

FORM-A**IN THE COURT OF JUDICIAL MAGISTRATE
SECOND CLASS, SUNDARGARH**

Present:-Sitesh Mohanty, LL.M.,
JMSC, Sundargarh.
J.O Code-OD00922

Dated, this 04th of April, 2024

GR Case No.659/2019

Trial No. 58/2024

Arising out of Talsara PS Case No.97
dtd.08.07.2019

U/s. 341/294/323/506/34 of IPC

Complainant	State of Odisha
Represented by	Smt. Dulari Nag, A.P.P., Sundargarh.

Accused persons	(1) Neeharika Khilari (34) W/o – Jitendra khilari. (2) Jasobanta Khilari (35) W/o – Kostu khilari. (3) Jitendra Khilari (45) S/o –. Kostu Khilari (4) Trilochan Khilari (40) S/o –. Kostu Khilari All Resident of Vill.-Tumulia PS- Talsara, Dist- Sundargarh
Represented by	Adv.Sri S Majhi&Associates.

FORM – B

Date of Offence	08.07.2019
Date of FIR	08.07.2019
Date of Charge Sheet	12.08.2019
Date of Framing of Charges	30.01.2024
Date of commencement of evidence	06.03.2024
Date on which judgment is reserved	28.04.2024

Date of Judgment	04.04.2024
Date of Sentencing Order, if any	-
Accused Details	
Rank Of The Accused	Name Of The Accused
A-1	Neeharika Khilari
Date Of Arrest	Not arrest as notice 41(A) served
Date Of Release On Regular Bail	-
A-2	Jasobanta Khilari
Date Of Arrest	Not arrest as notice 41(A) served
Date Of Release On Regular Bail	-
A-3	Jitendra Khilari
Date Of Arrest	Not arrest as notice 41(A) served
Date Of Release On Regular Bail	-
A-4	Trilochan Khilari
Date Of Arrest	Not arrest as notice 41(A)

	served
Date Of Release On Regular Bail	-
Offences Charged With	U/S. 341/294/323/506/34 of IPC
Whether Acquitted Or Convicted	Acquitted
Sentence Imposed	--
Period Of Detention Undergone During Trial For Purpose Of Section 428, Crpc	--

JUDGMENT

The above-named accused persons stand charged for commission of offences punishable under section 341/323/294/506/34 of the Indian Penal Code, 1860 (in short, the I.P.C).

2. Case of the Prosecution as reveals from the record in nutshell is as follows:

The case of Prosecution as unfolds from the F.I.R in short is that, on the written report of one Bijay Laxmi Mahakul of V- Majhapada, P.S.- Talsara D-Sundargarh, On July 8th, 2019, around 5:00 AM, while she was returning from the shop, the accused persons, who happen to be her neighbours, namely Jitendra Khilari, Trilochan Khilari, and Jasobanta Khilari, obstructed her path and physically assaulted her. As a result, her bangles which she was wearing were broken, and they also tore her nightwear, threatening her with severe consequences while brandishing a sword. Furthermore, they continued to intimidate her with the sword as she attempted to go to the police station to file FIR. As a result, she lodged a F.I.R. with the police. During the course of investigation, the I.O. visited the spot of occurrence. Examined the informant and other witnesses. Recorded their statement u/s-161 Cr.P.C. After completion of the investigation the IO submitted the Charge sheet vide C.S. No. 97 Dt.d 08/07/2019 U/s -341/323/294/506/34 of IPC against the accused persons. Subsequently particulars of offence under sections 341/323/294/506/34 of IPC were read over and explained to accused to which they pleaded not guilty and claimed for trial. Hence, this trial.

3. The defense sets up the plea of complete denial of the fact alleged against the accused person and of false implications.

4. Such being the rival contentions of the parties, the following points merit for determination: -

Whether on 08.07.2019 at Majhapada, P-Talsara, D- Sundargarh the accused person (Jitendra Khilari, Trilochan Khilari, and Jasobanta Khilari) in furtherance to their common intention:-

- I. Committed wrongful restraint to the complainant by preventing her to proceed in any direction in which he had right to proceed and there by punishable u/s 341/34 of I.P.C.?***
- II. Voluntarily caused hurt to complainant by causing her bodily pain, disease or infirmity and there by punishable u/s 323/34 of I.P.C.?***
- III. Uttered obscene words in or near a public place causing annoyance to others and there by punishable u/s 294/34 of I.P.C.?***
- IV. Criminally intimidated the complainant by threatening her with injury to the person with***

intent to cause alarm to him and there by punishable u/s 506/34 of I.P.C.?

5. In order to prove its case, the prosecution has examined as many as 2(two) vital witnesses in this case. Out of whom P.W.1 is the informant herself; P.W.2, is the occurrence witnesses. The prosecution has also relied on the plane paper F.I.R which is marked as Ext.P-1/P.W.1. On the other hand, no evidence is tendered on behalf of the defense.

When the prosecution concluded its evidence, the accused persons was examined U/S 313 of Cr.P.C. wherein the incriminating evidence were put to him to which he replied that all allegations against him are incorrect and are false and fabricated.

6. For brevity, all the offences are taken up jointly for consideration. Turning to evidence on record, it is seen that P.W.1, the informant admitted the fact of lodging of FIR (Ext.P-1/PW1) and identified her signature on it (Ext.P-1/1/PW1). In her evidence the informant stated the lodged the FIR on 08.07.2019 at Talsara PS and that due to some minor misunderstanding she lodged the FIR and that she

doesn't remember any thing about the case. She further stated that she doesn't want to proceed in this case.

In a criminal case, FIR is the statement that sets the criminal law into motion but in the case of ***Madhusudan Singh and Anr. vs State of Bihar AIR 1995 SC 1437***, the Hon'ble Supreme Court has held that

****"FIR is not a substantive piece of evidence and it can only be used for corroboration and contradiction of persons lodging the FIR."****

Thus, F.I.R not being a substantive piece of evidence and used only for the purpose of contradiction or corroboration. Here the informant has not deposed anything so question leading to contradiction or corroboration doesn't arise. Similarly, P.W.2 stated that the occurrence took place 3 years ago at about 6 AM and that her ignorance about the fact of the case and state that she doesn't remember anything about the case and that due to some minor misunderstanding the informant had lodged the case. Apart from the allegations made in F.I.R. which are not substantive in nature, there is nothing forthcoming from the evidence on record which goes to prove that on the alleged date, time and place the accused person had committed

wrongful restraint, caused hurt, criminally intimidated, and caused annoyance by using obscene words. As such the prosecution has failed to establish the above points for determination against the accused person.

7. The Hon'ble Supreme Court also in the Case of ***Madan Mohan Abbot vs State of Punjab AIR 2008 SC 1969*** has held that

****“We need to emphasize that perhaps it is advisable that in dispute where the questions are of personal in nature, the Court ordinarily accept the terms of compromise in between the parties even in case of criminal proceedings as keeping the matter alive with no possibility of result in favour of prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and the time so saved can be utilized in deciding more effective and meaningful litigation.”****

In this result, the court holds that, the prosecution has failed to prove its case beyond all reasonable doubt and the accused persons are found not guilty of committing offences punishable under sections 341/323/294/506/34 of IPC and the accused persons namely Jitendra Khilari, Trilochan Khilari, and

Jasobanta Khilari are acquitted there from u/s- 255(1) Cr.P.C.

Hence the accused persons be set at liberty forthwith being discharged from his bail bond and surety.

8. Since no seizure has been made, no order regarding disposal of property has been passed in this case.

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

J.M.S.C., SUNDARGARH

This judgment has been transcribed at my dictation, corrected and pronounced by me in the open court today on this 04th April 2024 in presence of the accused under my hand and seal of this court.

J.M.S.C., SUNDARGARH

FORM-C

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES		
A. Prosecution Witnesses		
Rank	Name	Nature of Evidence (Eye witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, other witnesses)
PW1	Bijaylaxmi Dharai	FIR/Complainant
PW2	Janaki Dharai	P.W
B. Defence witnesses, if any		
Rank	Name	Nature of Evidence (Eye witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, other witnesses)
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C. Court witnesses, if any		
Rank	Name	Nature of Evidence (Eye witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, other witnesses)
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List of Prosecution/ Defence/ Court Exhibits		
A. Prosecution Exhibits		
Sl. No	Exhibit Number	Description
1	P-1/P.W1	FIR
2	P-1/1/P.W1	Signature on FIR
B. Defence Exhibits		
Sl. No	Exhibit Number	Description
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C. Court Exhibits, if any		
Sl. No	Exhibit Number	Description
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D. Material Objects:		
Sl. No	Material Object Number	Description

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J.M.S.C., SUNDARGARH