

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.125 of 2016

(Arising out of G.R. Case No.3576 of 2010 corresponding to Nayapalli P.S.No.353, 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.

.... 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 : 3.8.2016

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 21.12.2010 at about 11 PM while the informant was on the roof of his house, at that time he saw three young persons came by one motor cycle in front of his house and out of them, the accused got down from the motor cycle and hurdled one bomb to our house. When the informant shouted, he along with two others fled away by the motor cycle. It is further alleged that after one hour one bomb

was hurdled on the shop which is in front of his house and the informant came to the ground and saw that their asbestos was damaged, the shop was fired and the shutter was bent. 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 IO also seized the motor cycle in question. 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 7(seven) witnesses whereas the accused has examined none.

5. The points for determination are:-

(i) Whether on 21.12.2010 at about 11 PM on the house of the informant situated at Nayapalli, the accused threw the bombs with such intention and under such circumstances that by that act, if the accused would have caused the death of the family members of the informant and nearby persons, 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 informant, PWs-2, 3 and 4 are the brothers of the informant, PW-5 is the seizure witness, PW-6 is the independent witness and PW-7 is the SI of Police who has submitted charge-sheet in this case.

6. PW-1 the informant has stated that the incident took place on 21.12.2010 and at that he and his elder brother Laxminarayan Samal were present on the roof of their house. He has also stated that three unknown persons came by one motor cycle and hurdled one bomb aiming towards his office which adjoins his house and escaped from the spot and after about one hour, the said three culprits came by one motor cycle and hurdled one bomb which fell on the asbestos of his office. He has further stated that the accused had hurdled the bombs on both the occasions and due to the explosion of the said bombs, the asbestos roof was damaged. PW-1 has also stated that on 30.7.2009 at 9.30 PM he returned back to his house by one motor cycle and while he was going to park his motor cycle in the garage, he saw two persons were sitting on a motor cycle at a distance of about 10 to 20 metres away from him. The present accused and one Sanjay Gouda were the said two persons sitting on the motor cycle and both of them came to him and abused him in obscene words and the present accused gave one blow by butt of the toy pistol and then he lodged FIR vide Ext.1.

During cross-examination, PW-1 has deposed that at present he is unable to identify the accused and he has not been examined by police in connection with this case. He has not stated before the IO that due to explosion of the said bombs, the asbestos roof was damaged. He has also deposed that the matter has been amicably settled between him and the accused and he does not want to proceed further in this case.

7. PW-2 has stated that one day in the year 2009 while he was present in his auto parts shop situated at Nayapalli, he saw many persons have assembled near their house

and he went there and saw that about 20 to 30 persons were shouting. He does not know anything else about this case. This witness was asked leading question u/s.154 of the Evidence Act by the prosecution. During cross-examination by defence, PW-2 has stated that he has not been examined by the police in connection with this case. PW-3 has stated that he does not know anything about the present case. This witness was asked leading question u/s.154 of the Evidence Act by the prosecution. During cross-examination by defence, PW-3 has deposed that he has not been examined by the police in connection with this case.

8. PW-4 has stated that he does not remember anything about the present case. This witness was asked leading question u/s.154 of the Evidence Act by the prosecution. During cross-examination by the defence, PW-4 has deposed that he has not been examined by the police in connection with this case. PW-5 has stated that one day at about 10 AM to 11 AM 4 to 5 years back at Priyadarshini Market situated near CRPF Square, in his presence the police had seized one bike as per seizure list vide Ext.2. During cross-examination, PW-5 has deposed that he does not know the name of the owner of the said motor cycle and he signed on the seizure list at the PS at the instance of the Police. PW-6 has stated that he does not know anything about the case. This witness was also asked leading question u/s.154 of the Evidence Act by the prosecution. During cross-examination by defence, PW-6 has deposed that he has not been examined by the police in this case.

9. PW-7 Police Officer has stated that on 15.1.2015 the IIC Sri Suryamani Pradhan entrusted this case to her for

investigation, since the previous IO Sri Akhay Kumar Pradhan was transferred from Nayapalli PS. She has stated that Ext.1 is the written FIR, Ext.1/2 is the endorsement with signature of Sri Tapan Kumar Mohanty, the then IIC of Nayapalli PS, Ext.1/3 is the formal FIR, Ext.1/4 is the signature of Sri T.K.Mohanty, Ext.3 is the seizure list dated 22.12.2010, Ext.3/1 is the endorsement with signature of Sri Akhay Kumar Pradhan, Ext.4 is the zimanama, Ext.4/1 is the signature of Sri A.K.Pradhan, Ext.2 is the seizure list dated 31.12.2010, Ext.2/2 is the signature of Sri A.K.Pradhan, Ext.5 is the spot map and Ext.5/1 is the signature of Sri A.K.Pradhan.

10. During cross-examination PW-7 has deposed that the incident took place on 21.12.2010 at 11 PM and the FIR was lodged on 22.12.2010 at 11 AM, but she has not directed her investigation to ascertain regarding the cause of delay in lodging the FIR. She has not prepared any spot map, but it has been prepared by Sri Akhaya Kumar Pradhan. She could not say the names of boundary owners of the residence-cum-shop of the informant. The spot is a crowded place. She (PW-7) had not examined the person who took the motor cycle in question in his zima.

11. PWs-2, 3, 4 and 6 have stated that they do not know anything about the present case and also do not know the accused. During their cross-examination, they have stated that they have not been examined by the police in connection with this case.

12. In the present case, PW-1 the informant at the first instance has stated that he does not know the accused and in the second instance he has stated that he knows the accused, but in the cross-examination he has stated that he is unable to identify the accused. PW-1 has also stated

that the matter has been amicably settled between him and the accused and he does not want to proceed further in this case. PWs-2, 3, 4 and 6 have not stated regarding presence of the present accused at the spot at the time of the alleged occurrence. They have not stated that the accused threw the bombs with such intention and under such circumstances that by that act, the accused would have caused the death of the family members of the informant. 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 PWs-2, 3, 4 and 6 were 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. During cross-examination, PW-5 has stated that he does not know the name of the owner of the motor cycle in question and he signed on the seizure list (Ext.2) at the PS at the instance of police. During cross-examination, PW-7 has stated that she has not directed her investigation to ascertain regarding the cause of delay in lodging the FIR. She could not say the names of the boundary owners of the alleged spot. Though the alleged spot was a crowded place, no person from that place, has been called to be witness in 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. In the circumstances, it is highly unsafe to rely on the discrepant statements given by the informant at one stage of the examination-in-chief that he knows the accused. It is pertinent to mention here that during cross-examination made on the next day of his examination-in-chief, he has stated that he is unable to identify the accused.

13. From the evidence on record as discussed above, it emerges that PW-1 who is the informant of this case, has not uttered anything implicating the accused with the alleged offences.

14. 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.

15. 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. Zimanana in respect of the seized motor cycle be cancelled four months after expiry of the appeal period, if no appeal is preferred and in case of appeal, the same shall be dealt as per the order of the Appellate Court.

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 3<sup>rd</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 Satya Narayan Samal.  
PW-2 Laxmi Narayan Samal.  
PW-3 Nimai Charan Samal.  
PW-4 Biranchi Narayan Samal.  
PW-5 Trilochan Sahu.  
PW-6 Sudarsan Baral.  
PW-7 Panchali Rout.

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-1 in Ext.1.  
Ext.2 Seizure List.  
Ext.2/1 Signature of PW-5 in Ext.2.  
Ext.1/2 Endorsement with signature of Sri T.K.Mohanty in Ext1.  
Ext.1/3 Formal FIR.  
Ext.1/4 Signature of Sri Tapan Kumar Mohanty in Ext.1.  
Ext.3 Seizure list.  
Ext.3/1 Endorsement with signature of Sri A.K.Pradhan in Ext.3.  
Ext.4 Zimanama.  
Ext.4/1 Signature of Sri A.K.Pradhan in Ext.4.  
Ext.2/2 Signature of Sri A.K.Pradhan in Ext.2.  
Ext.5 Spot Map.  
Ext.5/1 Signature of Sri A.K.Pradhan in Ext.5.

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.

