

accused Ajit @ Md. Azijula Sarif putting a revolver on his neck gave threatening to give them their demanded money. Accused Md.Sarif with intents to murder him pressed the trigger of the revolver but he luckily saved.. He narrated the incident before his friends to advise him to report the matter at the PS. On the basis of Ext.2 Jatani PS Case NO.161 dtd 8.7.05 U/s.387/307/506/34 IPC & U/s.25/27 Arms Act was registered against the accused persons. Sri Abhinaba Dalua, SI of police (pw.9) investigated into this case. While the investigation was going on on 10.7.05 the informant again reported the matter before the police that the accused persons were still giving threatening to give them their demanded money. Out of fear pw.8 was agreed to pay the same. After discussion the aforesaid information of pw.8 a plan was chalked out between the informant and the IO to caught hold the culprit raid hdnd. As per their plan pw.8 along with his some other friends went to the place i.e in front of the Jatani medical gate, Bhusandapur. Police party followed them. It was then 7 pm on 10.7.05 accused Ajit came at the selected place with a motorcycle and there was a discussion for few time in between pw.8 and accused Ajit. PW.8 gave a sum of Rs.20,000/- to the accused Ajit and at the same time gave a secret hint to police personnel who were previously present at the spot. After getting the hints from the informant police party apprehended the accused. PW.9 on personal search of the the accused Ajit recovered RS.20,000/- from his pant pocket and prepared seizure list Ext.1 in that respect in presence of the witnesses and left the seized money in the zima of the informant pw.8 by executing zimanama Ext.3. Further during the course of investigation the IO examined the informant along with other witnesses, visited the occurrence spot where the occurrence dtd 7.7.05 took place and prepared the spot map . After completion of investigation police submitted charge sheet against the accused persons named above under the aforesaid sections before the Court of Ld. SDJM, BBSR to face their trial in the court of law. Subsequently this case was transferred to the Court of Sessions for disposal according to law. Considering the materials available on record this court framed charge U/s.341,387,307,506/34 IPC against all the accused persons.

3. The case of t he defence is one of completely denial to the prosecution allegations and false implications.

4. The points for determination in this case are as follows:

i) Whether on 7.7.05 during evening hour in front of the house of the informant pw.8 situates at village Ramchandrapur the accused persons, in furtherance of their common intention wrongfully restrained pw.8 ?

ii) Whether on the alleged date, time and place the accused persons in furtherance of thir common intention put pw.8 in fear of death at the point of deadly weapons in order to commit extortion?

iii) Whether on the alleged date, time and at place the accused persons in furtherance of their common intention had attempted to commit murder to pw.8 by touching a bhujali on his belly and keeping fire arm i.e revolver on his neck?

iv) Whether on the alleged date, time and at place the accused persons, in furtherance of their common intention had given threat to pw.8 with intents to alarm his person and his family members and property?

5. To establish its case, prosecution examined 10 witnesses in all. PW.8 is the informant. PW.1,2,4,5,6,7 were the post occurrence witnesses to the occurrence which took place on 7.7.05. PW.2 & 5 were the witnesses to the seizure in respect of cash of RS.20,000/- seized under seizure list Ext.1. PW.3 is the police officer who was a witness to the cash transaction in between the informant pw.8 and the accused namely Ajit took place on 10.7.05. PW.9 is the IO of this case. PW.10 was the then IIC of Jatani PS who on the basis of the written report Ext.2 lodged by the informant pw.8 registered Ps Case No.161 2005. PW.10 under whose leadership the money transaction in between pw.8 and the accused Ajit took place on 10.7.05 was detected. On the other hand defence adduced no evidence on its side.

6. On perusal of the entire evidence led by the prosecution in this case shows that this case is not free from doubt and there are many infirmities in respect of the material facts. It is the case of the prosecution that prior to 7.7.05 the accused persons several time had given threat to pw.8 over phone. It is a fact that pw.8 had not reported the matter before police except narrating the same before his friends. The evidence of pww.8 does not disclose actually the date of such threatening and from which phone number the accused persons were giving threat to him and at what time. PW9 is the IO of this case, in his evidence he has clearly admitted that he had not diverted his investigation towards knowing the aforesaid facts. It is the case of the prosecution that on 7.7.05 during morning hour while pw.8 was going to his office the accused persons in front of his house obstructed him. Accused Jaga putting a knife on his belly and accused Ajit keeping revolver on his neck gave threat to him to give them Rs.5 lakh towards their dada chanda otherwise he will be in trouble. The date of the occurrence was during Summer season. The time of occurrence was morning hour. The spot map prepared by pw.9 shows that there were residential houses near the spot and the place of occurrence was at the chhak. As per the spot map the occurrence took place in front of the cooperative society of the Municipality and the house of the informant situates near about 200 meters away towards the Southern side of the spot. PW.8 in his evidence has stated that his house situates at the backside of the Municipality office. Hence there is serious contradiction in the prosecutions case with regard to the place of occurrence. Moreover none of the nearby people have examined in this case. I am astonished as to how the nearby natives could not know about the occurrence when the

occurrence took place during morning hour in the Summer Season near to their house. Besides that there is another contradiction in between the prosecution version and pw.2 with regard to the date of occurrence. PW.2 in his evidence has stated that on 8.3.05 pw.8 told him that the accused persons and their associates were threatening him and were asking him for Rs.5 lakh towards dadabati. It is further stated by him that on 9.3.05 the informant told him that accused Jaga touched the bhujali on his belly and threatened to remove him from Jatani if he does not pay the demanded money. Further also it is stated by him that during that period accused Ajit touched a pistol on his neck and threatened that if he does not give him the demanded money he would be removed from Jatani bajar. From the aforesaid evidence pw.2 it is seen that the threat given by the accused Ajit and Jaga with knife and revolver was prior to 2005 which was not the case of the prosecution. As per the prosecution case the alleged occurrence took place on 7.7.05. Therefore, the evidence of pw.2 is not reliable at this stage. Further. PW.8 in his FIR has mentioned that accused Ajit putting a revolver pressed its trigger with intents to finish him away but none of the witness examined from the side of prosecution except pw.8 has stated this fact in the court. Hence I place no reliance on the aforesaid uncorroborated testimony of pw.8. Though pws.1,4,5,6,7 has stated in their evidence that they heard about the threatening given by accused Ajit and Jaga at the point of knife and revolver to pw.8 from pw.8 but they have not stated anywhere in their evidence that on which date and at which place pw.8 narrated the incident before them. It is the admitted fact that pws.1,2,4,5,6,7 are the friends of pw.8. Hence they are interested witness to this case. Therefore, their evidence has been scrutinized with much care and cautious. Considering the evidence of pws.1,2,4,5,6,7,8 with regard to the occurrence took place on 7.7.05 I am of the opinion that their such evidence is not free from doubt. According to the prosecution case the FIR (Ext.2) has been lodged in this case after the occurrence took place on 7.7.05 as per the formal FIR (Ext.2/3) it is seen that the place of occurrence is about one kilometers away from Jatani PS. FIR(Ext.2) was lodged at the PS on 8.7.05 at 8 pm. Hence there is delay of 24 hours in lodging the FIR. It is the duty of the prosecution to explain as to why there was delay in lodging the FIR. But here in the instant case prosecution has not done so.

7. It is the case of the prosecution that while Jatani PS Case NO.161/05 was under investigation on 10.7.05 the accused Ajit gave threat to pw.8 to give his demanded money towards dadabati otherwise he will take severe action against him. PW.8 brought this fact to the notice of the IO. Thereafter a plan was made out and place was selected where they will catch hold the accused. As per their plan pw.8 intimated the place to accused Ajit who came to the main gate of Jatani CHC. During evening hour at 7 pm when pw.8 will fulfill his demand. Accordingly pw.8 and his friends went to the selected place, police personnels followed them with a vehicle and kept conceal their presence near at the selected place. It

was then 7 pm the accused Ajit came to the selected place with his motorcycle where pw.8 gave a sum of Rs.20,000/- to the accused Ajit towards dadabati by that time the police party who were there caught raid handed the accused and on personal search of the accused Ajit, the IO recovered Rs.20,000/- from his possession in presence of pw.2 and 5 and prepared seizure list Ext.1

8. True it is that pw.8 had given no written report about the occurrence took place dtd. 10.7.05. Prosecution has also not produced the station diary entry, the day of 10.7.05 of Jatani PS to satisfy the court about the occurrence took place on 10.7.05. There is no legal evidence except seizure list (Ext.1) that pw.3,9 and 10 all police personnels had been to the medical gate on 10.7.05 at about 7 pm. As per the evidence of pw.2 the alleged money transaction had taken place on the opposite side of the main gate. It is the evidence of pw.9 that the seizure list Ext.1 was prepared at the spot. From Ext.1 it is seen that the place of seizure was inside the Jatani CHC premises. Hence there is serious infirmities in the prosecution evidence regarding the exact place of money transaction in question. Pws.2,3,5,9 and 10 in their evidence have stated that they had seen pw.8 while he gave Rs.20,000/- to accused Ajit as per their plan but the informant pw.8 in his evidence has stated that none had seen the alleged money transaction. None of the prosecution witness have stated the Regd. No. of the motorcycle in which accused Ajit came to the spot. Prosecution does not disclose that the said vehicle of the accused Ajit was seized. It is the evidence of pw.2 that police had been to the place with police jeep whereas the police personnels have stated that they had been to the spot with a private car. The IIC, Jatania PS who claims to have been to the occurrence spot has not able to state in which vehicle they had been to the occurrence spot. More over the number of currency note had not been mentioned. It is not the evidence of police personnel that pw.8 had shown Rs.20,000/- before him while he proceeded to the selected spot. Though pw.8 in his evidence has stated that he has shown the amount to police. The aforesaid evidence of pw.8 has got no support from the evidence of any other witness. Further also the accused persons have not been charged in this case for the occurrence took place in 10.7.05.

9. In view of my aforesaid discussions and considering the prosecution evidence available on record, meticulously I am of the opinion that the prosecution has not been able to establish its case against the accused persons beyond all reasonable doubt and as such the accused persons are entitled to be acquitted.

In the result, I hold the accused persons are not guilty for the offences punishable U/s.341,387,307,506/34 IPC & acquit them therefrom U/s.235(1) Cr.P.C. The accused persons are on court bail, as such they be discharged from their bail bonds.

The zimanama in respect of cash of Rs.20,000/- seized under seizure list (Ext.1) is hereby canceled and the same be retained with the zimadar as the accused Ajit has not claimed the said money was of him. This aforesaid property disposal order shall be carried out four months after the appeal period is over, if there would be no appeal.

ACJM-ASJ,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 26th December, 2014 under my hand and seal of this court.

AC.J.M-ASJ,BBSR

List of P.ws. Examined for prosecution.

P.w.1	Manoj Ku. Das
P.w.2	Antaniok Kar
P.w.3	Saroj Patel
p.w.4	P.K.Mohanty
p.w.5	Manoranjan Mangaraj
p.w.6	S.S.Jena
p.w.7	Baikunthanath Majhi
p.w.8	Mahendra Prasad
p.w.9	Abhinaba Dalua
p.w.10	Santosh Ku. Mohanty

List of D. W.s. Examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1	Seizure list dtd 10.7.05
Ext.1/1	Signature of pw.2 in Ext.1
Ext.1/2	Signature of pw.5 in Ext.1
Ext.2	Written FIR dtd. 8.7.05
Ext.2/1	Signature of pw.8 in Ext.2
Ext.3	Zimanama dtd. 10.7.05
Ext.3/1	Signature of pw.8 in Ext.3
Ext.2/2	Endorsement & signature of IIC S.K.Mohanty in Ext.2
Ext.4	Rough spot map
Ext.4/1	Signature of pw.9 in Ext.4
Ext.1/3	Signature of pw.9 in Ext.1
Ext.3/2	Signature of pw.9 in Ext.3
Ext.2/3	Formal FIR
Ext.2/4	Signature of pw.10 in Ext.2/3

List of exhibits marked for defence.

Nil.

List of M.Os.

Nil

AC.J.M-ASJ,BBSR

