

FORM-A

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, DASPALLA J.O.Code: OD-0706 Present: Sri Soumya Ranjan Prusty, LL.M., J.M.F.C, Daspalla. Date of Judgment :- 21.07.2023 <u>G.R. 134 of 2013</u> T.R. No.323 of 2014 (Arising out of Gania PS Case No.33/dt.15.08.2013)	
COMPLAINANT	STATE OF ODISHA
REPRESENTED BY	Ld. APP, Daspalla
ACCUSED PERSONS	1) Kuna Pradhan, aged about 50 years, S/o. Late Sudarsan Pradhan, 2) Sudhansu Kumar Rout, aged about 49 years, S/o- Brajabandhu Rout, 3) Joginath Jena, aged about 60 years, S/o- Late Deba @ Debaraj Jena, 4) Laxmidhar Jena, aged about 52 years, S/o- Panu Jena, 5) Prafulla Rout, aged about 50 years, S/o- Late Basant Kumar Rout, 6) Bhagirathi Jena, aged about 60 years, S/o- Late Gouranga Jena, 7) Dibakar Rout, aged about 60 years, S/o- Late Raghu Rout, 8) Ayodhya Rout, aged about 53 years, S/o- Late Dayanidhi Rout, 9) Naba Rout, aged about 50 years, S/o- Late Nidhi Rout, 10) Sridhar Pradhan, aged about 49 years, S/o- Matia Pradhan, 11) Ananda Rout, aged about 50 years, S/o- Late Arata Rout, 12) Sanatan Dehuruka, aged about 49 years, S/o- Late Bhagaban Dehuruka, 13) Rabindra Rout, aged about 50 years, S/o- Late Gundicha Rout, 14) Sadhu Charan Rout, aged about years, S/o- Saranga Rout,

G.R. Case No.134 of 2013

2

	15) Babula Rout, aged about 45 years, S/o- Gobardhana Rout, 16) Damodar Swain, aged about 72 years, S/o- Late Matia Swain, 17) Rabindra Kumar Rout, abated on 14.07.2023 S/o- Krupasindhu Rout, 18) Abhimanyu Rout, abated on 14.07.2023 S/o- Chandramani Rout, All are of Village- Paturia, P.S: Gania, District: Nayagarh. Accused persons
REPRESENTED BY	Advocate Sri H. B. Sahoo & associates.

FORM-B

Date of Offence			15.08.2013				
Date of F.I.R.			15.08.2013				
Date of Charge Sheet			18.11.2014				
Date of Framing of Charge			12.01.2015				
Date of commencement of evidence			22.05.2015				
Date of which judgment is reserved			21.07.2023				
Date of Judgment			21.07.2023				
Date of the Sentencing Order, if any			N.A.				
Accused Details							
Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or Convicted	Sentence imposed	Period Detention undergone during Trial for purpose of section 428 Cr.P.C.
01	Kuna Pradhan	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/ 427/379/ 506/323/ 34 of IPC	Acquitted	N.A.	N.A.

G.R. Case No.134 of 2013

3

02	Sudhansu Kumar Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/ 427/379/ 506/323/ 34 of IPC	Acquitted	N.A.	N.A.
03	Joginath Jena	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/ 427/379/ 506/323/ 34 of IPC	Acquitted	N.A.	N.A.
04	Laxmidhar Jena	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/ 427/379/ 506/323/ 34 of IPC	Acquitted	N.A.	N.A.
05	Prafulla Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/ 427/379/ 506/323/ 34 of IPC	Acquitted	N.A.	N.A.
06	Bhagirathi Jena	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/ 427/379/ 506/323/ 34 of IPC	Acquitted	N.A.	N.A.
07	Dibakar Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/ 427/379/ 506/323/ 34 of IPC	Acquitted	N.A.	N.A.
08	Ayodhya Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/	U/s.448/ 427/379/ 506/323/ 34 of	Acquitted	N.A.	N.A.

G.R. Case No.134 of 2013

4

			dt.05.09.2014	IPC			
09	Naba Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/427/379/506/323/34 of IPC	Acquitted	N.A.	N.A.
10	Srdhar Pradhan	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/427/379/506/323/34 of IPC	Acquitted	N.A.	N.A.
11	Ananda Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/427/379/506/323/34 of IPC	Acquitted	N.A.	N.A.
12	Sanatan Dehuruk	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/427/379/506/323/34 of IPC	Acquitted	N.A.	N.A.
13	Rabindra Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/427/379/506/323/34 of IPC	Acquitted	N.A.	N.A.
14	Sadhu Charan Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble High Court vide BLAPL No.16168/ dt.05.09.2014	U/s.448/427/379/506/323/34 of IPC	Acquitted	N.A.	N.A.
15	Babula Rout	02.10.2014	Bailed by police on 02.10.2014 as per direction of Hon'ble	U/s.448/427/379/506/323/	Acquitted	N.A.	N.A.

			High Court vide BLAPL No.16168/ dt.05.09.2014	34 of IPC			
16	Damodar Swain	31.07.2014	12.08.2014	U/s.448/ 427/379/ 506/323/ 34 of IPC	Acquitted	N.A.	N.A.

J U D G M E N T :

1. The above named accused persons stand charged for the offences punishable U/s.448/427/379/506/323/34 of IPC of the Indian Penal Code.

2. Case of the prosecution in a nut-shell is as follows :-

Informant namely Nalini Rout has lodged FIR to the effect that on 15.08.2013 at about 6.30 PM at Paturia while her husband was absent in her residence the accused persons being armed with farsa, bhujali, thenga threatened to kill her and rape her and also abused her using filthy language such as “bedha, gihali” and asked her to leave the house. Accused Kuna Pradhan along with Suandhansu and Joginath Jena dragged the informant to the road by holding her hair and assaulted her. Other accused persons namely Damodar Swain, Laxmidhar Jena, Prafulla Rout, Bhagirathi Jena, Dibakar Rout, Rabindra Kumar rout, Abhimanyu Rout, Ajodhya Rout, Naba Rout entered into her house and committed theft of paddy, rice,

brone utensils such as gara, bucket, cook pan, small bronze handa, cycle, rabi crops. and other accused persons namely Sridhar Pradhan, Ananda Rout, Sanatan Debruka, Rabindra Kumar Rout, Babula Rout, Sadhu Charan Rout by two crowbars damaged her house and destroyed her asbestos of her house. The accused persons threatened her to dire consequence and left that place. When her husband came she informed him and lodged the FIR

Basing upon the written report of the informant, IIC Gania PS registered PS case No.33/2013 U/s.448/294/354/323/506/427/379/34 of the Indian Penal Code and directed A.S.I. G. Ch. Sundaray to take up investigation. After investigation, C.S. was submitted U/s.448/427/294/379/506/323/34 of the Indian Penal Code against the accused persons. The charge U/s.448/427/379/506/323/34 was framed under the said sections and the accused persons faced their trial accordingly. Hence, this case.

3. The plea of defence is of complete denial and false implication.

4. Following point is to be determined for adjudication of this case:-

Whether on 15.08.2013 at about 6.30 PM at Paturia, all the accused persons in furtherance of their common intention:

i) committed house trespass by entering inside the house of the informant with intent to commit an offence, and thereby committed an offence punishable u/s.448/34 of IPC ?

ii) committed mischief by causing wrongful loss or damage to the house of the informant valued at more than Rs.50/-, and thereby committed an offence punishable u/s.427/34 of IPC?

iii) committed theft of bronze utensils, rabi crops, cycle by dishonestly taking away those out the possession of the informant without her consent, and thereby committed an offence punishable u/s.379/34 of IPC ?

iv) Criminally intimidated the informant by threatening to rape her and kill her, and thereby committed an offence punishable U/s.506/34 of IPC ?

v) voluntarily caused hurt to the informant and thereby committed an offence punishable u/s.323/34 of IPC?

5. In order to prove its case the prosecution has examined six charge-sheeted witnesses out of seven including the informant as P.W.5. The rest witnesses are declined by the learned APP. The prosecution has exhibited two documents. On the other hand, the defence has neither examined any witness nor exhibited any document from its side.

6. On analysis of the evidence available on case record, it is observed the informant (PW.5) has deposed that the incident had taken place on 18.08.2023 at about 6.30 A.M. in their house at Paturia village. She was in her house. All the eighteen accused persons entered inside armed with thenga, bhujali etc. They also abused her in filthy language saying “Gihali, bedha, bindhani etc” and asked her to leave the house. They carried out all her household articles like utensils, cot, cycle, etc. They also damaged her house, broke and destroyed the asbestos of her house. They threatened her of dire consequence and left the place. Her husband was absent at the time of incident and when he came back she reported the matter at P.S. She admitted her FIR is marked as Exhibit.2 and her signature thereon is marked as Exhibit.2/1.

P.W. 1, 2 are the independent witnesses have deposed their complete ignorance about this case and thus, not supported the case of prosecution. The learned APP declared the aforementioned witnesses hostile and cross-examined them U/s.154 Indian Evidence Act but could not be able to extract any material information from their mouth. P.W.3 has expressed his complete ignorance about the occurrence and not supported the case of prosecution.

P.W.4 M.O. has deposed that on 15.08.2013, on police requisition he examined one Nalini Rout of village Paturia and found the following injuries I) swelling below right shoulder of size around 3 CM X 3 CM, possible by a hard and blunt object. The injury was simple in nature. There numbers of linear abrasion of 1 CM each parallel to each other. The body part is right back at L4 vertebral level. The injury is simple in nature caused by semi-pointed object by scratching or dragging. The age of the injury is about 16 to 18 hours at the time of his examination. The time of examination was 6.45 P.M. on 15.08.2013. He proved injury report marked as Ext.1 and his signature upon it is marked as Ext.1/1.

P.W.6 the I.O. has deposed that on 19.03.2014 he received charge of P.S. case No.33/2013 U/s.448/294/354/323/506/427/379/34 of IPC from ASI G. Sundaray and continued with the investigation. During the course of his investigation he re-examined the complainant and searched for the accused persons. On 31.07.2014 he arrested the accused, Damodar Swain and forwarded him to the court. On completion of investigation he submitted charge sheet No.42/2014 U/s.448/323/506/427/379/34 of IPC against the accused persons to face their trial in the court of law.

7. In this instant case in hand the informant (P.W 5) has deposed the incident partly corroborating the FIR story. Except the informant all the witnesses except I.O and M.O are silent. P.W.1 and P.W.2 are turn hostile and P.W.3 is silent. So there is no evidence on the record to corroborate the statement of P.W 5. Further the informant in his cross examination stated that due to previous enmity she falsely deposed against the accused persons and the matter has been settled for which she does not want to proceed in this case. It is well settled that FIR is not considered a substantive piece of evidence, it can only be used to corroborate or contradict the informant's evidence in Court (vide *Apren Joseph @ Current Kunjukunu & Ors. vs. The State of Kerala*, AIR 1973 SC 1). Its evidentiary value is confined to the extent of confrontation or corroboration of its contents with the maker thereof. But in this instant case, as the informant examined has not deposed anything with respect to prosecution's story, no question of confrontation or corroboration arises and resultantly, mere FIR stands of no help to prosecution's case. Apart from these seven witnesses, no other witness is examined in this case to support prosecution's case.

8. Where the informant is not interested to proceed in this case and conveyed about the settlement and

where no other witness has given any testimony implicating the accused persons with any offence whatsoever, the prosecution has utterly failed to prove its case beyond reasonable doubt. Further all the alleged offences are compoundable in nature.

9. In the result, the accused persons are found not guilty of the offences punishable U/s.448/427/379/506/323/34 of the Indian Penal Code and they are acquitted u/s.248(1) of Cr.PC. The accused persons be set at liberty forthwith and be discharged from their bail bonds.

There is no order regarding seized articles as there is no seizure reported in this case.

Enter the case as mistake of fact.

J.M.F.C., Daspalla

Transcribed to my dictation, corrected by me,
Pronounced & delivered in the open Court in presence
of the accused persons on this the 21st day of July,
2023.

J.M.F.C., Daspalla

FORM-C

LIST OF PROSECUTIONS / DEFENCE / COURT WITNESSES		
A. Prosecution Witness		
Rank	Name	Nature of Evidence
P.W.1	Jayakrushna Rout	Independent witness
P.W.2	Shiba Rout	Independent witness

P.W.3	Bula Rout	Independent witness
P.W.4	Dr. P. Rajakumar Subudhi	M.O.
P.W.5	Nalini Rout	informant
P.W.6	Akshaya Kumar Pradhan	I.O.
B. Defence Witnesses, if any:		
Rank	Name	Nature of Evidence
	Nil	
C. Court Witnesses, if any:		
Rank	Name	Nature of Evidence
	Nil	
LIST OF PROSECUTIONS / DEFENCE / COURT EXHIBIT		
A. Prosecution Exhibits		
Sl. No	Exhibit Number	Description
01	Exhibit.1	Injury Report
02	Exhibit.1/1	Signature of P.W.4 on Ext.1
03	Exhibit.2	F.I.R.
04	Exhibit.2/1	Signature of P.W.5 on Ext.2.
B. Defence Exhibits, if any:		
Sl. No	Exhibit Number	Description
	Nil	
C. Court Exhibits, if any:		
Sl. No	Exhibit Number	Description
	Nil	
D. Material Objects:		
Sl. No	Material Object Number	Description
	Nil	