

**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 : 02.12.2014

Date of Judgment : 04.12.2014

G.R. No. 544/2014
Trial Case No. 574/2014

S t a t e

vrs

1. Sanjeeva Paikaray, aged about 22 years,
S/o. Himansu Paikaray,
Village-Kanheipur G.P Nachuni, P.S.-Banapur, Dist-Khurda.
2. Balaram Swain, aged about 30 years,
S/o- Late Bhagirathi Swain,
Village-Rajabazar, Gajapati Nagar, PS-Jatni, Dist- Khurda.

... Accused Persons

For offences punishable u/s 394/332 of IPC

For the Prosecution : A.P.P

For the Defence : For accused no. 1) Sanatan Swain & his
Associates Advocate.
For accused no. 2) Debashis Ray Mohapatra &
his Associates Advocate

J U D G M E N T

The accused persons stand charged for offences punishable u/s.
394/332 of IPC.

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

That on 08.08.2014 at about 2.00 A.M the informant Debendra
Nayak appeared at Khurda Road G.R.P.S. and presented a written report to the

effect that the informant was working as Token Porter in East Coast Railway, Khurda Road Railway Station. On the same night, he was on duty. At about 12.40 PM while he was returning to S.S. Office on the Plat Form No. 3, two young culprits snatched away his Nokia Mobile Phone from his pocket. When the informant raised hullah, the culprits hurt his cheek with a small knife. On hearing hullah, T.P.M.A., Bijay Patra, T.N.C Paradeep Kumar Sathapathy along with GRP Staff who were on duty rushed to spot and chased the culprits. When they chased culprits, one culprit passed the stolen mobile phone to another culprit who fled away from the spot. However, one culprit was caught hold by the witnesses. On being asked, the culprit disclosed his name and address as Sanjeev Kumar Paikaray, Village-Kanheipur, PS.-Banapur, Dist-Khurda and the name and address of other culprit as Balaram Swain of Rajabazar, PS-Jatni, Dist-Khurda. Basing upon such report of the informant Khurda Road GRPS Case No. 56 dtd. 08.08.2014 was registered and the matter was investigated into. After completion of investigation, charge sheet u/s 394/332 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 could not be recorded due to want of incriminating material.

4. The points to be determined are as follows ;

(i) Whether in the night of 08.08.2014 at about 12.40 A.M. at Khurda Road Railway Station on Platform No. 3, the accused persons voluntarily caused hurt to the informant while committing robbery in respect of his Nokia mobile phone from his possession forcibly ?

(ii) Whether on the aforesaid date, time and place of occurrence the accused persons voluntarily caused hurt to the informant who was a public

servant, in order to deter him from his duty ?

5. To substantiate the charge, prosecution has examined two witnesses in all out of whom P.W.1, Debendra Nayak is the informant and victim of this case. P.W.2, Tapan Kumar Patnaik is a witness to the occurrence. Examination of the rest witnesses has been declined by the prosecution. Defence has examined none on its behalf.
6. P.W.1, the informant of this case has deposed that due to some misunderstanding there was some dispute with accused persons which he has settled amicably. He expressed his unwillingness to proceed further with this case. During cross-examination, P.W.1 admitted to have got no allegation against the accused persons. He deposed that he neither knows the contents of F.I.R nor he remembers the incident. P.W.2 stated that nothing was seized in his presence. Examination of the rest witnesses has been declined by the prosecution.
7. From the aforesaid evidence of prosecution witnesses it appears that none of the witnesses has whispered a single word against the accused persons. FIR is not a substantive piece of evidence but it can be used only to corroborate and contradict the maker thereof, while the informant (P.W-1) being the maker of the FIR (Ext.-1) does not corroborate the FIR story, prosecution cannot take any benefit out of the FIR (Ext.-1). Under the above circumstances, I find no incriminating material against the accused persons.

In the result, I hold the accused persons not guilty of the offences punishable u/s 394/332 of IPC and acquit them there from u/s 248(1) of Cr.PC. The accused persons be set at liberty forthwith and they are discharged from their

bail bonds.

Enter the case as mistake of fact.

The zimanama in respect of the seized mobile phone be cancelled and made absolute and the seized knife be destroyed, 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 4th day of December, 2014 under my hand signature and seal of this court.

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

List of witnesses examined for prosecution

PW.1	Debendra Nayak
PW.2	Tapan Kumar Patnaik

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.-2	Seizure list.

List of documents admitted in evidence for defence

N I L

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

