

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS(O),
BHUBANESWAR, DIST-KHURDA

Present : Sk. Md. Quais, M.A., LL.M.
J.M.F.C.(O), BHUBANESWAR

Date of conclusion
of argument : 12.11.2014

Date of Judgment : 17.11.2014

G.R. No. 180/2014
Trial Case No. 418/2014

S t a t e

v r s

1. Tukuna Nayak, aged about 35 years,
S/o. Dhruba Charan Nayak,
2. Dillip Nayak @ Puku, aged about 30 years,
S/o- Dhruba Charan Nayak,
Both are of Village-Kaimatia, PS- Jatni, Dist- Khurda.

... Accused Persons

For offences punishable u/s 435/506/34 of IPC

For the Prosecution : A.P.P

For the Defence : Subash Ch. Dash & his Associates Advocates.

J U D G M E N T

The accused persons stand charged for offences punishable u/s. 435/506/34 of IPC for allegedly committing mischief by fire with intent to cause damage to the Auto Rickshaw of the informant and for committing criminal intimidation by issuing threats to the informant in furtherance of their common intention.

2. The case of the prosecution in shortly runs as hereunder:

That on 24.03.2014 in between 11.30 PM to 12.00 midnight the informant had parked his auto rickshaw in front of the house of his maternal uncle

at Village-Kaimatia. The accused persons having previous enmity set fire to the Auto Rickshaw bearing no. OR-02-BH-3033 of the informant and threatened the informant to face dire consequences. Basing upon the report of the informant on 25.03.2014 Jatni PS Case No. 65/2014 was registered and the matter was investigated into. After completion of investigation, charge sheet u/s 435/506/34 of IPC was submitted against the accused persons to face their trial in court of law. Hence this case.

3. The plea of the accused persons is cleaned denial and false implication.

4. The points to be determined are as follows ;

(i) Whether on 24.03.2014 in between 11.30 PM to 12.00 midnight at village-Kaimatia the accused persons in furtherance of their common intention committed mischief by fire with intent to cause damage to the Auto Rickshaw of the informant ?

(ii) Whether on the aforesaid date, time and place of occurrence, the accused persons in furtherance of their common intention committed criminal intimidation by issuing threats with injury to the property of the informant with intent to cause alarm in his mind ?

5. To substantiate the charge, prosecution has examined ten witnesses in all out of whom PW.1, Susanta Nayak is the informant and victim of this case. PW.2, Arjun Nayak, PW.5, Deepak Nayak and PW.7, Subash Nayak are the uncles of the informant. PW.3, Ananta Nayak, PW.4, Brajabandhu Nayak, PW.6, Naresh Nayak, PW.8, Abhimanyu Nayak, PW.9, Lingaraj Nayak are the witnesses to occurrence. PW.10, Kishore Kumar Samal is I.O of this case. Examination of the rest witnesses has been declined by the prosecution.

Defence has examined none on its behalf.

6. In order to prove the occurrence, PW.1, the informant has deposed that he is residing with his maternal uncle at Village-Kaimatia. He had an auto rickshaw. About four to five months back in one night he had parked his auto-rickshaw bearing no. OR-02-BH-3033 in front of his uncle's house. He was preparing to sleep. He heard hullah outside of house. When he came out, he found someone had set fire in his auto rickshaw. Some co-villagers were trying to put the fire off by throwing water. The auto rickshaw was completely damaged by fire. In the night, he reported the matter in writing to police vide F.I.R Ext.-1. During cross-examination, PW.1 stated five to six persons were putting fire at the time of his arrival. Thirty to Thirty five family are residing in village-Kaimatia. One Kanhei, Kalia, Arup, Raju, Parsu, Badal had tried to put off the fire. The hood and seats of auto were completely damaged. He deposed that the auto rickshaw was parked in the open space. He admitted that the accused persons were having previous enmity with his family on the date of occurrence. He hold insurance policy of the burnt vehicle.

P.W.2, P.W.3, P.W.4 and P.W.5 are witnesses to seizure, but they have not corroborated the factum of seizure. They have deposed that on being asked by Police they had put their signature on a paper and the contents of paper were not read over or explained to them. P.W.7 deposed that at the time of occurrence he was watching T.V in his house and hearing hullah, he came out and found the auto rickshaw of the informant was burning. He put off fir by applying water with the help of others. P.W.6, P.W.8 and P.W.9 have not supported the prosecution case.

PW.10, the I.O of this case has deposed that on 25.03.2014 he was working as S.I of Police attached to Jatni PS. On that day, on the written report of informant Jatni PS. Case No. 65/2014 was registered and he took up investigation of this case. During investigation, he had examined the informant and other witnesses, visited the spot and prepared a spot map vide Ext.-5. He seized the burnt auto rickshaw from the spot and left the same in zima of the informant. He arrested the accused persons and forwarded them to Court. On completion of investigation, he submitted a charge-sheet U/s. 435/506/34 of IPC.

7. From the aforesaid evidence of prosecution witnesses it appears that none of the witnesses has whispered a single word against the accused persons. In his FIR vide Ext.-1 the informant has mentioned the name of the accused persons on suspicion. Apart from the FIR, there is no corroboration to the evidence of P.W.1 or any material available to connect the present accused persons with alleged offence. Although the witnesses have disclosed that they had arrived at the spot just after the auto rickshaw was set fire, but they are silent as to who set fire to the same. The I.O of this case is also silent as to what evidence led him to file charge-sheet against the accused persons. Under the above circumstances, I find no incriminating material against the accused persons as conviction cannot be laid on mere suspicion.

8. Regarding the offence U/s. 506 of IPC none of the witnesses including the informant has whispered a single word regarding issuance of any threat by accused persons to anyone. As such the prosecution has measurably failed to prove its case against the accused persons.

In the result, I hold the accused persons not guilty of the offences punishable u/s 435/506/34 of IPC and acquit them there from u/s 248(1) of Cr.PC. They be set at liberty forthwith and they are discharged from their bail bonds.

Enter the case as mistake of fact.

The zimanama be canceled and made absolute after four months from the date of expiry of appeal period if no appeal is preferred and in case of appeal as per direction of Appellate Court.

J.M.F.C.(O), Bhubaneswar

Dictated, corrected and pronounced in the open court on this the 17th day of November, 2014 under my hand signature and seal of this court.

J.M.F.C.(O), Bhubaneswar

List of witnesses examined for prosecution

P.W.1	Susanta Nayak
P.W.2	Arjun Nayak
P.W.3	Ananta Nayak
P.W.4	Brajabandhu Nayak
P.W.5	Deepak Nayak
P.W.6	Naresh Nayak
P.W.7	Subash Nayak
P.W.8	Abhimanyu Nayak
P.W.9	Lingaraj Nayak
P.W.10	Kishore Kumar Samal

List of witnesses examined for defence

N o n e

List of documents admitted in evidence for prosecution

Ext.-1	FIR
Ext.-1/1	Signature of PW.1 on Ext.-1.
Ext.10	Signature of PW.10 on Ext.-1.
Ext.-2	Seizure list.
Ext.-2/1	Signature of PW.1 on Ext.-2.
Ext.-2/2	Signature of PW.2 on Ext.-2.
Ext.-2/3	Signature of PW.3 on Ext.-2.
Ext.-2/4	Seizure list.
Ext.2/5	Signature of PW.10 on Ext.2/4.
Ext.-3	Zimanama.
Ext.-3/1	Signature of PW.1 on Ext.-3.
Ext.-3/2	Signature of PW.1 on Ext.-3.
Ext.-3/3	Signature of PW.10 on Ext.-3.
Ext.4	Signature of PW.4 on seizure list.
Ext.4/1	Signature of PW.5 on seizure list.
Ext.4/2	Seizure list.
Ext.4/3	Signature of PW.10 on Ext.4/2.
Ext.5	Spot Map.
Ext.5/1	Signature of PW.10 on Ext.-5.

List of documents admitted in evidence for defence

N I L

J.M.F.C.(O), Bhubaneswar

