

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, KHURDA

PRESENT:

Sri Satya Ranjan Pradhan  
Asst..Sessions Judge, Banpur

**S.T. Case No. 02/104 of 2014/2012**

(Arising out of G.R. Case No. 89/2012  
corresponding to Banpur P.S. Case No. 54 of 2012 )

Date of Argument : 05.08.2014

Date of Judgment : 13.08.2014

State. ... Prosecution.

Versus.

1. Gagan Bihari Biswal, aged about 37 years, S/o Sudhakar Biswal.
  2. Kuna @ Srinibash Biswal, aged about 31 years, S/o Sudhakar Biswal.
  3. Dasarathi Behera, aged about 38 years, S/o Sukadev Behera.
  4. Ganesh Patra, aged about 58 years, S/o Late Khali Patra.
  5. Sudhakar Biswal, aged about 74 years, S/o Late Khali Biswal.
  6. Pabitra Patra, aged about 42 years, S/o Suresha Patra.
  7. Kabiraj Bisoi, aged about 42 years, S/o Late Hajari Bisoi
  8. Nilakantha Bisoi, aged about 47 years, S/o Late Hari Bisoi.
  9. Laxmidhar Biswal, aged about 47 years, S/o Sudhakar Biswal.
  10. Muna @ Ashis Biswal, aged about 27 years, S/o Sudhakar Biswal.
- All are of Vill: Halanda, P.S:Banpur, Dist: Khurda.

... Accused persons.

For the Prosecution : Sri S.Mishra, Addl. P.P.  
For the Defence : Sri D.K.Pattnaik & Associates,  
Advocates.

Offence U/s 341/294/379/307/506/149 I.P.C.

**JUDGMENT**

1. The above named accused persons stands charged U/s 341/294/379/307 /506/149 of the Indian Penal Code .
2. The brief facts of the prosecution story is that:

On 09.03.2012 at about 10.30pm the informant and his uncle Baman Charan Das were returning to their house from village Beruhainbadi. on their way back to their home near Halanda School the present accused persons along with some others had obstructed them. The accused persons namely Manu Biswal abused the victim Baman Charan Das in obscene words saying “ SALA MAGIHA etc” and assaulted him by means of fist and kicks blows. There after they took him to the village School. Near the said School the accused Munu Biswal assaulted Baman Das by means of a sword causing profuse bleeding injury on his head. Due to the such assault the victim Baman Charan Das fell down and lost his sense. The accused persons who were present at the spot took away one money purse and mobile phone from Baman Das. For the aforesaid occurrence the informant Swadhin Kumar Das lodged a written report before the I.I.C Banpur P.S on 10.03.2012. On the basis of such information the I.I.C. Banpur P.S has registered a case U/s 341/294/323/324/307/506/379/34 I.P.C. against the present accused persons along with some others. However after completion of investigation the I.O submitted charge sheet against 11 accused persons U/s 341/307/294/506 /379/149 of the I.P.C. During course of trial the accused Purna Chandra Biswal did not appear. Hence the case against him was split up vide order dated 23.05.2014 and the present case is proceeded with against the rest 10 accused persons.

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

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

- (i) Whether on 9<sup>th</sup> day of March 2012 at about 10.30 pm the accused persons in prosecution of their common object wrongfully restrained the informant and his uncle so that they couldnot go in any direction in which they had the right to proceed?

- (ii) Whether on the aforesaid date, time and place of occurrence the accused persons in prosecution of their common object assaulted the victim with a sword with an intention to kill or knowledge under such circumstances that if he by that act caused death of victim he would have held guilty of murder?
  - (iii) Whether on the aforesaid date, time and place of occurrence the accused persons in prosecution of their common object abused the informant and his uncle in obscene language in or near a public place causing annoyance to others?
  - (iv) Whether on the aforesaid date, time and place of occurrence the accused persons in prosecution of their common object committed criminal intimidation by threatening the victim with injury to his person with intent to cause alarm to him?
  - (v) Whether on the aforesaid date, time and place of occurrence the accused persons in prosecution of their common object dishonestly took away the moveable property such as money purse and mobile phone without the consent of the victim?
5. To substantiate its case prosecution had examined as many as eight witnesses, whereas defence had examined none.
6. The informant who is an eye witness to the occurrence was examined by the prosecution as P.W.4. While being examined as P.W.4 this witness admitted the fact of lodging of F.I.R. by him. However he denied his knowledge about the occurrence. The F.I.R which lodged by him was marked on behalf of the prosecution as Ext.2. The victim of the case Baman Chandra Das was examined by the prosecution as P.W.5. Like P.W. 4 he also denied his knowledge about the occurrence. Moreover he stated that he has nothing to say against the accused persons. Both the informant and victim were examined by the Learned Addl. P.P U/s 154 of the Evidence Act. But nothing was

brought out from their mouth which could have supported the case of the prosecution. Apart from these two witnesses prosecution had examined four other eye witnesses to the occurrence as P.W,s 1,2, 7 & 8. Like P.Ws 4 and 5 they also denied their knowledge about the occurrence. These witnesses were also put to question by the Learned Addl. P.P. U/s 154 Evidence Act. But nothing much of importance was elicited from their mouth. Apart from the aforesaid witnesses the prosecution had examined two witnesses to the seizure of one motor cycle. The said witness to the seizure also denied their knowledge about the said seizure made in their presence. However they admitted their signatures on the seizure list marked as Ext.1 and 1/1. Apart from these witnesses no other witnesses were examined by the prosecution. From the aforesaid discussion it reveals that none of the prosecution witnesses supported the case of the prosecution including the informant and the victim. All the said witnesses showed their ignorance about the alleged occurrence. However the prosecution could able to mark the F.I.R as Ext.2 through the informant. At this juncture it can be said that the F.I.R is not a substantial piece of evidence which can be used to convict the accused persons. Rather it is a corroborative piece of evidence. It can be used for the purpose of contradiction and corroboration only. As no corroboration is available to the FIR story the said document marked as Ext.2 is of no use for the case of the prosecution. As none of the prosecution witnesses including the informant and victim did not support the case of the prosecution I am of the opinion that prosecution could not able to prove its case beyond all reasonable doubt.

7. In the result I hold the accused persons are found not guilty U/s 341/294/379/307/506/149 I.P.C. and acquit them u/s. 235(1) Cr.P.C. They 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 subject to 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 13.08.2014.

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1. Kailash Patra  
P.W.2. Gurudev Sahoo  
P.W.3. Subash Chandra Das  
P.W.4 Swadhin Kumar Das  
P.W.5 Baman Charan Das  
P.W.6 Niranjana Das.  
P.W.7 Satyanarayana Paltasingh  
P.W.8 Kandarpa Jena

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1. Signature of P.W.3 on seizure list.  
Ext.1/1. Signature of P.W.6 on seizure list  
Ext. 2 F.I.R.

Ext.2/1 Signature of P.W.4 on Ext.2.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.