

IN THE COURT OF THE ADDL.C.J.M-ASJ, B H U B A N E S W A R.

Present:
Sri P.L.Satpathy,LL.B.,
Addl.C.J.M-ASJ,Bhubaneswar.

C.T.CASE NO.23/127/13

Code No.211701022582013

Arising out of G.R. Case No.449/10 corresponding to Mancheswar PS Case No.46/10)

S T A T E

-Versus-

1. Mirza Fakir Baig, aged about 41 years, S/o Abdul Razak,
S/o Abdul Razak, At- Haridaspur, P.O- Naharkanta, PS: Baliana, Dist: Khurda

..... Accused persons.

OFFENCE U/S.307 I.P.C

Counsel for the prosecution : Sri P.Pattnaik, Addl.P.P, Bhubaneswar.

Counsel for the defence : Md. Ziaul Haquee & Associates, Advs, BBSR.

Date of argument: 9.7.14

Date of judgment:14.7.14

J U D G M E N T

1. In this case the accused named above stands charged for commission of offence punishable U/s.307IPC. Rabi Mohanty (not examined) is the injured. Damodar Sahu (not examined) is the informant. The alleged occurrence in this case took place on 16.2.10 at around 7 pm in the house of Santisudha @ Santibudhi situated at Tuhikuti basti under Mancheswar PS.

2. Shortly stated, the prosecution case is that :

The informant was a massion who was remaining in the occurrence Tuhikuti basti about one half years back prior to the occurrence. PW.5 Santibudhi was a married woman. Her husband for his sustainance was remaining outside and sometimes comes to PW.5 . PW.5 was remaining in the occurrence basti. Rabi Mohanty (the injured) was a truck driver. He was alone remaining in occurrence basti. About 3 to 4 days prior to the alleged occurrence pw.5 had been to her village Tamaka. Rabi Mohanty was staying in her house. On 16.2.10 at around 7 pm there was hullah in the basti. Hearing hullah the informant Damodar Sahu came to the occurrence spot and found Rabi Mohanty having sustained bleeding injuries on his persons lying on the

road near to the house of pw.5. Several persons had congregated there. On inquiry the informant ascertained that Rabi Mohanty was inside the house of PW.5 someone assaulted him with sharp edged weapon causing severe bleeding injuries on his persons with intents to murder him. The informant requested the persons present at the spot to shift the injured Rabi Mohanty to the hospital but none come forward him. In the mean time police party arrived at the spot. Informant Damodar Sahu reported the matter orally before Sri Abhinab Dalua, the then SI of police, Mancheswar PS (pw.13) who reduced the oral report of the informant Damodar Sahu into writing and subsequently the said writing was treated as FIR (Ext.4) and police sent the injured to Capital hospital, BBSR and subsequently on the advise of the doctor Capital hospital police shifted the injured to SCB Medical College & Hospital, Cuttack for his treatment . On the basis of Ext.4 Sri Bishnu Charan Mishra , IIC Mancheswar PS registered Mancheswar PS Case No.46 dtd.16.2.10 U/s.307 IPC was registered against unknown accused persons and entrusted the investigation of this case to Sri Abhinab Dalua (PW.13) for investigation. In the course of investigation the IO of this case (pw.13) visited the spot, prepared the spot map and spot report (ext.5 & Ext.5/1 respectively), examined the informant, injured and other witnesses in this case. The scientific team visited the occurrence spot and after visiting the occurrence spot, seized blood stained earth, sample earth and submitted their report (Ext.6) at the occurrence spot under seizure list (Ext.7) and issued injury requisitions in favour of the injured who was undergoing treatment at SCB MCH, Cuttack. The accused while in police custody voluntarily confessed to have committed the crime which was recorded by him U/s.27 Evidence Act in separate sheet and the accused gave recovery the weapon of the offence i.e sword(which was seized in separate sheet), seized the bed head ticket of the injured Rabindranath Mohanty at SCB, MCH, cuttack under seizure list (ext.3/1), forwarded the seized incriminating materials through Ld. SDJM, BBSR to DFDSL, BBSR for examination vide forwarding report (Ext.10). After completion of investigation PW.13 submitted charge sheet before the Court of Ld. SDJM, BBSR. against the present accused U/s.307 IPC to face his trial in the court of law. The case was committed to the court of sessions and subsequently was transferred to this court for it's disposal according to law.

3. The case of the defence is one of completely denial to the prosecution allegations and false implications.
4. The points for determination in this case is as follows:
 - I) Whether on 16.2.10 evening at around 7 pm at the house of Santi Budhi (pw.5) situates at Tuhikuti Basti under Mancheswar PS, the accused attempted to commit

murder to one Rabindranath Mohanty, driver who was also then residing in said house. ?

5. To establish its case, the prosecution examined as many as 13 witnesses, & some documents from serial number one to ten on the other hand defence adduced no evidence on its side. After close scrutiny of the materials available on record it seems that the accused was not named in the FIR. Pws.1 to 9 were residing in the occurrence basti at the relevant time. . They denied to have their any knowledge about the occurrence while deposing in the court. Although prosecution with the light of the court cross examined Pws 1 to 9 but failed to elicit anything from their mouth to connect the accused with the commission of the alleged offence. Pws.10,11,12 were the seizure witnesses. PW.13 is the IO of this case. PW.10,11,12 & 13 were not the factual witnesses. The confessional statement of the accused recorded U/s.27 Evidence Act has not been established beyond all reasonable doubt. Prosecution has also not proved the fact-um of seizure in respect of the sword in question. More over Rabindranath Mohanty the person who had received injury in this case and Damodar Sahu the person who had lodged the report in this case have not been examined in this case despite all possible steps taken in the matter by the Prosecution.

6. Considering the evidence available on record and non-examination of the informant and the injured in this case I am of the opinion that the prosecution has failed to connect the accused with the commission of alleged crime although materials available on record is liable to the extent that one Rabindranath Mohanty, S/o Ramchandra Mohanty of village Matiapada, Dist: Puri had received injury on his persons.

In the result, I hold the accused not guilty for commission of offence U/s.307 IPC and acquit him therefrom U/s.235(1)CrPC. The accused is on court bail and he be discharged from his bail bonds.

Addl.C.J.M-A.S.J,Bhubaneswar.

The blood stained mat, blood stained earth, control earth, one blood stained sword with white colour fiber handle said to have been seized relating to this case be destroyed four months after the appeal period, if there would be no appeal.

Addl.C.J.M-A.S.J,Bhubaneswar.

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 14th day of July, 2014 under my hand and seal of this court.

Addl.C.J.M-A.S.J,Bhubaneswar.

List of P.ws. examined for prosecution.

P.w.1	Raju Munidia
P.w.2	Balaram Champati
P.w.3	Mohan Purty
P.W.4	Sukanti Purty
P.W.5	Santi Sidhu
P.W.6	Mangilal Bandia
p.w 7	Suni Bandia
p.w.8	Ramamani Purti
p.w.9	Phulamani Champia
p.w.10	Abani Ku. Sahu
p.w.11	Abhaya Ku. Swain
p.w.12	Pratap Ch. Sahu
p.w.13	Abhinaba Dalua

List of D.ws.examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1	Signature of p.w.10 on statement U/s.27 I.E.Act
Ext.2	Signature of p.w.10 in seizure list dtd. 1.5.10
Ext.3	Signature of p.w.11 in seizure list dated 4.5.10
Ext. 3/1	Seizure list dtd. 4.5.10
Ext.3/2	Signature of pw.12 in Ext. 3/1
Ext.4	Written FIR
Ext.4/1	Signature of Damador Sahu in Ext.4
Ext.4/2	Endorsement and signature of pw.13 in Ext.4
Ext.4/3	Endorsement & signature of Bishnu Charan Mishra IIC in Ext.4
Ext.4/4	Formal FIR
Ext.4/5	Signature of IIC B.C Mishra in Ext.4/4
Ext.5	Spot Map
Ext.5/1	Report of IO regarding visit of spot
Ext.5/2	Signature of pw.13 in Ext.5
Ext.5/3	Signature of PW.13 in Ext.5/1
Ext.6	Spot visit report of DFSL,Khurda
Ext.6/1	Signature of PW.13 in Ext.6
Ext.6/2	Signature of M.R.Das, S.O, DFSL, BBSR in Ext.6
Ext.7	Seizure list dated 17.2.10
Ext.7/1	Signature of pw.13 in Ext.17
Ext.7/2	Signature of Bharat Samad in Ext.7
Ext.1/1	Statement of accused Mirza Fakir Beg recorded U/s.27 I.E Act
Ext.1/2	Signature of pw.13 in Ext.1/1
Ext.1/3 to 1/7	Signature of accused in Ext.1/1
Ext.3/3	Signature of PW.13 in Ext.3/1
Ext.3/4	Signature of Karnel Mudgal in Ext.3/1
Ext.8	Zimanama dtd 4.5.10
Ext.8/1	Signature of pw.13 in Ext.8
Ext.8/2	Signature of Karnel Mudgal in Ext.8
Ext.9	Photo copy of medical documents containing 10 sheets
Ext.10	Forwarding letter of SDJM, BBSR sending exhibits to DFSL, BBSR containing two pages
Ext.10/1	Signature of PW.13 in Ext.10

List of exhibits marked for defence.

N i l.

List of M.Os.

N i l.

