

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 23rd Dec. '14.

T.R. Case No.25 of 2009.

[Arising out of G.R. Case No.1109 of 2007, corresponding to Mancheswar P.S. Case No.73 dated 28.03.2007.]

S T A T E

-V e r s u s-

Sarat Chandra Senapati, aged about 60 years, S/o. Late Dhani Senapati of Vill. – Gandarpur, P.S. – Nandankanan, Dist. – Khurda.

... **Accused.**

Counsel :

For prosecution -- Shri B.B. Mohanty (P.P. I/c.).
For defence -- Shri L. Mohapatra & Associates.

Under sections 294/341/323/506, IPC read with section 3(1)(x), S.C. & S.T. (P.A.) Act, 1989.

Date of argument : 10.12.2014.

Date of judgment : 23.12.2014.

J U D G M E N T

The accused stands charged under sections

294/341/323/506 of the I.P.C. read with section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called “the Act”).

2. Factual matrix leading to the case of prosecution is that the informant is an employee of F.C.I. at Bhubaneswar. He belongs to 'Keuta' sub-caste under the category of Scheduled Caste. It is alleged, inter alia, that on 28.03.2007, while he was preparing to leave for his office, the accused came there and abused him in obscene language saying “TU SALA KEUTA MAGIHA” and also threatened him as to why he did not exercise his franchise in favour of Ashok Behera, but cast his vote to Kabi Behera. While the informant was going on the road, the accused also assaulted him with fist blows and slaps. Then, the accused threatened the informant to kill. After such incident, F.I.R. was lodged. During investigation, witnesses were examined, caste certificate of the informant was seized, injured was examined by doctor on police requisition and after completion of investigation, charge-sheet was submitted. Hence the case of prosecution.

3. Plea of the accused is complete denial to the charges levelled against him.

4. The points that need for determination are :

i) Whether the accused on the relevant date, time

- and place, abused the informant in obscene language causing annoyance to him and others ?
- ii) Whether the accused on the relevant date, time and place, wrongfully restrained the informant ?
- iii) Whether the accused on the relevant date, time and place, voluntarily caused hurt to the informant ?
- iv) Whether the accused on the relevant date, time and place, criminally intimidated the informant by threatening him to kill ?
- v) Whether the accused intentionally insulted or intimidated with intent to humiliate the informant, who is a member of a Scheduled Caste, in any place within public view ?

5. It is well settled law that a conviction can be maintained basing on the sole evidence of a single witness if his evidence is cogent, clear, trustworthy and above reproach. It is also well settled law that evidence should be weighed but not to be counted. Bearing in mind the above principles, let me find out if the prosecution has been able to prove the occurrence and charges levelled against the accused.

6. Prosecution, in order to bring home the charges against the accused, has examined six witnesses, out of whom P.W.1 is the informant himself; P.Ws.2, 3, 4 & 5 are outsiders; and P.W.6 is the Investigating Officer. Defence has examined none.

7. It is revealed from the evidence of P.W.1 that on the date of occurrence at about 9 A.M., after taking tea, when

he was going riding a bicycle, the accused stopped him on the way and abused him saying “SALA MAGIHA SALA KEUTA TOTE KEHI KAHIBAKU NAHANTI” and dealt a slap on his cheek for which he fell down. He further stated that as the accused was dealing kicks on him, witnesses Naba Rout & Raba Rout came to his rescue and saved him. He stated to have lodged the F.I.R. vide Ext.1. According to him, he is 'Kaibarta' by caste belonging to Scheduled Caste and he was insulted by such abuse. In cross-examination, he could not recollect the date of incident and he has forgotten the name of the day. He further stated that there was swelling on the cheeks and he was sent for medical examination. He had not sustained any injury due to fall. When he has forgotten the date of occurrence and did not receive any injury due to fall, his evidence cannot be said to be convincing because if a person falls on the ground, definitely there would be some bruises or any other kind of injury on his person. Further, in cross-examination, denying to the suggestion of defence, he stated to have stated before the Investigating Officer that the accused abused him uttering the above abusive words; but the defence has not confronted this evidence to the Investigating Officer for which it cannot be said that P.W.1 has contradicted such statement with that of his earlier statement made before the

police. But, on a perusal of the F.I.R. (Ext.1), it appears that P.W.1 has stated therein that the accused abused him, such as, “TU SALA KEUTA MAGIHA TOTE KEHI KAHIBAKU NAHANTI”, but not exactly as he has deposed before the Court as “SALA MAGIHA SALA KEUTA TOTE KEHI KAHIBAKU NAHANTI”. Thus, there is discrepancy between the F.I.R. and the statement of P.W.1 as to pointing out at him personally casting aspersions on his caste. Moreover, there is discrepancy as to the exact words used. It is true that minor discrepancy in such case cannot be looked into, but in view of serious allegations under the provisions of the Act, strictest scrutiny is required while analysing the evidence on record. Moreover, in the F.I.R., there is no allegation that the accused dealt slaps on the cheeks of the informant whereas P.W.1 has stated so. Thus, the evidence of P.W.1 is varied from stage to stage as to the exact occurrence that has occurred. That apart, the injury report (Ext.3) of P.W.1 does not disclose any injury on his cheek; but he has stated that there was swelling on his cheek. Thus, the statement of P.W.1 is not cogent, clear, consistent and above reproach to be relied upon solely to prove the occurrence and charges against the accused.

8. P.Ws.2, 3 & 4 have stated that they do not know anything about the occurrence. They have been cross-

examined by the learned Public Prosecutor as to their previous statements made before the police and the Investigating Officer has also been confronted to their previous statements where they have narrated the occurrence before him. Thus, P.Ws.2, 3 & 4 have become hostile to the prosecution. It is well settled law that even if the witness has turned hostile to the prosecution, but his evidence cannot be rejected in toto and the same should be subjected to scrutiny to find out if at all that can be utilised for any purpose. It is only available in cross-examination of P.W.2 that the accused does not pull on well with the informant. So, from the evidence of P.W.2, it appears that there was previous enmity between the parties. As such, P.Ws.2, 3 & 4, who have turned hostile to the prosecution, did not corroborate the evidence of P.W.1 to prove the occurrence and the complicity of the accused in the alleged crime.

9. P.W.5 has feigned his ignorance about the factum of seizure, although he has admitted his signature vide Ext.2 in the seizure list. In cross-examination, he stated that police took his signature on a plain paper. So, he has not proved the seizure of any article.

10. P.W.6, who is the Investigating Officer, stated to have seized the caste certificate of the complainant on

production by him vide Ext.2. He has not proved any other incriminating materials showing any circumstances against the accused to prove his complicity with the commission of the offences.

11. In this case, P.W.1 has not stated that the occurrence took place on the road within public view. So, his evidence and the evidence of other prosecution witnesses do not prove that the place of occurrence is within public view to attract the ingredients of section 3(1)(x) of the Act. Prosecution has not proved the caste certificate to show that the informant belongs to Scheduled Caste. The ingredients of the offence under the Act, as alleged, are also not proved. In that view of the matter, prosecution has failed to establish by cogent, clear and consistent evidence the alleged occurrence and the ingredients of the said offence as well.

12. As regards offence under section 294, I.P.C., prosecution has failed to establish that the place of occurrence is a public place and, as such, the ingredients of the said offence are not proved. Since injury on P.W.1 is not proved by cogent and consistent evidence by prosecution, the ingredients of section 323, I.P.C. are also not proved. No evidence is led by P.W.1 that he was wrongfully restrained by the accused so as to prevent him from proceeding in any

direction in which he had a right to proceed for which the ingredients of section 341, I.P.C. remained far from proof. Moreover, there is no evidence led by P.W.1 or any of the prosecution witnesses to prove the ingredients of section 506, I.P.C. As a result, such offence also remained far from proof.

13. From the discussions made in the foregoing paragraphs, it is found that prosecution has miserably failed to prove the occurrence and ingredients of the offences against the accused. Hence, I hold the accused not guilty of the offences punishable under sections 294/341/323/506 of the I.P.C. read with section 3(1)(x) of the Act and he is acquitted thereof under section 248(1), Cr. P.C. He be discharged from the bail-bond.

**Sessions Judge, Khurda
at Bhubaneswar.**

23.12.2014.

Dictated, corrected by me and pronounced in the open Court this day the 23rd December, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

23.12.2014.

List of witnesses examined for prosecution.

P.W.1	--	Gouranga Sahoo,
P.W.2	--	Naba Kishore Rout,

P.W.3 -- Ainthu Senapati,
P.W.4 -- Rabindra Rout,
P.W.5 -- Bharat Mohapatra &
P.W.6 -- Sridhara Prasad Panigrahi.

List of witnesses examined for defence.

Nil.

List of documents admitted in evidence for prosecution.

Ext.1 -- Written F.I.R.,
Ext.1/1 -- Signature of P.W.1 in Ext.1,
Ext.2 -- Signature of P.W.5 in seizure list,
Ext.1/2 -- Endorsement in Ext.1,
Ext.1/3 -- Formal F.I.R.,
Ext.2/1 -- Seizure list,
Ext.2/2 -- Signature of P.W.6 in Ext.2/1, &
Ext.3 -- Injury report.

List of documents admitted in evidence for defence.

Nil.

**Sessions Judge, Khurda
at Bhubaneswar.**

23.12.2014.