

IN THE COURT OF ADDL CHIEF JUDICIAL MAGISTRATE AT BONGAIGAON
G.R CASE NO 137/10

STATE

VS

GUNAJIT DAS

ACCUSED U/S 387IPC.

PRESENT : SRI DEBASHISH SAIKIA,AJS

SAMEER KUMAR NATH.....ADVOCATE FOR THE STATE

ARUN DEKA.....ADVOCATE FOR THE ACCUSED.

DATE OF HEARING.....15.6.13,3.7.13,2.5.14,27.5.14

DATE OF ARGUMENT.....20.10.14, 5.11.14.

DATE OF JUDGMENT.....5.11.14.

JUDGMENT

1) Informant Dr Sushanta Bhattacharjee lodged an ezaher on 16.3.10 before the S.P Bongaigaon P.S stating inter-alia that for about an month he was receiving constant threat over his phone demanding money in the name of ULFA. Informant further stated that a person identifying himself to be Mr Bharali used to call him from his phone number 9957379599 and used to demand money and that whenever he expressed his inability to pay demand the said person threatened him of dire consequences.

2) Police on receipt of the above complaint registered a case vide Bongaigaon P.S case no 42/10 u/s 387 IPC r/w sec 10/13 UA(P) act and started investigation of the case. On completion of investigation charge sheet was filed against the accused u/s 387IPC.

3) Cognisance of the case was taken and process was issued against the accused. On appearance of the accused copy of the case was furnished. Vide order dt 7.7.12 my learned predecessor in chair framed a formal charge u/s 387IPC which on being read over and explained the accused pleaded not guilty and claimed to be tried. Prosecution in order to prove its case examined four witnesses including the I/O.

4) The plea of the accused persons is that of total denial. Statement of the accused u/s 313 CrPC was recorded in which the accused reiterated his defence plea. Accused however declined to adduce evidence. I have heard arguments forwarded by the learned counsel of both sides.

The only point for determination is : Whether the accused in order to commit extortion put the informant in fear of death or grievous hurt ?

DISCUSSION,DECISIONS AND REASONS THEREFOR:

In order to bring home a charge u/s 387 IPC prosecution is supposed to prove the following ingredients that (i) That the accused put any person in fear, or (ii) the accused attempted to put any person in fear,of any injury and (iii) the accused did so in order to the committing of extortion and (iv) further the fear the victim was put to is one of death or grievous hurt.

Now in order to ascertain as to whether the prosecution has been able to prove the above ingredients the evidence of the prosecution witnesses have to minutely perused. Pw1 is the informant Dr Sushanta

Bhattacharjee. In his evidence Pw1 deposed that in between 15th February 2010 and 16th March 2010 he was regularly pressurized by a person identifying himself to be one Mr Bharali, a member of ULFA organization over his mobile by demanding ten lakhs from him. Pw1 further deposed that when he expressed his inability to pay the said amount the caller threatened to kill him if the demand was not met. PW1 further deposed that accused Gunajit one day came and asked him as to whether any person has demanded money from him and when he narrated about the demand so made over his phone by one person identifying himself to be Mr Bharali of ULFA organization, accused told him that the said organization has sent him to negotiate with him about the demand so made. Pw1 deposed that he knew accused Gunajit and later he came to know that he was involved with another in the instant case. PW1 also deposed that later when the said caller again demanded money he informed the matter to the S.P Bongaigaon in the form of a written ezaher which he identified as Ext1. PW1 however did not clarify as to how he came to know the involvement of accused in the instant case.

Pw2 is Monojit Das is witness to the seizure of a mobile handset from the accused vide seizure list Ext2. Pw2 clarified in his cross that the police told him that they have seized the said mobile handset from the accused and he was asked to put his signature on the seizure list, which he did. Pw3 another seizure witness Sanjay Borgoiary too deposed in tune with Pw2.

Pw4 is the I/O of the case S.I Paramanda Bora. In his evidence he deposed that in course of is investigation he has collected he phone subscriber call details of mobile number 9957379599 and it came to the fore that the said number belongs to a subscriber namely Hamida

Khatun but from the said phone number a male person makes the call. Pw4 further deposed that in course of the investigation it also came to light that the mobile number belonging to accused which is 9954665790 has connection with the mobile number from which the informant used to receive demand for money. Pw4 also deposed that when the accused was questioned he admitted his guilt before him. This in nutshell is the evidence on record.

A perusal of the evidence of the prosecution witnesses goes to show that there is no direct evidence against the accused. In the instant case the accused has not made any demand to the informant by himself and that prosecution contends that the accused is indirectly involved in the extortion. Prosecution has sought to bring home the charge against the accused on the basis of circumstantial evidence. The circumstantial evidence which the prosecution relies upon is:

- i) That the subscriber details, of the mobile number from which a person identifying himself to be Mr Bharali used to place demands of money to the informant, has shown that the accused Gunajit Das constantly kept contact with the said mobile number, thereby raising an inference that the accused was in hand in glove with the bearer of mobile number from which the demand orders are made to the informant and as such there is suspicion of the involvement of the accused.
- ii) that the accused has admitted his guilt before the I/O in course of the investigation.
- iii) That accused Gunajit himself came to the informant and after inquiring in respect of any demand for money by a organization , he revealed his intention of becoming the negotiator between the organization and the informant , as directed by the organization .

So far as the first circumstance is concerned, it appears that from the subscriber details it is found that the mobile number from which Mr Bharali used to make demand to the informant belongs to one Hamida Begum, but surprisingly the I/O has not examined the said Hamida Begum in the instant case to ascertain as to who uses her mobile to make demands to the informant. Again the I/O has also not collected any materials to show that the male voice from which calls are made from the mobile number belonging to Hamida Begum is that of the accused. The accused may have contact with the mobile number belonging to Hamida Begum, but in absence of any concrete evidence, the involvement of the accused in the above facts cannot be said to have established the involvement of the accused with the crime.

So far as second instance is concerned, the law is very clear that confession made by an accused before a police officer is not admissible in the eye of law, and hence the above circumstance is also of no help to the prosecution.

Coming to the third circumstance, the same also by itself would not establish that the accused was directly or indirectly involved in making a demand to the informant. What follows thereby is that accused may have come to negotiate with the informant on the direction of some other person or might have come on his own accord. But there is no evidence that the accused had himself taken part in placing the alleged demand by the name of "bharali" or that the accused was acting in concert with any other person, in making demand of money from the informant. Prosecution has failed to fill in the peg in the said circumstantial chain. Therefore the instant circumstance cannot by itself would establish the complicity of the accused particularly when

the informant never stated in his evidence that accused has also given him some sort of threatening to pay the money.

Hence considering all these shortcomings in the prosecution case I am of the measured view that the prosecution has miserably failed to bring home the charge against the accused beyond all reasonable doubt and as such the accused is held not guilty of the offence he is charged with.

ORDER

Accused Gunajit Das is acquitted of the charge u/s 387 IPC and is set at liberty forthwith.

Bail-Bond of accused shall remain in force for a period of six months from today.

Given under my hand and seal of this court on the 5th day of November 2014 at Bongaigaon.