persons the escort personnels namely Sk. Nizam, Lingaraj Mallick and Sk. Mujibur Rehman got injured. For the aforesaid occurrence the informant lodged a written report before the O.I.C. Banpur P.S which was registered as Banpur P.S.Case No. 13/2001 U/s 224/225/333/307/34 I.P.C R/W 3/4 Explosive substance Act and after completion of investigation the C.S was submitted against the accused persons namely B. Ramesh Reddy, Matia @ Pankaja Bhola, Sarat Naik, Naresh Bisoi, Jitu @ Ajit Sarangi and Gundicha Parida U/s 224/225/333/307/34 I.P.C R/W 3 & 4 Explosive Substance Act along with Sarat Naik and Jujhia @ Judhistira Bhola U/s 333/307/109/34 I.P.C. R/W 3 & 4 Explosive Substance Act.

Out of the said accused persons the present case was committed for five accused persons namely Ramesh Reddy, Matia @ Pankaja Bhola, Sarat Naik, Naresh Bisoi and Jitu @ Ajit Sarangi. During the course of the hearing of the present case, the accused B.

Ramesh Reddy had expired. Hence the case against him was abated vide order dated 01.05.2009. The case of other two accused persons namely Matia @ Pankaj Bholra and Jitu @ Jitendra Sarangi were split up vide order dated 08.07.2014 and 2.6.2006 respectively. Accordingly the present case is proceeded against the accused persons namely Sarat Naik and Naresh Bisoi only.

3. The plea of the accused is one of complete denial .

4. The points for determination in this case are :-

(i) Whether on 9.2.2001 at about 3.30 pm the accused Naresh Bisoi in furtherance of his common intention with other accused persons while lawfully detained in custody for the offence of dacoity had escaped from the said custody and further offered resistance to the lawful apprehension?

(ii) Whether on the aforesaid date, time and place of occurrence the accused Naresh Bisoi and Sarat Naik as well as other accused persons as well as other accused persons in furtherance of their common intention voluntarily caused grievous hurt to constables Mujibur Rahemn, Sk. Nizam and Lingaraj Mallick by means of bombs and knives which were instrument for stabbing?

(iii) Whether on the aforesaid date, time and place of occurrence the accused Naresh Bisoi and Sarat Naik as well as other accused persons in furtherance of their common intention assaulted Mujibur Rahemn , Sk. Nizam and Lingaraj Mallick by

means of bombs and knives with such intention or knowledge and under such circumstances that if by that act the death could be caused of said Mujibur Rehman, Sk. Nizam and Lingaraj Mallick they would have been guilty of murder?

(iv) Whether on the aforesaid date, time and place of occurrence the accused Sarat Naik in furtherance of their common intention had abetted the other accused persons for their escape from lawful custody and for attempt of murder of the escort personnels?

(v) Whether on the aforesaid date, time and place of occurrence the accused persons unlawfully and maliciously caused explosion of bomb and caused hurt to constables Lingaraj Mallick , Mujibur Rehman and Sk. Nizam?

(vi) Whether on the aforesaid date, time and place of occurrence the accused persons found in possession of bombs and knives with intent by means thereof to endanger life and property and conspired and caused injury to Lingaraj Mallik, Mujibur Rahemn and Sk. Nizam.

5. To substantiate its case prosecution had examined as many as 16 witnesses and produced certain documents marked as Ext.1` to 12.

On the other hand defence had examined none.

6. Before analysis of evidence led by both parties it is worth mentioning herewith that "A man legally arrested for an offence must submit to be tried and dealt with according to law, if he gains or attempts to gain his liberty with the use of force before he is delivered by due course of law he commits the offence". The charge and ground for which the accused persons are facing their trial has already been mentioned in the foregoing paragraphs. Now in the present paragraph and succeeding paragraphs we will discuss the evidence led by both parties to find out whether the accused persons named above are guilty for the charges level led against them or not. As mentioned earlier the prosecution in order to establish its case had examined as many as 16 witnesses. However for better appreciation of evidence the evidence of the informant is taken into account first. The informant Satyabadi Mohapatra who took over the charge of C.S.I., Banpur court on the date of the occurrence was examined by the prosecution as P.W.4. While being examined in the court he admitted the fact that on 9.2.2001 he was working as C.S.I Banpur. He could identify the accused persons namely B.Ramesh Reddy, Naresh Bisoi and Pankaj Bholra standing in the dock but could not identify the accused Sarat Naik who was also standing in the dock. Regarding the alleged occurrence it was stated by him that on 9.2.2001 the escort

personnels namely Lingaraj Mallick, Mujibur Rehman and one other had brought the U.T.Ps namely B.Ramesh Reddy, Pankaj Bhola, Naresh Bisoi, Ajit Sarangi and others for their production before the court. After their production before the J.M.F.C., Banpur the informant had returned the I.C. Warrants of the said U.T.Ps to the said constables. At 3.20 pm while he was there in the office heard a sound of bomb being exploded near the court hazat. So he came out the office and found the place to be filled with smoke. Taking the said opportunity some of the U.T.Ps tried to escape. Out of them the U.T.P Pankaj Bhola, B. Ramesh Reddy, Ajit Sarangi could be apprehended by the constables Rahul Das, Mujibur Rehman, Lingaraj Mallick and the informant himself. However the accused Kalu @ Gundicha Parida could able to escape from the custody. Thereafter he came to know from the constable Lingaraj Mallick that when they opened the gate of the hazat, at that time all the U.T.Ps gave sudden push to them. At that time the accused Ramesh Reddy and Pankaj Bhola had exploded bombs for the purpose of escaping. Through this witness prosecution could be able to mark the F.I.R as Ext.2. Al though he was cross examined by the counsels of both the accused persons nothing was brought out of their mouth which will cast a doubt over his statement. The other important witnesses to the prosecution case are Lingaraj Mallick, Sk. Nizam, Sk. Mujibur Rehman and Raul Das. All the said

persons were working as constables . The witness such as Lingaraj Mallick, Sk. Nizam and Sk. Mujibur Rehman were the escort personnels who had brought the U.T.Ps to the Banpur court from Sub-Jail Khurda. They were examined by the prosecution as P.W.2, 5 and 16. All the said witnesses supported the case of the prosecution by saying that on the alleged date of occurrence they had brought the U.T.Ps to Banpur court from Khurda Sub- Jail. Out of the said three persons only P.Ws 2 and 5 named the U.T.Ps who were brought to the court that day such as Ramesh Reddy, Pankaj Bhol, Naresh Bisoi, Gundicha Parida and others. They have also stated that the said U.T.Ps were kept in the hazat of the court for the purpose of their production before the court of J.M.F.C., Banpur. After their production at 3.30 pm when P.W.16 Mujibur Rehman opened the hazat gate and was putting hand cuff on U.T.P Ramesh Reddy the other U.T.Ps who were inside the hazat had pushed the hazat gate. Thereafter the accused Ramesh Reddy assaulted P.W.16 on his back by means of a knife causing bleeding injury. So far as throwing of bombs is concerned it was stated by P.W.5 that the accused Ramesh Reddy and Pankaj Bhol had exploded bombs causing injury on his left leg. On the other hand P.W.2 could not name the person who had exploded the bombs. P.W.16 only named accused Pankaj Bhol for exploding the bombs. Both the witnesses (P.Ws 2 & 16) supported the statement of P.W.5 to

the fact that due to the said explosion P.W.5 had sustained injury on his left leg. They also stated that after the aforesaid occurrence some of the U.T.Ps (name of the said U.T.Ps were disclosed) could be apprehended but the U.T.P Gundicha Parida could manage to escape. The driver who was driving the court van also corroborated the prosecution case to the effect that he was the driver of the court van in which the U.T.Ps were brought to the court on that day. He had heard the explosion of bomb and seen the injuries on the body of escorting party. All these witnesses were cross examined at length by the learned counsel for the defence, however nothing much of importance was elicited from their mouth to discredit their statements rather they stood firm to their earlier statements made before the police as well as to the statements which they made during their examination in chief in the court. Apart from these escort personnels and driver the prosecution had examined C.S.I and Court staffs as P.W.s 9 & 8 namely Raula Das and Niranjana Behera. At the relevant date Raula Das was working as constable in C.S.I office where as Niranjana Behera was working as Accountant in the court of J.M.F.C., Banpur. Both of them had heard the sound of bomb explosion as well as the shout 'paleigale paleigale'. So far as escape of U.T.Ps and their apprehension P.W.8 did not name any person but disclosed that some of the U.T.Ps had escaped and out of them some were apprehended.

Similarly PW.9 disclosed the number of U.T.Ps as 7 who had escaped and named person Bhola, Ramesh Reddy and Ajit Sarangi to be the persons who were apprehended immediately. Both these witnesses have claimed to have seen the injuries on the persons of the escort constables. One of the vital witness to the prosecution case is P.W.10 Kishore Lenka. This witness was one of the U.T.Ps who were produced in the court of J.M.F.C., Banpur on the relevant date. According to him while he was inside the hazat and drowsing he heard the explosion of bombs. After the alleged explosion he only found himself and Bijay Pradhan (P.W.15) inside the Hazat. Apart from them all had escaped. He also corroborated the prosecution story by saying that two APR constables had sustained injuries on their persons in the alleged occurrence. P.W.15 was another U.T.P produced in the court on the alleged date of the occurrence denied his knowledge about the alleged occurrence, although he admitted the fact that he was accused in G.R. 1625(A)/91. Though this witness was put to question U/s 154 of the Evidence Act by the learned Addl. P.P. nothing much of importance was elicited from his mouth which could have supported the case of the prosecution. Like P.W.15, P.W.11 did not support the case of the prosecution although he was put to question U/s 154 of the Evidence Act. Apart from the occurrence witnesses prosecution had examined some of the witnesses to the seizure. In this case the I.O had seized

the remittances of the bombs, the wearing apparels that means the official dress of the APR constables Sk. Nizam and Sk. Mujibur Rehman as well as two knives, vide seizure lists marked as Exts.3,4,5 & 6. P.W.1 and 6 are the witnesses to the seizure of remittance of exploded bombs. Both of them were the staffs of J.M.F.C., Banpur. Out of the said witnesses P.W.1 admitted the fact of seizure of the aforesaid articles. Through him the said seizure list was marked as Ext.1 and his signature was marked as Ext.1/1. P.W.6 though admitted the fact of hearing the sound of explosion of bombs and putting of signature on a paper, showed his ignorance about the alleged seizure. P.W.7 and 14 are the witnesses to the seizure of the knives and the uniforms. Both these witnesses stated about the alleged seizure made in their presence. Through them the said seizure lists could be marked as Ext.3,4,5 and 6 and their signatures were marked as Ext.3/1, 4/1,5/1,6/1 and 3/3.4/3, 5/3 and 6/3 respectively. After the alleged occurrence the injured escort personnels i.e. Sk. Nizam, Sk. Mujibur Rehman were medically examined by P.W.13. The medical evidence also corroborated the prosecution case and proves the alleged occurrence. During his examination the medical officer had stated that on 9.2.01 while he was working at C.H.C Banpur on police requisition he had examined Sk.Mujiibur Rehman. Sk. Nizam and Lingaraj Mallick. During his examination of Sk. Mujibur Rehman he found (i)

one stab injury of size 2 X 1.5 cm X muscle deep over back thoracic region with bleeding and opined that the injury to be simple in nature. So far as the possible of weapon of offence used it was stated by him that the same could have been caused by pointed sharp object. During his examination of Sk. Nizam he found (i) one lacerated injury of size 2cm X 1 cm X muscle deep over dorsom of foot. (ii) one lacerated injury of size 2cm X 1.5 cm X muscle deep over left dorsom of foot, one inch below the first injury. (iii) multiple lacerated injuries on the left leg and front of ankle joint (iv) Multiple lacerated injury over right wrist joint. After going through the statement of P.W.13 marked as Ext--- which reveals that the said persons had received injuries on the said part of the bodies which were stated by the injured persons as well as the other witnesses. The M.O had reserved his opinion regarding the nature of injury as he had referred him to D.H.H.Khurda for further examination for further examination. On the same day he had further examined Lingaraj Mallick (P.W.5) and had found (i) one abrasion of size 5 cm X3cm over mid shrift position of right arm. So far as the nature of injury is concerned he opined the same to be simple in nature.

7. The I.O of this case was examined by the prosecution as P.W.12. As per his version during the said period he was working as O.I.C. Banpur P.S. On receipt of the written report from C.S.I Satybad

Mohapatra he had registered the same as Banpur P.S. Case No. 13/2001 and took up investigation of this case. During his examination he had seized the wearing apparels of the injured escort personnels the knives and remittance of the exploded bombs in presence of the witnesses. He also had examined the accused persons Ramesh Reddy, Pankaj Bhola, Naresh Bisoi, Ajit Sarangi and also had arrested them. He had further sent the injury requisitions in favour of the injured persons and had received the same from the Medical Officer Banpur C.H.C. On 2.6.2001 he had made prayer to District Magistrate Khurda to accord sanction for prosecuting the accused persons under Explosive Substance Act. The seized articles were also sent by him to the S.F.S.L. for their examination vide requisition marked as Ext.9 and after completion of investigation he had submitted C.S against the accused persons. During his cross examination it was elicited from his mouth that though he had prayed to D.M. Khurda for sanction to lurch prosecution against the accused persons under Explosive Substance Act, he had not received the said sanction order from him. So far as the seizure of the knives are concerned he also admitted the fact that he had not directly seized the said knives from the possession of the accused persons. Apart from that no other thing was elicited from the mouth of the said witness.

8. From the aforesaid discussion I am of the opinion that the

prosecution through the examination of witnesses like P.W.2,5,16 (the escort personnels), P.W.4 (the informant), P.W.3 the driver of court van, P.W.8,9 (the court staff and staff of C.S.I) and above all P.10 one of the U.T.P who was there inside the said Hazat could able to prove the fact that such an occurrence took place for which this proceeding is going on. All of them not only disclosed about the alleged occurrence also disclosed about the injuries sustained by P.W.2, 5 and 16. The examination of medical officer as P.W.13 further strengthen the case of the prosecution. The witnesses to the seizure also proved the seizure. The said witnesses though cross examined at length by the defence counsels stood firm to their statements and nothing was brought out from their mouth for which they will depose false hood against the accused persons. Rather their statements found to be reliable, cogent and trustworthy. Although C.S was submitted against seven accused persons. In the present case at hand we were dealing with accused Sarat Naik and Naresh Bisoi. During the course of argument the counsel for the accused Sarat Naik had argued that although the prosecution witnesses have supported the case of the prosecution there is no direct evidence available against the accused Sarat Naik and he was not brought to the Banpur court from Khurda Sub- Jail for his production. In this regard he had drawn the attention of the court to the contents of the F.I.R were named of the U.T.Ps along with the cae

numbers in connection with which they were produced is mentioned. On perusal of the F.I.R it reveals that the informant P.W.4 had clearly mentioned the names of the U.T.Ps along with their connected case in connection with which they were brought from Khurda Sub-Jail to Banpur Court for their production which does not reveal the name of the accused Sarat Naik as one of the U.T.P. All the prosecution witnesses while being examined also could not identify the said accused. On perusal of the case record it reveals that the present accused Sarat Naik was entangled in the present case. On the basis of the statements of witnesses like Rabi Jena and Bijay Pradhan for supplying bombs and knives to the U.T.Ps for their escape from the custody. Although the said persons Rabi Jena and Bijay Pradhan were examined as P.W.11 and 15 both of them had denied their knowledge about the occurrence. Although the learned Addl. P.P. had put some leading questions to the aforesaid witnesses as per the 154 of the Evidence Act nothing was brought out from their mouth which could have supported the case of the prosecution. As because the said witness remained silent about the alleged occurrence and other witnesses did not disclose about any such activity or other involvement of accused Sarat Naik either in connection with the alleged crime or for abating the act of other U.T.P, I am of the opinion that the prosecution could not able to prove its case against this accused Sarat Naik

beyond all reasonable doubt.

9. So far as the other accused Naresh Bisoi is concerned the contents of F.I.R. marked as Ext.2 and statement of P.Ws 2,4,5 and 16 clearly implicates the present accused as one of the perpetrator of the alleged crime. Although there is no direct evidence available regarding the fact that this present accused had stabbed the APR constable and threw bombs still then he will be held responsible for the said offence done by other accused persons because the alleged act were done by the other accused persons in furtherance of their common intention.

The general principle of criminal liability is that, it is the primary responsibility of the person who actually commits an offence and only that person who has committed crime can be held guilty but this section U/s 34 of I.P.C. lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention. If the criminal act is the result of common intention then every person who did the criminal act with common intention would be responsible for the total offence irrespective of the share which he had in its perpetration.

Basing upon this principle this accused is held liable for the act which act which he had done himself as well as by the other accused persons. As revealed from the evidence led by the prosecution the

U.T.Ps who were in the hazat shared a common intention to escape from the lawful custody and in pursuance to their common intention they had pushed the hazat gate simultaneously when P.W.16 was putting the hand cuff on accused B.Ramesh Reddy after opening the hazat gate. Before that they had collected the knives and bombs. These things show that all of them had shared common intention for the aforesaid act. So irrespective of the part played by him he will be held liable for the totality of the offence.

In the aforesaid case the accused Naresh Bisoi is facing trial for the offence U/s 224/333/307/34 I.P.C read with 3 and 4 of the Explosive Substances Act. So far as the offence U/s 3 and 4 of the Explosive Substance Act is concerned before lurching a case against the accused persons necessary sanction should have been accorded by the prosecution from the District Magistrate Khurda as section 7 of the said Act clearly puts a restriction on the trial of the said offence without the necessary permission. The said provisions reads as follows:-

Section 7 of Explosive Substance Act:- the restriction on trial of offence "no court shall proceed to the trial of any person for an offence against this act, except the consent of the Central Government". The term 'Central Government' has been substituted with the term 'District Magistrate' as per the amendment made in the

year 2001. So as section -7 of the said act clearly puts a restriction on the trial of the accused persons without a prior permission, the present accused can not be convicted for the said offence as the I.O had not obtained the said permission from the District Magistrate, although he had prayed for the same. The said fact was also held by the Apex Court in the case of Deepak Khinchi – versus- State of Rajasthan in Criminal Case No. 719/2012 arising out of Special Leave petition No.3989/2011.

10. Apart from the aforesaid offences the accused is also facing trial U/s 224/34 I.P.C. The offence U/s 224 of the I.P.C deals with two kinds of offence. (1) Intentional resistance or illegal obstruction by a person to his lawful apprehension for any offence with which he is charged (2) Escape or attempt to escape by a person from lawful custody for the offence with which he is charged or of which he has been convicted. In the present case at hand it falls under category of 2nd type. The illegal proposition for trial after arrest is that “ a man legally arrested for an offence must submit to be tried and dealt with according to law. If he gains his liberty before he is delivered by due course of law he commits the offence of escape”. Here we have to see whether he had made an attempt for an escape or escaped from custody in which he was lawfully detained. As revealed from the F.I.R marked as Ext.2 the said accused Naresh Bisoi was detained in

custody as U.T.P in connection with G.R. 316/1999. In connection with that case he was arrested and he was inside the custody. The said accused never raised plea that the arrest in G.R.316/1999 was never a lawful detention. In absence of the same it can be held that he was in custody and that custody was unlawful custody from which he tried to escape as evident from the statement of the prosecution witnesses. Accordingly I find the accused guilty for the offence U/s 224/34 of the I.P.C. This accused is also charged U/s 333/34 I.P.C for voluntarily causing grievous hurt to deter public servant from discharging his duty. So as to bring him within the purview of the charge the aforesaid provision of law the prosecution must prove the following acts done by him (i) that accused voluntarily caused grievous hurt (ii) that the person so grievous hurt was a public servant (iii) that such public servant was then discharging his duty (iii) that the accused did so with intent to prevent or deter such public servant or any other public servant from discharging his duty or that he did so in consequence of something done, or attempted to be done by such public servant in the lawful discharge of his duty. In the aforesaid case as discussed earlier the present accused had shared common intention with other accused persons for escaping from the custody. In furtherance of such common intention, one of the accused B. Ramesh Reddy had stabbed the APR constable Sk. Mujibur Rehman and also had threw bombs.

One other accused Pankaj Bhol had also exploded one bomb. Due to the said explosions and attack by knife the witness such as P.W.5, P.W.16 and P.W.2 had sustained injuries on their person. The medical officer had examined them and submitted the injury reports which are marked as Exts.10,11 and 12. Out of the said injuries the doctor had opined the injury of Sk. Mujibur Rehman and Lingaraj Mallick to be simple in nature .So far as the injuries on the person of Sk. Nizam is concerned no opinion was expressed by the M.O C.H.C., Banpur and had reserved his opinion referring the said injured to D.H.H, Khurda for further treatment. The I.O of the case had not brought and produced the treatment report of the said injured from D.H.H. Khurda. In absence of any final opinion in respect to the said injuries it can not be said that the injuries were grievous in nature. The injured persons were APR constables and as such were public servants. There is no dispute to the fact that said occurrence took place while they were discharging their duties as public servants. As because mp report suggesting a grievous injury was submitted by the prosecution this accused can not be held liable for the offence U/s 333 of the I.P.C. However he can held liable for the offence U/s 332 of the I.P.C. As the accused was charged for the higher offence no separate charge is required for convicting the accused for a lesser offence. So the act of the accused falls within the ambit of the section 332 of the I.P.C. Hence

convicted thereunder.

11. In addition to that the present accused is also facing trial for the offence U/s 307/34 I.P.C. To substantiate its case the prosecution must prove that (i) that the death of a human being was attempted (ii) that such death was attempted to be caused by, or in consequence of, the act of the accused (iii) that such act was done with the intention of causing death; or that it was done with the the intention of causing such bodily injury as (a) the accused knew to be likely to cause death ; or (b) was sufficient in the ordinary course of nature to cause death.

Under the aforesaid section the intention or knowledge which is necessary to constitute murder may exist, combined with an act which falls short of the complete commission of that offence. So it is very much necessary to gather the intention of the assailant. The said intention of the assailant is to be gathered from the nature of the weapon used and the parts of the body where the injuries are inflicted. As revealed from the case record the present accused along with others in furtherance of their common intention had pushed the gate of the hazrat. Thereafter one of the accused dealt a blow on the back of P.W.16 by a knife and two others exploded bombs. The injury which was sustained due to the stabbing by B.Ramesh Reddy upon the person of Mujibur Rehman P.W.16 was caused over the back of thoracic region of size 2 X 1.5 cm X Muscle deep. The doctor opined

the said injury to be simple in nature. While being examined as P.W.13 the doctor did not opine as to whether the said injury could have been fatal to the life of the said injured or not. Similarly the accused B. Ramesh Reddy and Pankaj Bhola had exploded bombs. The I.O had seized the remittance of the exploded bombs vide seizure list marked as Ext.1 and had sent the same to S.F.S.L Bhubaneswar along with other seized items for their examination and opinion. Although the said report was sent for their examination no report was submitted either by the I.O or by the prosecution. No effort was made to get the said report from S.F.S.L, Bhubaneswar. The report of S.F.S.L. Bhubaneswar was necessary to find out the contents of the said explosive and its strength. From the same it could have ascertained as to whether there was knowing about such strength in the bomb to take the life of a person or not. Similarly not a single prosecution witness had stated that the said bombs were thrown at them with an intention to take their lives or not. Simply they stated that the accused persons had exploded bombs for which the P.W.5 sustained injuries. The said injuries were sustained by (P.W.5) on his left leg. The nature of the said injuries also not known as the treating doctor at Banpur C.H.C did not opine about the nature of the injuries. No report effort was made by the I.O and prosecution to bring out the final opinion of the doctor from D.H.SH Khurda. So taking all into consideration I am of the opinion

that the prosecution failed to prove that the said act was by the accused persons with an intention or knowledge, so as to commit an offence of murder which ultimately fall front of murder. In this circumstances the offence U/s 307 of the I.P.C can not be made out. However the same falls within the ambit of section of 324 of the I.P.C which deals with the offence of voluntarily causing hurt by dangerous weapon or means. To bring home the charge under that provision the prosecution must prove that (i) that the accused caused by his act bodily pain, disease or infirmity to the complainant; (ii) that he did such act intentionally or with knowledge that it would cause the pain etc.; (iii) that it was unprovoked; (iv) that the accused caused it by means of an instrument for shooting, stabbing or cutting; or by an instrument, which used as a weapon is likely to cause death; or by means of fire, etc.; or by means of any poison, etc., or by means of any substance which it is deleterious to the human body to inhale etc., or by means of any animal. As discussed earlier from the evidence of the witnesses as well as the medical report of the injured it reveals that the injured persons had sustained bodily injured due to such act committed by the accused persons which was unprovoked by a knife and bombs which are definitely dangerous weapons and it was also caused in a dangerous mean. Accordingly the accused Naresh Bisoi is held liable for the offence U/s 324/34 of the I.P.C and convicted thereunder.

From the above discussion I found the accused Naresh Bisoi guilty for the offence U/s 224/332/324/34 of I.P.C he is convicted thereunder & and not guilty for the offence U/s 3 & 4 of Explosive Substances Act and acquitted therefrom. At the same time I find the accused Sarat Naik not guilty for the allegedly committing the offence U/s 333/307/224/109/34 I.P.C, read with Section 3 & 4 of the Explosive Substances Act and he is acquitted therefrom as per provision U/s 235 (1) Cr.P.C. His bail bonds stand cancelled.

So far as rendering the beneficial provision of P.O.Act is concerned considering the nature and gravity of the alleged offence I am of the opinion that the same shall not be rendered to the accused at the same time for the selfsame reason I also do not feel it proper to release him under section 360 Cr.P.C.

Asst. Sessions Judge, Banpur.

HEARING ON THE QUESTION OF SENTENCE

Heard the convict, Learned counsel for the convict and Learned Addl. PP on the question of sentence. The Learned Counsel for the convict submitted that the convict is a first offender having no criminal antecedent against his name. Hence lenient view may be taken in awarding sentence, whereas the Learned Addl. P.P. Prayed to impose stringent and exemplary punishment to the convict.

Considering the magnitude of the offence, taking the aggravating and mitigating factors into account the convict Naresh Bisoi is sentenced to undergo Rigorous Imprisonment for a period of 1 year and to pay a fine of Rs. 2,000/- (Rupees two thousand), in default to undergo R.I for 2 months for the offence U/s 224/34 I.P.C. Further he is sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay fine of Rs.2000/- (two thousand) in default to undergo R.I for 2 months for the offence U/s 332/34 I.P.C. At the same time the convict is also sentenced to undergo Rigorous Imprisonment for the period of 3 years and to pay fine of Rs. 2000(two thousand) in default, to undergo Rigorous Imprisonment for a period of 2 (two) month for the offence punishable under section 324/34 I.P.C. All the sentence shall run consecutively . The period of detention as UTP be set off from the sentence of imprisonment as per section 428 Cr.P.C.

No order regarding disposal of property is made as another accused persons are yet to be apprehended and face their trial.

Asst. Sessions Judge, Banpur.

Typed to my dictation & corrected by me. Judgment being sealed and signed is pronounced in the open court today i.e. on 30th day of January,2015

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1.	Prakash Chandra Barik
P.W.2.	Lingaraj Mallick
P.W.3.	Dayan Khan
P.W.4	Satyabadi Mohapatra
P.W.5	Sk. Nizam
P.W.6	Kailash Chandra Patra
P.W.7	Prakash Chandra Supakar
P.W.8	Niranjana Behera
P.W.9	Raula Das
P.W.10	Kishore Lenka
P.W.11	Rabi Jena
P.W.12	Baidya Narayan Bhoi.
P.W.13	Dr. Pabitra Kumar Pati.
P.W.14	Basanta Kumar Samantaray.
P.W.15	Bijay Pradhan
P.W.16	Mujibur Rehman

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1.	Seizure list
Ext.1/1.	Signature of P.W.1 on Ext.1.
Ext. 1/ 2	Signature of P.W.6 on Ext.1
Ext. 1/3	Signature of P.W.12 on Ext.1
Ext.2	F.I.R.
Ext. 2/1	Signature of P.W.4 on Ext.2.
Ext.2/2	Endorsement with signature of P.W.12.
Ext.3	Seizure list.
Ext.3/1	Signature of P.W.7 on Ext.3.
Ext.3/2	Signature of P.W.12 on Ext.3.
Ext. 3/3	Signature of P.W.14 on Ext.3.
Ext.4.	Seizure list.
Ext.4/1	Signature of P.W.7 on Ext.4
Ext.4/2	Signature of P.W.12 on Ext.4
Ext. 4/3	Signature of P.W.14 on Ext.4.
Ext.5	Seizure list
Ext.5/1	Signature of P.W.7 on Ext.5.
Ext. 5/2	Signature of P.W.12 on Ext.5
Ext. 5/3	Signature of P.W.14 on Ext.5.
Ext.6	Seizure list.
Ext.6/1	Signature of P.W.12 on Ext.6
Ext.6/2	Signature of P.W.12 on Ext.6.
Ext. 6/3	Signature of P.W.14 on Ext.6

Ext.7	Spot map.
Ext. 7/1	Signature of P.W.12 on Ext.7
Ext.8	Forwarding report to S.F.S.L.
Ext.9.	Spot map
Ext.10	Injury report
Ext.10/1	Signature of M.O on Ext.10.
Ext.10/2	Signature of P.W.16 on Ext.10.
Ext.11	Injury report of Sk. Nizam
Ext.11/1	Signature of P.W.13 on Ext.11.
Ext.12.	Injury report of Lingaraj Mallick.
Ext.12/1	Signature of P.W.13 on Ext.12.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.