

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, BANPUR

PRESENT:

Sri Satya Ranjan Pradhan
Asst..Sessions Judge, Banpur

S.T. Case No. 27/162 of 2014/2009

(Arising out of G.R. Case No. 87/2000
corresponding to Banpur P.S. Case No. 52/2000)

State. ... Prosecution.

-Versus-

1. Manoj Mahapatra, aged about 43 years,
S/o Brundabanda Mahapatra
Vill: Bhagabatisahi Banpur, P.S: Banpur, Dist: Khurda.
2. Purna Chandra Bhopa, aged about 45 years,
S/o Late Giridhari Bhopa,
Vill: Bhagabatisahi Banpur, P.S: Banpur, Dist: Khurda.
3. Anil Kumar Mahapatra, aged about 47 years,
S/o Charan Mahapatra @ Nayak
Vill: Dakshya Prajapatisahi, Banpur,
P.S: Banpur, Dist: Khurda.

... Accused Persons.

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

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

Date of Argument : 06.01.2015

Date of Judgment : 08.01.2015

Offence U/s 147/148/341/323/436/379/ 427/294/149 I.P.C.

JUDGMENT

1. The above named accused persons stand charged U/s 147/148/
341/323/436/379/ 427/294/149 I.P.C.
2. The brief facts of the prosecution story is that:

On 22.04.2000 at about 12pm the informant along with some others were working in the firm house of one Bhaskar Pradhan. At that time the present accused persons along with others whose number was around 60 to 70 being armed with deadly weapons came to the said firm house and started abusing them in obscene words. Thereafter they assaulted one Basanti Swain who was also there in the first house. Hearing the shout of Basanti Swain the informant and others went to the spot but the accused persons also assaulted them, damaged the household articles kept in the said firm house and set it on fire. Thereafter the said accused persons took the informant and others to village Mangalajahi and assaulted them. Further they threatened them with dire consequences. For the aforesaid occurrence the informant Bidyadhar Sethi lodged a written report before the Banpur P.S. which was registered as Banpur P.S. Case No.52 dated 22.04.2000 against 47 persons. However after completion of investigation C.S. was submitted against 13 accused persons. Out of them the case was committed against 12 accused persons. Out of the said 12 accused persons the case of other accused persons were split up from these 3 accused persons vide this court order dated 17.09.2014 and 24.07.2014. Now here in this case only these three accused persons are facing trial.

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

(i) Whether on 22nd day of April, 2000 at 12 pm at Bhatapada the accused persons being the member of unlawful assembly in prosecution of their common object committed rioting?

(ii) Whether on the same date, time and place of occurrence the accused persons being the member of unlawful assembly in prosecution of their common object armed with deadly weapon to commit an offence?

(iii) Whether on the same date, time and place of occurrence the accused persons in prosecution of their common object wrongfully restrained the informant and others from proceeding in a certain direction in which they had the right to proceed?

(iv) Whether on the same date, time and place of occurrence the accused persons in prosecution of their common object voluntarily caused hurt to the informant and others?

(v) Whether on the same date, time and place of occurrence the accused persons in prosecution of their common object committed mischief by fire knowing it well that thereby they will cause damage to the house of the informant?

(vi) Whether on the same date, time and place of occurrence the accused persons in prosecution of their common object committed theft?

(vii) Whether on the same date, time and place of occurrence the accused persons in prosecution of their common object abused the informant and others in obscene language in or near public place causing annoyance to others?

(viii) Whether on the same date, time and place of occurrence the accused persons in prosecution of their common object committed mischief by causing wrongful loss or damage to the property more than Rs.50/-?

4. To substantiate its case prosecution had examined as many as seven witnesses, whereas defence had examined none.

5. As mentioned earlier to substantiate its case prosecution had examined as many as seven witnesses including the informant as P.W.1. The informant Bidaydhar Sethi while being examined as P.W.1 stated that he does not remember anything about this case. So far as the present accused persons is concerned he had disclosed that he has nothing to say against them. However, through this witness prosecution could able to mark the F.I.R as Ext.1 At this juncture the learned Addl. P.P put some questions to this witness as per section 154 of the Evidence Act but nothing much of importance was elicited from his mouth which could have supported the case of the prosecution. The other victims of this case namely Laxman Rout and Basanti Swain were examined by the prosecution as P.Ws 7 and 4. Like the informant these witnesses showed their ignorance about the alleged occurrence. Although the prosecution put some leading questions U/s 154 of the Evidence Act but nothing much of importance was elicited from their mouth. The owner of the firm house namely Bhaskar Chandra Pradhan was examined as P.W.6. According to his

version 15 to 16 years back this occurrence had taken place. The witnesses like Bidyadhar Sethi and Laxman Rout who were examined as P.W. 1 & 7 had told him that while they were working in his firm house some people had assaulted them and set fire the house. Apart from that he stated nothing about the occurrence, he also remained silent about the identity of the persons who had done the aforesaid act. Apart from these aforesaid witnesses some seizure witnesses were examined such as Bijay Kumar Pradhan and Prafulla Chandra Tiadi as P.Ws 2 & 3 they were the witnesses to the seizure of some burnt household articles and jute packets along with cashew packets. Out of the said witnesses P.W.2 denied his knowledge about the alleged seizure. However he admitted his signature on the seizure list. On the other hand P.W.3 stated about the alleged seizure of 20 to 24 numbers of jute packets in his presence. Apart from the aforesaid witnesses one other person namely Anatha Sahu was examined as P.W.5. According to him some years back some people had asked him to carry some cashew packets in his auto. In connection with that police had seized his auto rickshaw and the cashew packets. Apart from that he has stated nothing about the occurrence. From the aforesaid discussion it reveals that none of the prosecution witnesses including the informant and other victims had stated about the alleged occurrence. Only P.W.6 had told about the occurrence but he has not

an eye witness to the occurrence. He heard about the alleged occurrence from the informant and P.W.7. Although he had stated about the alleged occurrence, he did not implicate the present accused persons in the aforesaid occurrence. So we are only left with the FIR marked as Ext.1. 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. 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.1 is of no use for the case of the prosecution. As none of the prosecution witnesses including the victims did not support the case of the prosecution, I am of the opinion that the prosecution could not able to prove its case beyond all reasonable doubt.

6. In the result I hold the accused persons not guilty for the offence U/s 147/148/341/323/436/379/ 427/294/149 I.P.C. and acquit them U/s. 235(1) Cr.P.C. They be set at liberty forthwith and be discharged from their bail bonds

No order is passed regarding the seized property as the case against the other accused persons was split up and they are to face their trial.

Typed to my dictation & corrected by me. Judgment being sealed and signed is pronounced in the open court today i.e. on 08.01.2015.

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1. Bidyadhar Sethi.
P.W.2. Bijay Kumar Pradhan.
P.W.3. Prafulla Kumar Tiadi.
P.W.4 Basanti Swain.
P.W.5 Anatha Sahu
P.W.6 Bhaskar Chandra Pradhan
P.W.7 Laxman Rout

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.61on Ext.1.
Ext.2 Signature of P.W.1 on the Injury report.
Ext.3 Signature of P.W.2 on the seizure list.
Ext.4 Seizure list.
Ext4/1 Signature of P.W.3 on Ext.4.
Ext.5 Seizure list.
Ext.5/1 Signature of P.W.5 on Ext.5.
Ext.6 Zimanama.
Ext.6/1 Signature of P.W.5 on Ext.6
Ext.7 Signature of P.W.6 on Zimanama.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.