

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.2726/2013**

**Trial No- 2375/2014**

**Date of argument: 14.08.2014**

**Date of Judgment: 16.08.2014**

STATE ..... Prosecution

Versus

1. Ajaya Kumar Thakur, aged about 23 years, S/o. Mantu Kumar Thakur, Vill- Chaudaupur , P.S. Daudpur, Dist- Chhapar (Bihar), At/Pr- Cuttack Road, Bhubaneswar Hotel Lane, P.S. Laxmisagar, Dist- Khurda.
2. Rajesh Nayak, aged about 22 years, S/o. Laxman Nayak, Vill- Dasarathipur, P.S. Banapur, Dist- Khurda At/Pr- Badagada Canal Road, P.S. Badagada, Dist- Khuda .....Accused persons.

Offence under Section 379/34 of IPC..

Counsel for the Prosecution: APP, Bhubaneswar.

Counsel for the defence: Sri B.K. Sahoo and Associates.

**J U D G M E N T**

The above named accused persons stand charged for committing the offences punishable U/s. 379/34 of IPC..

2. The prosecution case in brief is that :-

On 17.07.2013 at about 8.30 P.M. while the informant, Rajkishore Moharana was returning from Unit-1 market with his wife Smt. Basanti Moharana, in between Rental Colony and Kalinga Sudio Chhak, two unknown persons came in a two wheeler and snatched the

gold chain of 32gms. from his wife's neck and his wife fell down and sustained injuries. Being aggrieved the informant lodged FIR at the Police Station and after due investigation Police submitted charge sheet U/s.379/34 of IPC against the present accused persons and subsequently charge U/s. 379/34 of IPC was framed against them to which they plead not guilty and 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 17.07.2013 at about 8.30 P.M the present accused persons in furtherance of their common intention took away the gold chain of the informant's wife and thereby committed the offence punishable U/S 379/34 of IPC?*

5. In order to establish its case prosecution has examined as many as six witnesses out of whom the informant Rajkishore Moharana is P.W.1 and his wife Smt. Basanti Moharana is the P.W.2, P.W.3 Akshya Kumar Prusty is one stranger who assisted the informant to shift his wife to hospital from the spot, P.W.4 Sarat Naik and P.W. 5 Daitari Dash are the seizure witnesses and P.W.6, Sukadev Nayak is the Investigating Officer. On the other hand, defence has examined none. The prosecution has exhibited the FIR as Ext.1 and the signature of the informant on the said FIR as Ext. 1/1, the Zimana as Ext.2 and the signature of the informant on zimanama as Ext. 2/1. Ext.3 is the medical report and Ext. 3/1 is the signature of Basanti Moharana on said medical report. Ext.4 and Ext.5 are the signatures of witnesses P.W.4 and P.W.5 respectively on the said seizure list. Ext. ½ is the endorsement of the I.I.C on the FIR directing P.W.6 to take up the investigation. Ext.6 is the injury requisition issued by the I.O. in favour of P.W.2 and Ext. 6/1 is his signature on the said injury requisition. Ext.7 is the seizure list prepared by the I.O. U/s. 27 of the Indian Evidence Act. Ext/ 4/2 is the signature of the I.O on the seizure list. Ext. 2/2 is signature of the I.O. on zimanama.

6. While evaluating the evidence on record in connection to the alleged commission of offence , it is ascertained that the informant , P.W.1 Rajkishore

Moharana and his wife , the victim lady P.W.2, Basanti Moharana have deposed before this Court that on the alleged date and time while they were returning home, on their way near Mundasahi, two unknown persons came in a bike and snatched away the gold chain of P.W.2 and gave push blow to P.W.2 for which P.W.2 sustained injury and lost two nos. of her teeth. She was subsequently shifted to hospital and got treatment . Subsequently P.W.1 lodged FIR at the Police Station. P.W.3 is an independent witness who has assisted the P.W.1 to shift P.W.2 to the hospital for her treatment. He also deposed before this Court that he has not seen the culprits. P.W.4 and P.W.5 did not support the prosecution case and deposed that nothing has been seized by the investigating officer in their presence. However, I.O., has categorically stated before this Court that after taking over the investigation of this case, he got message from Chandrasekharpur Police Station that two numbers of culprits have been detained in connection to similar kind of offence and then he proceeded and interrogated them and those two culprits stated before him that they have committed offence and have kept the gold chain at a place near Kalpana & then the I.O. along with seizure witnesses 4 and 5 went to the spot and seized the gold chain and then on getting prima facie evidence against the present accused persons , the I.O. has submitted charge sheet against them.

7. A thorough evaluation of evidence on record clearly shows that neither the informant nor his wife or any other independent witness have seen the present accused persons at the time of occurrence. It is also ascertained from the prosecution witness that they couldn't see the face of the culprits , as because the culprits are keeping their face cover by putting helmet on their head. But the only basis for acquisition of the prosecution against the accused persons is that they have confessed before the Police and the culprits lead the I.O. to the spot along with witness where the I.O. seized the gold chain which had been snatched away from the neck of the P.W.2. The I.O. also recorded the statement of the accused persons U/s. 27 of the Indian Evidence Act vide Ext.7 but the seizure witnesses in whose presence the alleged gold chain was seized have not supported the prosecution case and P.W.4 and P.W.5 have categorically deposed that nothing has been seized in their presence.

8. Most importantly, the evidence on record shows that the P.W.1 was given in zima of a part of a gold chain and there is nothing before this Court to hold that the seized gold chain was same chain which had been snatched away from the neck of P.W.2 on the alleged date of occurrence. P.W.2 who is I.O. in this case has stated before this Court that he has seized only a part of a gold chain and the other part of the gold chain could not be procured and he has not got any special mark of identification of the said gold chain and the informant has not produced any receipt of the said gold chain.

In such facts and circumstances, when the seizure of gold chain which had been snatched from the neck of the P.W.2 is not seized from the possession of the present accused persons and when no other prosecution witnesses have stated anything against the present accused persons, this Court comes to the conclusion that the occurrence regarding snatching of gold chain from the neck of the P.W.2 is true but there is no specific evidence on record to hold the accused persons guilty in this case. As such the present accused persons are found not guilty of the offence U/s. 379/34 of IPC and accordingly they are acquitted there from as per the provision U/s. 248(1) of the Cr.P.C. They be set at liberty. Their bail bonds stand cancelled. The seized article be returned to the real owner after cancellation of proper zimanama after appeal period is over.

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 16<sup>th</sup> day of August, 2014.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

- P.W.1: Raj Kishore Maharana.  
P.W.2: Smt. Basanti Maharana.  
P.W: Akshrya Ku. Prusty.  
P.W.4: Sarat Naik.  
P.W.5: Daitar Dash.  
P.W.6: Sukadeb Nayak.

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 it.  
Ext.2: Zimanama.  
Ext.2/1: Signature of P.W. 1 on said zimanama.  
Ext.3: Medical Report.  
Ext.3/1: Signature of P.W.2 on medical report.  
Ext.4: Signature of P.W.4 & 5.  
Ext.5: Signature of P.W. 4& 5.  
Ext.1/2. Endorsement on the FIR directing P.W.6 to take up investigation.  
Ext.6. Injury requisition issued by the I.O. in favour of P.W.2  
Ext.6/1: Signature of P.W.6 on the said requisition.  
Ext.7: The seizure list prepared by the I.O. U/s. 27 of the Indian Evidence Act.  
Ext.4/2. Signature of the I.O. on the said seizure list.  
Ext. 2/2: Signature of the I.O. on zimanama.

List of Exts. marked on behalf of the defence:

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S.D.J.M., Bhubaneswar.