

IN THE COURT OF SPECIAL JUDGE: BHUBANESWAR.

Present:

Shri I.K. Das, LL.B.
Special Judge, Bhubaneswar.TR CASE NO. 45/99 of 2004

(Arising out of G.R. Case No.3716 of 2002)

Vide Hon'ble Courts Letter No. 8017 (44) dtd. 9.9.2014**Status of the accused person/persons:**

1. Accused persons are on bail:
2. Accused persons are absent:

Date of argument- 24.09.14Date of Judgment- 26.09.14

State

-Vrs-

1. Sarat Chandra Jena @ Bansi, aged about 50 years
S/o Surendra Jena, resident of Vill: Sundarpada
PS: Airfield, Dist: Khurda, A/p: Harizan Basti
Near GED Office, Unit-1, Bhubaneswar
2. Subash Kumar Swain @ Babu, aged about 52 years
S/o: Taru Swain, resident of Vill: Chhedapadar
PS: Bhanjanagar, Dist: Ganjam, A/p: Jhumpuri Basti
Near GED Office, Unit 1 Bhubaneswar

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Accused persons

Advocate for the prosecution-

Sri N.R. Ray, Addl. P.P. BBSR

Advocate for Accused persons

Shri A. Mishra, Advocate

Offence Under Sections:-

Sec. 294/354/427/506/34 IPC readwith u/s 3
of SC & ST (PA) Act.**J U D G M E N T**

The accused persons stand charged for the offence u/s
294/354/427/506/34 IPC readwith u/s 3 of SC & ST (PA) Act.

2. Prosecution was initiated against both the accused persons on the basis of one written FIR filed by one Smt. Jhunu Dei before IIC, Capital PS on dtd. 17.11.02. As per the allegation, on 15.11.02 at about 10 PM while the informant was alone with her mother in law beside her house, both the accused persons alongwith some criminals abused the informant with filthy words and drove her away from her house by dragging her hand. The accused persons also drove away her mother in law from their house. Thereafter, they damaged the house and threw away their belongings. They also threatened them to leave the place or else they will set fire to their house. FIR further reveals that prior to the occurrence the accused persons were asking the informant to vacate the spot where they constructed their house which is adjacent to the house of the accused. But, the informant and her family members did not agree to such proposal. Hence, being annoyed with the informant the accused persons assaulted her on the relevant night. IIC Capital PS on receipt of the FIR registered PS case No. 520/02 and directed for investigation of the case. During course of investigation, police visited the spot, examined witnesses and after completion of investigation, submitted charge sheet with the above mentioned offences. Hence, the trial.

3. Plea of the defence is complete denial to the allegation.

4. Points for determination are as follows:-

(i) Whether on 15.11.2002 at about 10 PM, at Unit 1 Harizan Basti, the accused persons, in furtherance of their common intention, uttered obscene words at the informant Jhunu Dei at a public place to the annoyance of others and thereby committed offence u/s 294/34 IPC ?

(ii) Whether on the same day, time and same place, the accused persons, in furtherance of their common intention, used criminal force to the informant Jhunu Dei, intending to outrage the modesty and thereby committed the offence u/s 354/34 IPC ?

(iii) Whether on the same day, time and place, the accused persons in furtherance of their common intention,

committed mischief causing loss or damage to the informant and thereby committed the offence u/s 427/34 IPC ?

(iv) Whether on the same day, time and place, the accused persons in furtherance of their common intention, committed criminal intimidation by threatening Jhunu Dei with injury to her person with intent to cause alarm to the said Jhunu Dei and thereby committed the offence u/s 506/34 IPC ?

(v) Whether on the same day, time and place of occurrence, the accused persons in furtherance of their common intention committed atrocity to the informant Jhunu Dei who belongs to Scheduled Caste community and thereby committed offence u/s 3 of SC & ST (PA) Act ?

5. During the course of trial, prosecution examined 3 witnesses out of which P.W.2 is the informant, P.W.1 is her mother in law and P.W.3 is the husband of the informant.

6. As the witnesses did not support the prosecution case, prosecution declined to examine rest of the witnesses. The informant P.W.2 in her evidence stated that she does not remember about the occurrence. She also does not know the accused persons in the case. She is an illiterate lady. P.W.1 admitted that the informant is her daughter in law. But, she does not know anything about the case. P.W.3 said that the informant is his wife. But, he does not know anything about the case. FIR could not be proved by examining the author of the FIR.

7. During the course of argument, learned defence counsel submitted that although in the FIR, there was much allegation against the accused persons. During the course of evidence, the principal witnesses who are the victims of the case did not support to the prosecution allegation in any manner. That apart, the informant is a woman belonging to SC & ST community. Therefore, prosecution should have taken steps for investigation of the case by a police officer not below the rank of DSP. But, in the instant case, one SI of Police conducted

investigation. On perusal of case record, I find no document is filed or evidence is led that the witnesses belong to SC & ST caste. Hence, in absence of evidence, I find no material u/s 294/354/427/506/34 IPC and u/s 3 SC & ST (PA) Act.

8. In the result, the accused persons are found not guilty for the offence u/s 294/354/427/506/34 IPC and u/s 3 SC & ST (PA) Act and are acquitted u/s 235 (1) Cr.P.C. The accused persons be set at liberty forthwith. Their bail bonds be cancelled and surety be discharged.

9. The seized property be destroyed, four months after expiry of appeal period, if no appeal is preferred and in case of appeal, as per the direction of the appellate court.

Pronounced in the open Court today this the 26th day of September, 2014.

Typed to my dictation and corrected by me.

Special Judge, Bhubaneswar

Special Judge, Bhubaneswar

List of witnesses examined for the prosecution

P.W.1:- Jhumpei Naik

P.W.2:- Jhunu Naik

P.W.3:- Batakrushna Naik

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Nil

List of Exts. Marked for Defence

Nil

Special Judge, Bhubaneswar.