

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

Present:

Sri A.K.Sahoo, LL.M.,

2nd Addl. Sessions Judge, Khurda.

S.T 50/41 OF 2013/12

(Arising out of G.R.Case No. 561/09 corresponding to Khurda P.S Case
No. 168/09)

S T A T E

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Prosecution.

...Vrs...

Papa @ Nasirudin Khan, aged about 42 years, S/o Late Sk. Sattar Khan

Vill. Keranga, P.s- Khurda, Dist. Khurda**Accused**

OFFENCE U/S. U/s. 341, 323, 325, 307 and 506 I.P.C.

Counsel for the prosecution : Sri A.K.Pattnaik, Addl. P.P

Counsel for the defence : Sri Pravat Ku. Das Adv.

Date of argument : 30.7.2014

Date of Judgment: 5.8.2014

J U D G M E N T

The above named accused stands charged U/s.341, 323, 325, 307 and 506 I.P.C.

2. The prosecution story is that on 2.6.09 at 5 p.m while Asruf Khan, the father of informant Jamal Khan had been to collect water from the village tube well, at that time another lady was collecting water. Since the pitcher of the lady was filled with water, the father of informant asked to take it. At that time accused Papa @ Nasirudin Khan rebuked Asruf Khan and assaulted on his face.

When Asruf disclosed to his wife (mother of the informant), his grand mother, mother and younger brother Fazal Ahamed Khan went to the house of accused to ask him. While his younger brother asked Papa Khan about it, the accused assaulted his younger brother with the handle of a spade. When Asruf intervened, accused dealt a blow with the spade on the head of Asruf causing bleeding injury, for which he fell down on the ground. Local people shifted him to Khurda Hospital and then for better treatment he was shifted to Vivekananda hospital, Bhubaneswar. After treatment at Bhubaneswar, the injured was brought to Khurda hospital and during his treatment such F.I.R was lodged on 3.6.09. During investigation of the case police seized one iron spade (Kanka with wooden handle) from the house of accused on 4.6.09 and also one red colour napkin stained with blood and one pillow cover of violet colour stained with blood on production by complainant and then after obtaining injury report and on completion of investigation launched prosecution against the accused. The accused pleaded not guilty and claims for trial. Hence this case.

3. The plea of the accused is mere denial rather he takes a plea that false case has been foisted.

4. The points for determination in this case are;

- i) Whether accused voluntarily obstructed Asruf Khan from going in a direction, he has right to move?
- ii) Whether the accused caused hurt to Asruf Khan with intention and knowledge to cause such hurt?
- iii) Whether the accused voluntarily caused grievous hurt to Asruf Khan with intention and knowledge to cause such hurt?
- iv) Whether the accused caused hurt to Asruf Khan having intention and knowledge that if death is caused, he would be guilty of murder?

v) Whether the accused has committed criminal intimidation by threatening Asruf Khan and his family members causing alarm to them?

5. Prosecution has examined as many as 9 witnesses in this case. Defence has examined one witness in support of its plea that Asruf Khan had sustained injury due to fall near the tube well. Out of the witnesses P.w.1 is the informant and son of injured Asruf Khan, P.w.2 is the Medical Officer, P.w.3 is the injured Asruf Khan, P.w.s.4,5 and 6 are the independent local witnesses, P.w.7 is the grand mother of the informant, P.w.8 is the younger brother of the informant and P.w.9 is the I.O in this case.

6. It is evident from the testimony of P.w.2 that on 2.6.09 at 7.05 p.m he had examined Asruf Khan and had found three lacerated injuries ,out of which 2 injuries on his parietal region and the other on the inner aspect of left side upper lip. While injury no.1 and 2 are grievous, injury no.3 is simple in nature and the age of injuries were within 3 hours at the time of his examination. P.w.1 the informant has lodged the F.I.R hearing about the incident from the village people. He has not seen the occurrence. Police had seized the blood-stained napkin and the pillow cover on his production vide seizure list Ext.2. P.w.3 Asruf Khan says that on 2.6.09 at 5 p.m while he had been to collect water from the village tube well, women were present near the tube well and he requested them to assist him to draw water from the tube well, out of turn removing pitcher of the lady from the collection point, accused Nasirudin Khan picked up quarrel with him. He returned home and narrated it to his mother Isa Bibi P.w.7. Thereafter P.w.s.7 and 8 went to the house of accused to enquire about it. While Fazal Ahamed Khan asked accused Nasirudin Khan about the incident, the accused assaulted him with the handle of pick axe with a blow on his hand, thereafter the accused dealt two blows by the pick axe on his head and receiving blows he became unconscious and regained sense 15 days after the incident at Cuttack hospital. Learned defence counsel has challenged the testimony of this witness on the ground that there was no 2 blows on his head. P.w.4 , P.w.s.5 and 6 did not support the case of prosecution. Prosecution

has declared them hostile, but failed to elicit anything from them corroborating the F.I.R story. The case is based on the testimony of the family members of Asruf Khan. Prior enmity between two families is admitted. P.w.7 the mother of Asruf Khan says that one Budha @ Mustaq Ahamed brought his son in injured condition at about 5 o clock and disclosed that accused Papa Khan assaulted his son causing injuries. After giving preliminary treatment she went to the house of accused, asked about it. P.w.8 also reached at the house of Papa @ Nasirudin Khan. When she asked about assault to P.w.3, accused brought out an axe and assaulted P.w.8 with the handle of the same on his right hand. He raised alarm at that time Asruf was going towards the tube well to bring his pitcher , but the accused assaulted him on his head by means of a spade causing severe bleeding injury. Learned defence counsel urged that there is contradictions regarding the assault part of the occurrence as stated by the family members. P.w.8 says that his father returned home without collecting water and disclosed that accused Nasirudin Khan assaulted him by means of a pitcher (gara) and rebuked him. Thereafter when they had been to ask about it to the accused Papa Khan, he assaulted P.w.8 with a spade on his left hand arm and when his father tried to intervene accused dealt 3-4 blows with a spade on his head causing bleeding injury.

7. The alleged incident consists of two parts. The first alleged incident took place near the tube well concerning collection of water and the alleged second incident has took place near the house of accused. Admittedly though P.w.3 says to have been treated at Cuttack, but there is no evidence in that regard. Similarly there is no medical evidence that P.w.8 had sustained any injury. The injury report vide Ext.2 indicates three lacerated injuries on the body of Asruf. P.w.3 does not say about assault to him near the tube well. He only says that the accused quarreled with him and says that accused dealt 2 blows by means of spade on his head. Learned defence counsel submits relying on the testimony of P.w.7 that in view of her statement that the accused was standing near his house, while P.w.3 was brought in injured condition, the case

of prosecution of assault is to be disbelieved rather it indicates that he had sustained injury due to fall near the tube well.

P.w.7 has clearly stated that she has seen two injuries on the head of Asruf Khan due to assault by accused. Standing of accused near his house is not a ground to disbelieve the case of prosecution, particularly when the F.I.R has been lodged soon after the occurrence and the injured has been examined by doctor within three hours of the incident. Both such facts are a towering piece of evidence to believe the case of prosecution. Admittedly the witnesses P.w.s.1,3,7 and 8 belong to one family and the independent witnesses have not supported the case of prosecution, but it is trite that the family members shall not shield the real culprit.

8. Learned defence counsel urged that there is contradiction regarding the spot of occurrence and when the witness P.w.7 says that the assault had taken place near the tube well while the testimony of other witnesses is that the incident had taken place near the house of accused, the benefit must go to the accused. As a matter of fact it remains that the house of the accused is not at a far place from the tube well. P.w.8 says that the spot of assault of his father is 15-20 cubits from their house and the tube well situates at a distance of 100-150 meters from his house. The spot map Ext.6 indicates that the dwelling house of the accused situates in between the house of complainant and the tube well. Now it is clear to draw a conclusion that the tube well is not at far place from the house of accused. When the injuries caused to p.w.3 has been proved, the case of prosecution can not be rejected on the ground that due to prior enmity such case has been foisted.

9. It is also urged by the defence that prosecution has failed to prove three injuries found on the body of p.w.3, out of those two lacerated injuries are on his parietal region and the other lacerated wound on the inner aspect of left side upper lip and when there is contradiction regarding the number of blows in the testimony of witnesses, accused is entitled to benefit. In the present case

though there is some contradiction regarding the first incident taken place while collecting water at the tube well , but it is clear from the testimony of the injured as well as P.w.8 that the second incident had taken place near the house of accused. When the accused assaulted p.w.3 with a spade on his head as he intervened assault to his son P.w.8. Though P.w.7 Isa Bibi, aged about 75 years who is the mother of the injured says that the accused has assaulted her son with a pitcher (gara), but it is not corroborated by any evidence. All the witnesses say about assault with a spade. Admittedly the spade has not been produced before the court for identification, but the I.O says to have seized it. Considering the age of the incised injuries found by the M.O soon after the occurrence it can be safely concluded relying on the testimony of the injured P.w.3 that he was assaulted with the spade which is an agricultural implement. When assault by accused Papa Khan with a spade to P.w.3 causing injuries on the parietal region on his head is forthcoming, on some minor contradiction regarding the testimony of the witnesses recorded by the I.O, in the facts of the present case assault part of the occurrence can not be discarded. The Medical Officer testifies that the injury no.1 and 2 are grievous in nature. The hurt being lacerated caused on vital part of the body i.e on parietal region of head, it endangers life and comes under grievous hurt.

10. Defence has examined D.w.1 Ibrahim Khan, who says that his house situates near the tube well and that P.w.3 had sustained injury due to fall at the tube well for slipping of his leg on the platform of the tube well and that the accused was not present in the village on the same day. The spot map Ext.6 does not indicate existence of house of D.w.1 near the tube well. Therefore, believing the testimony of the injured coupled with the injury report much importance can not be given to the testimony of D.w.1. At the same time it can not be believed that p.w.3 had sustained such three injuries due to repeated fall on the platform near the tube well for slipping of his leg and for prior enmity such case has been filed against accused Papa @ Nasirudin Khan.

11. So far as offence U/s. 341, 323 and 506 I.P.C is concerned, none of the witnesses have stated specifically that accused Papa Khan had restrained injured Asruf Khan or threatened causing alarm to him or that voluntarily caused simple hurt to him. To bring home the charge U/s.307 I.P.C the intention and knowledge of the accused that the death would be caused to the injured is relevant. In the present case the incident arose out of a trivial matter like dispute for collection of water from a tube well. When the family of the injured asked the accused about it, he has assaulted P.w.3 with a spade causing injuries on his head. From such circumstances intention to kill or knowledge that the injured would die can not be inferred. In the case of Hara Mallik @ Harihar and others Vrs. State 2009 (Suppl-1) OLR 370 Hon'ble High Court of Orissa held that to satisfy the requirement of an offence U/s.307 I.P.C, there should be an intention to murder and the injury was caused with the knowledge that the same would result in death, although the injured by the grace of god may luckily escape death. In order to determine the intention of the assailant, various factors and circumstances are to be considered such as, the nature of injury caused, severity of the blow or its persistence, sufficiency of time and opportunity of causing more injuries, intervention by others, the nature of weapon etc. Therefore, in the facts of the present case charge U/s.307 I.P.C fails. In the case Samal @ Somanath Rout Vrs. Orissa (2008) 41 O.C.R 300 while dealing with the assault by a spade in an appeal in which the accused was convicted U/s.326 I.P.C, it is held that spade does not come under purview of deadly weapon. In the present case admittedly the weapon of offence seized i.e spade has not been produced and there is no clarity in evidence regarding assault by edge side of the spade to draw a definite conclusion regarding the weapon of offence. At the same time considering grievous hurt to Asruf Khan due to assault by Nasirudin Khan with a spade used for agricultural purpose causing lacerated injuries on his head establishes the case U/s.325 I.P.C, accordingly the accused is held not guilty U/s. 341, 323, 307 and 506 I.P.C and acquitted there from U/s.235(1) Cr. P.C, but he is found guilty U/s.325 I.P.C and convicted thereunder U/s.235(II) Cr. P.C. For such type of offence, I am

not inclined to inclined to give benefit to the convict under the provisions of P.O Act.

2nd Addl. Sessions Judge, Khurda

HEARING ON THE QUESTION OF SENTENCE

It is submitted that the convict is a first offender and lessor punishment may be given. Considering the circumstances under which the offence is committed on village road and the injuries caused, to meet the ends of justice the convict is sentenced to undergo R.I for one year and to pay a fine of Rs. 5000/- i.d to under go R.I for 2 months for the offence U/s.325 I.P.C. Fine if realised be given to the injured Asruf Khan as compensation U/s.357 Cr. P.C. The period detained in custody be set off U/s.428 Cr. P.C.

2nd Addl. Sessions Judge, Khurda.

The judgment is dictated, corrected and pronounced by me in the open court today i.e 5th day of August,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	Jamal Ahmed Khan
P.w.2	Dr. Bharati Das
P.w.3	Asruf Khan
P.w.4	Jamila Bibi
P.w.5	Abtal Azim Begum
P.w.6	Jaini Begum @ Bibi
P.w.7	Isa Bibi
P.w.8	Fazal Ahmed Khan
P.w.9	Jagannath Mishra

List of Dws examined for defence.

D.w.1 Ibrahim Khan

List of exhibits marked for prosecution.

Ext.1 Report of P.w.1
Ext.1/1 Signature of P.w.1
Ext.2 Seizure list.
Ext.2/1 Signature of P.w.1
Ext.3 Report of P.w.2 Dr. Bharati Das
Ext.3/1 Signature of P.w.2 on Ext.3
Ext.1/2 Endorsement and signature of I.I.C on F.I.R
Ext.4 Formal F.I.R
Ext.4/1 Signature of I.I.C on Ext.4
Ext.5 Injury requisition.
Ext.5/1 Signature of P.w.9 on Ext.5
Ext.6 Spot map.
Ext.6/1 Signature of P.w.9 on Ext.6
Ext.7 Seizure list.
Ext.7/1 Signature of P.w.9 on Ext.7
Ext.8 Dying declaration of injured.
Ext.8/1 Signature of P.w.9 on Ext.8

List of Exhibits marked for defence.

N i l.

List of M.Os marked for prosecution.

N i l.

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