

IN THE COURT OF 2ND ADDL.SESIONS JUDGE, KHURDA.

Present:

Sri A.K.Sahoo, LL.M.,
2nd Addl. Sessions Judge, Khurda.

T.R 1 of 2013

(Arising out of G.R. No. 43/11/09 corresponding to Banpur P.S.Case No. 15/09)

S T A T E **Prosecution.**
...Vrs...

1. Dr. Antaryami Maharana, aged about 54 yrs S/o Dandapani Maharana, AVA Hospital, INS Chilika, P.S. Balugaon, Dist. Khurda.
2. Deepak Ku. Jujharsingh, aged about 30 yrs S/o Dhobei Jujharsingh of vill. Ghiakhala, P.S Balugaon, Dist. Khurda.
3. Pabitra Ku. Rout, aged about 33 yrs S/o Aintha Rout.
4. Bichitra Rout, aged about 28 yrs S/o Aintha Rout

Both of vill.Sanatanapur, P.S Balugaon, Dist. Khurda.

5. Anathu Nayak, aged about 43 yrs, S/o Late Ajodhya Nayak
Vill.Kairasingh, P.S. Khalikot, Dist. Ganjam At/pr. Balugaon, Dist.Khurda.

.....**Accused persons.**

OFFENCE U/S.294,323, 506, 379/34 I.P.C & Sec.3(i)(x) S.C & S.T(P.A)Act.

Counsel for the prosecution : Sri A.K.Pattnaik,Adv

Counsel for the defence : Sri Bibhash Pattnaik, Adv.

Date of argument : 4.9.2014

Date of Judgment: 9.9.2014

J U D G M E N T

The above named accused persons stand charged U/s. 294, 323, 379, 506/34 I.P.C and 3(i)(x) S.C & S.T(P.A) Act.

2. On 2.2.2011 at 10 a.m the informant Prasanna Kumar Sethi had been to Abha Hospital at Balugaon for treatment since he was suffering from Asthma. He belongs to schedule caste. Accused Dr.Antaryami Moharana is the owner of the hospital, other accused persons are employees of the hospital. Seeing the informant the accused persons, employees of the hospital pushed him telling "Haire Sala Dhoba Maghia". Asking him for reason of coming to the hospital since he had quite the job from the hospital 4 years back. At that time accused Dipak Jujharsingh kicked on the private part portion of the informant, for which he fell down at the spot. Thereafter other accused persons assaulted him with fist blows and kicks. At that time the owner of the hospital came out and rebuked him telling idiot, rascal and bastard and got him assaulted further through local goondas while he was going out of the hospital. Thereafter while he was entering into his vehicle bearing Regd No. OR 02W 9188, the goondas snatched away a gold chain from his neck weighing about 25 g.ms. Some how he was saved from the spot. On such allegation police registered the case U/s.294, 323, 506, 379/34 I.P.C and Sec.3(i)(x) S.T & S.T (PA) Act, and the S.D.P.O, Balugaon was entrusted to conduct the investigation. The investigation resultant into submission of charge-sheet against the accused persons, hence this case.

3. The plea of the accused persons is mere denial.

4. The points for determination in this case are;

- i) Whether accused persons in furtherance of their common intention uttered obscene words in a public place, causing annoyance to others?
- ii) Whether the accused persons caused hurt to the informant with intention and knowledge to cause such hurt?

- iii) Whether the accused persons threatened to assault the informant in furtherance of their common intention causing alarm to him?
- iv) Whether the accused persons in furtherance of their common intention committed theft of a gold chain from the informant?
- v) Whether the accused persons intentionally insulted the informant with intention to humiliate him for being a member of schedule caste within public view?

5. Prosecution has examined p.w.2 the informant in this case and P.w.1 an independent witness to the case and then considering the testimony of the informant closed its case.

6. The informant belongs to schedule caste, while the accused persons belong to general caste. He testifies in court that about 3 and half years back, he had been to Abha hospital for treatment and due to misunderstanding there was an occurrence of assault and counter assault, for which he was medically examined. The informant further testifies that since he was assaulted on his head, he was taken to Bhubaneswar for treatment, for which he can not say who uttered what words at the spot. His brother had scribed the F.I.R on which he had put his signature only. P.w.2 has proved the F.I.R vide Ext.1 and his signature on it vide Ext.1/1. He has also proved the zimanama of the caste certificate taken by him vide Ext.2. Prosecution has declared him hostile to it and has suggested the F.I.R story, but the witness denies to have any knowledge to the incident as suggested by prosecution. Therefore, it can be inferred from his testimony that for misunderstanding there was an occurrence of assault and counter assault which is different from the case of prosecution. P.w.1 Madhusudan Tarai stating nothing in the court regarding the occurrence, prosecution has also declared him hostile and has suggested its case alleged to have taken place on 2.2.2011, but the witnesses denies to have any knowledge about it. Except such evidence there is no other material in record to prove the case of prosecution. No other witness has been examined by the prosecution.

7. The testimony of informant that there was an occurrence of assault and counter assault makes the veracity of prosecution story doubtful. At the same time to bring home a charge U/s.3(i)(x)S.C & S.T (P.A) Act, it is incumbent upon the prosecution to establish that the accused persons insulted the person belonging to S.C or S.T in any place within public view with intention to humiliate him. In the present case the informant does not say about uttering of any such words to bring home the ingredients of the charge U/s.3(i)(x) S.C & S.T (P.A) Act. In the case M.L Ohri Vrs. Kanti 2009(4) criminal court cases 499(P&H), it is held that an offence under the provision of Sec.3(i)(x) S.C & S.T (P.A) Act is committed when a person committing the offence has intention to abuse and knowledge that the person so abused belonged to S.C or S.T. When the word used is mentioned in the complaint and that the complainant belongs to S.C and that the accused intentionally and knowing him to be a member of S.C had uttered the words to insult her, the proceeding is liable to be quashed. In the present case though the F.I.R contain that the accused persons rebuked him telling his caste, but the same has not been proved, rather the informant resiled from it, telling that he has neither scribed the F.I.R nor can say about the rebuking part of the occurrence. His statement that his brother had brought the F.I.R to him and he had only signed on it and that when his brother has not been examined by the prosecution, the contents of the F.I.R can not be gone into.

8. Having regard to such fact and testimony of the informant, so also other witnesses examined by prosecution, it can be safely concluded that prosecution has failed to prove the ingredient of the offence U/s. 294, 323, 506, 379/34 I.P.C and Sec. 3 (i)(x) S.C & S.T (P.A) Act, consequently the accused persons are held not guilty to the charge U/s. 294, 323, 506, 379/34 I.P.C and Sec. 3 (i) (x) S.C & S.T (P.A) Act and are acquitted there from U/s.235(1) Cr. P.C.

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

The zimanama be cancelled and other articles, if any, be destroyed, after four months expiry of appeal period, if no appeal is preferred, and as per the order of appellate court, if an appeal is preferred.

2nd Addl. Sessions Judge, Khurda.

The judgment is dictated, corrected and pronounced by me in the open court today i.e 9th day of September,2014 under my hand and seal of this court.

2nd Addl. Sessions Judge, Khurda.

List of P.w.s examined for prosecution.

P.w.1 Madhusudan Tarai
P.w.2 Prasanna Kumar Sethi.

List of Dws examined for defence.

N i l.

List of exhibits marked for prosecution.

Ext.1 F.I.R
Ext.1/1 Signature of P.w.1 on F.I.R
Ext.2 Zimanama
P.w.2/1 Signature of P.w.2 on zimanama.

List of Exhibits marked for defence.

N i l.

List of M.Os marked for prosecution.

N i l.

2nd Addl. Sessions Judge, Khurda.