

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,

BHUBANESWAR

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

G.R. Case No. 2810/2012

(Arising out of Laxmisagar P.S. Case No. 152/2012)

T.R. No. 1388/2014

State: -

.....Prosecution

-Versus -

- 1) Gudu Bihari Singh @ Mantosh Singh, aged about 31 yrs,
S/O- Lal Mohan Singh, At- Uparsahi,
PS- Laxmisagar, Dist- Khurda.
- 2) Sazid Khan, aged about 22 yrs,
S/O- Rasid Khan, At- Jharpada,
PS- Laxmisagar, Dist- Khurda.
- 3) Rajesh Gopal, aged about 32 yrs,
S/O- Ram Gopal, At- Jharpada,
PS- Laxmisagar, Dist- Khurda.

.....Accused Person

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

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

Counsel for the Defense : *Shri R.R.Sundara & his associates*

.....Advocates, Bhubaneswar.

Date of Conclusion of Argument : 02.12.2014

Date of Pronouncement of Judgment : 23.12.2014

Offences under Sections- 394/34 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-394/34 of the I.P.C. for in furtherance of their common intentions of Causing voluntarily hurt to the informant in committing robbery.
2. The abridgement of the prosecution case runs as follows:-

That, one Abdul Satar, aged about 26 yrs, S/O- Afjal Saikh of Bairamipur, PS- Lalgola, Dist- Murshidabad (W.B.) presented a written report before IIC of Laxmisagar P.S., Khurda. The informant made an allegation therein that on 09.08.2012 at about 4am he heard some noise for which he wake up and found three unknown culprits had committed theft of their mobile phones & trying to fled away. On this he along with other his friends when trying to chase them they assaulted them by means of Iron rod and bhujali. Two of the accused person succeeds to flee away & one of the accused was caught hold by them who disclosed his name as Gudu Bihari @ Mantosh Singh. For the reasons the informant lodged an FIR at Laxmisagar Police Station, Bhubaneswar.
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. Gudu Bihari Singh @ Mantosh Singh, 2. Sazid Khan, 3. Rajesh Gopal under sections 394/34 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, in furtherance of their common intentions have on the said date, time & place voluntarily caused hurt to the Informant & to his friends in committing robbery & thereby they are liable u/s 394/34 IPC?
6. To substantiate its case, the prosecution has examined ten vital witnesses i.e. the Informant as P.W.-7, PW-1, 3, 4, 5, 6, 8, 10 are the occurrence witnesses of this case. PW-9 is the seizure witness of this case. PW-2 is the scribe of the F.I.R. of this case. On the other hand, defence has examined none.
7. After a careful perusal of the evidence of the informant-P.W-7, In his evidence PW-7 stated before the court that on 09.08.2012 at about 4am he heard some noise for which he wake up and found three unknown culprits had committed theft of their mobile phones & trying to fled away. On this he along with other his friends when trying to chase them they assaulted them by means of Iron rod and bhujali. Two of the accused person succeeds to flee away & one of the accused was caught hold by them who disclosed his name as Gudu Bihari @ Mantosh Singh. For the reasons the informant lodged an FIR at Laxmisagar Police Station, Bhubaneswar. However on perusal of the evidences of PW-1, 3, 4, 5, 6, 8, 10 it is revealed that they do not know anything about the case matter. Moreover they put their ignorance about the fact of the case. On perusal of the evidences of PW-9 who was the seizure witness of this case, he stated in his evidence that nothing has been seized in his presence. He put his signature on the blank seizure list at the instance of the Police. On perusal of the evidences of the PW-2 of this case it revealed that on the relevant day PW-2 had gone to the PS in connection to other case. As he was able to speak and write Bengali hence at the instance of the Police he scribed the F.I.R. so also he proved the FIR marked as Ext-1, his endorsement as Ext-1/1 and Ext-1/2 was his signature thereon. Moreover the prosecution did not examine the I.O. of the case who is the vital witness of this case. None of the prosecution witness put any quittance with the

accused persons. Thus the evidences of these witnesses do not support to the prosecution's case.

8. 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.

9. 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 persons namely 1. Gudu Bihari Singh @ Mantosh Singh, 2. Sazid Khan, 3. Rajesh Gopal are not found guilty for the offence punishable under sections U/s 394/34 of the IPC and is acquitted thereof under section 248 (1) of Cr.P.C. and he be set at liberty forthwith and be discharged from their bail bonds.

The seized property be confiscated to the state, if that will fetch market value or else the same to be destroyed after 4 months of expiry of the period of limitation prescribed for the appeal, if no appeal is preferred, and if any appeal is preferred then the same is to be dealt with in accordance to the order of the appellate court. 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 and pronounced in the open court on this day i.e.; the 23rd day of December, 2014 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 : Habib Bulla
P.W. 2 : Priya Prasad Mohapatra
P.W. 3 : Sumanta Kumar Das
P.W. 4 : Gurudev Rout
P.W. 5 : Sandeep Kumar Das
P.W. 6 : Shyam Sundar Jena
P.W. 7 : Abdul Suttar
P.W. 8 : Seikh Allam
P.W. 9 : Sk Maukem
P.W. 10 : Hanif Saikh

List of witnesses examined on behalf of the Defence.

: None

List of Exhibits marked on behalf of the Prosecution.

Ext. 1 : FIR
Ext. 1/1 : Endorsement of PW-2 on the FIR
Ext. 1/2 : Signature of PW-2 on the FIR
Ext. 2 : Signature of PW-9 on the Seizurelist

List of Exhibits marked on behalf of the Defence.

: Nil.

**Judicial Magistrate First Class,
Bhubaneswar**