

IN THE COURT OF THE ADDL. SESSIONS JUDGE-CUM-SPECIAL JUDGE(CBI), COURT NO.IV,BHUBANESWAR.

P R E S E N T : Shri S.K.Mishra, O.S.J.S.,  
Addl. Sessions Judge-cum-  
Special Judge (CBI), Court No.IV,  
Bhubaneswar.

C.T.No.124 of 2016

(Arising out of G.R. Case No.3577 of 2010 corresponding to Nayapalli P.S.No.352, dated 22.12.2010).

S T A T E ..... Prosecution

-Versus-

Makara Maharana, aged about 28 years,  
S/o.Late Harihar Maharana, resident of  
Village-Kantabada, PS-Chandaka,Dist.-Khurda.  
At Present- Saptadinagar, Unit-VIII,  
PS-Khandagiri, Bhubaneswar, Dist.-Khurda.

.... Accused.  
(ON BAIL).

For the Prosecution : Sri S.K.Barik, Addl.P.P.

For accused person : Sri S.P.Rout, SDC.

Date of argument : 27.7.2016

Date of judgment : 1.8.2016

Offences under Sections- 307 IPC & 9(b) I.E.Act.

#### J U D G M E N T

1. The above accused stood charged for committing the offences punishable under Sections- 307 IPC & 9(b) I.E.Act.

2. Briefly stated the prosecution case is that on 20.12.2010 at about 10.30 PM two persons came by a motor cycle and one person got down and hurdled two bombs at the dealership of the informant situated at Fire Station Crossing, Baramunda, Bhubaneswar and they suspected that the persons had thrown the bombs to kill

their staff and there was loud sound and smoke. Nobody received any injury, but 2 to 3 motor cycles which were parked inside, were damaged. Basing on the report of the informant, a case under Sections- 307 IPC & 9(b) I.E.Act. was registered and investigation was taken up. During investigation, the informant, the witnesses and the accused were examined. The IO visited the spot and recorded the statements of the witnesses. The accused was arrested and forwarded to the Court. After completion of investigation, charge-sheet under Sections- 307 IPC & 9(b) I.E.Act was submitted against the accused. The learned SDJM, Bhubaneswar committed the accused in the Court of Sessions. Charge for the offences, as above mentioned, was framed against the accused.

3. Defence plea is one of complete denial and false implication.

4. Prosecution has examined 3(Three) witnesses whereas the accused has examined none.

5. The points for determination are:-

(i) Whether on 20.12.2010 at about 10.30 PM at the dealership of the informant situated at Fire Station Crossing, Baramunda, Bhubaneswar, the accused dropped the bombs with such intention and under such circumstances that by that act, if the accused would have caused the death of their staff, then the accused would have been guilty of murder?

(ii) Whether on the said date, time and place, the accused used the bombs, in contravention of rules made under Section 5 or of the conditions of a licence granted under the said rules?

PW-1 is the employee of the informant, PW-2 is the informant and PW-3 is the SI of Police who has submitted charge-sheet.

6. PW-2 the informant has stated that on 22.12.2010 while he was at his house at Bomikhal, his security guard

intimated him over telephone that most probably there has been explosion of bomb just outside their show-room and there was high sound. He has also stated that hearing the same, he went to their office and there his security guard told him that he has seen two persons came by motor cycle and hurdled two bombs aiming to their office and both the bombs were exploded and there was loud sound. But nobody was injured and only two motor cycles were damaged and then he (PW-2) lodged FIR Vide Ext.1 and he heard that one person named Makara Moharana has committed the offence.

During cross-examination, PW-2 has deposed that he was not present at the time of occurrence and he does not know the accused and has never seen him. He has not mentioned in the FIR the reason for which he could not lodge the FIR earlier, soon after the occurrence. PW-2 has also stated that he has not mentioned the above examination-in-chief in the FIR.

7. PW-1 has stated that on 20.12.2010 he was working as Manager, Rohan Auto Riders Pvt. Ltd., Bhubaneswar and on that day on hearing sound of bursting of cracker, he went outside and two security guards intimated him that two bombs have been hurdled in front of the main gate of Rohan Motors and he (PW-1) also found remnants of some crackers. He does not know anything else about this case. This witness was asked leading questions u/s.154 Evidence Act by the prosecution. During cross-examination by defence, PW-1 has deposed that he does not remember the names of both the security guards from whom he heard about the matter.

8. PW-3 the IO has stated that on 27.10.2012 at about 12 noon the then IIC Sri Anup Kanungo of Nayapalli PS

entrusted him to investigate into the case and accordingly he (PW-3) took over the charge of investigation from the said IIC, since the previous IO Sri D.R.Bhuyan was transferred from Nayapalli PS. He has proved the endorsement with signature of IIC Sri Tapan Kumar Mohanty vide Ext.1/2, the formal FIR vide Ext.1/3, signature of Sri Tapan Kumar Mohanty vide Ext.1/4. Sri D.R.Bhuyan prepared the spot vide Ext.2. During investigation, PW-3 re-examined the witnesses and went through the previous records. The case was supervised by the IIC and he (PW-3) received supervision note of the IIC, complied the instruction given by the IIC in supervision and during supervision the IIC concluded that it is a true case u/s.9 (b) I.E.Act and 307 IPC and accordingly he(PW-3) submitted compliance report before DCP, Bhubaneswar for passing necessary order to submit charge sheet. PW-3 has also stated that the accused was earlier arrested on 31.12.2010 at 11.10 AM and remanded to jail custody in connection with Nayapalli PS Case No.353 dated 22.12.2010. So, the previous IO Sri Bhuyan had prayed the Court of SDJM, BBSR for remand of the accused in this case on 13.2.2011 and accordingly, the accused was remanded in this case to jail custody. After receipt of orders, he (PW-3) submitted charge sheet u/s.9(b) I.E.Act and 307 IPC against the accused.

9. During cross-examination, PW-3 has deposed that the incident took place on 20.12.2010 at 10.30 PM and the FIR was lodged on 22.12.2010 at 10.30 PM, but he has not directed his investigation to ascertain about the delay in lodging the FIR. He has also deposed that he has not prepared any spot, but it has been prepared by Sri Bhuyan and nothing has been seized in connection with this case.

He could not say the names of the boundary owners of the office-cum-shop of the informant. The spot is a crowded place, but no chance witness was available. He(PW-3) has not examined the accused in this case.

10. In the instant case, PWs-1 and 2 have not stated regarding presence of the present accused at the spot at the time of the alleged occurrence. PW-1 has stated that two security guards intimated him that two bombs have been hurled in front of the main gate of Rohan Motor, but he (PW-1) does not remember names of the said two security guards. Even the said two security guards have not been examined in this case. PW-2 has stated that his security guard intimated him over telephone that there has been explosion of bomb just outside their show-room, but he does not remember the name of the said security guard. PW-3 has stated that nothing has been seized in connection with this case. PW-3 has not directed his investigation to ascertain about the delay in lodging the FIR. PW-3 has also stated that though the spot is a crowded place, but no chance witness was available there. PWs-1 and 2 have not stated that the accused dropped the bombs with such intention and under such circumstances that by that act, the accused would have caused the death of their staff. They have not stated that the accused used the bombs at the alleged spot. Nothing has been elicited from their mouth implicating the accused in the alleged offences. Although PW-1 was asked leading question by the prosecution u/s.154 Evidence Act, but nothing has been elicited from him to implicate the accused in connection with this case. No test identification parade has been conducted to identify the real culprit. In absence of any such test identification parade, identification in the Court

for the first time in such type of cases, cannot be accepted, unless the complainant and witnesses had disclosed the detail identifying features of the culprit in their earlier statements like FIR and statement recorded u/s.161 Cr.P.C. In the present case, there is no evidence on record to show that any such identifying feature of the culprit was disclosed by the informant and other prosecution witnesses with reasonable particularity. There is no reliable evidence to show that the complainant and the prosecution witnesses had prior acquaintance with the accused.

11. From the evidence on record as discussed above, it emerges that PW-2 who is the informant of this case and PW-1 who was present at the time of occurrence, has not uttered anything implicating the accused with the alleged offences.

12. Therefore, after analyzing the evidence on record and for the reasons discussed above, this Court finds that the prosecution has failed to prove commission of the alleged offences punishable under Sections- 9 (b) I.E.Act and 307 IPC against the present accused.

13. In the result, the present accused is found not guilty of the offences punishable under Sections -9(b) I.E.Act and 307 IPC. The accused is acquitted u/s.235 (1) of Cr.P.C. and is set at liberty. The bail bond is cancelled and surety is discharged.

Enter this case as mistake of facts.

Addl. Sessions Judge-cum- Special Judge  
(CBI), Court No.IV, Bhubaneswar.

The judgment is typed to my dictation and corrected by me and pronounced to-day on this 1<sup>st</sup> day of August, 2016 given under my hand and seal of this Court.

Addl. Sessions Judge-cum- Special Judge  
(CBI), Court No.IV, Bhubaneswar.

List of witnesses examined for the prosecution :

PW-1 Biswajeet Nayak.  
PW-2 Rajib Dubey.  
PW-3 Bimbadhar Mohapatra.

List of witnesses examined for the defence :-

Nil.

List of exhibits marked for the prosecution :-

Ext.1 F.I.R.  
Ext.1/1 Signature of PW-2 in Ext.1.  
Ext.1/2 Endorsement with signature of IIC  
T.K.Mohanty.  
Ext.1/3 Formal FIR.  
Ext.1/4 Signature of Tapan Kumar Mohanty.  
Ext.2 Spot Map.  
Ext.2/1 Endorsement with signature of Sri Bhuyan in  
Ext.2.

List of exhibits marked for the defence :-

Nil.

List of M.Os. marked for the prosecution :-

Nil.

Addl. Sessions Judge-cum- Special Judge  
(CBI), Court No.IV, Bhubaneswar.

