



Offences under Sections 148, 427/149, 294/149, 506/149, 307/149, 302/149 of IPC.

### J U D G M E N T

1. All the accused persons stood charged for committing the offences punishable u/s.148, 427/149, 294/149, 506/149, 307/149, 302/149 of IPC.

2. Briefly stated the prosecution case is that on 26.12.2014 at about 10 P.M while deceased Raj Kishore Nayak @ Raja had stood near his motor cycle by parking the same in front of his house, the accused persons came and challenged him as to why he has parked his motor cycle on the road side and there was exchange of hot words between them. Then the accused persons called 25 to 30 young persons over telephone and they came there and by that time the persons of Raja came there. Seeing them, the accused persons stepped backward out of fear and took Raja far away from that place. They stabbed knife on his back and Raja was lying with profuse bleeding. Seeing this, when Mahima Samantaray protested, they dealt blows to him causing serious bleeding injuries on his shoulder. It is further alleged that Raja was shifted to Capital Hospital, Bhubaneswar for treatment and thereafter shifted to SCB Medical College and Hospital, Cuttack, where, he succumbed death. Basing on the report of the informant, a case u/s. 147, 148, 427, 294, 506, 307, 302, 149 of IPC was registered and investigation was taken up. During investigation, the informant, injured and the witnesses were examined. The IO visited the spot. The injured persons were medically examined on police requisition. The accused persons were arrested and forwarded to the Court. After completion of investigation, charge-sheet u/s. 147, 148, 427, 294, 506, 307, 302, 149 of IPC was submitted against all the accused persons. The

learned SDJM, Bhubaneswar committed the present accused persons in the Court of Sessions. Charge for the offences, as above mentioned, was framed against the present accused persons.

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

4. Prosecution has examined as many as 10(ten) witnesses whereas the defence has examined none.

5. The points for determination are:

(i) Whether on 26.12.2014 at about 10 PM at Tareni Nagar, Salia Sahi, Bhubaneswar, the present accused persons along with accused Anant Sahu, Rinku Swain and Santosh Samantaray @ Sahu @ Jitu were members of an unlawful assembly and were at the time armed with gun, Andhrakati, sword and lathi?

(ii) Whether on the above date, time and place, the present accused persons along with others were members of an unlawful assembly and in prosecution of the common object of the said assembly they all committed mischief by causing damage to splendor plus motor cycle of Shan Samantaray bearing registration No.OD-02-5152 the cost of which is about Rs.50,000/- ?

(iii) Whether on the above date, time and place the present accused persons along with other accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, uttered obscene language in a public place i.e. public road to Raja Kishore Nayak @ Raja causing annoyance to others?

(iv) Whether on the above date, time and place the present accused persons along with other accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, committed criminal intimidation by threatening deceased Raj Kishore Nayak @ Raja with intent to cause alarm to him ?

(v) Whether on the above date, time and place the present accused persons along with other accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, attacked Mahima Samantaray @ Shan on different parts of his body including his shoulder causing grievous bleeding injury by means of

Andhrakati with such intention and under such circumstances that by that act, if they would have caused death of Mahima Samantaray @ Shan, then they would have been guilty of murder?

(vi) Whether on the above date, time and place the present accused persons along with other accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, committed murder intentionally causing the death of Raj Kishore Nayak @ Raja?

6. It is the evidence of PW-5 (the informant that he has lodged the FIR vide Ext.2 and Ext.3 is the formal FIR and he has signed on the formal FIR vide his signature Ext.3/1. He has also stated that Deceased Raja @ Raj Kishore Nayak is the younger brother of his wife and he was residing at Salia Sahi, Bhubaneswar and he was murdered on the 27<sup>th</sup> day in the month of "Pousa" about one year and one month back at Salia Sahi. He has further stated that one unknown person contacted him to the mobile telephone of Raja on the same day in the evening at about 5 PM and intimated that Raja has been admitted in hospital and he and his brother-in-law Prakash Nayak (Sadu) went to SCB Medical College Hospital, Cuttack and found that Raja is dead and PW-5 also found two injuries on his back and post-mortem was conducted on the dead body and on the same day PW-5 reported the matter at Nayapalli Police Station. He has further stated that he came to know from Fakir, the owner of the house in which Raja was staying as tenant that on the relevant day there was exchange of hot words between Raja and four other persons regarding parking of his motor cycle on the road and another ten persons came to the spot on being called by the said culprits and then they attacked Raja by means of knives. He has also stated that Ext.4 is the inquest report on which he has given his signature vide Ext.4/1. During

cross-examination, PW-5 has stated that he does not know the contents of Ext.2 and he has simply signed on it and he could not say who has scribed the FIR. He has also stated that he has never seen the accused persons on any earlier occasion and he does not know their names.

7. PW-1 in his evidence has stated that he does not know the accused persons and the informant, but he knew Raja Nayak (since dead) as he was his neighbor and he has heard that he is dead since about one year. He has also stated that one day in the year 2014 there was quarrel in their locality and he heard about it after returning to their basti and police had been to their basti and took his signature vide Ext.1 on a paper. During cross-examination, PW-1 has stated that he does not know any of the accused persons or culprits and their identities.

8. PW-2,3, 4, 6,7 and 8 in their evidence have stated that they do not know the accused persons. Similarly, P.W.2, 3, have stated that they do not know the informant and the deceased. P.W.2 has also stated that about one year back he had heard that one person named Raja has been murdered. During cross-examination, he has stated that he does not know any of the accused persons or culprits and their identities.

9. P.W.3 has stated that he only know accused Kabuli. She has also stated that one day at about 11 AM about 12 to 13 months back, she found that many persons assembled and some police personnel were present. During cross-examination, PW-3 has stated that she does not know the names and identities of the accused persons. She has further stated that she knows the accused Kabu as she used to purchase sand and bricks from him.

10. During cross-examination, PW-4 has stated that she does not know the names and identities of the accused persons. She has further stated that she knows the accused Kabu as she used to purchase sand and bricks from him.

11. PW-6 has stated that one day in the year 2015 he had accompanied the informant and his brother-in-law Prakash to SCB Medical College Hospital, Cuttack and there they saw and identified the dead body of Rajendra Nayak and he gave his signature vide Ext.4/2 on the inquest report vide Ext.4. He has not been cross-examined by the defence. During cross-examination, P.W.7 has stated that she has not been examined by police in connection with this case.

12. In his evidence P.W.8 has stated that on 26.12.2014 he was staying at Tarini Nagar of Salia Sahi, Bhubaneswar and Raja Kishore Naik (deceased) was staying as a tenant in his house and he was murdered on 26.12.2014. He has further stated that some persons of their locality intimated him over telephone that some young persons committed his murder attacking by means of weapons and he came to his house and shifted Raja Kishore Naik by an ambulance to Capital Hospital, Unit-VI, Bhubaneswar and from there he was shifted to SCB Medical College and Hospital, Cuttack being accompanied by him and there the doctor declared him as "brought dead" and then PW-8 intimated the said fact to his (Raja) family members. He has also stated that he has signed on the inquest report (Ext.4) vide Ext.4/3 and the post-mortem was conducted on the dead body of Raja Kishore Naik. During cross-examination, PW-8 has stated that he could not say who committed the murder of Raja Kishore Naik.

13. PW-9 has stated that he does not know the accused persons and the informant. He has also stated that

deceased Raja was staying as a tenant in the house of Fakir Jena situated at Salia Sahi, Tarini nagar and about one year back one day at about 10 PM there was some shouting in front of the said house by about 25 to 30 persons and when he reached there, somebody dealt blow on his right shoulder by one stick from his backside and then he left that place. He has further stated that he and Raja were shifted by one ambulance to Capital Hospital, Bhubaneswar and Raja was in injured condition. He has also stated that he was medically examined and treated there and subsequently he heard that Raja was shifted to Cuttack, where he succumbed to injuries. He has further stated that his motor cycle bearing registration No.OD-02-E-0743 along with its RC book were released in his zima as per zimanama vide Ext.6 and Exts.6/1 and 6/2 are his signatures. He has also stated that he does not know how Raja sustained injuries. During cross-examination, PW-9 has stated that he has not been examined by police in connection with this case.

14. From the evidences of PWs-1, 2, 5, 6, 8 and 9, though it has been proved that the deceased has died, but the above witnesses could not say how the deceased died and they have also not supported the case of prosecution implicating the present accused persons in the alleged crime. Though the prosecution has asked leading questions to PWs-1, 2, 3, 4, 7 and 9 u/s.154 of Evidence Act, but nothing has been elicited from their mouth to implicate the present accused persons, as authors of crime. The evidence of P.Ws.1,2,3,4,7 and 9 has no way helpful to the case of prosecution. Rather their evidence remains silent regarding the death of the deceased and assault on the injured.

15. Now, the only witness left PW-10, who is the Investigating Officer. According to him, on 27.12.2014 he was the IIC of Nayapalli PS and on that day, on the written report of the informant, he registered PS case No.383/2014 u/s.302/34 IPC, took up investigation, visited the spot vide spot map Ext.8, seized the splendor motor cycle bearing registration No.OD-02-2152 with broken condition, its RC book standing in the name of deceased Raja Kishore Nayak, one Karisma motor cycle bearing registration No. OD-02E-0743 with damaged condition, its RC book standing in the name of Shan Samantaray. He has also stated that on 27.12.2014 he conducted inquest over the dead body of Raja Kishore Nayak @ Raja at SCB Medical College, Cuttack in presence of witnesses and sent the dead body for PM Examination through constable D.Chatar by issuing command certificate in his favour and dead body challan vide Ext.9 and after post-mortem he seized the wearing apparels of the deceased and command certificate being produced before him at the PS by Constable D.Chatar vide seizure list Ext.10. He has further stated that he left the seized motor cycle in zima of Jagannath Nayak as per zimanama vide Ext.11 and released the relevant documents of the said vehicle in his zima as per zimanama vide Ext.6 and he issued injury requisition in favour of injured Mahima Prasad Samantaray vide Ext.5/1. He has also stated that he arrested the accused persons on 29.12.2014 and forwarded them to Court on 30.12.2014. He has further stated that he also conducted raid on the house of the other accused persons, but they were found absent and he received PM report Ext.7 from MO, SCB Medical College, Cuttack and injury report Ext.5/1 from the concerned doctor and on 24.4.2015 he submitted preliminary charge-sheet against the present four accused

persons. He has also stated that he had taken steps for obtaining chemical examination report from SFSL, Rasulgarh, Bhubaneswar in respect of the wearing apparels of the deceased, but it was intimated that chemical examination has not yet been conducted. During cross-examination PW-10 has stated that he had not prayed to the Court for conducting TI Parade in respect of the accused persons. The evidence of P.W.10 is not corroborated with the evidence of the informant and other prosecution witnesses.

16. In fact, all the prosecution witnesses except PW-10(IO) have not stated regarding presence of the present accused persons at the spot at the time of the alleged occurrence. Their evidence are completely silent regarding commission of murder of Raja @ Raj Kishore Nayak by the present accused persons. PW-9 who is an injured has stated that somebody dealt blow on his right shoulder by one stick from his back side, but he has not implicated the present accused persons in any manner. The role of the present accused persons in the alleged crime is remained silent. The prosecution witnesses have not stated that the present accused persons had uttered obscene language causing annoyance to others and they had committed mischief by causing damage to Splendor motor cycle of Shan Samantaray and they had committed criminal intimidation by threatening deceased Raj Kishore Nayak @ Raja with intent to cause alarm to him and they had attacked Mahima Samantaray @ Shgan on different parts of his body including his shoulder causing grievous bleeding injury by means of Andhrakati with such intention and under such circumstances that by that act, they had caused the death of Mahima Samantaray @ Shan and they had committed murder intentionally causing death of the

deceased Raj Kishore Nayak @ Raja. Nothing has been elicited from their mouth implicating the present accused persons in the alleged offences. Although PWs-1, 2, 3, 4, 7 and 9 were asked leading questions by the prosecution u/s.154 Evidence Act, but nothing has been elicited from them to implicate the present accused persons in connection with this case. There is no cogent and reliable evidence from the evidence of above P.Ws. that the accused persons have played any role towards the murder of the deceased. Since the evidence of prosecution witnesses remained silent about the cause of death of the deceased and the persons who have committed the above crime, it is difficult on the part of the court to reach to a conclusion that the death of the deceased was caused due to assault made by the accused persons.

17. Therefore, after analyzing the evidence on record and for the reasons discussed above, this Court finds that the prosecution has failed to prove that the present accused persons are the author for commission of the alleged offences punishable under Sections- u/s.148, 427/149, 294/149, 506/149, 307/149, 302/149 of IPC.

18. In the result, the present accused persons are found not guilty of the offences punishable under Sections u/s.148, 427/149, 294/149, 506/149, 307/149, 302/149 of IPC. They are acquitted u/s.235(1) of Cr.P.C. and are set at liberty. The bail bonds are cancelled and sureties are discharged. Zimananas be cancelled, four months after expiry of the appeal period, if no appeal is preferred and in case of appeal, subject to the result of the same as per the order of the Appellate Court. No order regarding disposal of material object, if any, is passed, since split up record is pending against other accused persons.

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 18<sup>th</sup> day of April, 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	Siba Prasad Samantaray.
PW-2	Kartik Rana.
PW-3	Latarani Sahoo.
PW-4	Jharana Rout.
PW-5	Jagannath Nayak.
PW-6	Ajay Kumar Nayak.
PW-7	Minakshi Das.
PW-8	Fakir Charan Swain.
PW-9	Sahan Samantaray @ Mahima Prasad.
PW-10	Suryamani Pradhan.

List of witnesses examined for the defence :-

Nil.

List of exhibits marked for the prosecution :-

Ext.1	Signature of PW-1 on property seizure memo dated 27.12.14.
Ext.1/1	Signature of PW-2 on property seizure memo dated 27.12.14.
Ext.2	FIR.
Ext.2/1	Signature of PW-5 on Ext.2.
Ext.3	Formal FIR.
Ext.3/1	Signature of PW-5 on Ext.3.
Ext.4	Inquest Report.
Ext.4/1	Signature of PW-5 on Ext.4.
Ext.4/2	Signature of PW-6 on Ext.4.
Ext.4/3	Signature of PW-8 on Ext.4.
Ext.5	Signature of PW-9 in medical examination report.
Ext.6	Zimanama.
Exts.6/1 & 6/2	Signatures of PW-9 on Ext.6.
Ext.7	Post-mortem report (on admission).
Ext.2/2	Signature of PW-10 on Ext.2.
Ext.3/2	Signature of PW-10 on Ext.3.
Ext.8	Spot map.

Ext.8/1	Signature of PW-10 on Ext.8.
Ext.1/3	Signature of PW-10 on Ext.1.
Ext.4/4	Signature of PW-10 on Ext.4.
Ext.9	Deadbody challan.
Ext.10	Seizure list.
Ext.10/1	Signature of PW-10 on Ext.10.
Ext.11	Zimanama.
Ext.11/1	Signature of PW-10 on Ext.11.
Ext.6/3	Signature of PW-10 on Ext.6.
Ext.5/1	Injury requisition.
Ext.5/2	Signature of PW-10.
Ext.12	Search list.
Ext.12/1	Signature of PW-10 on Ext.12.
Ext.13	Forwarding letter dt.11.3.15 of learned SDJM, Bhubaneswar.

List of exhibits marked for the defence :-  
Nil.

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

List of M.Os. marked for the defence :-  
Nil.

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

