

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

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

G.R..CASE NO.4063-08

Code No.35298/14

(Arising out of Baliana P.S. Case No.182/08)

S T A T E

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Prosecution.

.....Versus.....

1. Arun Ku. Panda, aged about 37 years.
s/o Gangadhar Panda.
2. anmaya Ku. Panda @ Tarun aged about 30 years.
s/o. Gangadhar Panda,
3. Smt. Binodini Panda, aged about 42years,
s/o/.Late Surendra Panda
4. Smt. Pramila Panda, Aged bout 58 years
w/o. Gangadhar Panda

All are of vill.Benupur P.S. BalianaDist. Khurda.

..... Accused persons

OFFENCE U/S.336,294,506/34 I.P.C.

Counsel for the prosecution : Sri Bidyut Ranjan Mishra. A.P.P, BBSR

Counsel for the defence : Sri Bidwan Das & Asso., Advs, BBSR.

Date of argument: 5.7.14Date of judgment:11.7..14**J U D G M E N T**

1. In this case the above noted accused persons named above jointly stand their trial for the offences U/S294,336,,506/34 I.P.C. Nilambar Mangaraj (PW.1) is the informant. Pitambar Mangaraj (PW.2) is the elder brother of PW.1. Dinakrushna Mangaraj (PW.3) is the son of PW.2.

Accused Arun Panda & Tarun Panda are two brothers . Accused Pramila Panda & Binodini Panda are respectively the mother and sister of accused Arun & Tarun.

2. The prosecution case, in brief, is as follows:

The alleged occurrence in this case took place on 16.10.08 at 4 pm. Nilambar Mangaraj (PW.1) lodged a written report (Ext.1) with Baliana PS on 16.10.08 at around 9.10 pm alleging there in that prior to the alleged occurrence accused Arun Panda had taken his two numbers of tractors for using his building construction work and three numbers of

cars for his marriage purpose on hire basis and as such accused Arun Panda had to pay some money to him. . On 16.10.08 at about 10 am he sent his brother Pitambar Mangaraj (PW.2) to accused Arun Panda for money due to him. Accordingly PW.2 went to accused Arun Panda and asked about the money which he had to handover to PW.1 in reply accused Arun Panda told that detail account statement is with PW.1, let he come at around 4 pm with your brother (PW.1). On the same date at around 4 pm pw.1 , 2 and Dinakrushna Panda, PW.3 (son of pw.2) went to the house of accused Arun Panda situated at village Balikanthia & asked accused Arun at about money in question. Accused Arun told them not ask him about the money as he was then in tension but PW.2 forced accused Arun to give the money immediately. Accused Arun went inside his house , came again holding a cro bar with his hands and the other accused persons came and started pelting stones towards Pws.1,2 and 3. Accused Arun holding a crobar chased to assault them . Out of fear they left the occurrence spot. It is further alleged that at about one hour after the said occurrence he and PW.3 had been to the house of Kalandi Behera (PW.4). The accused persons also abused at them in obscene words.. Seeing them accused Arun and Tarun carrying sword and barcha rushed towards them to assault. Due to the fear of he and his nephew, pw.3 went away to their house. On the basis of the FIR (Ext.1) the IIC , Baliana PS registered Baliana PS Case No.182 dtd. 16.10.08 U/s.294,,336,506/34 IPC against Arun Panda, Tarun Panda and their mother and sister and entrusted this case upon pw.9 for investigation. pw.9 examined the informant and other witnesses , visited the spot, prepared the spot report (ext.3) , seized four numbers of brickbats at the occurrence spot in presence of the witnesses under seizure list (Ext.1). As per the direction of the IIC, Baliana PS pw.8- another ASI of police took charge of the investigation of this case from PW.9 on 15.2.09 who, after investigation, submitted charge sheet against the above noted four accused persons U/s.294,336,506/34 IPC before the Court of Ld. SDJM,BBSR to face their trial in the court of law.

3. The case of the defence is one of complete denial to the prosecution allegations and false implication in terms of compromise in between the parties. Prosecution case proceeded against the accused only for the offence U/s.294 & 336/34 IPC.

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

- i) Whether on 16.10.08 at about 4 pm at village Balikanthia the accused persons in furtherance of their common intention, caused annoyance to others by using obscene words to PW.1,2, & 3 in or near a public place ?
- ii) Whether on the alleged date, time and at place the accused persons in furtherance of their common intention, pelted brick-bats to Pws..1,2 and 3 which is not only endangered the life and personal safety of PW.1 to 3 but also to others.?

5. To establish the prosecution case prosecution has examined as many as 9 witnesses including the informant. PW.1 and his brother pw.2 and his nephew pw.3. Pws. 8 and 9 are two Ios of this case. PW.8 one of the IO who had submitted charge-sheet in this case. Pws.4,5,6,7 are alleged to be the eye witness to the occurrence. On the other hand defence did not choose to adduce any evidence on its side.

6. Admittedly PW.5 and 7 are alleged to be the eye witnesses to the occurrence have not supported to the case of the prosecution. PW.8 and 9 were not the factual witness. Their evidence is only based upon the evidence collected by them in course of investigation. Pws.1,2 and 3 are the victims . PW.4 and 6 are alleged to be the eye witnesses to the occurrence. Reading the evidence of PW.1 to 3, 4 and 6 it is seen that they all have given ambiguous evidence that the accused persons abused at Pws.1 to 3 in obscene words but they have not disclosed in their evidence the exact verbatim used by the accused persons towards Pws.1,2,3. In the absence of such things it is too difficult to hold as to whether the word if any uttered by the accused persons towards Pws.1,2,3 were obscene or not. From the spot report prepared by pw.9 in Ext.3 reveals tht the place of occurrence was on public place. To constitute an offence U/s.294 IPC it is the duty of the prosecution to prove that the obscene words uttered by the accused persons had caused annoyance to others. In this case that important ingredient is totally absent so when prosecution fails to establish two essential ingredients of Section 294 IPC it can be safely said that prosecution has failed to establish its case U/s.294 IPC against the accused persons.

7. It is the prosecution's allegation that the accused persons in the course of alleged incident had pelted brick bats towards Pws.1,2 and 3. None of the witnesses have stated actually which accused pelted brick bats or all the accused persons had pelted brickbats. PW.9 in his evidence has stated that in the course of investigation on the occurrence night he had seized four numbers of brick bats laying in the village danda in presence of the witnesses under seizure list (Ext.2) admittedly no brickbats has been produced before the court during the course of trial. . PW.9 nowhere in his evidence has stated that who had identified the brickbats to him at the occurrence spot saying that the brickbats seized under Ext.2 were the said brickbats used by the accused persons in pelting towards others. None of the persons were injured due to pelting of brickbats. Hence prosecution case with regard to the offence U/s.336 IPC is not proved beyond all reasonable doubt.

In view of my aforesaid discussion, I am of the considered view that the prosecution has failed to establish its case U/s.294,336/34 IPC against the accused persons beyond all reasonable doubt and as such all the accused persons are entitled to be acquitted.

In the result, I hold the accused persons are not guilty of the of-fences U/s.294,336/34 IPC and acquit them U/s.255(1) Cr.P.C. The accused persons are on court

bail and as such they be discharged from their respective bail bonds .

Enter this case as “Mistake of Fact”

AC.J.M,BBSR

The brickbats seized in connection with this case under seizure list (Ext.2) be destroyed four months after the appeal period is over, if there would be no appeal.

AC.J.M,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today

i.e. on 11th July, 2014 under my hand and seal of this court.

AC.J.M-,BBSR

List of P.ws. examined for prosecution.

P.w.1 Nilambar Mangaraj
 p.w.2. Pitambar Mangaraj
 p.w. 3 Dinakrushna Mangaraj
 p.w. 4. Hemanta Behera @ Kalandi
 p.w.5. Sridhar Panda
 p.w. 6 Radhakanta Srichandan
 p.w.7 Dilip Ku. Panda
 p.w.8 Ramachandra Ratha
 p.w.9 Sadasiba Barik

List of D. W.s.examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1 FIR
 Ext.1/1 Signature of PW.1 in Ext.1
 Ext.2 Seizure list
 Ext.2/1 Signature of pw.6 on Ext.2
 Ext.1/2 Endorsement of IIC
 Ext.3 Spot report
 Ext.3/1 Signature of p.w.9 on Ext.3
 Ext.2/2 Signature of p.w.9 on Ext.2

List of exhibits marked for defence.

N i l.

List of M.Os.

Nil

AC.J.M-BBSR

