

**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 : 03.04.2014

Date of Judgment : 05.04.2014

G.R. No. 2804/2008  
Trial Case No. 759/2010

S t a t e

vrs

1. Jogendra Moharana, aged about 76 years,  
S/o. Late Bairagi Moharana,
2. Jayaram Rout, aged about 64 years,  
S/o- Late Kulamani Rout  
Both are of Vill: Patia, P.S- Chandrasekharpur,  
Dist- Khurda.

... Accused Persons

For offences punishable U/s. 420/294/506/34 of IPC

For the Prosecution : A.P.P.

For the Defence : Sri Kamadev Tripathy &  
Associate Advocates

J U D G M E N T

The accused persons stand charged for offence punishable u/s  
420/294/506/34 of IPC.

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

That on 24.06.1991 the accused no. 1 executed a sale deed vide RSD No. 4418 in favour of the complainant for the land bearing plot no. 731/1609 and 730/1608 under Khata No. 177 of Mouza Patia for area Ac 0.35 Dec and Ac 0.04 Dec respectively in presence of witness accused no. 2. After a long gap the complainant could know that the Plot No. 730/1608 in the RSD was wrong. The complainant requested the accused no. 1 for correction of sale deed. He also requested accused no. 2 for correction of sale deed. But the accused persons did not agree for correction of sale deed. They did not pay any heed to the request of the complainant even made through his lawyer. On 08.06.2008, the complainant had been to the house of accused no. 1 where accused no. 2 was present. When the complainant requested them for correction of sale deed. Both the accused persons abused him in obscene words and threatened him to kill if the complainant again come with same request.

The complainant filed a complaint petition vide ICC No. 2754/2008 in the court on 09.06.2008 and the complaint petition was sent to IIC, Chandrasekharpur P.S for registration and investigation. Basin upon such complaint of the complainant Chandrasekharpur PS Case No. 236/2008 was registered and the matter was investigated into. After completion of investigation, charge sheet u/s 420/294/506/34 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 clean denial and false implication.

4. The points to be determined are as follows ;

(i) Whether the accused persons on 24.06.1991 in furtherance of their common intention cheated the informant by dishonestly inducing the complainant Babaji Jena to purchase the land of accused, Jagendra Moharana at Mouza Patia bearing Plot No. 731/1608 and executed sale deed in respect of Plot No. 730/1608 falsely and thereby induced the complainant to deliver the consideration amount thereof ?

(ii) Whether on 08.06.2008 at 11.00 A.M at Village-Patia the accused persons in furtherance of their common intention, abused the complainant by uttering any obscene words in or near a public place causing annoyance to the complainant and others ?

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

5. To substantiate the charge, prosecution has examined four witnesses in all out of whom PW.1, Babaji Sahoo is the complainant and

victim of this case, P.W.2, Bijay Kumar Rout, P.W.3, Gandharba Moharana and P.W.4, Basanta Kumar Jena are all witnesses to occurrence. Defence has examined none on its behalf.

6. PW.1, the complainant has deposed that he had purchased a piece of land bearing plot no. 731/1608 and 731/1609 vide Khata no. 177 from accused, Jogi Moharana on 24.06.1991 for an area of Ac 0.07 Dec vide sale deed no. 4418. Later on he could know that the Plot No. have been wrongly mentioned in sale deed. He requested the accused, Jogi Moharana for correction of sale deed. But, both the accused persons abused him in filthy language and threatened to kill. During cross-examination, P.W.1 admitted that he is in possession of the purchased land since last 20 years. He admitted to have not produced the original sale deed in court. He admitted that he had exchanged his land with accused, Jogi Moharana. He admitted to have not paid any consideration amount to the accused. He failed to disclose the date of occurrence of uttering obscene words and threatening by accused persons. P.W.2, P.W.3 and P.W.4 have deposed that the complainant has purchased the land of accused, Jogi Moharana. P.W.2 and P.W.4 are silent about any mistake in sale deed or about any other occurrence. P.W.3 deposed that he heard that the Plot No. in sale deed has been wrongly mentioned. The hearsay evidence of P.W.3 cannot be relied upon.

7. In order to prove an offence of cheating, the prosecution must establish the dishonest intention of the accused persons at the time of occurrence. It reveals from the evidence P.W.1, the complainant of this case that the land in question has already been occupied and possessed by him after execution of sale deed. While the accused, Jogi Moharana has delivered the possession of the actual land to the complainant, his intention to cheat the complainant is under shadow of doubt. Moreover, the original sale deed has not been produced or proved by the prosecution to verify the plot number in question. Without proof of the sale deed alleged to be wrong. The case of the prosecution cannot be relied upon.

8. Regarding the offence of uttering obscene words, the complainant is himself silent about the actual words uttered by the accused persons. None of the witness has corroborated the evidence of P.W.1 regarding uttering of obscene words by accused persons or issuing threats to the complainant. Under the above circumstances, the allegation of uttering obscene words and issuing threats is not proved beyond doubt. The benefit of doubt is extended to the accused persons.

In the result, I hold the accused persons not guilty of the offences punishable u/s 420/294/506/34 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 document be cancelled 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.

Sd-  
05.04.2014  
J.M.F.C.(O), Bhubaneswar

Dictated, corrected and pronounced in the open court on this the 5<sup>th</sup> day of April, 2014 under my hand signature and seal of this court.

Sd-  
05.04.2014  
J.M.F.C.(O), Bhubaneswar

List of witnesses examined for prosecution

PW.1	Babaji Jena
P.W.2	Bijay Kumar Rout
P.W.3	Gandharba Moharana
P.W.4	Basanta Kumar Jena

List of witnesses examined for defence

N o n e

List of documents admitted in evidence for prosecution

Ext.1	FIR
Ext.1/1 to 1/5	Signature of PW.1 on Ext.-1.
Ext.2	Seizure list
Ext.2/1	Signature of P.W.1 on Ext.-1.
Ext.3	Zimanama

Ext.3/1

Signature of P.W.1 on Ext.-3.

List of documents admitted in evidence for defence

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Sd-

05.04.2014

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