

IN THE COURT OF THE CHIEF JUDICIAL, MAGISTRATE-  
CUM-ASSISTANT SESSIONS JUDGE, KHURDA,  
CIRCUIT, AT- BHUBANESWAR

P R E S E N T:

***Dr. P.M.Samal, LL.,M,Ph.D, (Law)***

Chief Judicial Magistrate -Cum-  
Assistant Sessions Judge Khurda.

**Criminal Trial NO.286 OF 2013**

(Arising out of GR Case No. 2537/2014 1405/2003  
corresponding to Nayapalli PS Case No.96 dated.  
23.04.2003 Committed by SDJM, Bhubaneswar  
on13.09.2013)

S T A T E

-V E R S U S-

1. Juga Prakash Kanungo, aged about 57 years  
S/o. Lal Mohan Kanungo  
Vill-Arisol, PS-Govindpur, Dist-Cuttack
  2. Samarendra Nayak @ Tulu, aged about 54 years  
S/o.Nrupendra Nayak,  
At-Kaflabazar, PS-Lalbag, Dist-Cuttack
  3. Partha Pattnaik @ Tulu, aged about 58 years  
S/o. Sarat Chandra Pattnaik  
At-Jhangirmangala, PS-Purighat,,Dist-Khurda.
- ..... Accused persons

Date of argument 28.01.2015

Date of Judgment 04.02.2015

**Under Section.384/307/506/34 IPC and U/s. 25 & 27 Arms Act.**

Counsel for the State .....Mrs. B.Mohanty (APP.)

Counsel for Accd. Jugaprakash Kanungo- Sri B.P.Sarangi

Counsel for Accd. Samarendra Nayak:-Sri P.Pattnaik & Associates

Counsel for Accd. Partha Pattnaik: Sri D.Panda & Associates

**J U D G M E N T**

1. The above named accused persons have faced the trial after being charged for the offences punishable U/Ss. 384/307/506 read with 34 IPC and U/s. 25 and 27 Arms Act.

2. A brief narrative of the prosecution case is unfolded hereunder:

The informant Subash Agarwal lodged a written report before IIC Nayapalli P.S. alleging inter alia that on the same date at the twilight hour at about 5.40 A.M. two unknown motor cycle borne youth reached at the gate of his residence and gave their identity as Crime Branch officers and asked the watchman to call him. When the watchman went inside to call him they indiscriminately fired to his house and spread bullets which hit windows, wall of the house and the car parked in his premises and they fled from the spot. The informant further reflected in his FIR that one Dipu Sharma of Rourkela used to extend threat over his mobile phone demanding percentage from the railway contracts and threatened of dire consequences.

On such report police registered a case and took up investigation.

During investigation the IO visited the spot, prepared the spot map and examined first the watchman Jachindranath Bhoi along with other witnesses and seized some incriminating materials at the spot. Further the IO kept surveillance over the mobile phones reportedly used by the persons involved in the crime and subsequently arrested the accused Kulu @ Juga Prakash Kanungo and Tula @ Partha Pattnaika, after their involvement established in the case. Further he forwarded them to the court. The IO had also seized involved motor cycle, cartridge etc and finally submitted chargesheet against the accused persons showing the accused Amit Singh @ Amit Choudhury, Dipu @ Dipendra Sharma and Samarendra @ Tula as absconder. Accused Tula @ Samarendra released on bail by virtue of order of Hon'ble Court . Subsequently the case record was committed to the court of Sessions by the SDJM, Bhubaneswar and split up the case record against accused Amit Singh @ Choudhury and Dipu @ Dipendra Sharma vide order dated 13.09.2013. Hence this trial.

3. The accused persons have completely denied to the allegations made from the side of the prosecution.

During examination U/s. 313 1(b) of Cr.P.C. the accused Partha Pattnaik took further plea of false implication in this case due to hot exchange of words with the police. Rest two accused persons namely Samarendra Nayak and Juga Prakash Kanungo took plea of false implication in this case.

4. From the stand taken by the parties to this case it is become obligatory on my part to answer the points that delineated for

consideration.

Whether the accused persons in furtherance of their common intention on 23.04.2003 at about 5.40 A.M. At Plot No.N-1/93 IRC village Nayapalli at the residence of the informant:

- (i) have put the informant in fear of gun shot injury to him and his family members and dishonestly induced him to deliver percentage from the railway contracts awarded to him?
- (ii) Have made gun shot to the informant and his family members residing with him with such intention and knowledge to cause their death?
- (iii) Have threatened of dire consequence to the informant and his family members causing alarming to them?
- (iv) Have possessed arms (gun) without having valid license and used illegally?

5. The prosecution has relied upon the oral testimonies of five witnesses to prop up the allegations made against the accused persons apart from the documents exhibited Exts1 to Ext. 7/1. Of the witnesses examined, P.Ws. 1 and 2 are informant's brother, P.W.3 is the informant, P.W.4 is an independent witness to the occurrence and P.W.5 is the IO. But the accused persons declined to adduce any evidence on their behalf. The details of the documents exhibited on behalf of the prosecution are given at the foot of the judgment.

6. In view of the progress made in this case by the prosecution and for the sake of brevity all the points that posed for consideration are taken up together hereunder:

The prosecution has made it explicit that some unknown culprits came in motor cycles to the residence of the informant on the alleged date of incident, opened indiscriminate firing to the house of the informant and spread bullets which are not only hit to the doors and windows but also to the car parked within the premises. The unknown culprits first approached the watchman Jachindranath Bhoi by giving their identity as Crime Branch Officers and asked him to call informant from the house and later part of the incident ensued. The informant (P.W.3) during his examination states on oath that on 23.04.2003 while he was inside in his house at Nayapalli heard noise from the outside. Two persons came near to his house and asked his security personnel to call him and the time he came outside none of the person were there and they left after firing to his doors and windows which were got damaged. So he lodged the report before the police in writing marked Ext.1 and Ext.1/1 is signature therein. It is next deposed at Para-2 of his examination in chief that a person namely Dipu Sharma from Rourkela used to extend threat over phone demanding Rs.50,00,000/- (Rupees Fifty lakhs) and also threatened him to kill by gun shot. During investigation the police seized fourteen empty cartridge from the spot in his presence through a seizure list Ext.2 and Ext.2/1 is signature therein.

7. The informant has not uttered anything about the other accused persons if involved in this case except the accused Dipu Sharma. It is mentioned in the FIR Ext.1 that Dipu Sharma used to extend threat demanding percentage at the rate of five percent on each railway contracts awarded but no where mentioned as demand of Rs.50,00,000/- (Rupees fifty lakhs) and to kill if his demand fulfilled by the informant. Therefore, the testimony of the P.W.3 the informant, is not only in consistent with the contents of the FIR, but also contrary to it regarding such demand. Let us see in the case record if any evidence available against the present accused persons to know their involvement in the alleged crime.

8. The brothers of the informant examined in this case as P.Ws. 1 and 2 respectively have simply deposed about some unknown culprits fired from gun into the house of informant and they do not know the accused persons. Both of them are post occurrence witnesses . The independent witness to the occurrence examined in this case as P.W.4 also expressed his ignorance about any such incident. The vital witness to the occurrence i.e. watch man Jachindranath Bhoi has not been brought into the witness box by the prosecution and the reason thereof is not known. The IO P.W.5 during his examination has stated that on 24.04.2003 he seized one Yamha Motor cycle OIX 1768 which was lying at Jayadev Vihar and he seized the same under a seizure list Ext.5. On 29.04.2003 as per call details report of three mobile phones obtained from Reliance Service Provider he seized the same under a seizure list Ext.6 and recorded the statement of accused Kulu @ Juga Prakash

Kanungo who gave recovery of a Samsung Mobile bearing No.9737022842 and prepared seizure list vide Ext.7. He arrested him and forwarded to the court but he has not made it clear as to the specific role played by the accused Juga Prakash Kanungo except recovery of a Samsung Phone. It is the bounden duty of the prosecution to prove the vital ingredients of the offence U/Ss. 384/307/506 and 25 and 27 Arms Act.

9. On a plain reading of entire evidence on record brings it forth that there was a firing to the house of informant on the alleged date and time of occurrence. It cannot be said concretely that the present accused persons are the perpetrator of the crime or the responsibility can be imputed on their head. In a Criminal case the evidence ought to be clearer than light. Mere creation of suspicion however strong cannot substitute the legal proof. Thus, the evidence on record not at all clear the involvement of present accused persons. In other word, the prosecution has not produced a little bit of evidence against any of the present accused persons. Therefore, the plea taken by the accused persons appears to be probable.

Consequently I hold the accused persons are not guilty of committing offence U/Ss. 384/307/506 read with 34 IPC and U/s.25 & 27 Arms Act and acquit them U/s. 235(1) Cr.P.C..

They be set at liberty forthwith.

The bail bonds cancelled and sureties be discharged.

Since split up case is pending, no order for disposal of property is passed.

CJM-Cum-A.S.J.- Khurda, circuit at Bhubaneswar

Dictated and corrected by me and pronounced in open Court today i.e 4<sup>th</sup> day of February, 2015, under my hand and seal of this court.

CJM-Cum-A.S.J.- Khurda, circuit at Bhubaneswar.

**List of witnesses examined on behalf of the prosecution**

P.W.1        Rajesh Agarwal  
P.W.2.        Anil Agarwal  
P.W.3.        Subash Agarwal  
P.W.4        Jayadev Das  
P.W.5        Raj Kishore Paikray

**List of witnesses examined on behalf of the defence.**

N o n e

**List of documents Exhibited on behalf of the prosecution.**

Ext.1        FIR  
Ext.1/1.      Signature of P.W.3 on Ext.1  
Ext.2        Seizure list

- Ext.2/1      Signature of P.W.3 on Ext.2
- Ext.1/2      The endorsement of IIC
- Ext.3        Spot Map
- Ext.3/1      Signature of P.W.5 on Ext.3
- Ext.2/2      Signature of P.W.5 on Ext.2
- Ext.4        Seizure list
- Ext.4/1      Signature of P.W.5 on Ext.4
- Ext.5        Seizure list
- Ext.5/1      Signature of P.W.5 on Ext.5
- Ext.6        Seizure list
- Ext.6/1      Signature of P.W.5 on Ext.6
- Ext.7        Seizure list
- Ext.7/1      Signature of P.W.5 on Ext.7

List of documents Exhibited on behalf of the defence.

N I L.

CJM-Cum-A.S.J.- Khurda. circuit At-Bhubaneswar