

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE -
CUM - ASSISTANT SESSIONS JUDGE, MALKANGIRI**

Present : Dr. Anil Kumar Dutta,
M. A. (Economics) LL.M., Ph.D (Law)
C.J.M. & Asst. Sessions Judge, Malkangiri.

Criminal Trial No.01 of 2018 (T)

(C.T. No.01 of 2018 of Sessions Judge, Malkangiri,
arising out of Malkangiri P.S. Case No.119,
dt.21.10.2015 by the learned S.D.J.M., Malkangiri
in G.R. Case No.179/2015)

The State Complainant

Versus

Dhiraj Kumar Nayak, aged about 29 years,
S/O Rama Kanta Nayak
Village : 119 Colony, Malkangiri
P.S./ Dist:- Malkangiri Accused.

Advocate for the Prosecution : Sri Gopal Krushna Panda
Addl. P.P., Malkangiri

Advocate for the Defence : Sri Manas Kumar Swain
& Associates, Advocates, Malkangiri.

Date of conclusion of argument : 15.03.2018

Date of delivery of Judgment : 19.03.2018

OFFENCES : U/S. 323/325/307/506 OF IPC

J U D G M E N T

Accused stood charged for the commission of
offence under Section 323/325/307/506 of Indian Penal
Code.

2. The prosecution case in brief as reveals from the plain paper F.I.R, seizure list, injury report and other related documents that on 21.10.2015 at about 10.00 A.M. one Rama Kanta Nayak son of late Raghunath Nayak resident of 119 Colony, Malkangiri asked his middle son Dhiraj Kumar Nayak why he had taken away money from his pocket. On asking of the informant, accused Dhiraj Kumar Nayak gave a fist blow and pushed to his father Rama Kanta Nayak as a result to which he fell down on the ground, sustained fracture on his left knee. Accused also abused and threatened to the informant. Police had sent injured to District Headquarters Hospital, Malkangiri for medical examination and registered P.S. Case No.119 of 2015 and investigated the incident. Accused was arrested and forwarded to the Court. After completion of investigation, the investigating officer had submitted charge sheet against the accused for the offence u/s 323/325/307/506/34 IPC.

3. Plea of the defence is complete denial of the alleged assault to his father Rama Kanta Nayak and of false implication.

4. Points which is needed for determination:-

- (i) Whether on 21.10.2015 at about 10.00 A.M. at village 119 Colony, Malkangiri, the accused Dhiraj Kumar Nayak voluntarily caused to his father Rama Kanta Nayak by giving pushes and fist blow on his chest?

(ii) Whether on 21.10.2015 at about 10.00 A.M. at village 119 Colony, Malkangiri, informant Rama Kanta Nayak had sustained fracture injury on his left knee due to push of his son and he had medically examined on police requisition?

(iii) Whether on 21.10.2015 at about 10.00 A.M. at village 119 Colony, Malkangiri, accused Dhiraj Kumar Nayak committed criminal intimidation by giving threatening to his father Rama Kanta Nayak and caused alarm to him?

(iv) Whether on 21.10.2015 at about 10.00 A.M. at village 119 Colony, Malkangiri, accused Dhiraj Kumar Nayak intending or knowing to kill of his father Rama Kanta Nayak has giving fist blow on his chest and pushed him for which Rama Kanta Nayak fell down on the ground and sustained fracture on his left knee?

5. In order to prove the offence, against the accused, prosecution has examined as many as seven witnesses. Out of whom P.W.1 Dr. Gopabandhu Behera, is the medical officer who examined informant and accused on police requisition, P.W.2 Rama Kanta Nayak, is the injured and informant, P.W.3 Smt. Laxmi Priya Nayak is the wife of informant, P.W.4 Manoj Mishra and P.W.6 Narasingh Mohanty are two independent witnesses, P.W.5

Manoranjan Nayak is the son of informant and elder brother of accused and P.W.7 is the investigation officer in this case.

On the other hand, defence has not examined any witness in its favour.

6. So far, evidence available on record to prove the offence, it is found that neither informant injured Rama Kanta Nayak (P.W.2) nor his wife Laxmi Priya Nayak (P.W.3) have deposed that accused Dhiraj Kumar Nayak had caused any assault to P.W.2 on 21.10.2015. P.W.2 Rama Kanta Nayak, his wife Laxmi Priya Nayak (P.W.3) and his son Manoranjan Nayak (P.W.5) are the family members of the accused. P.W.2 and P.W.3 deposed that there was a family dispute with the accused. Accused has mental derangement. He had quarrelling with P.W.2 regarding taking of money from the pocket of P.W.2. P.W.2 fell down on the ground and sustained injury on his left knee. Being aggrieved on such incident P.W.2 had lodged F.I.R. at P.S. that F.I.R. had marked as Ext.3 and Ext.3/1 is the signature of P.W.2. Police had sent P.W.2 to DHH, Malkangiri for medical treatment. The injury report received from the medical officer has been marked as Ext.2 by the medical officer Dr. Gopabandhu Behera (P.W.1). The medical officer deposed that displacement of left patella bone of left leg of P.W.2. The nature of injury was grievous and might have been caused by use of force or assault. The medical officer (P.W.1) also admitted in his evidence that injuries can be possible by dashing against

the wall and falling on the hard surface. On injury report the nature of injuries has not been mentioned. The medical officer has not made any recommendation for such dislocation and no X-ray plate has been produced by him. P.W.5 Manoranjan Nayak is the elder brother of accused and son of informant. He deposed that he has no knowledge regarding occurrence. He was not present in his house. He is staying with his wife and children at Medical chowk, Malkangiri in his official quarter. His parents are staying with his younger brother at 119 Colony, Malkangiri. P.W.5 has shifted his father to DHH, Malkangiri for medical treatment. P.W.4 Manoj Mishra and P.W.6 Narasingha Mohanty are two non official independent witnesses. They are the neighbours of informant and accused. They are expressed his ignorance about the occurrence. P.W.7 K. Prasad Rao Dora, investigating police officer. He had examined the witnesses and issued injury requisition to medical officer for medical examination of informant Rama Kanta Nayak. He had prepared spot map which has been marked as Ext4 and Ext.4/1 is the signature of P.W.7 and after completion of investigation, P.W.7 submitted charge sheet against the accused for the offence u/s 323/325/307/506 IPC.

7. On careful analysis of the entire evidence on record, it is found that neither informant injured nor any of his family members P.W.3 and P.W.5 have deposed that accused had assault his father intending or knowing to kill his father. On the contrary informant and his wife also

admitted in their evidence that there was mental derangement of the accused. Due to family dispute and tension informant had fell down on the ground and sustained injury on his knee. So intention or knowledge of the accused to assault or kill his father is not found in the evidence of any witness. So offence u/s 323/325/307/506 IPC have not been proved against the accused by the prosecution beyond all reasonable doubts.

8. In the result, accused is found not guilty for commission of offence Under Section 323/325/307/506 IPC and he is acquitted of that offence under the provision of section 235(1) of Cr.P.C on benefit of doubt. He is set at liberty forthwith. His bail bond is stands cancelled.

Enter this case as a mistake of fact.

**C.J.M - CUM - ASST. SESSIONS JUDGE,
MALKANGIRI**

The Judgment is transcribed to my dictation, corrected by me and pronounced in the open court on this the 19th day of March, 2018 given under my hand and seal of this Court.

**C.J.M - CUM - ASST. SESSIONS JUDGE,
MALKANGIRI**

Witnesses Examined for Prosecution:-

P.W.1 : Dr. Gopabandhu Behera
P.W.2 : Rama Kanta Nayak
P.W.3 : Laxmi Priya Nayak
P.W.4 : Manoj Mishra
P.W.5 : Manoranjan Nayak
P.W.6 : Narasingh Mohanty
P.W.7 : K. Prasad Rao Dora

Witnesses Examined for Defence:

None

Documents Marked for Prosecution:

Ext.1 : Injury Report

Ext.1/1 : Signature of P.W.1 on Ext.1

Ext.2 : Injury Report

Ext.2/1 : Signature of P.W.1 on Ext.2

Ext.3 : F.I.R.

Ext.3/1 : Signature of P.W.2 on Ext.3

Ext.3/2 : Endorsement and signature of IIC on Ext.3

Ext.4 : Spot map

Ext.4/1 : Signature of P.W.7 on Ext.4

Document's marked for defence:

NIL

M.O.'s marked for prosecution:

NIL

M.O.'s marked for defence:

NIL

C.J.M - CUM - ASST. SESSIONS JUDGE,
MALKANGIRI