

For the Prosecution : Sri S.K.Barik, Addl.P.P.
For accused No.1,3 & 4 : Sri S.Pati & Associates.
For accused No.2 : Sri B.K.Tripathy & Associates.
For accused No.5 : Md.Ziaul Haque & Associates.
For accused No.6 : Sri A.K.Acharya & Associates.
Date of argument : 27.7.2016
Date of judgment : 2.8.2016

Offences under Sections 399 and 402 of IPC .

J U D G M E N T

1. All the above accused persons stood charged for committing the offences punishable under Sections 399 and 402 of IPC.
2. Briefly stated the prosecution case is that on 19.3.2016 at 11.30 PM the informant along with his team were performing night patrolling duty by PS Bolero. At about 3 AM near Rasulgarh Chowk they received reliable information that a group of persons were sitting behind Rasulgarh Durga Puja Mandap in a dark place and were planning to commit dacoity on the people coming for morning walk at Puri By-Pass Road and in between Rasulgarh and Vani Vihar Road. They arranged two local witnesses and they parked their vehicle in front of Rasulgarh Truck Owners' Association and proceeded to the spot. It is also alleged that the informant and his staff detected some persons assembled at the said place and two motor cycles were parked at the spot. Out of six persons, they apprehended four persons and rest two persons managed to escape due to darkness. They

searched the place but could not able to trace the rest two persons. Being asked, the said four persons disclosed their names and addresses and they could not explain their presence in the said dark place in late night hour. They found two motor cycles were parked at the spot. The said persons could not produce any document of those motor cycles and they disclosed that they used to commit robbery and dacoity of mobile phones, gold chains and purses from the persons going in the late hour of night. At 4.30 AM in presence of the witnesses, on search of accused Sk.Ali, they found a Nokia mobile handset and on search of accused Motibur Rehman @ Moti, they found a Nokia mobile handset and on search of accused Md. Nizam @ Doll, they found Rs.500/- and on search of accused Sk.Abdul Rauf @ Tutun, they found Rs.390/-. They prepared seizure lists and the witnesses and the accused persons signed on the said seizure lists. On further interrogation, the accused persons disclosed that they were involved in many cases of chain and mobile phone snatching in different areas of Bhubaneswar. Basing on the report of the informant, a case under Sections 399 and 402 of IPC was registered and investigation was taken up. During investigation, the informant and other witnesses were examined. The IO visited the spot and seized the recovered articles. The accused persons were arrested and forwarded to the Court. After completion of investigation, charge-sheet under Sections 399 and 402 IPC was submitted against all the accused persons. The learned SDJM, Bhubaneswar committed the accused persons in the Court of Sessions. Charge for the offences, as above mentioned, was framed against all the six accused persons.

3. Defence plea is one of complete denial and false implication.

4. Prosecution has examined as many as 6 (six) witnesses whereas the defence has examined none.

5. The points for determination are:

(i) Whether on 19/20.3.2016 at about 3 AM at night in a dark place behind Rasulgarh Durga Puja Mandap all the accused persons were preparing to commit dacoity on the people coming for morning walk at Puri By-pass Road i.e. N.H.203 and in between Rasulgarh and Vani Vihar Road?

(ii) Whether on the above date, time and place all the accused persons being members of a gang of six persons, had assembled for the purpose of committing dacoity?

PW-1 is the Home Guard-cum-Driver attached to Mancheswar Police Station, PWs-2 and 3 are independent witnesses, PW-4 is the Havildar attached to Mancheswar Police Station, PW-5 is the SI of Police who lodged the FIR in this case and PW-6 is the IO.

6. It is the evidence of PW-5 the informant that on 19.3.2016 he was performing patrolling duty along with ASI Sri R.K.Das, Havildar B.P.Mohanty, Constable Sri S.K.Jena by their PS Bolero vehicle and near Rasulgarh Square at 3 AM he got reliable information that some persons were sitting behind Rasulgarh Durga Mandap and were planning to commit some crime. On receipt of the said information they proceeded to the said spot after arranging two independent witnesses from nearby locality. They parked their vehicle Truck Owners' Association Office and proceeded to the spot and on reaching the spot, he (PW-5) could manage to apprehend four culprits from out of six culprits and the rest two culprits managed to escape from the spot and on being asked, the said four culprits disclosed their names and names of the other two culprits

who managed to escape from the spot. The said four culprits could not give any satisfactory answer regarding the purpose for which they had assembled there.

7. PW-5 has also stated that one Bajaj Discover and one Bajaj Pulser motor cycles were seized from the spot. The said culprits could not show any document regarding the owners of the said vehicles. He (PW-5) recovered one or two mobile phones and some cash from them. He seized the above articles and cash as per seizure list vide Ext.1/2 and took the seized articles, cash and said four culprits to the PS. Then he (PW-5) lodged FIR vide Ext.2 at Mancheswar PS.

8. During cross-examination, PW-5 has deposed that although many trucks were parked near Truck Owners' Association Office, he has not called any driver or helper to the spot as a witness as it was not necessary. He (PW-5) has not noted the date and time in the FIR below his signature. He could not recollect the geographical directions of the spot as it was night time. He does not remember which particular culprit was apprehended by individual member of their team. PW-5 has also stated that the seized articles were not sealed by him at the spot. While returning they were total eleven persons including the four culprits but he does not remember the total number of persons who came back to the PS from the spot by their Bolero vehicle. He does not remember if any article or cash was seized from accused Jagannath Reddy.

9. PW-1 has stated that he does not know the accused persons. On 19.3.2016 he had accompanied to SI Susanta Kumar Das and some other police staff on mobile patrol duty. He does not remember anything else about the case. This witness is declared hostile by prosecution. PWs-2 and

3 have stated that they not know the accused persons. They have stated that on 20.3.2016 near one OMFED booth at Rasulgarh, they put their signatures on a paper vide Exts.1 and 1/1 respectively. They do not know anything about the case. During cross-examination, they have deposed that they gave their signatures vide Exts.1 and 1/1 on a blank form, being afraid of police. They have not been examined by police in this case. They do not remember the date on which they gave their signatures.

10. PW-4 has stated that on 19.3.2016 he had accompanied Sri Susant Kumar Das, SI of Police, Sri Raj Kishore Das, ASI of Police and Constable Sri S.K.Jena on night patrol duty to Rasulgarh Square. SI Sri Das received one telephone call and then they reached near OMFED stall of Babuli Samantaray at Rasulgarh Square. SI Sri Das sought for help of Sri Samantaray and another person of the said locality to accompany them for a work. They parked their vehicle near Truck Owners' Association Office and walked up to Durga Puja Mandap and there they saw that six persons were sitting and talking between themselves and on seeing them, they tried to run away. They could apprehend four persons and rest two persons managed to escape. Being asked, the said four persons did not give answer as to what they were doing at that place. Being further asked, they disclosed their names and identities and that of rest two persons who managed to escape from the spot. They found one Bajaj Pulser and Bajaj Discover motor cycles, two sets of mobile and some cash at the spot.

11. During cross-examination, PW-4 has stated that no station diary was maintained by them while leaving the PS and no command certificate was issued to them for going

on night patrolling duty, but they had gone on night patrolling duty as per advance programme. He could not say from whom SI Sri Das received the telephone call. He also could not say which culprit was apprehended by particular member of their patrolling party and the individual culprits from whom recovery was made. He has also deposed that their personal search was not taken by the IO or the informant.

12. PW-6 has stated that on 20.3.2016 at 7 AM on the report of SI Sri S.K.Das, IIC Sri H.B.Swain of Mancheswar PS registered PS Case No.79 date 20.3.2016 and he (PW-6) was entrusted with the investigation of the case. He has also stated that he examined the complainant, other police witnesses, seizure witnesses, recorded their statements u/s.161 Cr.P.C., visited the spot and prepared the spot vide Ext.3. He (PW-6) took charge of the seized articles from SI Sri Das which he had seized from the possession of the accused persons at the spot and interrogated the accused persons namely, Sk.Ali, Motibur Rehman, Md. Nizam and Sk.Abdul Rauf and arrested and forwarded them to the Court.

13. PW-6 has also stated that on 25.3.2016 at about 8.30 PM he had arrested the accused Jagannath Reddy and on 26.3.2016 he forwarded him to the Court. On 30.3.2016 he (PW-6) received information from IIC, Kharavelnagar PS that the accused Baula @ Kausar Ali was arrested and forwarded in Kharavelnagar PS Case No.11 dated 7.1.2016 and on 4.4.2016 he prayed for remand of the accused Baula @ Kausar Ali which was accepted. The case was supervised by Sri R.N.Satpathy, ACP Zone-V,BBSR and then he (PW-6) submitted compliance to DCP, BBSR and getting orders from him on 23.5.2016 he (PW-6) submitted

charge sheet against six accused persons u/s.399 and 402 IPC. He has further stated that M.O.-I is Nokia - X mobile set seized from accused Sk.Ali. M.O.-II is Nokia 515 mobile set seized from accused Motibur Rehman. M.O.-III is the envelope containing one number of five hundred rupee GC note seized from accused Sk. Ali. M.O.-IV is the envelope containing cash of Rs.390/- in the denomination of three numbers of one hundred rupee GC notes, one number of twenty rupee GC notes and seven numbers of ten rupees GC notes seized from the accused Abdul Rauf.

14. During cross-examination, PW-6 has stated that he has not examined any member of public, although about 20 to 30 persons were present at a distance of about 40 to 50 metres away from the spot. He has not directed his investigation if any such watchman was present in the Truck Owners' Association Office and in the premises of Venketeswar English Medium School in the relevant night. He has also deposed that he had examined all the witnesses on 20.3.2016, but had sent the statement recorded u/s.161 Cr.P.C. of only witness Babuli Samantaray to the Court while forwarding four accused persons to the Court on 20.3.2016. He has not directed his investigation to ascertain about the ownership of two seized mobile sets, IMEI numbers of the said mobile telephone sets, mobile telephone numbers in respect of the SIM cards used in those two mobile telephone sets and the names of the persons in whose favour the said SIM cards were issued. He has not issued any notice to the owners of the two seized

motor cycles in question, although he had ascertained their names and addresses.

15. In the instant case, out of six witnesses, PWs-1, 4, 5 and 6 are the police personnel and PWs-2 and 3 are independent witnesses. PWs-2 and 3 have stated that they do not know anything about the case. PW-1 has also stated that he does not remember anything about the case. PW-4 has stated that he could not say which culprit was apprehended by particular member of their patrolling party. PW-5 has also stated that he does not remember which particular culprit was apprehended by individual members of their team. PWs-4 and 5 have not specifically stated that from whom the seized articles have been recovered. PW-4 has stated that the alleged spot was an open space, but some trees were there near the spot. PW-5 has stated that there were some shops at a little distance away from the alleged spot. PW-6 has stated that Duga Mandap is situated at a distance of about 30 metres on the eastern side of the spot and in the same direction, NH No.5 is situated at a distance of about 150 metres away from the spot and on the southern side there is Venketeswvar English Medium School situated at a distance of about 150 metres away from the spot and there are barren lands on the western side of the spot, where garbage are dumped. From the above statements, it is found that PWs-4, 5 and 6 have deposed different statements regarding the directions of the alleged spot. Therefore, in the absence of any other piece of reliable evidence to show that they had, in fact, assembled in the alleged spot for the purpose of committing dacoity and had made preparation to commit the same, this Court cannot jump to the conclusion to hold that they had assembled there for the purpose of

committing dacoity and had made preparation for the same. The said conclusion of this Court also gets support from the statement of the informant (PW-5) that the accused persons had assembled at the spot in question for the purpose of committing "some crime". The said statement of the PW-5 is too vague in nature to hold that the accused persons had assembled there for the purpose of committing dacoity and had made preparation for the same. No test identification parade has been conducted to identify the real culprit. In absence of any such test identification parade, identification in the Court for the first time in such type of cases, cannot be accepted, unless the complainant and witnesses had disclosed the detail identifying features of the culprit in their earlier statements like FIR and statement recorded u/s.161 Cr.P.C. In the present case, there is no evidence on record to show that any such identifying feature of the culprit was disclosed by the informant and other prosecution witnesses with reasonable particularity. There is no reliable evidence to show that the complainant and the prosecution witnesses had prior acquaintance with the accused. None of the prosecution witnesses including the complainant (informant) and the IO have stated that they had any prior acquaintance with the accused persons. None of them have stated that the accused persons had assembled at the place in question for the purpose of committing dacoity and had made preparation for the same.

16. Learned counsel for the defence has relied upon the decision reported in 1985 C.L.R. 80 Braja Mohan Pradhan-Vrs.- State and submitted that the accused persons may not be in a position to show as to why this case has been falsely filed against them. As per the allegation made by

the prosecution, accused Kausar Ali @ Balua and accused Jagannath Reddy @ Jaga ran away from the spot on seeing the police personnel. The said conduct of the accused persons by running away from the spot on seeing the police personnel, cannot be used against them for the purpose of concluding that in fact that they had assembled at the spot in question along with other accused persons for the purpose of committing dacoity and had made preparation for the same. Different persons react differently. The said two accused persons might have left the spot out of fear on seeing the police, although they might have not committed any crime and are innocent persons.

17. Therefore, after analyzing the evidence on record and for the reasons discussed above, this Court finds that the prosecution has failed to prove its case against the accused persons for commission of the alleged offences punishable under Sections- 399 and 402 of IPC beyond reasonable doubt.

18. In the result, the accused persons are found not guilty of the offences punishable under Sections 399 and 402 IPC. They are acquitted u/s.235(1) of Cr.P.C. and are set at liberty. The seized two motor cycles in question be returned to its lawful owners after obtaining proper zimanamas. The seized cash of Rs.500/- in one envelope (M.O.-III), Rs.390/- in another envelope (M.O.-IV), Nokia – X mobile set (M.O.-I) and Nokia 515 mobile set (M.O.-II) be confiscated to the State, four months after expiry of the appeal period, if no appeal is preferred and in case of appeal, the same shall be dealt as per the order of the Appellate Court.

Enter this case as mistake of facts.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

The judgment is typed to my dictation and corrected by me and pronounced to-day on this 2nd day of August, 2016 given under my hand and seal of this Court.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

List of witnesses examined for the prosecution :

PW-1	Nilu @ Nibas Kumar Samantaray.
PW-2	Jitendra Kumar Ray.
PW-3	Babuli Samantaray.
PW-4	Bishnu Prasad Mohanty.
PW-5	Susanta Kumar Das.
PW-6	Sumit Kumar Soren.

List of witnesses examined for the defence :-

Nil.

List of exhibits marked for the prosecution :-

Ext.1	Signature of PW-2 on a paper.
Ext.1/1	Signature of PW-3 on a paper.
Ext.1/2	Seizure list.
Ext.1/3	Signature of PW-5 on Ext.1/2.
Ext.2	FIR.
Ext.2/1	Signature of PW-5 on Ext.2.
Ext.2/2	Signature of IIC of Mancheswar PS.
Ext.2/3	Formal FIR.
Ext.2/4	Endorsement with signature of IIC Sri H.B.Swain.
Ext.3	Spot Map(consisting of three sheets).
Ext.3/1	Signature of PW-6 on Ext.3.

List of exhibits marked for the defence :-

Nil.

List of M.Os. marked for the prosecution :-

M.O.-I	Nokia X mobile.
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- M.O.-II Nokia 515 mobile.
M.O.-III Envelope containing one number of five
 hundred rupee GC note.
M.O.-IV Envelope containing cash of Rs.390/-.

List of M.Os. marked for the defence :-

Nil.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

