

FORM-A**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, DIGAPAHANDI, GANJAM**

Present: **Smt. Nilima Sarangi,**
Judicial Magistrate First Class,
Digapahandi, District: Ganjam

JO Code-OD-00798

Dated this 12th day of August, 2026.

[G.R. Case No.270 of 2012]

[T.R. No.366/2013]

[CNR No.-ODGM130000712012]

(Arising out of Digapahandi P.S. Case No.121 dtd.10.09.2012

U/s.-294/323/34 of IPC)

Complainant	State of Orissa
REPRESENTED BY	Sri H.K. Panigrahi, A.P.P. Digapahandi.
ACCUSED PERSONS	Subhas Sethy Aged about 61 years S/o-Lt. Krushna Sethy Mitu Sethy Aged about 40 years S/o-Subash Sethy Both are of Village-P. Purushottampur P.S.-Digapahandi, District-Ganjam.
REPRESENTED BY	Sri A.N. Mishra, Advocate, Digapahandi, Ganjam

FORM-B

Date of Offence	06.09.2012
Date of FIR	10.09.2012
Date of Charge sheet	31.01.2013
Date of Framing of Charges	09.12.2013
Date of commencement of evidence.	16.05.2014
Date on which judgment is reserved/date of argument.	29.07.2026
Date of the judgment	12.08.2026
Date of the Sentencing Order, if any	--

Accused persons Details

Rank of the Accused persons	Name of the Accused persons	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 of CrPC
A. I	Subhas Sethy	13.09.12	21.09.12		Acquitted		
A. II	Mitu Sethy	13.09.12	21.09.12				

J U D G M E N T

The accused persons named above stands prosecuted for commission of offence U/s.-294/323/34 of Indian Penal Code (hereinafter referred as IPC).

2. The story of the prosecution in brief is that the informant namely Pintu Sethi, S/o.-Surendra Sethi of village-Khajuripalli, P.S.-Digapahandi, Ganjam has reported that on dtd.06.09.2012 at about 01:00 P.M, while he along with his sister going to Gokarnapur in his cycle at that time nephew of Subash Sethy namely Ujala Sethi and nephew of Budhia Sethi namely Kora Sethy passed comment and when he asked them the reason of passing obscene comment, they chased to assault him. Then on dtd.07.09.2012 evening while he along with his father were returning to their village, at that time Ujala Sethi assaulted his father with a thenga for which his father's left hand got fractured and Subash Sethi also assaulted his father by means of a Kati on his head and then Mitu Sethi, Ujala Sethi, Mora Sethi assaulted him with a Thenga and Kalu Sethi saved him. They also abused in obscene languages and threatened to kill them in life if they reported the matter at P.S. Then they went to P.S and inform the matter but police send them to CHC, Digapahandi for their treatment and MO of CHC, Digapahandi referred them to MKCG, Berhampur.

After the treatment he lodge the FIR at P.S. to take legal action against the accused persons.

On basis of this report the then IIC, Digapahandi PS registered the case vide P.S case no.121 dtd.10.09.2012 and directed T. Lachana, ASI of Digapahandi PS to investigate the case. After due completion of investigation, the Investigating officer (hereinafter referred as I.O. in short) submitted charge sheet vide C.S. No.4 dtd.31.01.2013 of offence U/s.- 294/323/34 of I.P.C against the above accused persons to stand their trial in the Court of law. Hence this case.

3. The plea of the accused persons is of complete denial and alleges of false implication.

4. Basing upon the aforesaid story of the prosecution against the accused persons with the alleged criminal offences against him, the following points are required to be determined for the just decision of the case: -

Whether on dtd.07.09.2012 at about 01:00 P.M. on the way from Gokarnapur towards Khajuripalli, the accused persons in furtherance of their common intention has: -

- i. abused the informant and his father in various obscene languages in a public place, causing annoyance to others and thereby committed an offence?
- ii. voluntarily caused hurt to informant and and his father and thereby committed an offence?

5.To substantiate its case the Prosecution has examined as many as 5(Five) witnesses out of which P.W.5 namely Pintu Sethi is the informant-cum-victim, P.W.1 namely Surendra Sethi is the Father of the informant, P.W.2 namely Kalu Sethi is the occurrence witness, P.W.3 namely Bangali Sethi and P.W.4 namely Nirajan Sethi are the independent occurrence witnesses in this case. Prosecution has marked Ext.1 & Ext.1/1 on its behalf. The I.O of this case could not been examined in this case as inspite of repeated summon his whereabouts could not been traced. On the other hand, the accused persons have neither examined any witnesses nor marked any documents on their behalf.

6. On perusal of evidence on record, it appears that the informant-cum-victim of this case namely Pintu Sethi, who has been examined as P.W.5 deposed that the occurrence took place on dtd.06.09.2012 at about 05:00 P.M. in front of the house of Subash. As per his evidence on relevant date and time while he was proceeding to his house with his father, at that time accused persons Mitu and Ujala tried to assault him with hockey stick but his father raised his hand and the blow strikes on the hand of his father for which his father sustained fractured injury. The accused Subash dealt a Kati blow on the head of his father, causing

bleeding injury and he shifted his father to Digapahandi CHC and his father was referred to MKCG, Berhampur. Then Mitu, Ujala and Subash assaulted him on a hockey stick sustained swelling injury. He then lodged the FIR against the accused persons. He proved the FIR vide Ext.1 and his signature thereon vide Ext.1/1.

P.W.1 namely Surendra Sethi, who is the father of the informant deposed that the occurrence took place about one year and 7 months at about 06:00 P.M in the Danda of Subash (from the date of recording of deposition i.e., on dtd.16.05.2014). As per his evidence on the relevant day of occurrence, while he and his son was returning to his house from his land, at that time accused persons attacked his son to assault. The accused Subash raised a thenga on his son and in order to save his son he raised his hand and the blow strick on his hand for which he sustained fracture injury on his hand. Thereafter accused Subash assaulted on his head with a Katari and he sustained bleeding injury and he became senseless and was admitted in the hospital.

P.W.2 namely Kalu Sethi, who is the occurrence witness in this case has deposed that the occurrence took place about one year and seven months at the evening time at the house of accused Subash Sethi (from the date of recording of deposition i.e. on dtd.16.05.2014). As per his evidence on the

relevant day of occurrence, while he was sitting in the village library, on hearing the shout of the informant he reached at the spot and found Surendra was lying on the ground and his hand was broken and he sustained bleeding injury on his head and accused persons were standing near to him. Then he intervened in the matter and accused persons assaulted the informant and he again intervened and the accused persons left the spot. Then he gave water to the informant and shifted the informant to medical with an auto. The injured was first treated at Digapahandi CHC and then referred at Berhampur for treatment.

Both independent occurrence witnesses P.W.3 i.e. Bangali Sethi and P.W.4 i.e. Niranjan Sethi deposed that they does not know anything about the occurrence.

7. During the course of argument, Learned APP appearing for the State submitted that the testimony of informant i.e. P.W.5 and his father I.e P.W.1is corroborated with the case of prosecution. One occurrence witnesses i.e. P.W.2 has also supported the case of prosecution and corroborated with the evidence of P.W.5. P.W.2 immediately reached at the spot after hearing the shout of the informant. The defence has failed to establish any material contradiction, omission or inconsistency affecting the prosecution case. At the conclusion he argued that prosecution has successfully

proved its case beyond all reasonable doubt. On the other hand the learned advocate for the accused persons submitted that the prosecution case is based on some false and fabricated allegations. He further argued that P.W.5 is the informant, P.W.1 is father and P.W.2 is the paternal uncle of P.W.5. So all the supporting P.Ws i.e. P.W.1, P.W.2 and P.W.5 are related and they interested witnesses and their evidence must be scrutinized properly. Both the independent occurrence witnesses i.e. P.W.3 and P.W.4 has not supported the case of prosecution. The evidence of PW1 and PW5 suffers from material contradictions and there is inconsistencies regarding the manner of occurrence which create serious doubt about the truthfulness of the prosecution version. The prosecution witnesses have admitted previous enmity. It is well settled that where two views are possible from the evidence on record, the view favorable to the accused must prevail. The prosecution evidence is full of inconsistencies, omissions, interested testimony and lack of independent corroboration. The prosecution has thus failed to prove the charges U/s.-294/323/34 of IPC against the accused persons beyond reasonable doubt.

8. I have carefully gone through the case record and perused the entire evidence on record. In this case the accused persons are charged for commission of offence U/s.294/323/34 of IPC. So far as the 1st point for

determination for the offence U/s.294 IPC is concerned, the prosecution has to prove that the accused persons has used obscene words in a public place or near a public place, and such act of them must have caused annoyance to others. Regarding the 2nd point for determination is concerned, the prosecution must establish that the accused persons have voluntarily caused hurt i.e. bodily pain, disease and infirmity to the informant P.W.5 and his father P.W.1 with intention or with a knowledge thereby to cause hurt to the informant and committed offence U/s.323. Section-321 of IPC is subject to Section 334 of the Code. Here intention of the accused plays the vital role Now, let me examine whether the prosecution has established all the ingredients of the alleged offences against the accused.

9.Law is well settled that prosecution has to prove the guilt of the accused persons beyond all reasonable doubt. The prosecution cannot draw any strength from the weakness of the case of the accused. It is also a settled proposition in the criminal law that the accused persons have a pious right of not to be convicted for an offence which is not established beyond reasonable doubts by the prosecution. The burden of proof in a criminal trial always rests upon the prosecution and the same never shifts on accused. On a careful scrutiny of the case record, it is found that prosecution has

examined five C.S witnesses out of six C.S in this case. Except the informant i.e. P.W.5, his father i.e. father P.W.1, and his paternal uncle P.W.2, none of the other P.Ws has supported the case of the prosecution. Both independent witness i.e. P.W.3 and P.W.4 stated that they does not know anything about this case and they were not declared hostile by the prosecution in this case. The supporting P.W.s i.e. P.W.1, P.W.2 and P.W.5 belongs to one family and they are related and somehow interested witnesses. The informant i.e. P.W.5 in para-8 and para-9 of his cross examination stated that accused Subash Sethi is his grandfather and Mitu Sethi is his paternal uncle and his family is not pulling well with the accused persons prior to the occurrence. Even P.W.2 also admitted in para-5 of his cross examination that prior to the occurrence a quarrel was picked up between the parties. It seems that there was a dispute between both the parties prior to the occurrence. It seems that there is enmity in between both the parties and thus independent witness's corroboration to the evidence of all P.Ws is highly essential to consider their evidence. It is well settled principle of law that enmity is a double-edged sword and it can be ground for false implication and the testimony of inimical witnesses has to be considered with caution. But in this case all the independent occurrence witnesses did not supported the case of prosecution and has not stated any incriminating

material against the accused person. Rather from the evidence of P.W.3 and P.W.4, it reveals they does not know anything about the occurrence. From the FIR and from the evidence of P.W.1 and P.W.5., it reveals that P.W.1 sustained fracture injury and he was shifted to CHC Digapahandi for his treatment and there again he was against shifted to Berhampur medical for his treatment. But no such medical/injury report for treatment of P.W.5 is filed in this case by the prosecution. The M.O. is a material witness but was also not cited as charge sheet witnesses of this case. From the evidence of P.W.1 it reveals that accused persons has assaulted him by means of Thenga whereas from the evidence of P.W.5, it reveals that accused persons has assaulted P.W.1 by means of Hockey stick. The fact stated in FIR neither corroborates with the evidence of P.W.1 and P.W.5 nor with the evidence of P.W.2. No weapon of offence was seized by him for this case. In this case the statement of informant and FIR is not at all corroborated by a single witness as examined by the prosecution. So remains the only piece of evidence i.e. the FIR, and to that regard it is pertinent to say here that the law is well settled that FIR is not a substantive piece of evidence and it can only be used for the purpose of corroboration and contradiction, but the FIR cannot be the basis of fixing liability upon the accused persons. In this case as none of the independent witnesses examined have

supported to the facts of this case, hence, none of the ingredients as alleged against the accused persons are proved to be committed by him to the victim of this case conclusively beyond all reasonable doubts. Thus, in light of the above discussed observations, considering the evidences on record, the facts and circumstances of the case and evidences adduced by the prosecution it could be seen that there is no clear proof raised by the prosecution on the basis of which a conviction can lie against the accused persons. So, at this stage it would be unfair and contrary to the interest of justice, and it would tantamount to abuse of process of law, to continue with the criminal proceeding and punish the accused, as such would not secure ends of justice. The corroboration of the prosecution case is doubtful regarding the charges labeled against the accused persons. Thus, the prosecution in this way failed to establish this case beyond all reasonable doubt and benefit of doubt is to be extended to the accused persons.

In view of the above discussions, the prosecution has failed to establish the ingredients of offence U/s.294/323/34 of IPC against the accused persons. In the result therefore, I hold the accused persons not guilty of the offences punishable U/s.294/323/34 IPC and accordingly they are acquitted therefrom as per section 255 (1) of Cr.P.C. The accused persons be set at liberty forthwith and his bail bonds shall remain in force

for a further period of six months in view of the provision contained U/s.437(A) of the Cr.P.C..

Enter this case as “mistake of fact” for statistical purpose.

There is no seized order as nothing has been seized in this case

***Judl. Magistrate First Class,
Digapahandi, Ganjam.***

This judgment is dictated, corrected and pronounced by me in the open Court today on this the 12th day of August 2026, under my seal and signature.

***Judl. Magistrate First Class,
Digapahandi, Ganjam.***

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A. Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE
P.W.1	Surendra Sethi	Father of the informant
P.W.2	Kalu Sethi	Occurrence witness
P.W.3	Bangali Sethi	Independent occurrence witness
P.W.4	Niranjana Sethi	Independent occurrence witness
P.W.5	Pintu Sethi	Informant
B. Defence Witnesses, if any		
RANK	NAME	NATURE OF EVIDENCE
Nil	Nil	Nil
C. Court Witnesses, if any		
RANK	NAME	NATURE OF EVIDENCE
Nil	Nil	Nil
LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution Exhibits		
Sl. No.	Exhibit Number	Description
1	Ext.1	FIR
2	Ext.1/1	Signature of P.W.5 on FIR
B. Defence Exhibits, if any		
Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

C. Court Exhibits, if any		
Sl. No.	Exhibit Number	Description
Nil	Nil	Nil
D. Material Objects:		
Sl. No.	Material object Number	Description
Nil	Nil	Nil

***Judl. Magistrate First Class,
Digapahandi, Ganjam.***