

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

Present:

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

Dated, Bhubaneswar the 15th Jan. '15.

T.R. Case No.28 of 2012.

[Arising out of G.R. Case No.2897 of 2004, corresponding to Baliana P.S. Case No.117 dated 09.09.2004.]

S T A T E

-V e r s u s-

Manas Ranjan Biswal, aged about 30 years, S/o. Ghanashyam Biswal of Vill. – Sarakana, P.S. – Baliana, Dist. – Khurda.

... **Accused.**

Counsel :

For prosecution	--	Shri B.B. Mohanty (P.P. I/c.).
For defence	--	Shri N.K. Rath & Associates.

Under section 294/34, IPC read with section 3(1)(x), S.C. & S.T. (P.A.) Act, 1989.

Date of arguments : 07.01.2015.

Date of judgment : 15.01.2015.

J U D G M E N T

The accused stands charged under section 294/34 of the Indian Penal Code 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 the prosecution is that on 06.09.2004 at 8 A.M., informant Arjuna Bhoi had gone to Sri Bateswar temple for prayer. After completion of prayer, while he was returning, the present accused, along with accused Surendra Panda, abused him in obscene language by stating “SALA BAURI”. The accused persons also threatened the informant to cause injury to his person if he would dare to enter the temple further. The informant narrated the incident to his co-villagers, who came near the spot of occurrence. Thereafter, he lodged F.I.R. at Baliana Police Station. During investigation, the Investigating Officer visited the spot, examined the witnesses and seized the Caste Certificate of the informant. After completion of investigation, Charge-sheet was submitted against both the accused persons. During trial, accused Surendra Panda expired for which the case against him is abated. Hence, the case of the 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 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. Prosecution, in order to bring home the charges against the accused, has examined three witnesses, out of whom P.W.1 is the informant himself; P.W.2 is the scribe of the F.I.R., and P.W.3 is the Investigating Officer. Defence has examined one witness, who is a co-villager of the accused.

6. 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.

7. It is revealed from the evidence of P.W.1 that on 06.09.2004 at about 8 P.M., while he was offering Pranam near Chandini of the temple, accused Surendra, who was the priest of the temple, came there, abused him and also threatened him as to why he had entered the temple being a Bauri. On the protest by P.W.1, accused Surendra gave him slap by saying "TAMA AMAPAKHARE BASUCHHA BOLIKARI BAHUT

SAHASA HEIGALANI, MANDIRA BHITARE PASIBAKU SAHASA HELANI”. According to P.W.1, accused Manas, who was present there, started abusing him saying “BAURI, SALA, TAMA MUHAN BADHI GALANI, BAURIMANE MANDIRAKU PASIBA PAIN CHESTA KALENI”. There were many persons present at the spot. Accused Surendra abused him calling his caste Bauri for which he felt insulted. Since the matter could not be solved, he lodged F.I.R. In cross-examination in para-5, denying the suggestion of defence, he stated to have narrated before the police that accused Manas abused them as BAURI, SALA, TAMA MUHAN BADHI GALANI, BAURIMANE MANDIRAKU PASIBA PAIN CHESTAKALENI”. P.W.3, who is the Investigating Officer, denied about such statement of P.W.1 before him as to the utterance of the above sentence by P.W.1 before him; but P.W.1 has stated before him that accused Manas abused him (P.W.1) as “HAIRE BAURI TUME SALA KOUDINA MANDIRARE PUJA KARITHILA”. Thus, the statement of P.W.1 contradicts his earlier statement as to the exact language used by accused Manas towards him.

8. P.W.2 has stated to have scribed the F.I.R. as per the instructions of his father (P.W.1) and it was read over and explained to P.W.1 after which he handed over the same to police. He proved the F.I.R. vide Ext.1. Denying the

suggestion of defence, P.W.1 stated to have mentioned in the F.I.R. that accused Surendra assaulted him with a slap. But, the F.I.R. does not disclose the allegation of such assault. Moreover, P.W.1 does not disclose whether such occurrence took place within the public view. Thus, the statement of P.W.1 is not clear, cogent and above reproach to be relied upon to prove the occurrence and the ingredients of the offences alleged against the accused. As such, it requires corroboration.

9. P.W.2 is not a witness to the occurrence and he is only the scribe. There is no other witnesses examined to support the evidence of P.W.1. Hence, there is no cogent, clear and consistent evidence adduced to prove the occurrence. Section 3(1)(x) of the Act has got the following ingredients :

- a) The member of a Scheduled Caste must be insulted or intimidated;
- b) there must be intention to humiliate the informant;
- &
- c) such humiliation must be within public view.

10. There is no statement of P.W.1 to show that the occurrence has taken place within the public view. Moreover, the exact obscene words of the accused has not been proved by P.W.1 as per the discussion in the foregoing paragraphs.

So, the prosecution has miserably failed to prove the ingredients of section 3(1)(x) of the Act.

11. In order to prove the charge under section 294 of the I.P.C., the following ingredients are to be proved :

- a) Obscene words must have been used;
- b) such obscene words must have been uttered in or near a public place; &
- c) the accused must have caused annoyance to the informant and others.

12. On going through the evidence of P.W.1, I find that he has never stated that the occurrence took place in or near a public place. Moreover, the exact obscene words has not been proved as per the discussion made above. Thus, the ingredients of section 294 of the I.P.C. remained far from proof.

13. As the prosecution has miserably failed to prove the occurrence against the accused beyond all shadow of doubts, the evidence of D.W.1 needs no discussion.

14. In the backdrop of the aforesaid facts, I am constrained to hold that the prosecution has miserably failed to bring home the charges against the accused beyond all shadow of doubts. Hence, I hold the accused not guilty of the offences punishable under sections 294/34 of the I.P.C. read with section 3(1)(x) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 and he is acquitted thereof under section 248(1), Cr. P.C. He be discharged from the bail-bond.

**Sessions Judge, Khurda
at Bhubaneswar.**

15.01.2015.

Dictated, corrected by me and pronounced in the open Court this day the 15th January, 2015.

**Sessions Judge, Khurda
at Bhubaneswar.**

15.01.2015.

List of witnesses examined for prosecution.

P.W.1 -- Arjuna Bhoi,
P.W.2 -- Bapina Kumar Bhoi &
P.W.3 -- Rahas Bihari Pani.

List of witnesses examined for defence.

D.W.1 -- Dambarudhar Swain.

List of documents admitted in evidence for prosecution.

Ext.1 -- F.I.R.,
Ext.1/1 -- Endorsement of P.W.2 in Ext.1,
Ext.1/2 -- Endorsement of OIC in Ext.1,
Ext.2 -- Spot Map, &
Ext.3 -- Copy of Caste Certificate.

List of documents admitted in evidence for defence.

Nil.

**Sessions Judge, Khurda
at Bhubaneswar.**

15.01.2015.