

IN THE COURT OF THE ADDL.C.J.M, B H U B A N E S W A R.

Present:
Sri P.L.Satpathy,LL.B.,
Addl.C.J.M,Bhubaneswar.

G.R.CASE NO.1742/02

(Arising out of Baliana P.S. Case No.78 Dated 14.6.02)

S T A T E Prosecution.
.....Versus.....

1. Ghanasyam Mohapatra, aged about 38 years,
S/o Narahari Mohapatra, Vill.Rajatoi, PO: Sampur
PS: Pipili, Dist: Puri

..... Accused person.

OFFENCE U/S.279,337,338 I.P.C

Counsel for the prosecution : Sri B.R Misra A.P.P, Bhubaneswar.

Counsel for the defence : Sri Tusarkanta Misra & Associates, Advs, BBSR.

Date of argument: 7.11.2013

Date of judgment: 8.11.2013

J U D G M E N T

1. In this case the accused named above stands his trial U/Ss. 279,337, & 338 IPC.

2. The prosecution case, in short, is that:

On 14.6.02 at around 5.30 am while Charulata bus bearing Regd. No. OSU 9192 was going from Berhampur to Lalitgiri carrying groom party had parked on the public road, NH.5(Bhubaneswar-Cuttack Road) in front of Lakheswar petrol pump near Pahal police outpost under Baliana PS without moving engine. By that time a mini bus bearing Regd. No. OR-04-7328 carrying passengers was coming from Bhubaneswar side to Cuttack side with high speed and violently hit on the backside of Charulata bus as a result of which the backside of Charulata bus and the front side of the alleged mini bus were damaged and three occupants namely Brundabana Kare, Gobinda patra and Sachidananda Nayak of the mini bus received multiple grievous injuries on their person and another occupants of the said mini bus namely Ghanasyama Mohapatra received minor injuries on his person. Sri Hemanta

Ku. Patra driver of Charulata bus (PW.2) lodged a written FIR (Ext.4) about the accident at Pahal police outpost. The ASI of Pahal Outpost entered the facts of Ext.4 into the station diary entry and send the original FIR (Ext.4) to the OIC, Baliana PS for registration of the case and started investigation into the case. On the basis of the Ext.4 the OIC, Baliana PS registered PS Case No.78 dtd. 14.6.02 U/Ss.279,337,338 IPC against the driver of the alleged mini bus and directed the ASI, Pahal outpost to continue the investigation. During the course of investigation the IO of the case visited the spot, prepared the rough spot map, examined the informant as well as other witnesses in this case, seized both the accident involved vehicle along with its relevant documents, driving license of both the drivers of the vehicles under seizure list (Ext.5) and left the seized two bus and it's relevant documents in zima after executing zimanama and send the injured to the medical for their examination and arrested the driver of the accident mini bus and released him on bail. After receipt of injury reports and completion of the investigation submitted charge sheet against the present accused U/Ss.,279,337,338 IPC before the court to face his trial in the court of law.

3. The case of the defence is one of complete denial. The accused in his statement recorded U/s.313 CrPC denied to have his any involvement with the alleged accident.

4. The points for determination in this case are as follows:

- i) Whether on 14.6.02 during morning hour at around 5.30 am the accused was driving the mini bus bearing Regd. No. OR 04 7328 (new bus) on public road, NH.5, BBSR-Cuttack road ?
- ii) Whether the said driving of the accused was rash and negligent?
 - iii) Whether the accused due to his said rash and negligent driving caused the alleged accident by giving hit to the back side of Charulata bus bearing Regd. No. OSU -9192 which was parked without moving engine on NH.5 in front of the Lakheswar petrol pump near at Pahal Outpost under Baliana PS?
 - iv) Whether due to said accident the occupants of the mini bus received grievous and minor injuries on their persons?

5. To establish its case prosecution has examined 5 witnesses, in all, on its side. PW.2 is the informant who was the driver of the Charulata bus. PW.1

and 5 were the doctors who had medically examined the injured of the accident. PW.3 and 4 were the witnesses in respect of seizure of the accident vehicles along with it's relevant documents under seizure list(Ext.5). Defence adduced no evidence on its side.

6. Minute examination of the evidence brought on the record shows that it is the reliable evidence that on 14.6.02 at around 5.30 am the mini bus bearing Regd. No. OR 04 7328 carrying passengers while going from Bhubaneswar to Cuttack on the way on NH.5 in front of Lakheswar petrol pump gave a hit to the back side of the Charulata bus bearing Regd. No.OSU 9192 as a result of which the backside of the Charulata bus and the front side of the mini bus were damaged and some occupants of the mini bus received multiple severe injuries on their persons. The defence has no dispute about the alleged accident but it is the case of the defence right from beginning to end that the accused was no way involved in the alleged accident and that he was not driving the mini bus at the time of accident. Now the question arises for consideration is that the driver who was driving the mini bus at the time of accident was none the else but is the present accused. Now in the instant case it is for the prosecution to establish that the present accused was driving the said mini bus at the relevant time of accident but none the else. After through scrutiny of the evidence led by the prosecution it is seen that the evidence led by the prosecution in this case falls short of this. PW.1 and 5 are two doctors who admittedly had not seen the accident. Similarly Pws. 3 and 4 were two witness to the seizure. It is not the case of the prosecution that PW.3 and 4 were the witness to the accident. PW.2 who is the informant in this case was the driver of the Charulata bus(the accident involved bus) in his evidence he has not uttered a single word that the present accused was driving the accident mini bus at the time of accident. More over the accused was not named in the FIR. Above all, on the basis of the evidence led by the prosecution in this case it can not be safely said that the accused was driving the accident mini bus at the relevant time and he was responsible for the alleged accident. In view of my aforesaid discussion I am of the opinion that the prosecution has failed to establish it's case against the accused and as such the accused is entitled to be acquitted.

In the result, I hold the accused is not guilty U/Ss.279,337,338 IPC and acquit him therefrom U/s.255(1) CrPC. The accused is on court bail, he be discharged from his bail bonds.

Enter this case as "Mistake of Fact"

ACJM,Bhubaneswar.

The zimanama in respect of the seized accident vehicles and its relevant documents as well as the driving licenses are here by canceled and the same be returned to the person who is the real and true owner of it's after four months, if there will be no appeal.

ACJM,Bhubaneswar.

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 8th day of November, 2013 under my hand and seal of this court.

ACJM,Bhubaneswar.

List of P.ws. examined for prosecution.

P.w.1 Raghunath Nayak
P.w.2 Hemanta Ku. Patra
P.w.3 Shyamsundar Sahoo
P.w.4 Upendra Ku. Sahoo
P.w.5 Dr.Jatan Ku. Sarangi

List of D.ws.examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1 Medical examination report of injured Burndaban Kore
Ext.1/1 Signature of p.w.1 on Ext.1
Ext.2 Medical examination report of injured Govinda Patra
Ext.2/1 Signature of PW.1 in Ext.2
Ext.3 Medical examination report of injured Sachidananda Nayak
Ext.3/1 Signature of PW.1 in Ext.3
Ext.4 Written FIR
Ext.4/1 Signature of PW.2 on Ext.4
Ext.5 Seizure list dtd. 14.6.02
Ext.5/1 Signature of PW.2 in Ext.5
Ext.5/2 Signature of PW.3 in Ext.5
Ext.5/3 Signature of PW.4 in Ext.5
Ext.6 Injury report of Ghanashyam Mohapatra
Ext.6/1 Signature of PW.5 in Ext.6

List of exhibits marked for defence.

N i l.

List of M.Os.

Nil

AC.J.M,Bhubaneswar.

