

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

Sri Satya Ranjan Pradhan
Asst..Sessions Judge, Banpur

S.T. Case No. 49/22/26 of 2014/2000

(Arising out of G.R. Case No. 156/1998
corresponding to Banpur P.S. Case No. 94 dt.04.06.98)

State. ... Prosecution.

Versus.

Kabi @ Kabiraj Ghadei, aged about 58 years,
S/o Kartika Ghadei
Vill: Bhimpur, P.S: Banpur,
Dist: Khurda.

... Accused.

For the Prosecution : Sri S.Mishra, Addl. P.P.

For the Defence : Sri S.K.Pattnaik & Associates,
Advocates.

Date of Argument : 14.08.2014

Date of Judgment : 20..08.2014

Offence U/s 47(a) B & O Excise Act r/w Section 307/332/34 of I.P.C.

JUDGMENT

1. The above named accused person stands charged U/s 47(a) B & O Excise Act read with 307/332/34 of the Indian Penal Code, for unlawfully possessing 40 liters of I.D liquor for attempting to murder the informant and for voluntarily causing hurt to deter the public servants from discharging their duty in furtherance of his and accused Chhabi Ghadei with common intention.

2. The brief facts of the prosecution story is that:

On 04.06.1998 the informant Havildar Maheswar Paltasingh and driver Sudarsana Mangaraj had been to the Ghantasila Hill area vide command certificate No.64 dated 4.6.1998 for patrolling duty. At about 6.30 am they found the present accused coming on his cycle along with two jerrycans containing about 40 liters of I.D liquor whereas the other accused Chhabi Ghadei was following him. The informant detained the

accused Kabi Ghadei and asked him to accompany them to the P.S. Near Patapur Chhaka cannal road the accused Chhabi Ghadei came from behind and obstructed the informant and directed the informant and Sudarsana to leave the accused Kabi . As they did not listen to him, accused Chhabi started throwing stones at them. The first stone hit Sudarsana Mangaraj on his face and the second one hit on the back side neck of the informant Maheswar Paltasaingh causing injuries. At that time the present accused Kabi Ghadei brought out a wooden plank kept in his cycle and dealt a blow aiming towards the head of Maheswar Paltasingh. But as Maheswar showed his left hand it did not hit on his head rather he sustained injury on his left palm. Seeing this accused Kabi again dealt a blow on the head of Maheswar causing bleeding injury . Theafter Sudarsana Mangaraj could able to caught hold of the accused Kabi and Maheswar snatched away the wooden plank from him. At that time some villagers gathered at the spot for which the accused Chhabi Ghadei fled away from the occurrence place. Then both Maheswar and Sudarsana could able to apprehend the accused Kabi and produced him before the O.I.C, Banpur P.S. along with the said cycle, two jerrycans containing I.D liquor and the wooden plank. Maheswar filed the F.I.R before the O.I.C, Banpur P.S also being signed by Sudarsan. The same was registered as Banpur P.S.Case No.94 dated 04.06.1998 U/s 307/333/34 I.P.C & 47(a) B & O Excise Act. After completion of investigation I.O submitted charge sheet against the accused persons namely Kabiraj Ghadei and Chhabi Ghadei U/s 307/332/34 I.P.C. & 47 (a) B & O Excise Act. Prior to the stage of commitment the accused Chhabi Ghadei did not appear before the court below for which the case against Chhabi Ghadei was split up vide order dated 13.12.1999 and the case against Kabi Ghadei was only committed to the Court of Sessions to face his trial. Now the present case is proceeded with, only against accused Kabiraj Ghadei.

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

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

(i) Whether on 4th day of June, 1998 the accused Kabi in furtherance of of

their common intention assaulted the informant Maheswar with a wooden plank with an intention to kill or knowledge under such circumstances that if they by that act caused death of informant he would have held guilty of murder?

(ii) Whether on the aforesaid date, time and place of occurrence the accused in furtherance of their common intention voluntarily caused hurt to Maheswar Paltasingh to deter him and Sudarsana from discharging their duty?

(iii) Whether on the aforesaid date, time and place of occurrence the accused was in unlawful possession of 40 liters of I.D. Liquor.?

5. To substantiate its case prosecution had examined as many as nine witnesses, whereas defence had examined none.

6. Here in this case prosecution had examined as many as nine witnesses. However for better appreciation of evidence the statement of the informant Maheswar Paltasingh is taken into account first. This witness corroborating the F.I.R story stated that on 4.6.1998 he was posted as constable at Banpur P.S. On that date at about 5.15am he along with Asst. driver Sudarsana Mangaraj were performing patrolling duty near Ghantasila hill. During such patrolling they found the accused Kabiraj coming from jungle side on a bicycle with two plastic jerrycans Suspecting the accused they detained him and conducted search. Upon their search they found him possessing approximately 40 liters of Liquor. So they apprehended him and proceeded towards the P.S. along with the accused and the seized items. One kilometer after they reached near village Patapur. There the other accused Chhabi Ghadei came to their front and directed to release the accused Kabi but the informant denied to obey him for which the accused Chhabi got furious and started abusing him saying “ SALA MAGIHA POLICE CHINHA LIBHAI DEBU AMA DANARE TUME GODA PAKAUCHHA”. Thereafter he picked up some stones lying by the side of the road and threw towards them. One of such stone hit on the

right side face of Asst. Driver Sudarsana Mangaraj and the other hit on the left side neck of the informant. Due to the throwing of the stones both of them sustained bleeding injuries. At that time accused Kabi brought out a wooden plank tied on his cycle and dealt a blow aiming to the head of this informant but the informant showed his left hand to save himself for which he sustained injury on his left palm. Seeing this the accused dealt another blow on the head of the informant saying“ SALA MARILANI RE” causing bleeding injury. Both the injured tied their napkin around their injuries to prevent further bleeding. Thereafter Sudarsana Mangaraj could able to caught hold of the accused Kabi. Hearing about the said occurrence the villagers gathered near the spot. Seeing the arrival of the villagers the accused Chhabi left the spot by his cycle, whereas Maheswar and Sudarsana these two informants could able to apprehend the accused Kabi and return to the P.S along with the said accused, his cycle, plastic jerrycans containing liquor and the wooden plank. After arrival at the P.S Maheswar lodged a written report being signed by him as well as by Asst. driver Sudarsana Mangaraj. The said F.I.R was marked on behalf of the prosecution as Ext.7 and his signature marked as Ext.7/1. Through this witness the prosecution also proved the seizure list vide which the blood stained napkin and command certificate were seized as Ext.4. The other victim of this case namely Sudarsana Mangaraj was examined by the prosecution as P.W.9. If we will peruse the statement of the said witness it will be found that he contradicted the statement of P.W.7 on many points, starting from the date of the occurrence. Although P.W.7 disclosed the date of the occurrence to be 4.6.1998, P.W.9 started his statement by disclosing that on 4.9.1998 he along with P.W.7 had been to Ghantasila Hill to execute the warrant pending against the accused Kabi Ghadei. After their arrival near the Hanuman temple they found the accused coming on a bicycle loaded with two plastic jerrycans containing liquor. At the spot they detained the accused and were bringing him to the P.S. On the way back to the police station near Patapur chhaka the other accused Chhabi Ghadei came there and asked them to release the accused Kabi. Both the witnesses refused to obey him. So Chhabi started throwing stones at

them. One of such stone hit on the face of this witness causing bleeding injury and another hit on the head of P.W.7. Apart from this he stated nothing about the occurrence. He remained silent about any criminal act done by the accused Kabi Ghadei. On the other hand during his cross examination he clearly stated that the accused Kabi neither had assaulted him nor P.W.7 Maheswar Paltasingh. Further he has stated that Kabi Ghadei had not caused any obstruction to their official duty. Apart from these witnesses the prosecution had examined other witnesses to the occurrence such as P.Ws.3 and 4. But both these said witnesses denied their knowledge about the alleged occurrence. Prosecution also had examined some seizure witnesses such as P.Ws. 5,6 and 8 whose statements will be discussed later on. Apart from the aforesaid witnesses prosecution has examined the medical officer as P.W.1. Through this witness prosecution had marked injury reports of P.W.7 and 9 as Ext.1 and 2.

7. From the aforesaid discussion it reveals that there are some contradiction between the statement of the prosecution witnesses which resulted in creating some doubt such as (i) whether on the alleged date of occurrence P.Ws 7 and 9 had been to the alleged spot on duty or not. If they had been to that spot what was the reason. (ii) secondly whether the prosecution witnesses no.7 had seized 40 liters of I.D. Liquor from the possession of this accused Kabi and thirdly whether accused Kabi Ghadei is at an involved in the alleged assault or not. If the statement of P.W.7 is believed on 4.6.98 they had been to the alleged spot for performing patrolling duty where as, as per the statement of P.W.9 on 4.9.98 they had been to the alleged spot, as per the direction of the O.I.C to execute a warrant pending against Kabi Ghadei. However as per the Ext.7 the F.I.R. both the said witnesses had been to the alleged spot vide command certificate No.64 to apprehend some liquor traders. From the statements of P.W.7, P.W.9 and Ext.7 (the F.I.R) it reveals different reasons for the presence of P.W.7 & 9 at the spot .The prosecution could not able to give the appropriate reason as to why P.W.7 and P.W.9 had been to the alleged spot. The reason thereof could have been ascertained by perusing command certificate No.64 dated 4.6.1998. The

said command certificate bearing No.64 dated 4.6.1998 is said to be seized vide Ext.4. But the same was not produced in the court for verification. Further if the statement made by P.W.7 towards the last of para -2 of his cross examination is believed at the time of occurrence he was wearing a lungi and it is hard to believe that a police staff will go for patrolling/ for execution of warrant by wearing a lungi instead of his official dress. If the aforesaid facts are coupled together then it will raise suspicion about the alleged story of the prosecution.

The reason for the alleged occurrence is that from the spot P.W.7 and 9 apprehended accused Kabi Ghadei while he was transporting liquor. From his possession 40 liters of liquor was seized and while bringing him to P.S accused Chhabi came and asked them to leave Kabi when they did not leave Kabi the alleged occurrence was taken place. So it is pertinent to see if the police had seized any liquor or not. That apart this equally to find out the facts of seizure as the present accused Kabi Ghadei is also facing trial for allegedly committing the offence U/s 47 (a) B & O Excise Act. So far as the seizure is concerned it was stated by P.W.7 and 9 that after the tussle and attack by the accused persons they could able to apprehend the accused Kabi Ghadei and they had brought him to P.S along with one Hercules cycle and plastic jerrycans(two in number) each containing 20 liters of I.D. Liquor along with one wooden plank. The said seizure list vide which the aforesaid articles were seized were marked on behalf of the prosecution as Ext.3/1. Although both these said witnesses disclosed about the alleged seizure prosecution did not mark the signature of P.W.7 on the seizure list. So far as the independent witnesses to the seizure is concerned, the witnesses namely Padma Charan Samantaray and Basanta Pradhan are said to be the witnesses to the said seizure. Both these said witnesses were examined as P.Ws 2 and 8. Out of the said witnesses PW.2 denied his knowledge about the seizure however he admitted his signature on the seizure list. Although P.W.8 the homeguard stated about the said seizure he showed his ignorance as to in which connection the alleged seizure was made. According to him on the production of P.Ws 7 and 9 the said seizure was made but he did not disclose the presence of

the accused at the said spot. Rather stated that he found the said articles lying on the verandah of the P.S. To prove a case U/s 47(a) B & O Excise act the seizure of contraband articles must be shown to be made from the exclusive possession of the offender and the statements of the independent witnesses does not reveal the same. That apart the seized articles were not produced in the court. Though the said articles were said to be sent for chemical examination, the report thereof was not produced and marked. Even if it was produced and marked the credibility of such report would have been suspicious due to want of following of proper procedure such as , collection of sample & sealing thereof. Both the said witnesses P.Ws 7 and 9 stated to have seized the liquor but they have no experience in identifying liquor. What they should have done that at that spot in presence of the witnesses sample should have been collected it sealed bearing their signatures and the signatures of witnesses and sent it for chemical examination immediately but the aforesaid procedure was not followed. In absence of the aforesaid facts not only the fact of seizure was doubted but the existence of such an occurrence was also found to be suspicious. Accordingly, it can be said that the prosecution could not able to prove a case U/s 47(a) Bihar & Orissa Excise Act.

8. So far as the assault on PW.7 and 9 is concerned, as reveals from the statements of P.Ws 7, he implicated both Kabi and Chhabi in the alleged crime whereas P.W.9 one of the victim to the occurrence only implicated Chhabi in the alleged crime and remained silent about any act done by the accused Kabi Ghadei through out his statement Rather during his cross examination (para-3) he clearly stated that the accused Kabi Ghadei had not assaulted him or P.W.7. Going one steps ahead he stated that Kabi had not caused any obstruction in performing their official duty. As because these major contradictions was found out between the statements of P.W.7 and 9, it was wise to seen for independent corroboration. If the statement of P.W.7 (made in para-2 page-4) is believed nearby 50 to 60 people of the village gathered at the spot and had seen the occurrence. Out of such people prosecution could not able to produce a single witnesses who could have said about the

occurrence. Rather examined witnesses like P.Ws 3 and 4 who virtually denied their knowledge about the occurrence. Apart from these said witnesses the prosecution could not able to produce any other witnesses who were at the scene of the crime and have seen it. In the aforesaid circumstance it can be said that the prosecution could not able to prove its case beyond all reasonable doubt.

9. In the result I hold the accused not guilty for the offence U/s 307/332/34 I.P.C. & 47 (a) B & O Excise Act. and acquit him u/s. 235(1) Cr.P.C. He be set at liberty forthwith and be discharged from the bail bonds.

The seized article if any be destroyed after four months of expiry of the appeal period if no appeal is preferred and in case of any appeal the same be dealt with as per the order of the Appellate court.

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 20.08.2014.

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1.	Dr. Sibanarayana Jally
P.W.2.	Padma Charan Pradhan
P.W.3.	Bhimasen Muduli
P.W.4	Abhimanyu Muduli.
P.W.5	Pandaba Nayak
P.W.6	Laxmidhar Naik.
P.W.7	Maheswar Paltasingh.
P.W.8	Basanta Kumar Samantaray.
P.W.9	Sudarsana Mangaraj

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1.	Injury report.
Ext.1/1.	Signature of P.W.1 on Ext.1.
Ext.2	Injury report.
Ext.2/1	Signature of P.W.1 on Ext.1.
Ext.3	Signature of P.W.2 on the seizure list.
Ext.3/1	Seizure list.

Ext.3/2	Signature of P.W.8 on Ext.3/1.
Ext. 3/3	Signature of P.W.9 on seizure list.
Ext.4	Seizure list.
Ext.4/1	Signature of P.W.5 in Ext. 4.
Ext. 4/2	Signature of P.W.6 in Ext.4.
Ext. 4/3	Signature of P.W.7 on Ext.4
Ext 5	Signature of P.W.6 on the seizure list.
Ext.6	Signature of P.W.6 on the seizure list.
Ext.7	Written F.I.R.
Ext. 7/1	Signature of P.W.7 on Ext.7
Ext. 7/2	Signature of P.W.9 on Ext.7

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.