

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, BANPUR

PRESENT:

Sri Satya Ranjan Pradhan
Asst. Sessions Judge, Banpur

S.T. Case No. 46/06/10 of 2014/1997/1993

(Arising out of G.R. Case No. 64/1988
corresponding to Balugaon P.S. Case No. 32
of 1988)

State. ... Prosecution.

-Versus-

Bana Behera, aged about 60 years, S/o Bansidhar Behera.
Vill: Kandhanuagaon, P.S: Balugaon, Dist: Khurda.

... Accused.

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

For the Defence : Sri B.K.Muduli, Advocates. &
Associates,

Date of Argument : 29.09.2014

Date of Judgment : 30.09.2014

Offence U/s 324/323/307/34 of I.P.C.

JUDGMENT

1. The above named accused stands charged U/s 323/324/307/34 .of the Indian Penal Code for having committed the offence of voluntarily causing simple hurt, for voluntarily causing hurt by means of a danger weapon and for attempting murder of the informant.
2. The brief facts of the prosecution story is that on 4.3.1988 the accused persons namely Bajia Palai and Banambar Behera came to the shop of the informant and asked his employee Bhaskar Sethi to serve them

liquor. When Bhasker Sethi showed his inability to serve the liquor both the said accused persons mercilessly assaulted him. For that matter Bhaskar Sethi had lodged a written report against the accused persons. Being aggrieved both the accused persons again came to the shop of the informant in the night of 30/31.03.1988 at about 12 AM and assaulted him by means of an iron rod on his head and with a wooden plank causing bleeding injuries. Thereafter the informant came to the Naval O.P and informed the matter orally. A.S.I. R.N. Singh reduced the same into writing and registered a case U/s 307/325/323/34 I.P.C and took up the investigation himself. The said report drawn by R.N. Singh was registered as Balugaon P.S. Case No.32/88 U/s 307/325/323/34 of the I.P.C against both the accused persons. Before commitment, the case of accused Bajia Palai was split up from the main case vide order dated 23.01.91 of J.M.F.C., Banpur in G.R. Case No. 64/88 and the case of accused Bana Behera only was committed to the Court of Sessions On 22.12.1992. The said case was registered as S.T. 6/10 of 1997/1993. Subsequently, the case of accused Bajia Palei was committed to the court of Sessions on 14.04.1993 and was registered at the Sessions court as S.T. Case No.32/1993. Thereafter both the cases were tagged vide order dated 22.09.1993 in the court of Asst. Sessions Judge, Khurda and hearing of the case has commenced. During hearing of the case as the

accused Bajia Palai did not appear. So his case was again split up from the present case on 06.11.1997 and accordingly the present case is proceeded with against the accused Bana Behera.

3. The plea of the accused is one of complete denial.
4. The points for determination in this case are :-
 - (i) Whether in the night of 30/31.03.1988 the accused persons in furtherance of their common intention voluntarily caused hurt to the informant?
 - (ii) Whether on the same date, time and place of occurrence in furtherance of their common intention voluntarily caused hurt to the informant by means of an iron rod?
 - (iii) Whether on the same date, time and place of occurrence the accused persons in furtherance of their common intention dealt a blow by means of a iron road causing hurt with such intention or knowledge and under such circumstances by that act death of the informant might be caused?
5. To substantiate its case prosecution had examined as many as five witnesses, where as defence had examined none.
6. To substantiate its case prosecution had examined as many as five witnesses including employee of the informant namely Bhaskar Sethi as P.W.2 and the medical officer as P.W.4. Apart from these two prosecution had examined three more witnesses as P.Ws 1, 2 & 5. But did not examine the informant and the investigating officer. Although it is a case of the year 1988 till 29.09.2014 the informant nor the I.O

could be examined by the prosecution. This court vide order dated 22.09.2014 directed the prosecution to produce the remaining witnesses in the court by 26.09.2014 but the prosecution could not produce the said witnesses on the date fixed. The evidence of the said witnesses could have played a significant role in proving the guilt of the accused persons. In the circumstances we were left with the evidence of the five witnesses mentioned earlier including Bhaskar the employee of the informant who is an eye witness to the occurrence. But the said witness Bhaskar Sethi denied his knowledge about the occurrence. He did not whisper a single word of acquisition against any of the accused persons. Similarly the other eye witnesses to the occurrence examined on behalf of the prosecution as P.Ws 1 and 3 denied their knowledge about the occurrence. Both P.Ws 1 and 3 were put to question U/s 154 of the Evidence Act but nothing much of importance was elicited from their mouth which could have supported the case of the prosecution. During course of the investigation the I.O of this case had probably seized the blood stained lungi of the victim. To prove it prosecution had examined Trinath Sahu as a witness to the said seizure but the said witness also denied his knowledge about the seizure. However he admitted only his signature on the said seizure list. Regarding his signature on the seizure list he stated that he has a shop. Whenever police asks him he puts his

signature on papers. Apart from this he stated nothing about the seizure. In addition to the aforesaid four witnesses the M.O was examined as P.W.4 who had examined the informant. During his examination he stated that on 31.03.88 he had examined the informant Kailash Sahu and found five injuries on his person which were mentioned in this report marked as Ext.2 for the prosecution. So from the aforesaid discussion it reveals that only the medical officer stated about the injuries sustained by the informant; but neither the informant nor the investigating officer of this case was examined by the prosecution. In addition that the other employee of the informant who was examined by the prosecution as P.W.2 denied his knowledge about the occurrence. The non examination of the informant was a fatal blow to the prosecution because although the M.O examined as P.W.4 stated about the injuries sustained by the informant, due to the non- examination of the informant it could not be proved as to how those injuries were sustained by the informant and whether those were inflicted by the accused or not. So as none of the prosecution witnesses implicated this accused in the alleged offence and as no material available against this accused I am of the opinion that the prosecution has not able to prove its case beyond all reasonable doubt.

7. In the result I hold the accused not guilty U/s 323/324/307/34

I.P.C. and acquit him u/s. 235(1) Cr.P.C. He be set at liberty forthwith and be discharged from the bail bond.

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 30.09. 2014.

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1. Arjuna Behera
P.W.2. Bhaskar Sethi
P.W.3. Manguli Tarei
P.W.4 Narayana Sahoo
P.W.5 Trinath Sahoo

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1. Signature of P.W.3 Manguli Tarei.
Ext. 2 Injury report.
Ext. 2/1 Signature of P.W.4 on the report.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.