

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:
BHUBANESWAR.

PRESENT:-

Sri Ishan Kumar Das, LLB,
Addl. Sessions Judge, Bhubaneswar.

SESSIONS TRIAL CASE NO. 13/190 of 2003

(Arising out of GR case No. 4289/2000 committed
by the S.D.J.M, Bhubaneswar)

Date of argument- 04.03.14

Date of Judgment- 12.03.14

S t a t e

Vrs.

1. Pranay Bhusan Mangaraj, aged about 32 years
S/o Gagan Chandra Mangaraj, resident of : Khudupur
PS: Jatni, Dist: Khurda
2. Priyadarsi Prizam Ranjan Jaisingh Paikray, aged about 31 years
S/o: Dhruba Charan Jaisingh Paikray, At: Khudupur
PS: Jatni, Dist: Khurda
3. Nilamani Bhuyan, aged about 54 years
S/o: Banchanidhi Bhuyan, At: Kusupur
PS: Brahmagiri, Dist: Puri

....Accused persons

Advocate for the prosecution- Sri N.R. Ray, Advocate

Advocate for Accused persons Sri P.K. Mohanty, Advocate

Offence Under Sections:- Sec. 452/354/325/307/34 IPC and u/s 3
(i)(x) of SC & ST (PA) Act.

J U D G M E N T

The accused persons stand charged for the offence Under Sec.
452/354/325/307/34 IPC and u/s 3 (i) (x) of SC & ST (PA) Act in the instant trial.

2. Prosecution was initiated against all the three accused persons on the basis of a written report lodged by one Satyanarayan Behera before IIC, Jatni PS on 22.12.2000. It was alleged that on the same day, in the morning the neighbours of

the informant were cutting trees at his bari and on protest of his mother and sister, the accused persons abused them with filthy words. It was further alleged that the brother in law of accused- Nilamani Bhuyan was armed with a Katari and threatened to kill the family members of the informant. Again at 2 PM, the accused persons came to his house and entered into it. They assaulted his mother, sister and himself with wooden plank. Accused Nilamani dealt blow with the wooden plank while two other accused persons caught hold him. IIC Jatni PS treating the report to be FIR registered PS case No. 305/2000 for the offence u/s 341/323/506/34 IPC and Sec. 3 SC & ST (PA) Act and directed one ASI B.B. Rout to take up investigation of the case. During the course of investigation, the ASI visited spot, examined the witnesses, seized the weapon of offence and caste certificate of the informant and again left in zima. The injured-informant was forwarded for his medical examination to CHC, Jatni. One napkin belonging to the accused was also seized by the IO. The weapon of offence and one ganji with stains of blood was seized on production by the mother of the informant. After examination of witnesses and obtaining report from the medical officer, charge sheet is filed u/s 341/352/294/323/506/34 IPC readwith Sec. 3 SC & ST (PA) Act.

The case having been committed by the learned lower Court, this Court framed charge as mentioned above.

3. Plea of the defence is complete denial to the allegation. It is further case of the accused persons that the informant is their neighbour and there is land dispute between both the families for which they were not pulling well. The sister of the informant was married in the family of one of MLA of ruling party for which they were threatening the accused persons to grab their property. On the relevant day, the wife of accused Nilamani was inside her house and in the meantime, the informant, his sister and mother came in a group and dragged the wife of Nilamani in order to throw her inside a well. As the neighbours rushed to the spot, her life was saved. But, they threatened to lodge false cases against her family members.

4. In view of such allegation and counter allegation, the points of determination in this case are as under.

- (i) Whether on 22.12.2000 at about 2 PM at Ramachandrapur, the accused persons, in furtherance of common intention, committed house trespass by entering into the house of the informant used as human dwelling having made preparation for causing hurt to informant ?
- (ii) Whether on the same day, time and place of occurrence, the accused persons in furtherance of common intention, assaulted mother and sister of the informant, intending to outrage their modesty by such assault ?
- (iii) Whether on the same day, time and place of occurrence, the accused persons in furtherance of common intention, voluntarily caused grievous hurt to the informant Satyanarayan Behera ?
- (iv) Whether on the same day, time and place of occurrence, the accused persons in furtherance of common intention, did an act to commit attempting to murder with such intention and under such circumstances that if by that act had caused the death of the informant Satyanarayan Behera and they would have been guilty of murder ?
- (v) Whether on the same day, time and place of occurrence, the accused persons intentionally insulted or intimidated with intent to humiliate the informant Satyanarayan Behera, a member of Scheduled caste in any place within public view ?

5. During the course of trial, prosecution examined 7 witnesses and defence examined 2 witnesses in support of their case. Out of the prosecution witnesses, P.W.1 is the Medical Officer at CHC, Jatni who examined the injured-informant on the alleged date and submitted his report marked as Ext.1. P.W.3 is the informant and P.W.2 is his mother. P.W.6 is the brother of the informant. P.W.4 is the DSP who submitted charge sheet in this case. P.W.5 is SI of police who took charge of investigation from the ASI and conducted part of investigation. P.W.7 is the sister of the informant. Two independent witness and the initial IO of the case have not been examined by the prosecution during the trial.

6. P.W.2 in her evidence said that on the relevant day in the morning hour, the accused persons tried to cut away some branches of trees from her bari which she objected and hence, the accused persons abused her saying "BEDHA DHOBONI". Again at 1.30 PM, accused Nilamani followed by two other accused persons came to her house and knocked the door. As she opened the door, Nilamani dragged her outside for which she fell down and at the same time, her son Satyanarayan came out of the house, but accused Nilamani again dragged him outside and assaulted with a piece of wood on his head causing bleeding injury. The two other accused persons caught hold of her son at the time of assault. It is her evidence that immediately she reported the matter to police over phone and the police officer came to the spot and shifted the injured to hospital. In her cross examination, she admitted that there was dispute with the accused persons in relation to the boundary wall and therefore, there was enmity between them. Learned defence counsel suggested this witness that on the same day, Kadambari, the wife of accused Nilamani reported against the informant and others before police corresponding to GR case No. 4289/2000 to which the witness completely denied. It is brought from her mouth that she reported police over phone at about 2.45 PM and FIR was lodged after return of her injured son from the hospital. P.W.3 said in his evidence that the accused persons were cutting branches of guava tree in his bari to which his mother objected, but the accused persons abused with filthy words. Again at about 2 PM, the accused persons attempted to enter inside their house to which his mother resisted. Then, Nilamani dragged his mother and on his protest, Nilamandi dealt blow with a rafter on his head and back causing bleeding injury. He also supported that immediately thereafter, his mother reported to police over phone and he was shifted to Jatni hospital for medical examination. In his cross examination he admitted that his sister is married in the family of MLA, Gopalpur. But, at no point of time, they have created disturbance with accused persons. P.W.6 who is the brother of the informant did not involve the accused persons with dragging of his mother from their house, but only said that the accused persons assaulted to his brother. P.W.7 also deposed in the same manner during her cross examination.

7. During the course of argument, learned defence counsel has argued that this is a case u/s 3 SC & ST (PA) Act. Under Sec. 9 of the Act, investigation of such case can only be made by a police officer not below the rank of DSP. But, in the instant case, one ASI of police almost completed the investigation and one SI of Police and DSP have only submitted charge sheet without taking part in investigation of the case. Under such circumstance, the order of cognizance with the alleged offence does not stand good. He relied on decisions reported in **(2003) 25 OCR, 669 in the case of Bidhu Bhusan Rath and another vrs. State of Orissa, 2002 (I) OLR, 252 in the case of Sessions Judge-cum-Special Judge, Cuttack and others vrs. State of Orissa.** In addition to such irregularities, I find evidence reveals that the accused persons abused the mother of the informant at her house and no outsider was present at the relevant time. P.W.s 6 and 7, the brother and sister of the informant were very well present at the spot, but their evidence does not disclose that the accused persons abused their mother with filthy words with aspersion to their caste. After going through the principle decided by the Apex Court in the above decisions and on perusal of the evidence, I find that the offence u/s 3 SC & ST (PA) Act is not well proved by the prosecution beyond reasonable doubt.

Learned defence counsel has further brought out the fact that as per the formal FIR, the occurrence took place at 2 PM which was registered by the IIC at 2.05 PM. But, evidence reveals that the occurrence took place after 1.30 PM and immediately, the mother of the informant intimated police over phone. The police could have entered the telephonic information in the station diary which could have been treated as FIR. But, no such material is produced in the Court as to what was intimated to police over phone by the mother of the informant. Further, I find the informant was assaulted by the accused persons and thereafter, he was forwarded to CHC, Jatni for medical examination and on his return from the hospital, he alongwith his mother went to PS and reported the matter. It is not at all possible that within 5 minutes of occurrence, the injured went to hospital and got treatment and thereafter, lodged FIR. Therefore, no confidence can be imposed on such investigation when the FIR itself is doubtful. It is more

surprising that the initial IO, the ASI of police who conducted major part of investigation and recorded the statement of witnesses has not been examined in the Court. Material contradictions brought out by the defence from the mouth of prosecution witnesses could not be confronted to the IO as he is not examined. Therefore, a valuable right guaranteed to the accused persons has been withdrawn by non examining the IO in the Court. Learned defence counsel relied on a decision reported in **(1990) 3 OCR,266 in the case of Babaji @ Braja Kumar Mohanty vrs. State of Orissa**. It is held that non examination of investigating officer is a vital defect in the prosecution case and causes serious prejudice to the accused. In the same decision, Hon'ble Court has observed that non production of the station diary entry which is the first information before the police creates adverse inference against the prosecution. This being the position of investigation of the case, let me examine if prosecution has substantially brought home charges against the accused persons.

8. As regards offence u/s 325 IPC, prosecution is at the onus to prove that the accused voluntarily caused grievous hurt to the injured. The injury report is marked as Ext.1. The injured was examined at CHC, Jatni and was referred to Capital Hospital for further examination. No opinion was given by the medical officer awaiting intimation from Capital Hospital. But, record does not reveal if the injured was produced at Capital Hospital for her further examination and to give opinion regarding the nature of injuries. The witnesses examined in this case have also not deposed that the injury was grievous in nature in order to constitute the offence u/s 325 IPC. On the other hand, defence by examining two witnesses led evidence that the injured and his family members were trying to throw the wife of Nilamani into a well and on protest by the accused persons and the neighbourers, the informant ran away and fell down which caused injury on his head. Learned Addl. PP although cross examined the witnesses have not brought out any material to discard such evidence. Again, evidence reveals that the family members of the informant attacked the family of accused persons for which report was lodged at PS and a case bearing No. GR 4289/2000 is sub judice in the Court of SDJM, Bhubaneswar. Not a single independent witness has been examined on

behalf of prosecution which is very much essential when admittedly there was ill feeling between both the parties and there is chance of aggravating the case by the prosecution witnesses. I also find that offence u/s 307 IPC is not at all attracted in the circumstance as laid down by the prosecution witnesses. The witnesses said that one wooden plank which was lying at the spot in front of the house of the informant is the weapon of offence. The accused persons did not arm themselves with any weapon when they came to the house of the informant nor there is evidence that they had intention to murder the informant on the relevant day. Only one blow is given by one of the accused and nature of such injury still remain in doubt. Thus, taking into evidence on record, I feel prosecution failed to prove u/s 307 IPC or u/s 325 IPC against the accused persons. Further, considering the material contradictions available in the evidence of witnesses and the prejudice caused to defence by not examining the IO if not allow to believe that accused Nilamani dealt blow voluntarily causing injury for which he will be liable atleast for the offence u/s 323 IPC.

9. As regards offence u/s 354 IPC, there is no material on record that the accused persons in order to outrage modesty of the mother of the informant dragged her or applied any criminal force on her at the relevant time. It is argued by the learned Addl. PP that the accused persons dragged the lady made her half naked which is not supported through the evidence of any witness. Neither the saree has been seized nor there was any injury to the mother of the informant. Further, such allegation were not made in the FIR which is developed later. Hence, in my view the offence u/s 354 IPC fails to be proved against the accused persons beyond reasonable doubt.

10. It is alleged that the family members of the informant were inside the room at about 2 PM and the door was closed from inside. The accused persons knocked the door and as the mother of the informant opened the door, they entered into the house, dragged her and her son outside and assaulted. But, evidence does not support such allegation. The informant in his evidence said that as the accused persons attempted to enter inside the house, his mother resisted them. The brother of the informant did not whisper a single line that the accused

persons entered into their house in any manner. Similar is the evidence of the sister of the informant. P.W.7, the sister of the informant has categorically stated that the accused persons assaulted his brother at portico of his house and there is no evidence that they entered into the house in any manner. Similarly, in the evidence of P.W.6 who is another brother of the informant. He also did not corroborate the evidence that the accused persons entered into their house in order to assault his brother. Thus, taking into consideration the material contradiction in the mouth of witnesses, inimical relation between both the parties much prior to the occurrence, non examination of principal investigating officer and the investigation of the case not being conducted by the competent police officer, I believe prosecution failed miserably to prove the case in any manner against the accused persons beyond reasonable doubt.

11. In the result the accused persons are found not guilty for the offences u/s 452/354/325/307/34 IPC and u/s 3 (i) (x) of SC & ST (PA) Act and they are acquitted therefrom in accordance with provision u/s.235 (1) of Code Criminal Procedure. They be set at liberty forthwith. Their bail-bonds be cancelled and surety be discharged.

12. The seized articles, if any be destroyed after four months of appeal period is over, if no appeal is preferred or in case of appeal the same be dealt with in accordance with the direction of the Hon'ble Appellate Court.

Pronounced in the open Court today this the 12th day of March, 2014.

Dictated and Corrected by me.

Addl. Sessions Judge, BBSR

Addl. Sessions Judge, BBSR

List of witnesses examined for the prosecution

P.W.1:- Lingaraj Pradhan

P.W.2:- Mahalaxmi Behera

P.W.3:- Satyanarayan Behera

P.W.4: Bichitrananda Ray

P.W.5: Devisankar Prasad

P.W.6: Sandip Kumar Behera

P.W.7: Sujata Sethy

List of witness examined for the defence

D.W.1: Kadambari Jaisingh Paikray

D.W.2: Prabin Kumar Chhotray

List of exhibits marked for the prosecution

Ext.1: Report of P.W.1

Ext.2: Signature of P.W.1

Ext.2: Seizure list

Ext.2/1: Signature of P.W.2

Ext.3: Seizure list

Ext.3/1: Signature of P.W.2

Ext.4: Written report of P.W.3

Ext.4/1: Signature of P.W.3

Ext. 5: Seizure list

Ext.5/1: Signature of P.W.5

Ext.6: Zimanama

Ext. 6/1: Signature of P.W.5

Ext.6/2: Signature of zimadar

List of exhibits marked for the defence

Nil

Addl. Sessions Judge, Bhubaneswar.