

IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE,
BHUBANESWAR

PRESENT:

Sri D.R. Sahoo, L.L.M.

S.D.J.M, Bhubaneswar.

C.T Case No-4674/2013

Trial No- 723/2014

Date of argument: 20.08.2014

Date of Judgment: 21.08.2014

STATE.....Prosecution

Versus

Ajaya @ Bijaya Kumar Nayak, aged about 24 years, S/o.
Bimbadhar Nayak, At-Sabarasahi, Siripur P.S.Khandagiri,
Dist- Khurda,

.....Accused .

Offence under Sections 379/427 of Indian Penal Code

Counsel for the Prosecution: APP, Bhubaneswar.

Counsel for the defence (SDC), Bhubaneswar

J U D G M E N T

The above named accused stands charged for committing offences punishable U/s. 379/427 of I.P.C.

2. The prosecution case in brief is that:

On 02.12.2013 at about 12.30 A.M. night, the accused broke down the glass of the vehicle bearing regd. No.OR-02-AD-5893 and took away the Stepin . The accused also broke down the glass of the vehicle bearing regd. No.OR-02-BY-4194 and took away the Tape recorder and other articles from the said vehicles. The informant and other nearby persons chased the culprit while he was taking away those articles through a trolley and caught hold him near Ruchika Market and called the PCR and handed over the culprit to the police. . Subsequently, the informant lodged FIR at the Police Station and after due investigation police

submitted charge sheet U/s **379/427 of I.P.C** against the accused Tukuna Das and subsequently charges were framed there under to which the accused plead not guilty claimed for trial. Hence this trial.

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

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

i) *Whether on 02.12.2013 at about 12.30 A.M. night the present accused committed theft of Stepin of the vehicle and other articles of the informant and thereby committed the offence punishable U/S 379 of IPC ?*

ii) *Whether on aforesaid date and time the accused damaged the informant's vehicle glass and committed mischief punishable U/s 427/34 of IPC?*

5. In order to prove its case prosecution has examine as many as five witnesses out of whom Ramesh Kumar Behera is the informant. P.W.2 Ganesh Pradhan, P.W.3 Ganesh Jena and P.W. 4 Bulu Nayak are the indpendet witnesses . P.W.5 Tapaswini Das is another informant whose named found place in the FIR. Prosecutiio has failed to examine the I.O. On the other hand defecnce has examined none.

6. While considering the evidence on record , it is ascertained that on the alleged date of occurrence one person was taking away the Stepin of the vehicle through a trolley and nearby persons caught hold him and handed to him police. But none of the witness has implicated the present accused in this case . The P.W. 1 who is the informant in this case, in his cross-examination has categorically admitted that he could not tell the name of the accused and he cannot say who has committed the offence. Another informant , P.W.5 has deposed before this Court that she does not remember what exactly happened on that day. Nothing is in this case record to show that the seizure has been taken place from exclusive possession of the accused. The vital witness i.e. the Investigating Officer of this case has not

been examined and the evidence on record is not sufficient to hold the accused guilty in this case.

7. Taking consideration of the above said facts and circumstances, it is hold that the the prosecution has failed to prove its case beyond all reasonable doubt. and accordingly the accused is found not guilty of the offence punishable U/s. 379/427 of IPC. & as such he is acquitted there from as per the provision U/s.248 (1) Cr.P.C. He be set at liberty forthwith.

The seized articles be returned to real owner after cancellation of proper zima.

Enter the case as a mistake of fact.

S.D.J.M., Bhubaneswar.

Typed to my dictation, corrected by me and pronounced the judgment in the open Court today given under my hand and seal this the 21st day of August, 2014.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

- P.W.1: Ramesh Kumar Behera
- P.W.2: Ganesh Pradhan
- P.W.3: Gouri Shankar Jena.
- P.W.4: Bulu Nayak.
- P.W.5: Tapaswini Das.

List of witnesses examined on behalf of the defence:

None

List of Exts. marked on behalf of the prosecution:

- Ext.1: FIR.
- Ext.1/1.: Signature of P.W. on ext.1
- Ext. 2: Zimanama.
- Ext.2/1: Signature of P.W.1 on ext.2.
- Ext.3: Seizure list.
- Ext.3/1: Signature of P.W.2 on ext.3.
- Ext.4 : Zimanama in respect of trolley.
- Ext.4/1 Signature of P.W. on ext.4.
- Ext.5: Police zima to P.W.5.
- Ext.5/1: Signature of P.W.5 on ext.5.

List of Exts. marked on behalf of the defence:

N I L

S.D.J.M., Bhubaneswar.