

**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 : 18.11.2014

Date of Judgment : 20.11.2014

G.R. No. 2221/1988
Trial Case No. 3354/2009

S t a t e

vrs

Panchu Nayak, aged about 55 years,
S/o. Krushna Nayak,
Village-Basantapur, PS-Dasapala, Dist-Nayagarh.

... Accused

For offences punishable u/s 406 of IPC

For the Prosecution : A.P.P.

For the Defence : Gyana Ranjan Behera & his
Associate Advocates.

J U D G M E N T

The accused stands charged for offences punishable u/s. 406 of IPC for allegedly committing criminal breach of trust of a bicycle of the informant.

2. The case of the prosecution shortly runs as hereunder ;

That on 02.09.1988 at about 5.00 P.M the informant Jalandhara Samal appeared at Baliana PS and presented a written report to the effect that on 07.06.1988 the accused along with four labourers had come to the house of the informant for cutting the paddy. The present accused resided in

the house of informant for two days at Dedhal. During his stay, he had taken the green colour Atlas bicycle of the informant to bring some articles from the market. Thereafter, the accused didn't return to the house of informant. He also didn't return the bicycle of the informant. Basing upon such report of the informant Baliana PS Case No. 101 dtd. 02.09.1988 was registered and the matter was investigated into. After completion of investigation, charge sheet u/s 406 of IPC was submitted against the accused to face his trial in court of law. Hence, this case.

3. The plea of the accused could not be recorded due to want of incriminating material.
4. The point to be determined is as follows ;
 - (i) Whether on 07.06.1988 in the evening at Dedhal the accused being entrusted with the green Atlas bicycle of the informant committed criminal breach of trust in respect of such bicycle ?
5. To substantiate the charge, prosecution has examined four witnesses in all out of whom P.W.1, Jaladhara Samal is the informant and victim of this case. P.W.2, Umakanta Mohanty, P.W.3, Kulamani Samal and P.W.4, Bidyadhar Mallick are witnesses to occurrence. 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, P.W.1, the informant has deposed that the incident took place about 10 to 12 years back to the date of his deposition in Court (P.W.1 deposed on 09.07.2001). On that day, the P.W.1 had engaged five numbers of daily labourers for cutting paddy in his field. Out of five, four labourers left his house

after work. Accused stayed with P.W.1 in his house. One day the accused had taken the bicycle of informant to the market and he didn't return back. P.W.1 thereafter lodged the FIR vide Ext.-1. After six months he heard from a labourer that the accused is using his bicycle in his village. P.W.1 went to the village of accused, but couldn't find his bicycle. During cross-examination, P.W.1 stated that he cannot say the name of the labourer who informed him about the accused riding his bicycle. P.W.2 is a hearsay witness. Hence, his evidence cannot be taken into consideration. P.W.3 has deposed that about 10 to 12 years back to his deposition in Court four labourers had come to the house of informant to do cultivation work. Among them one stayed in the house of informant. The person who stayed in the house of informant took the bicycle of informant, but didn't return. He deposed to have accompanied P.W.1 to the village of accused at Dasapalla where the informant lodged a report at Dasapalla PS. He contradicted his statement before police regarding accompanying P.W.1 to the village of accused. P.W.4 has deposed that he could know from P.W.1 that one person who had come to cut paddy for informant had taken away his bicycle. P.W.4 is silent about involvement of present accused. Examination of rest of the witnesses including I.O was declined by the prosecution.

7. From the aforesaid prosecution evidence, it appears that P.W.1 has deposed that accused had taken away his bicycle. He is silent about the manufacturing company of the bicycle as well as its frame number. None of the witness has corroborated the evidence of P.W.1

that they had seen the accused taking the bicycle of P.W.1. P.W.2 is a hearsay witness and P.W.4 heard the occurrence from P.W.1. P.W.3 is also silent about the name of person among the labourers who had taken the bicycle of the informant. The occurrence took place on 07.06.1988. The FIR was lodged on 02.09.1988 i.e., after three months of occurrence. No explanation has been by any witness regarding the cause of delay in lodging FIR. Although, some material contradictions have been pointed out in the evidence of P.W.1 and P.W.3, the examination of I.O was declined and the defence couldn't able to confront the same to the I.O. As such none examination of I.O in this case has become fatal to prosecution. Moreover, neither the entrustment of bicycle to the accused is proved beyond doubt, nor the same has been recovered, for which it is not safe to hold that the accused committed criminal breach of trust of the property of informant. Benefit of doubt is extended to the accused.

In the result, I hold the accused not guilty of the offences punishable u/s 406 of IPC and acquit him there from u/s 248(1) of Cr.PC. The accused be set at liberty forthwith and he is discharged from his bail bond.

Enter the case as mistake of fact.

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

Dictated, corrected and pronounced in the open court on this the 20th 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

PW.1	Jalandhara Samal
PW.2	Umakanta Mohanty
PW.3	Kulamani Samal
PW.4	Bidyadhar Mallick

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.

List of documents admitted in evidence for defence

N I L

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

