

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR

Present. : Miss. Sarmistha Dash., LL.B.,
Judicial Magistrate First Class,
Banpur

Date of Argument : 14.10.2014
Date of Judgment : 15.10.2014

G.R. Case No.214/2006
T.R. No. 02/2008

State Prosecution

-Versus-

1. Pramod Swain, aged about 25 years, S/o Bula Swain
Vill: Moramori, P.S: Banpur, Dist: Khurda.
2. Sathia Swain, aged about 50 years, S/o Late Dandapani Swain
Vill: Kulei, P.S: Banpur, Dist: Khurda.

.... Accused persons.

Offence : U/s 379/34 of IPC

For the Prosecution : Sri J. Pradhan, APP
For the Defence. : Sri S.K.Pattnaik & his associates.

J U D G M E N T

01. The above named accused persons stand charged for the offence punishable Under Sections 379/34 of the IPC.

02. The brief facts of the prosecution case is that:-

On 07.07.2006 one Biswanath Muduli appeared before the I.I.C Banpur P.S and lodged a written report alleging therein that the accused persons on 7.7.2006 at 2 to 2.30pm committed theft of shuttering materials cost of Rs. 1,66,802/- from culvert No.327, 730 and 327.450 of Baluaon Bye pass near Belapada and Bhesari through the vehicle No.OAG/5575.

Upon such report P.S. Case No.147(4)/2006 was registered and investigation was carried out and after completion of investigation as

prima facie evidence is well made out against the accused persons, the I.O. submitted charge sheet against them. Hence this trial.

03. The plea of accused is one of complete denial and false implication.

04. The point for determination in this case emerges as follows:

(a) Whether on 7.7.2006 at 2.30 pm committed theft of shuttering materials cost of Rs. 1,66,802/- from culvert No.327, 730 and 327.450 at Balugaon Bye pass near Belapada without the consent of the informant dishonestly?

05. In order to prove its case, prosecution has examined as many as two P.Ws in its favour. Out of which P.W.2 is the informant, P.W.1 is an independent witness. On the other hand defence has examined none.

06. This is a case U/s 379/34 of the I.P.C. In order to substantiate the case against the accused, it is necessary to scrutinize the case of prosecution. During course of trial P.W.2 who is the informant of this case deposed that he does not know the accused and now he could not remember the occurrence. During his cross examination he said that he could not say the contents of the F.I.R. P.W.1 in his cross examination said that he does not remember the the date and month of occurrence and could not show any documents that he was working as watchman in P.C.L company.

07. On careful scrutinization of the above evidence it is found that the informant deposed that he does not remember the contents of the F.I.R as well as the occurrence. The prosecution has not been examined the I.O and the seizure witnesses. Apart from that none of the prosecution witnesses have deposed against the accused persons. In the

present circumstances it is clear that the prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubt.

08. In the result the accused persons are found not guilty for the offence U/s. 379/34 IPC and acquitted thereof U/s.248(1) of Cr.P.C. They be set at liberty forthwith and their bail bonds stand cancelled.

The zimanama be cancelled after expiry of four months of the appeal period if no appeal is preferred and in case of appeal as per the direction of Appellate court.

Enter the case as mistake of fact.

Judicial Magistrate First Class,
Banpur

This judgment is typed out as per my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, on this the 15th day of October, 2014.

Judicial Magistrate First Class,
Banpur

List of witnesses examined for Prosecution.

P.W.1 Ananta Mekup
P.W.2 Biswanath Muduli.

List of witnesses examined for defence.

None

List of Exhibits marked for Prosecution.

Ext-1 F.I.R
Ext.1/1 Signature of P.W.2 on Ext.1.
Ext.2 List of stolen articles.

List of Exhibits marked for defence.

Nil

List of MOs marked for Prosecution.

Nil

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