

Date of judgment : 8.1.2016

Offences under Sections 341/34, 323/34, 307/34, 379/34, 506/34 of IPC & u/s.3(1)(x) SC & ST (PA) Act.

J U D G M E N T

1. All the accused persons except accused Suman @ Somanath Nayak stood charged for committing the offences punishable u/s.341/34, 323/34, 307/34, 379/34, 506/34 of IPC & u/s.3(1)(x) SC & ST (PA) Act. Accused Suman @ Somanath Nayak was also charged for committing the offences punishable u/s.341/34, 323/34, 307/34, 379/34 & 506/34 of IPC.

2. Briefly stated the prosecution case is that on 5.11.2013 at about 6.30 PM while the informant Jitendra Kandi was returning to his house by his Hero Honda motor cycle, in between Dak Bangala Chhak to Matha Sahi, all the accused persons suddenly attacked the informant by means of Bhujali and iron rods. They abused him and snatched away his gold chain and cash of Rs.500/-. They also damaged and took away his Splendor motor cycle. They also threatened to kill him. Basing on the report of the informant, a case u/s.341/34, 323/34, 294/34, 307/34, 379/34 & 506/34 of IPC & u/s.3(1)(x) SC & ST (PA) Act was registered and investigation was taken up. During investigation, the informant and the witnesses were examined. The IO visited the spot. The informant was medically examined on police requisition. The document relating to the motor cycle was seized. The accused persons were arrested and forwarded to the Court. After completion of investigation, charge-sheet u/s.341/34, 323/34, 307/34, 379/34, 506/34 of IPC & u/s.3(1)(x) SC & ST (PA) Act was submitted against the accused persons. Separate charge for the offences, as above mentioned, was framed against them.

3. Defence plea is one of complete denial and false implication.
4. Prosecution has examined 6(six) witnesses whereas the defence has examined none.
5. The points for determination are:
 - (i) Whether on 5.11.2013 at about 6.30 PM in between Dak Bangala Chhak to Matha Sahi, the accused persons, in furtherance of their common intention, wrongfully restrained the complainant?
 - (ii) Whether on the aforesaid date, time and place the accused persons in furtherance of their common intention voluntarily caused hurt to the informant?
 - (iii) Whether on the aforesaid date time and place the accused persons, in furtherance of their common intention, had assaulted the informant, with such intention and knowledge that, if death is caused to the informant, then they would be guilty of murder?
 - (iv) Whether on the aforesaid dates, time and place the accused persons, in furtherance of their common intention, dishonestly took one gold chain weighing one Bhari, Rs.500/- and Splendor vehicle of the informant?
 - (v) Whether on the aforesaid date, time and place the accused persons, in furtherance of their common intention, committed criminal intimidation by threatening to kill the informant?
 - (vi) Whether on the aforesaid date, time and place the accused persons not belonging to SC & ST category except accused Suman @ Somanath Nayak, intentionally insulted with intent to humiliate the informant, a member of Scheduled Caste ?
6. PW-4 is the informant. PWs-1 to 3, 5 and 6 have been examined as eye-witnesses to the occurrence. The prosecution has declined to examine the rest charge-

sheeted witnesses. All the said witnesses have not stated anything regarding involvement of the accused persons in the alleged occurrence. They have also not stated regarding any threatening given to the informant by any of the accused persons. PWs-1, 2, 4, 5 and 6 stated that they do not know the accused persons.

7. PW-4 the informant has stated that there was dispute and quarrel between the residents of Bharatimatha Sahi and Jambeswr Patna Sahi on 5.11.2013 and for that, he lodged FIR vide Ext.2. He has also stated that due to fall, he sustained injuries. He has further deposed that he does not remember anything else about the said incident.

8. During cross-examination, PW-4 stated that he does not know, as to who has scribed the FIR and does not know its contents. He further stated that the matter has been amicably settled by the intervention of local gentlemen and he does not want to proceed further in this case. During cross-examination he has deposed that he had signed on Exts.1 and 2 without knowing its contents. He has deposed that he had sustained minor injuries due to fall.

9. In fact, the above named prosecution witnesses have not stated regarding presence of the accused persons at the spot at the time of the alleged occurrence. They have also not stated that the accused persons have used any word for the purpose of humiliating the informant as a member of Scheduled Caste. They have also not stated regarding any damage to the motor cycle. None of them have deposed that the accused persons took away any money and the motor cycle of the accused from his possession. They are also completely silent regarding any assault on the informant. They have not stated that any of the accused persons had caused any hurt or had attempted

to kill him. They have not stated that the accused persons restrained the informant from proceeding in any particular direction, to which he had right to go. Nothing has been elicited from their mouth implicating the accused persons in the alleged offences. Although PWs-1, 2, 3, 5 and 6 were asked leading questions by the prosecution u/s.154 Evidence Act, but nothing has been elicited from them to implicate the accused persons in connection with this case.

10. From the evidence on record as discussed above, it emerges that the victim (PW-4) who is the vital witness of this case, has not uttered anything implicating the accused persons, with the alleged offences. There is also no evidence on record that the accused persons in furtherance of their common wrongfully restrained the complainant and voluntarily caused hurt to him. The prosecution has also failed to prove that the accused persons attacked the complainant with deadly weapons attempting to commit his murder or had criminally intimidated him.

11. 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- 341/34, 323/34, 307/34, 379/34 and 506/34 of IPC against accused Suman @ Somanath Nayak and under Sections 341/34, 323/34, 307/34, 379/34, 506/34 of IPC and 3(1)(x) SC & ST (PA) Act against the rest accused persons.

12. In the result, the accused Suman @ Somanath Nayak is found not guilty of the offences punishable under Sections -341/34, 323/34, 307/34, 379/34 and 506/34 of IPC and the rest accused persons are found not guilty of the offences punishable under Sections- 341/34, 323/34, 307/34, 379/34, 506/34 of IPC & 3(1)(x) SC & ST (PA) Act. All the accused persons are acquitted u/s.235(1) of Cr.P.C.

and are set at liberty. Their bail bonds are cancelled and sureties are discharged. Zimanana in respect of the seized Hero Honda and its original registration certificate, 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 is required to be passed, as there is no material object.

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 8th day of January, 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 :

P.W.1	Sangram Keshari Mohapatra.
P.W.2	Safalya Kumar Kar.
P.W.3	Nilanchal Sahoo.
P.W.4	Jitendra Kumar Kandi.
P.W.5	Litu Das.
P.W.6	Bijay Kumar Kandi.

List of witnesses examined for the defence :-

Nil.

List of exhibits marked for the prosecution :-

Ext.1	Signature of Sangram Keshari Mohapatra in seizure list, dt.5.11.13.
Ext.1/1	Signature of Safalya Kumar Kar in seizure list, dt.5.11.13.
Ext.2	FIR.
Ext.2/1	Signature of PW-4 on Ext.2.
Ext.3	Plain paper FIR.
Ext.3/1	Signature of PW-4 in Ext.3.
Ext.4	Signature of PW-4 before doctor of BMC Hospital.
Ext.5	Signature of PW-5 in seizure list.

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.