

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BHUBANESWAR

Present : - Shri Bishes Kumar Sahu, LL.M.,
Judicial Magistrate First Class,
Bhubaneswar.

CT Case No. 1234/13
(Arising out of Lingaraj P.S. Case No. 53/2013)
T.R. No. 1776/2013

State: -

.....Prosecution

-Versus -

- 1) Aju @ Santosh Pradhan, aged about 23 yrs,
S/O- Late Krushna Chandra Pradhan,
At- Bhoisahi, Nageswartangi
P.S.- Lingaraj, Dist- Khurda.

- 2) Kalia @ Sanjay Kumar Samal, aged about 30 yrs,
S/O- Bata Krushna Samal,
At- Bhoisahi, Nageswartangi
P.S.- Lingaraj, Dist- Khurda.

.....Accused Persons

Counsels for the Prosecution: Shri Prakash Chandra Panda,
Shri Laxmidhar Parida &
Shri Sudhansu Sekhar Tripathy

.....A.P.P., Bhubaneswar.

Counsel for the Defense : Shri A.K.Sahoo & associates,

.....Advocate, Bhubaneswar.

Date of Conclusion of Argument : 15.11.2013
Date of Pronouncement of Judgment : 20.11.2013

Offences under Sections- 379/34 of the I.P.C.-1860

J U D G M E N T

1. The accused persons named above stands prosecuted for the offences punishable under section-379/34 of the I.P.C. for in furtherance of their common intentions of Committing Theft.

2. The abridgement of the prosecution case runs as follows:-

That, one Manas Ranjan Pattnaik, S/o- Mayadhar Pattnaik of Plot No. 532, Nageswartangi, PS- Lingaraj, Dist.-Khurda presented a written report before IIC of Lingaraj P.S. The informant made an allegation therein that on 30-31th march, 2013 at about night hours some unknown culprit committed theft of the 4 nos of batteries from the different travel cars parked at Unique Travels, Nageswartangi. For the reasons the informant lodged an FIR at Lingaraj Police Station, Khurda.

3. Basing upon the written report, law was set into motion and the matter was investigated into. In course of investigation; the concerned investigating officer visited the spot, examined the informant, and the witnesses present in the spot. The statements of the witnesses are also recorded u/s-161 of Cr.P.C. On completion of investigation, the I.O. submitted charge sheet against the accused namely 1. Aju @ Santosh Pradhan & 2. Kalia @ Sanjay Kumar Samal under sections 379/34 of the I.P.C. to face their trial in the court of law which gave rise to the present trial.

4. The plea of the accused is one of outright denial and of false implication.

5. The points for determination of this case are:-

- i. Whether the above named accused persons, in furtherance of their common intentions have on the said date, time & place committed theft of four nos of car batteries from the travel of the Informant?

6. To substantiate its case, the prosecution has examined six vital witnesses i.e. the Informant as P.W.-1, PW-3 & PW-5 are the seizure witnesses and PW-2, PW-4, PW-6 are the independent witnesses to this case. On the other hand, defence has examined none.

7. It is the settled cannons of law that the F.I.R. is neither an encyclopedia nor a substantive piece of evidence but it can only be used for contradiction u/s-145 or corroboration u/s-157 of Indian Evidence Act, 1872, against the maker or the scribe of it. Moreover, it is also the settled principles of law that there is no legal impediment in convicting a person on the sole evidence of a single witness which is the time-bound logic of Section-134 of Indian Evidence Act, 1872.

8. After a careful perusal of the evidence of the informant-P.W-1, it is found that the informant has proved the F.I.R. vides Ext-1 and his Signature vides-Ext-1/1 thereon. He also proved the zimanama marked at Ext-2 and Ext-2/1 is his signature thereon. During the examination of Pw-1 he narrated about the prosecution story that he got to know the occurrence in the early morning just after the occurrence of midnight. He also submitted that he has no direct knowledge as to who has committed theft. During the perusal of the evidences of PW-2 & PW-4, they also stated before the court that they got to know the occurrence in the early morning when the occurrence already been committed. They also put their ignorance about who were committed the theft. During the Perusal of the evidences PW-6, he stated before the court that he do not know anything about the occurrence of the offence. Let us discuss the evidences of seizure witnesses who are vital witnesses of this case. Both the seizure witnesses PW-3 and PW-5 proved their signature on the seizure list marked as Ext-3 and Ext-3/1 respectively. However they stated before the court that nothing has been seized in their presence. Moreover they stated before the court that they put their signatures on the blank seizure list at the instance of the Police. Thus the evidences of above witnesses no way helpful to the prosecution's case.

9. Considering the evidence adduced on the case record, this court is of the opinion that there is no iota of evidence worthiness to the name to connect the alleged accused persons in the alleged crime.

10. In the result, I hold that the prosecution has failed to prove its case against the accused persons beyond all reasonable doubt and as such the accused namely 1. Aju @ Santosh Pradhan & 2. Kalia @ Sanjay Kumar Samal are not found guilty for the offences punishable under sections U/s 379/34 of the IPC and are acquitted thereof under section 248 (1) of Cr.P.C. and they be set at liberty forthwith and be discharged from their bail bonds.

The seized articles which are released in zima be kept with the zimanadar. The zimanama be cancelled after expiry of four months of the period of limitation for appeal if no appeal is preferred and according to the order of the Appellate Court if appeal is preferred.

Enter the case as of "Mistake of Fact".

**Judicial Magistrate First Class,
Bhubaneswar.**

This judgment is typed by and corrected by me in my personal laptop and pronounced in the open court on this day i.e.; the 20th day of November, 2013 and given under my hand and seal of this Court.

**Judicial Magistrate First Class,
Bhubaneswar**

List of witnesses examined on behalf of the Prosecution.

P.W. 1 : Manas Ranjan Pattnaik
P.W. 2 : Afzal Mohammad
P.W. 3 : Sanjeeb Kumar Mohapatra
P.W. 4 : Chandra Kanta Pradhan
P.W. 5 : Tanuj Tarai
P.W. 6 : Sadasib Mohapatra

List of witnesses examined on behalf of the Defence.

: None

List of Exhibits marked on behalf of the Prosecution.

Ext. 1 : F.I.R.
Ext. 1/1 : Signature of P.W.1 on the F.I.R.
Ext. 2 : Zimanama
Ext. 2/1 : Signature of P.W.1 on the Zimanama.
Ext. 3 : Signature of PW-3 on the Seizure List.
Ext. 3/1 : Signature of PW-5 on the Seizure List.

List of Exhibits marked on behalf of the Defence.

: Nil.

**Judicial Magistrate First Class,
Bhubaneswar**