

In the Court of the Special Judicial Magistrate, Khurda.

Present Shri S.K.Padhy, LL.B.,
Spl. Judicial Magistrate,
Khurda.

Date of conclusion of argument: 19.8.2014
Date of Judgment: 20.8.2014

G.R. Case No. 776/03
T.R No. 535/12

State

Versus

1. Prahallad Pradhan age 58 years
S/o Late Basudev Pradhan
2. Sailabala Pradhan age 52 years
W/o Prahallad Pradhan
both are of village Barabati,
P.S Balagarh, Dist. Khurda.

Accused persons.

Counsel

For the prosecution
For the defence

Shri A. Khan, A.P.P., Khurda
Shri P.K.Mangraj and
associates. Advocates,
Khurda.

Offence u/s 341/294/323/506/34 of the I.P.C

J U D G M E N T

1. The above named accused persons stand prosecuted for the offences punishable u/s 341/323/294/506/34 of the I.P.C.

2. Prosecution case is that accused Prahallad Pradhan, the younger brother of the informant, taking opportunity of his fever had encroached one guntha of land from his share and planted crops there. When the wife of the informant protested for such action of the accused, he abused her in obscene words like "GODA GEI BEDHEI SABU BILLO MO BAPARO TOME KANA MO BANDA CHHODIBA". At that time he was returning from his field and by seeing him the accused abused him such as "SALA MAGHIA NATA LAGAECHU" and thereby assaulted him by means of a lathi. He sustained bleeding injury on his head and when his wife went for his rescue the accused and his wife assaulted causing bleeding injury on her body. They also threatened them to kill if they would report the matter at P.S. The informant reported the matter at the P.S and basing his report a case was registered and after due investigation charge sheet u/s 341/294/323/506/34 of the I.P.C was submitted against the accused persons Hence this case.

3. The accused persons had denied the charges made against them by taking the plea of false implication.

4. Now the points for determination in this case are as follows:

i) Whether on the relevant date, time and place the accused persons in furtherance of their common intention had wrongfully restrained the informant and his wife so as to prevent them from proceeding in any direction which they had right to proceed.

ii) Whether by that time the accused persons had abused them in obscene words causing annoyance to them and others at or near a public place.

iii) Whether on the relevant date, time and place the accused persons had voluntarily caused hurt to them and they were medically treated.

iv) Whether on the relevant date, time and place the accused persons had threatened the informant and his wife with criminal intention raising alarm in their mind.

5. In this case prosecution examined five nos. of witnesses including the informant as P.W 1 to 5 and defence examined none on its behalf. P.W 1 is the informant, P.W 2 is his wife, P.W 3 and 4 are independent witnesses and P.W 5 is the I.O who has investigated in to the offence and submitted charge sheet against the accused persons. Prosecution declined the rest of charge sheeted witness since despite taking all possible steps their attendance other witnesses could not be procured in the court. Further in view of the evidence led so far on behalf of the prosecution non examination of the remaining witness will not prejudice the defence. . F.I.R, signature of the informant, endorsement of the then O.I.C Bolagarh P.S, injury requisitions P. W 1 and 2 and the signature of the I.O are marked as Ext.1 to 3/1.

6. As regard to the offence u/s 294/34 of the I.P.C and while analyzing the prosecution evidence on record it is noticed that P.W 1, the informant has stated that on the occurrence day and time accused Prahallad Pradhan his younger brother had encroached some portion of his land and when his wife PW 2 protested he abused her such as "GODA GEI BEDHEI". At that when he reached there and protested he also abused him. His wife deposed that the accused abused him but did not state in what words he abused her and whether she was annoyed. The evidence of P.W 3 and 4 is complete silent regarding use of any obscene words to the informant and his wife. Moreover, .P.W 1 and 2 have not stated that if they were annoyed or any body else was annoyed by hearing the abusive words from the mouth of the accused persons. As such the offence alleged have not been proved by the prosecution beyond reasonable doubt.

7. Now coming to the offence u/s 323/34 of the I.P.C it is the statement of the P.W 1 that on the occurrence day and time when his wife protested his younger brother (accused) for encroachment of their land he assaulted her. When he

arrived there and protested the accused and his wife assaulted him also. Due to the assault made by them they sustained injuries and medically treated. P.W 2 ,the wife of the informant deposed in the same manner. The evidence of P.W 3 and 4 is complete silent regarding the occurrence. P.W 5, the I.O who has investigated in to the offence and submitted charged sheet against the accused persons admitted in his cross examination that the accused persons are brother and sister-in-law of the informant and there was ill feeling among them due to the land dispute. He further admitted that he has not seized any weapons in connection with this case. Further no medical report is forthcoming from the side of the prosecution in support of the case. It is admitted that the accused Prahallad Pradhan is the younger brother of the informant and there was ill feeling between them due to land dispute. So in absence of the medical report and ill feeling between the parties it is difficult to believe the uncorroborated statement of P.W 1 and 2 and base the conviction. Hence, I am of the opinion that prosecution has not been able to establish the charge u/s 323/34 of the I.P.C against the accused persons beyond all reasonable doubt.

8. Regarding the commission of the offences u/s 341/506/34 of the I.P.C P.W 1 to 4 have not stated anything regarding the commission of the alleged offences against the accused and there is no evidence on record. Consequently prosecution has also failed to prove the alleged offences against the accused beyond all reasonable doubt.

9. In the result the accused persons are held not held guilty u/s 341/294/323/506/34 of the I.P.C. He is, therefore, acquitted u/s 255(i) of the Cr. P.C.

10. They be set at liberty forthwith and discharged from his bail bonds.

11. Enter this case as mistake of fact.

Special Judicial Magistrate, Khurda.

This judgment is typed by me and pronounced in open court this the 3rd day of June 2014.

Special Judicial Magistrate, Khurda.

List of witnesses examined for the prosecution

P.W 1 Brajabandhu Pradhan, informant
P.W 2 Pitei Pradhan injured
P.W 3 Sundari Pradhan
P.W 4 Sukmani Pradhan.
P.W 5 Sanatan Behera, I.O.

List of witnesses examined for the defence

None

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List of documents admitted in evidence for the prosecution

- Ext. 1 F.IR
- Ext. 1/1 Signature of P.W 1
- Ext. 1/2 Endorsement of the then I.I.C Bolagarh P.S
- Ext. 2 Injury requisition of P.W 1
- Ext. 2/1 Signature of P.W 5
- Ext.3 Injury requisition of P.W 2
- Ext.3/1 Signature of the I.O
- Ext. 4 Injury requisition of Mina Pradhan
- Ext.4/1 Signature of the I.O.
- Ext. 5 Spot map
- Ext. 5/1 Signature of the I.O.

List of documents admitted in evidence for the defence

Nil

List of MOs admitted in evidence for the prosecution/ defence.

Special Judicial Magistrate, Khurda.

