

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, BANPUR

PRESENT:

Sri Satya Ranjan Pradhan
Asst..Sessions Judge, Banpur

S.T. Case No. 86/61 of 2014

(Arising out of G.R. Case No. 337/2011 corresponding
to Balugaon P.S. Case No.118 of 2011)

State. Prosecution.

-Versus-

Titu @ Tukuna Behera, aged about 33 years,
S/o Santha Behera of Vill: Baniapalli,
P.S: Balugaon,Dist: Khurda.

... Accused.

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

For the Defence : Sri M.P.Samantasinghar & Associates,
Advocates.

Date of Argument : 28.10.2014

Date of Judgment : 30.10.2014

Offence U/s 341/294/307/ I.P.C.

JUDGMENT

1. The above named accused stands charged U/s 341/294/307 of the Indian Penal Code for having committed the offence of wrongful restraint for abusing the informant in obscene words in or near public place and for attempting to commit murder the informant .

2. The brief facts of the prosecution story is that on 08.09.2011 at about 6 pm the informant was standing near village the tube well. At that time the

accused came and started abusing her saying “ HAILO CHHODI BEDHEI TU KANA PAIN MORA MAIPAKU NEI RAKHICHHU”. Thereafter he threatened to do away with her life by a beer bottle. Saying so he broke the beer bottle and assaulted the informant on her face by with it. Due to the said assault made by the accused the informant fell down on the ground. Thereafter the villagers who were present at the spot took her to the Balugaon C.H.C for treatment. From there she went to the Balugaon P.S and lodged a written report which was registered as Balugaon P.S. Case No.118/2011, U/s 341/324/307/294 I.P.C and after completion of investigation charge sheet was submitted against the present accused U/s 341/294/324/307 I.P.C.

3. The plea of the accused is one of complete denial and false allegation made by the informant as he had asked the informant who is his mother in -law to leave her wife to his house.

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

(i) Whether on 8.9.2011 at 6 pm the accused obstructed the informant in such a way that she could not proceed in any direction in which she had the right to proceed?

(ii) Whether on the same date, time and place the accused abused the informant in obscene words saying “HAILO CHHODI BEDHIE TU KANAPAIN MORE MAIPAKU NEI RAKHICHHU” in or near a public place causing annoyance?

(iii) Whether on the same date, time and place of occurrence the accused dealt blows on the face of the informant by means of a broken beer bottle causing hurt with such intention or

knowledge and under such circumstances that by that act death of the informant might be caused?

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

6. As stated in the preceding paragraph the prosecution had examined as many as nine witnesses to substantiate its case. However the main witness in this case is the informant -cum- victim namely Sita Behera who was examined by the prosecution as P.W.3 and for better appreciation of evidence it is proper to discuss her evidence first. While being examined as P.W.3 she stated that on the alleged date of the occurrence at 6 pm she was standing near the village tube well and the accused was standing on the village road in an intoxicated state. On seeing the informant the accused started abusing her saying “ BEDHEI JHIAKU KAHINKI CHHADUNU”. At that time the accused was concealing a beer bottle under his shirt. After abusing he brought out the said beer bottle and broke it. Thereafter he assaulted the informant with that broken beer bottle on her face for three times causing severe bleeding injuries. It was further stated by the informant that thereafter her daughter came to the spot and with the help of other villagers took her to medical. Through this witnesses the prosecution marked the FIR as Ext.1 and her signature on it as Ext.1/1. The informant was cross examined at length by the counsel for defence wherein it was elicited from her mouth that at the time of the occurrence 12 to 14 other peoples were

present at the spot. Out of whom she could name only two in para-5 of her cross examination such as Pradeep Behera and Prakash Behera. Further in para-7 of the cross examination she disclosed that at the time of occurrence Saras Behera, Mani Behera and Sita Behera were also present at the place of the occurrence. One other important thing was elicited from the mouth of the informant during the cross examination that from the place of occurrence she was taken to the medical. There she was treated for 15 days. On the 15th day itself she went to P.S and lodged the written report, which is contrary to the fact mentioned in the F.I.R. because as revealed from the FIR it was lodged and registered on the date of the occurrence itself. Apart from the informant the prosecution had examined seven other eye witnesses to the occurrence including the persons whose names were stated by the informant in para 7 of her cross examination. The said witnesses namely Mani Behera, Sarasa Behera and Sita Behera who were said to be accompanying the informant were examined by the prosecution by P.Ws 2, 5 and 7. The said three witnesses during their examination in court simply denied their knowledge about the occurrence. Although the Learned Addl. P.P examined them U/s 154 Evidence Act, but nothing much of importance was elicited from their mouth which could have supported the case of the prosecution. Apart from these three witnesses prosecution had examined other three witnesses to the occurrence namely Pabitra Behera , Matia Behera and Lingaraj Behera as P.Ws 1,6 and 8. Like the previous

independent witnesses, these three witnesses also denied their knowledge about the alleged occurrence. Out of these three witnesses Matia and Lingaraj i.e P.Ws 6 and 8 had put their signatures on the FIR as witnesses to the occurrence. But their evidence could not throw any light on the case of the prosecution, because of the fact that they choose to remain silent and did not whisper a single word against the accused. The only witness who corroborated the version of informant is her daughter Maina Behera (P.W-4). Although she corroborated the version of the informant in entirety in her examination in chief by saying that “on the date of the occurrence the informant was returning after attending call of nature. The accused on the way assaulted on her face by a broken beer bottle for around 3 to 4 times. After the said assault made by the accused she raised shout and informed others about the alleged occurrence. Thereafter she along with other villagers had taken her to the medical” but the real fact is that she is a post occurrence witness and have not seen the accused assaulting her mother. This fact could be stated relying upon her statement made in para-5 of her cross examination where in she had stated that she was not present at the spot while the occurrence took place. Rather she reached afterward. At that time the informant was lying on the ground and had lost her sense. And at that place accused Tukuna Behera was standing . Apart from the aforesaid witnesses prosecution had examined the investigating officer in this case as P.W.9. The medical officer could not be examined as he had died prior to his

examination. So from the above discussion it is found out that only the informant had made acquisition against the accused and she is the sole witness to the occurrence.

7. As revealed from the aforesaid discussion none of the witnesses supported the case of the prosecution except P.Ws 3 and 4 who are the mother and daughter. As revealed from their statement they were having ill relationship with the accused. The accused Tukuna Behera is the husband of P.W.4. But as per the allegation of P.W.3 the accused is a drunkard and used to quarrel with P.W.4 and for that reason P.W.4 is staying with her. P.W.4 similarly in para-4 of her examination in chief has stated that she is staying with her mother. The accused also during his examination in the court as per the section 313 Cr.P.C. had disclosed that he had asked the informant to allow P.W.4 to come with him. But instead of allowing P.W.4 to go with him the informant had foisted this case against him. It is a settled principle of law that when there exists previous enmity between the parties the evidence of the party concerned must be scrutinized carefully, So as to eradicate the chance of false implication. No doubt previous enmity is a double edged weapon which acts both ways. At time it gives motive for commission of the crime and at times it gives some motivation for false implication. In this circumstances it is the duty of the court to scrutinize the evidence of the witnesses particularly of those who are interested more carefully to separate the grains from the chaps. Here in this case both P.W.3 and 4 are interested

witnesses so their evidence required to be scrutinized carefully. On scrutiny of the evidence of P.W.3 the informant. Some contradictions and inconsistencies are found out and those are (i) So far as lodging of the FIR and medical treatment is concerned it was stated by the informant in para-9 of her cross examination that after the occurrence first she went to the medical. Further in para-12 she stated that 15 days after the occurrence she lodged the FIR. Again she clarified it by saying that on the 15th day itself after the occurrence she had been to the P.S. If these statements are read along with the statement made in Para-4 of the examination where he had stated that she was treated in the medical for 12 days, it will be crystal clear that the FIR was lodged on the 15th day of the occurrence after the informant returned from the medical. But the contents of the FIR as well as the statement of the I.O (P.W.9) are quite contradictory to it. As per the statement of P.W.9 on 8.9.11 he received the FIR from the informant at the P.S and registered it as Balugaon P.S. Case No.118. Thereafter he examined her and then sent her for medical examination along with the medical requisition marked as Ext.2. On perusal of the FIR which was marked as Ext.1 it also reveals that the same was scribed, presented and registered on 8.9.2011. Similarly on perusal of the injury requisition (Ext.2) it reveals that the same was issued on 8.9.11. But the statement given by the informant on oath is quite contrary to it. Moreover if the statement of the I.O made in para-8 is believed the informant had not received any medical treatment prior to coming to the P.S.

Answering to a question put by a defence counsel that whether the informant received any treatment prior to her lodging of the FIR the I.O categorically had stated that “ prior to coming to the P.S the informant had not undergone any treatment” In addition to it the informant could not name the person who had scribed the FIR. She also could not say the language in which the FIR was scribed. That apart the I.O of the case also had not examined the scribe if these things will be taken into account the very fact of initiation of the criminal proceeding will be in doubt. (ii) The next thing is that although the informant claims that at the time of the occurrence the witnesses namely Sarasa Behera, Maina Behera, Sita Behera , Pradeep Behera and Prakash Behera were present, the witnesses Sarasa, Maina and Sita Behera while being examined as P.Ws 2 & 7 denied their knowledge about the occurrence. The denial so made by these witnesses as well as by Lingaraj and Matia who had put their signature on the FIR (Ext.1) castes a serious doubt over the truthfulness of the informant. Apart from that there remained a lacuna made by the I.O as he did not seize the wearing apparels of the informant as well as the weapon of offence. It was the case of the prosecution that the accused had assaulted the informant after breaking the beer bottle at the spot but the said weapon of offence was not seized by the police nor the broken glass pieces . In para-9 of the cross examination the I.O had admitted that he had not seized any broken glass piece at the spot although he had visited the spot of occurrence twice. The I.O had also not

seized the stained apparel of the informant although her saree was said to be stained with blood. The reason for non seizure of the aforesaid articles were also not explained by the I.O or by the prosecution. The seizure of the aforesaid things were having much importance because of the fact that there is no availability of independent support to the statement of the informant as well as for the fact that the Medical Officer who had examined the informant could not be examined due to his death. If the I.O could have seized the aforesaid articles that could have given a support to the story narrated by the informant. In absence of the same it is very much difficult to believe and act upon the sole and uncorroborated testimony of the informant. Generally speaking independent corroboration is not a rule but it is required when there is chance of getting corroboration and when there exist some discrepancy in the statement of the witnesses owing to some previous enmity between the parties. So considering the aforesaid facts I am of the opinion that the sole uncorroborated testimony of the informant can not be relied upon due to the aforesaid facts as discussed above. Under the aforesaid circumstances I am of the view that the prosecution could not able to prove its case against the accused beyond all reasonable doubt.

8. In the result I hold the accused not guilty U/s 341/294/307 I.P.C.and acquit him u/s. 235(1) Cr.P.C. He be released from the custody forthwith.

The seized articles if any be destroyed after four months of the appeal

period is over, if no appeal is preferred and in case of any appeal subject to the orders 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 30th day of October, 2014.

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1. Pabitra Behera
P.W.2. Mani Behera
P.W.3. Sita Behera
P.W.4 Maina Behera
P.W.5 Sarasa Behera
P.W.6 Matia Behera
P.W.7 Bidyadhar Behera
P.W.8 Lingaraj Behera
P.W.9 Pramod Kumar Mallik

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1. F.I.R.
Ext.1/1. Signature of P.W.3 on F.I.R.
Ext. ½ Signature of P.W.9 on Ext.1.
Ext. 2 Meidcal requisition of the informant.
Ext. 2/1 Signature of P.W.9 on Ext.2.
Ext. 3 Spot map.
Ext.3/1 Signature of P.W.9 on Ext.3.
Ext.4 Injury report.
Ext. 4/1 Signature of M.O on Ext.4.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.