

The Court of JM 1st Class, Ramgarh
Present: Mrs. Smriti Tripathi
Judicial Magistrate
20th December, 2022
District: Ramgarh
G.R. Case No. 975/2017
CNR No. JHRG030003822017
(Mandu (Kujju) PS Case No. 221/2017)

Informant	State (Through Sunil Bansal)
Represented By	<i>Smt. Manju Kachchap, Ld. APP</i>
Accused	1. Md. Israil @ Molvi Kabadi, male, aged about 55 years [A1] 2. Md. Sahban s/o Md. Israil, male, aged about 25 years [A2] Both r/o Mauza Naisarail, P.S- Ramgarh, District. Ramgarh
Represented By	<i>Sri Abhishek Kumar, Ld. Advocate</i>

Date(s) of Offence	05.09.2017
Date of FIR	07.09.2017
Date of Chargesheet	06.04.2018
Date of framing of charge	30.07.2018
Date of Commencement of evidence	14.09.2018
Date of Judgment is reserved	17.12.2022
Date of Judgment	20.12.2022
Date of Sentencing Order, if any	N/A

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, CrPC.
A1	Md. Israil @ Molvi Kabadi	None	04.07.18	s. 147, 148, 323/149, 504/149, 506/149 of IPC	Acquitted	None	N/A
A2	Md. Sahban	None	04.07.18	s. 147, 148, 323/149, 504/149, 506/149 of IPC	Acquitted	None	N/A

J U D G M E N T

1. The afore-named accused persons (hereinafter referred to as "**A1 & A2**") are facing trial for charges framed u/s. 147, 148, 323/149, 504/149, 506/149 of The Indian Penal Code, 1860 (Hereinafter referred to as the "**IPC**").
2. The compendious case of prosecution, founded upon written report of Sunil Bansal and Deepak Raj Manglam (hereinafter referred to as the "**informants**") is that Some lands pertaining to khata no. 29 & 07 of plot no. 309 Rakba 80 decimal, plot no. 310 Rakba 83 Decimal, Plot no. 336 rakba 47 decimal, plot no. 305 rakba 30 decimal, plot no. 303 rakba 77 decimal, plot no. 310 rakba 31 decimal, plot no 336 rakba 72 decimal, total measuring area 4.20 decimal were bought by Trilok Chand Bansal and Uma Manglam who came in possession thereon. On 05.09.2017, at about 10:30 AM, when they reached these lands to construct a boundary wall, the Naisarai villagers Md. Israil and his son Md. Sahban and 8-9 people armed with *lathi-dunda* came there and started abusing and assaulting them. On asking the reason for this, they threatened kill them and lodge a false case if the work isn't stopped immediately, and left. Hence, this case.
3. After investigation, the Investigating Officer submitted **charge-sheet** bearing no. 50/2018 dated 06.04.2018 against A1 and A2 for the offence u/s. 147, 148, 323/149, 504/149, 506/149 of IPC and thereafter, **cognizance** was taken under for the same offence by the then court on 14.05.2018.
4. After supply of **police papers**, on 30.07.2018 **charges** were framed against A1 and A2 u/s. 147, 148, 323/149, 504/149, 506/149 of IPC and content of the charge was read over to them in simple Hindi to which they pleaded not guilty and claimed to be tried.
5. After closing the **prosecution evidence** on 26.07.2022, the **statements** of both A1 and A2 were recorded u/s. 313 of CrPC on 01.08.2022 in which they denied the material available against them and claimed to be innocent.
6. Thereafter, the defence was provided with an opportunity to adduce evidence on its behalf, if any and they produced certain documentary evidence after which, upon prayer of the Id. defence counsel, the **defence evidence** was closed and the matter was posted for arguments.
7. The prosecution argued that the case has been supported by the witnesses beyond all reasonable doubt which warrants conviction of A1 & A2.
8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out from the deposition of the witnesses. It was also submitted that the prosecution has failed to prove the guilt of A1 & A2 above named beyond reasonable doubt. The Id. Counsel for the defense also submitted that the FIR has

been lodged after a delay of two days, which is unreasonable, as they were just 15 minutes away from the Police Station, as both the informants have themselves deposed, and PW03 also had his driver present. Relying on P3 he argued that it only goes to show that the instant case is not borne out of facts but rather out of land dispute, that too at the behest of the informants who are violating the order of SDM, Ramgarh. Coming to the depositing of PW04, he submitted that he has also deposed that during his investigation he found that the instant land belongs to A1. Thus, he argued that it were the informants who were encroaching A1's land and not *vice-versa*. Finally arguing that the whole prosecution case is founded on the deposition of 2 witnesses, who want to send A1 and A2 to jail and snatch his land, prayer was made to acquit them.

9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charges levelled against A1 and A2 beyond reasonable doubt or not. On the bedrock of the charges framed, the prosecution case will be examined on the following touchstones for the sake of a more structured analysis:

9.1 Did A1 and A2, being a part of unlawful assembly with common object, cause hurt to the informants?

9.2 Did A1 and A2, being a part of unlawful assembly with common object, insult the informants intentionally, knowing that such insult was likely to provoke them to break the public peace?

9.3 Did A1 and A2, being a part of unlawful assembly with common object, criminally intimidate the informants?

9.4 Are A1 and A2 guilty of committing rioting? If yes, are they guilty of committing rioting armed with deadly weapon(s)?

10. Before the court dwells to consider the points of determination as stated above, it would be apt to enlist the evidences brought in this case by all sides for the sake of brevity and proper reference, reference to only the relevant portions of which is made at relevant parts of this judgment, although they have all been perused by this court in detail. These are:

List of Prosecution/Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence
PW1	Deepak Raj Manglam	Interested Witness [Informant]
PW2	Md. Aarif	Hostile Witness
PW3	Sunil Bansal	Interested Witness [Informant]
PW4	Vinod Kumar	Official Witness [Investigating Officer]

B. Defence:

Rank	Name	Nature of Evidence
--- nil ---		

List of Prosecution/Defence/Material ExhibitsA. Prosecution:

Sr. No.	Exhibit Number	Description	Objection
1.	Ext.1	Written report	Without Objection
2.	P 1/2/PW4	Forwarding report signed by Kujju OP	Without Objection
3.	P 1/3/PW4	Registration of the case	Without Objection
4.	P 2/PW4	Formal FIR	Without Objection
5.	P 3/PW4	Letter Pad of IDBI Bank addressed to O/C Kujju OP	Without Objection

B. Defence:

Sr. No.	Exhibit Number	Description	Objection
1.	D1	Certified Copy of FIR	Without Objection
2.	Mark X	Photocopy of Sale Deed No. 1634	Without Objection

C. Material Objects:

Sr. No.	Exhibit Number	Description
--- nil ---		

FINDINGS

Did A1 and A2, being a part of unlawful assembly with common object, cause hurt to the informants?; Did A1 and A2, being a part of unlawful assembly with common object, insult the informants intentionally, knowing that such insult was likely to provoke them to break the public peace?; Did A1 and A2, being a part of unlawful assembly with common object, criminally intimidate the informants?; Are A1 and A2 guilty of committing rioting? If yes, are they guilty of committing rioting armed with deadly weapon(s)?

11. For the sake of better appreciation, all these points of determination are being taken up together. In order to adjudicate upon them, it would be pertinent to have a look at the evidences the prosecution has filed to support its case.

11.1 PW01 deposed that the alleged incident took place on 05.09.2017 at 10:30 PM, while he was involved in raising the height of boundary wall at his land situated in village Rauta. These lands of khata no. 29, plot no. 7, 303, 305, 309, 310 and 336,

total measuring 4.20 acres were purchased from Sangita Poddar and Rajni Banka and were registered in the name of Trilok Chand Bansal and Umaraj Manglam and the informants had possession over the land which was also mutated in their name. In the meantime, A1 and A2 and others armed with *lathi-dunda* came there and started assaulting and abusing them while threatening them to stop the construction work else they will be implicated in a false case. Thereafter, he gave a written report to the police station and upon his identification, it was exhibited as Ext.1. He further deposed that his statement was recorded by the Investigating Officer and he identified A1 and A2 who were present in the court that day. In his cross examination, he deposed that Sunil Bansal is his friend and not his relative. He then deposed the surroundings of the said land, as per which, on one side is a functional road which readily sees many passerby during the alleged occurrence, 25-30 people were present there. He then deposed that and the distance of the alleged place of incident from Kujju OP is about 2.5 to 3kms which can be covered on a vehicle in about 15minutes. Further, that he obtained information relating to the said land and saw a copy of Register-II before purchasing it. He then denied the right or title of A1 over the said land and alongwith the knowledge that he had obtained loan against this land. Further, that Baleshwar Prajapati, who is alive resides near Bazar Tand and was called to the concerned PS after the informants went there. He then deposed that A1 has also lodged a case against them. Finally, that police recorded his statement the day after the alleged incident took place, at the place of the alleged incident.

11.2. PW02 turned hostile and did not support the prosecution case.

11.3. PW03 deposed that the alleged incident took place on 05.09.2017 at about 10:30 AM while he was present at his plot with Dipak Ram Manga for raising boundary wall in his rayti land bearing Khata no. 29 and 07, plot no. 303, 305, 309, 310 and 336 total area 4.2 acres, situated at Sewta Marar. In the meantime, Md. Israil and his son Shaiwal came there armed with *dunda* and assaulted him with the *lathi* due to which he sustained injury on his shoulder while Dipak sustained injury on his back. On hearing *hulla*, his driver Chhotu Tiwari came there and he went to the police station for registering FIR. Upon his identification, Ext. 1/1 was exhibited. Police took his statement with respect to alleged incident. He identified A1 who was present that day and claimed to identify A2 as well. In his cross-examination, he deposed the surroundings of the said land, as per which, on one side is a functional road which readily sees many passerby and that the distance between the alleged place of incident to Kujju OP can be covered in about 15minutes. Further, that he has not filed any document relating to his medical treatment. Further, that the earlier boundary on the said land was of lower height. He corroborated PW03's statement regarding due

diligence prior to purchase of the said land, and denied A1's right, possession, boundary-wall construction-work over it, or that he has mortgaged the said land to IDBI Bank who have also put up their board, and admitted that A1 has filed a case against him. Further, that Baleshwar is his own staff who resides somewhere in Bazar Tand. Finally, that the police recorded his statement a day after the alleged incident, but also enquired from him on the date of the alleged incident.

11.4. PW04 deposed that on 07.09.2017, he was posted at Kujju OP as an ASI and was handed over the charge of investigation of this case. After entering the written report in the case diary, he recorded restatement of both Dipak Raj Manglam and Sunil Bansal who supported the FIR. During his investigation, he visited and inspected the alleged place of incident and enquired about it as a result of which, he procured P3/PW4 In para 4 he alongwith other police force reached to the place of incident and inspected the place and interrogated with local people. In his cross-examination, he deposed that charge of the investigation was handed to him at the police station. The incident took on 05.09.2017 but written complaint was given to the Police Station on 07.09.2017 at 5:30 PM. Further, that the place of alleged incident is 7kms away from Bazar Tand and 4kms away from the Police Station. Further, that during investigation, he did not record the statements of passerbys or the onlookers/eye-witnesses who were indeed present and that he found that the said land was purchased by A1 and who has possession over it, but it was mortgaged to a bank and the informants have encroached it.

11.5 The prosecution has also filed P3/PW4 which upon a bare perusal of which, it only comes to light that the informants and A1 have locked horns over the said land. The Bank has stated here that A1 had mortgaged the said land but informants and others are raising construction over it and despite order from SDM, Ramgarh restraining it, they are continuing the same and violating this order.

12. The defense has, on the other hand produced D1, which is certified copy of the FIR filed against the informants by A1 and Mark X which is not being discussed being an unproved secondary evidence. Basing on these, the Id. defense counsel argued that the instant case is false as the real dispute between both the sides is concerning the said land and not concerning any criminal act done by A1 or A2.

13. Having gone through the prosecution evidence, it firstly appears that both the sides have locked horns over the said land. Now, coming to the charges levelled, as to the allegation of rioting, it has only been supported by the informants who are both interested parties. No independent witness or evidence has been produced for the same. The allegation regarding an unlawful assembly has also not been supported by the prosecution case. Even

the informants have not deposed anything about the other members of the said unlawful assembly. As to hurt caused to the informants, this fact has also only been supported by them. They have themselves deposed that there were other many passerby, and one eye witness Chhota Tiwari, another namely Baleshwar but none of these have been produced by the prosecution. As per the Investigating Officer, there were various eye-witnesses but they have also not been produced. No medical document corroborating this allegation has also been filed. Same is the case for allegations concerning criminal intimidation and intentional insult with a view to cause informants to breach public peace. The prosecution case is shorn of a single piece of evidence which would support the case of the informants. It in fact appears that the dispute between both the sides is civil in nature which has been given criminal contour, and the informants have not come to the court with clean hands.

14. Thus, this court is of the considered opinion that the prosecution has failed to substantiate the charge u/s. 147, 148, 323/149, 504/149, 506/149 of IPC. Hence, A1 and A2 are hereby **acquitted** in this case of all charges. A1 and A2 as well as their respective bailors stand discharged from the liabilities of their respective bail bonds.

Pronounced by me in open court.

(Dictated and corrected)

Sd/-

(Smriti Tripathi)
JO Code: JH02021
JM 1st Class, Ramgarh
Ramgarh, dated the 20th December, 2022

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