

IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE,
BHUBANESWAR

PRESENT:

Sri D.R. Sahoo, L.L.M.

S.D.J.M, Bhubaneswar.

C.T Case No-1754/2014

Trial No- 2279/2014

Date of argument: 18.08.2014

Date of Judgment: 20.08.2014

STATE.....Prosecution

Versus

Tukuna Das, aged about 19 years, S/o. Rabi Das, At-
Radhakrishna Basti, Housing Board Colony P.S.
Chandrasekharpur, Dist- Khurda,

.....**Accused .**

Offence under Sections 457/380 of Indian Penal Code

Counsel for the Prosecution: APP, Bhubaneswar.

Counsel for the defence Sri D.R. Mohapatra & Associates

J U D G M E N T

The above named accused stands charged for committing offences punishable U/s. **457/380** of I.P.C.

2. The prosecution case in brief is that:

On 08.05.2014 at about 2 A.M., the accused Tukuna Das committed lurking house trespass to the house of the informant and committed theft of grocery items which was kept on his trolley. Being aggrieved the informant lodged FIR at the Police Station and after due investigation police submitted charge sheet U/s **457/380 of I.P.C** against the accused Tukuna Das and subsequently charges were framed there under to which the accused plead not guilty claimed for trial. Hence this trial.

3. The plea of the defence is one of complete denial and false implication.

4. The points for determination in this case are as follows:-

i) *Whether on 08.05.2014 at about 2.00 A.M. the accused Tukuna Das committed lurking house trespass by night in order to commit theft and thereby committed an offence U/s. 457 of IPC ?*

ii) *Whether on the aforesaid date and time the accused committed theft of grocery items from the house of the informant which is used as home dwelling and custody of property and thereby committed an offence U/s. 380 of IPC?*

5. In order to prove its case prosecution has examined as many as eight witnesses out of whom Renta Soren is the informant i.e P.W.1 . P.W.2 Masanga Tudu and P.W.3 Muna Murmu are the seizure witnesses, P.W.4 Kailash Sai, P.W.5 Ananta Tudu, P.W.6 Dasarathi Mahanta and P.W. 7 Babula Singh are the independent witnesses, P.W.8 Rabi Naryan Sahoo is the Investigating Officer.

6. The evidence on record shows that the P.W. 1 Renta Soren has categorically stated before the Court that on 7th/8th May, 2014 at about 2 to 2.30 A.M. the accused Tukuna Das committed theft of Dal, Paddy, Salt, Soap and grocery items which he had kept on his verandah of his house and the accused illegally entered inside his house, took away the articles for which he lodged FIR at the Police Station. The prosecution has exhibited FIR as Ext.1 and the signature of the informant on said FIR as Ext. 1/1.. The informant has further stated that he has taken zima of the said articles on execution of proper zimanama vide Ext.2 and the signature of the informant on said zima as Ext. 2/1. The seizure witnesses such as P.W.2 and P.W.3 have deposed regarding seizure of some grocery articles from the house of the accused. P.W.4, P.W.5, P.W.6 and P.W.7 have stated regarding theft of grocery items from the house of the informant but the entire evidence on

record clearly shows that not a single witness including the informant have seen while theft took place. All the prosecution witnesses , during cross-examination have admitted that they have not seen who has committed theft. However, as per the prosecution evidence some grocery articles have been seized from the house of the accused. It can be stated here that for running a house hold, each family keeps grocery items in their respective house and prosecution has not shown anything in support of the fact that those grocery items belong to the informant. The independent witnesses as well as the seizure witnesses have categorically stated before the Court that they have not seen when the theft took place.

7. Most importantly, there is discrepancy in the version of prosecution witnesses as to from where the grocery items were stolen. While the informant is telling that he has kept the grocery items on Trolley, P.W.3 has deposed that the theft of grocery items took place at Radhakrushna Basti. At the same time, P.W.4, P.W.5 along with P.W.6 have deposed that theft committed from the house of the informant. Moreover, doubt comes to mind while the evidence of P.W.1 i.e. the informant is forthcoming that he has kept the grocery items on a Trolley outside of his house and he was sleeping inside his house. Apart from this, P.W.1 has stated that he was not in good term with the accused prior to the occurrence.

8. In the above discussed facts and circumstances some important facts which are forthcoming before the Court is that there was enimical relationship in between the informant and the accused and there is discrepancy in the version of the informant as well as the other prosecution witnesses as regard to the place where the grocery items were kept before the theft took place. Most importantly, the possibility that those grocery items belong to the accused cannot be denied . In such facts and circumstances, in the considered opinion of this Court a person cannot be punished on the basis of probabilities particularly when the prosecution has failed to prove its case beyond all reasonable doubt. and accordingly the accused is found not guilty of the offence punishable U/s. 457/380 of IPC. As such he is acquitted

there from as per the provision U/s.248 (1) Cr.P.C. He be set at liberty forthwith.

The seized articles be returned to real owner after cancellation of proper zima.

Enter the case as a mistake of fact.

S.D.J.M., Bhubaneswar.

Typed to my dictation, corrected by me and pronounced the judgment in the open Court today given under my hand and seal this the 20th day of August, 2014.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

- P.W.1: Renta Soren
- P.W.2: Masanga Tudu
- P.W.3: Muna Murmu
- P.W.4: Kailash Sai.
- P.W.5: Ananta Tudu.
- P.W.6: Dasaratha Mahanta.
- P.W.7: Babula Singh.
- P.W.8: Rabi Narayan Sahoo.

List of witnesses examined on behalf of the defence:

None

List of Exts. marked on behalf of the prosecution:

- Ext.1: FIR.
- Ext.1/1: Signature of P.W.1 on ext.1
- Ext.2: zimanama.
- Ext. 2/1. Signature of P.W. 1on Ext.2
- Ext. 3 : Seizure list.
- Ext. 3/1: Signature of P.W.2 on ext.3
- Ext. ½.: endorsement which IIC signature on it.

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

Ext3/3: Signature of P.W.8 on the seizure list.

Ext. 4: Crime detail.

List of Exts. marked on behalf of the defence:

N I L

S.D.J.M., Bhubaneswar.