

J U D G M E N T

The above named accused persons stand charged U/s. 147, 148, 379, 354, 294, 307/149 I.P.C.

2. On dtd. 28.9.2012 the complainant Habiba Bibi lodged a complaint petition in the court of learned S.D.J.M, Khurda making allegations against the accused persons in which after inquiry learned S.D.J.M, Khurda took cognizance of offence U/s.147, 148, 379, 354, 294, 307/149 I.P.C. It is averred in the complaint petition, that the accused persons have ostracized the family of the complainant and they were not allowing the family of the complainant to enter into the musk. On 20.9.12 evening her husband was returning home after making prayer out side of the musk, in front of her house, all the accused persons being armed with sword, gun and thenga challenged her husband, telling to come out of her house, when she protested all the accused persons forcibly entered into her house and assaulted her, so also misbehaved her. At the instance of Saifur Rahaman, the accused persons fired two rounds from a gun, but somehow she saved herself by moving to the first floor of the house out of fear. All the accused persons assaulted her, as well as her husband with fist blows and kicks and damaged her house hold articles. While she was lying on the ground all the accused persons took away cash of Rs. 50,000/- from her house by braking open the Almirah and also snatched away gold chain and her gold ornaments from her. While going away they threatened the informant challenging that reported the P.S shall yield no result and if she goes to court she would be murdered. In same night the complainant reported to police, but police did not register the case. In such case on appearance of the accused persons the case was committed to this court. The accused persons pleaded not guilty to the charge and claimed for trial, hence this case.

3. The plea of the accused persons is mere denial in this case.

4. The points for determination in this case are;

- i) Whether accused persons had formed an unlawful assembly with common object to assault the complainant and her husband ?
- ii) Whether the accused persons had committed rioting in prosecution of such common object ?
- iii) Whether the accused persons in prosecution of such common object armed with deadly weapons like sword, farsa and revolver during rioting?
- iv) Whether the accused persons in prosecution of their common object had committed theft of Rs. 50,000/- and one gold chain from the complainant?
- v) Whether the accused persons in prosecution of their common object had outraged the modesty of the complainant ?
- vi) Whether the accused persons in prosecution of such common object had uttered obscene words in a public place causing annoyance to others?
- vii) Whether the accused persons in prosecution of such common object had assaulted the complainant Habiba Bibi and her husband with intention and knowledge that if death is caused they would be guilty of murder?

5. At the time of hearing both parties compromise their case and the complainant herself stated nothing in court to bring home the charge against the accused persons. It is evident from her testimony that the incident had taken place 3 years back for the dispute arose while praying Namaz, and the dispute has been compromised among themselves outside the court. The complainant testifies that she does not remember about the incident. Prosecution has declared her hostile and has suggested that all the accused persons had gathered in front of her house being armed with Sword, Pistol and thenga and abused them and that as she protested the accused persons assaulted her and fired two rounds of bullets from one pistol aiming at her, and she survived. But the

witness denied to such suggestion. She also denies about any assault to them and the alleged theft. She has proved the complaint petition vide Ext.1.

6. P.w.2 another vital witness being the husband of p.w.1 the complainant also stated nothing in court implicating the accused persons with the alleged crime. He only says that two years back there was a quarreling and the matter has been compromised among themselves. Further that he has no allegation against the accused persons. In view of such evidence the prosecution has closed its case.

7. Such evidence in record indicates that there was some dispute between the parties which has been compromised, for which the witnesses have stated nothing to bring home the ingredients of the charge against the accused persons. Bentham says witnesses are eye and ear of the court, but for compromise of the dispute when witnesses do not utter anything in court on surmises and conjunctures the accused persons can not be held guilty. Accordingly when there is no even an iota of evidence against the accused persons to bring home the charge U/s.147, 148, 379, 354, 294, 307/149 I.P.C against them, they are held not guilty U/s.147, 148, 379, 354, 294, 307/149 I.P.C and are acquitted there from U/s.235(1) Cr. P.C.

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

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.ws examined for prosecution.

P.w.1 Habiba Bibi

P.w.2 Guni Khan

List of Dws examined for defence.

N i l.

List of exhibits marked for prosecution.

Ext.1 Complainant petition.

Ext.1/1 Signature of P.w.1

List of Exhibits marked for defence.

N i l.

List of M.Os marked for prosecution.

N i l.

2nd Addl. Sessions Judge, Khurda.