

J U D G M E N T

1. All the three accused persons stood charged for committing the offences punishable under Sections 399, 402 of IPC and 25 of Arms Act.

2. Briefly stated the prosecution case is that on 29.11.2015 at 6 PM the informant along with his team left for Bhadrak Balasore side in T-18646 Hyderabad-Howrah East Coast Express from Khurda Road Railway Station, as per the direction of SI Protection Force, to perform patrolling duty in running train to prevent theft of passengers' belongings, apprehend inter-state train passenger looters and drugging criminals. It is also alleged that during return patrolling duty, they boarded T-12663 Howrah-Trichinapali Express train at Bhadrak at about 8 PM at Bhadrak and performed patrolling duty in that running train and during their movement in the said running train in between Jajpur and Cuttack Railway Station, they detected some young persons moving in the train from coach to coach in suspicious manner and after Cuttack Railway Station they surrounded five member gang in S-5 coach near toilet and disclosed before them their identity as RPF plain cloth staff. When the informant and his staff asked for their journey ticket, the said 5 members failed to produce the same. It is further alleged that while the train was to enter into Bhubaneswar Railway Station Platform No.4 at about 11.15 PM, two of them suddenly pushed the staff of the informant and jumped down from the running train and disappeared in the darkness. Then they caught hold of the rest three persons and got down from the train and on verification, they disclosed their names. On their personal search, one lighter toy pistol, two ammunitions and two mobile phones were found from

accused Amar Kumar Mandal, one live ammunition, one packet of chilly powder, one shaving razor (khura), one Bhujali and one Samsung mobile phone were found from accused Milan Kumar Mandal and one packet of chilly powder, M-tech mobile phone, one Bhujali and some cash were found from accused Jyotish Mandal. Basing on the report of the informant, a case under Sections 399, 402 of IPC and 25 of Arms Act 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, 402 IPC and 25 of Arms Act was submitted against all the three accused persons. The learned SDJM, Bhubaneswar committed the three accused persons in the Court of Sessions. Charge for the offences, as above mentioned, was framed against the three accused persons.

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

4. Prosecution has examined as many as 9(nine) witnesses whereas the defence has examined none.

5. The points for determination are:

(i) Whether on 29.11.2015 at about 11.15 PM in Bhubaneswar Railway Station, the accused persons were preparing to commit dacoity by moving in the train No.12663 Howrah-Trichinapali Express from coach to coach?

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

(iii) Whether on the above date, time and place the accused persons were in illegal possession of one lighter toy pistol, two ammunitions 5.56 INSAS, one live ammunition, one shaving razor and Bhujalis?

PW-2 is the informant. PWs-1, 3, 4, 6 and 7 are the Constables attached to RPF, CIB, Khurda Road. PW-5 is the constable attached to GRPS, Bhubaneswar. PW-8 is the ASI, GRPS, Bhubaneswar, who first investigated the case. PW-9 is the IO.

6. It is the evidence of PW-2 the informant that on 29.11.2015 on the instruction of the Inspector-In-Charge, RPF, Jatni, Sri G.K.Dash, he, Constables Dusmant Kumar Rout, Jitendra Kumar Mohanty, Santosh Kumar Pradhan, K.C.Swain and K.C.Pradhan had gone on official duty for protection of passengers' belongings in Train No.18646 down Hyderabad-Howrah East Coast Express and they got down at Bhadrak Railway Station. PW-2 has also stated that they boarded in Train No.12663 Up Howrah-Trichinapali at Bhadrak Railway Station at about 8 PM and while they were watching the passengers' belongings, they found in between Jajpur Road Railway Station to Cuttack Railway Station that five culprits were moving in suspicious manner from coach to coach and were talking among themselves in Hindu language and after the train crossed Cuttack Railway Station, they brought the said five culprits to Coach No.5 and on being asked, they failed to produce any authority or train ticket to go by that train and they surrounded them. He has also deposed that while the train was approaching Bhubaneswar Railway Station, two culprits escaped by jumping from the said train and ran towards southern direction and then they got down from the said train at Platform No.4, Bhubaneswar.

7. PW-2 has further stated that all the three accused persons were in possession of one air bag each and on being asked, they disclosed their identities as Amar Kumar Mandal, Jotish Mandal and Milan Kumar Mandal and on

search of the said bags, he (PW-2) recovered toy lighting pistol, two unused 5.56 mm INSAS bullets, one LG mobile set, one Samsung mobile set from accused Amar Mandal and he also recovered one packet of chilli packet, one 9 mm ammunition, one shaving razor, one Bhujali and one Samsung mobile set from accused Milan Kumar Mandal and he also recovered one packet of chilli powder, one Bhujali, M-Tech mobile set, some cash from accused Jyotish Mandal. PW-2 has also stated that he intimated the said facts to IIC of GRPS, Bhubaneswar Sri Soubhagya Swain and Inspector, RPF Sri G.K.Dash and Sri Swain along with one of his ASI reached the spot and they produced the said articles and accused persons at GRPS, Bhubaneswar and then, he (PW-2) lodged written complaint vide Ext.1 at GRPS, Bhubaneswar. He also stated that he also produced the command certificate issued in their favour before IIC of GRPS and it was seized as per seizure list vide Ext.2 and Ext.3 is the zimanama in their favour.

8. During cross-examination, PW-2 has deposed that besides command certificate, no written instruction was issued in their favour to perform duty on that day in the train in question. PW-2 does not remember the exact time when Constable Jitendra Kumar Mohanty intimated about the suspicious movement of the culprits and the compartment number, in which he first detected the same. PW-2 could not say at which railway station the culprits boarded the train in question on that day and he also could not say the compartment numbers in which the culprits were moving. PW-2 has also deposed that they had not intimated any railway staff, RPF staff, GRP staff or TTE about the suspicious movement of the culprits and travelling of the accused persons without valid train ticket

or authority by that train. PW-2 has also stated that he has not heard the conversation of the culprits among themselves. PW-2 has also stated that he has not mentioned in the FIR Ext.1 and in his statement before the IO that the accused persons were carrying one air bag each.

9. PWs-1, 3, 4, 6 and 7 have stated that they had accompanied the informant on official duty for protection of properties of railway passengers in Train No.18646 East Coast and reached Bhadrak Railway Station and again they boarded in Train No.12663 Howrah-Trichinapali Express at about 8 PM. They further stated that while the train was near Jajpur Railway Station, they found that five persons were moving in suspicious manner inside the said train and they apprehended them after Cuttack Railway Station and on interrogation, they could not give any satisfactory answer. They have further stated that while the train was nearing Bhubaneswar Railway Station, two suspects escaped by jumping from the said train. They have also stated that on interrogation, they disclosed their names as "Amar Mandal, Milan Mandal and Jotish Mandal. They have also stated that the informant recovered one toy pistol, two unused bullets of size of 5.56 mm, one Samsung mobile set, master key and some cash from accused Amar Mandal and he also recovered one unused ammunition size of 9 mm, one LG mobile set, one Samsung mobile set, one chilly powder, shaving razor, master key and blade packet along with cash of Rs.410/- were recovered from accused Milan Mandal and he also recovered one iron Bhujali, M-Tech mobile set, chilli powder, master key, two old train tickets for travelling from Boinda to Bhubaneswar and some cash were recovered from accused Jotish Mandal.

They have further stated that the IIC of GRPF took the accused persons to GRPS, Bhubaneswar and one ASI Sri P.K.Sasmal of GRPS, Bhubaneswar, seized the above articles and cash from the accused persons as per seizure lists vide Exts.4, 5 and 6.

10. During cross-examination, PW-1 has stated that no station diary is maintained at CIB of RPF and he does not remember the compartment number in which they first detected the suspicious movement of the accused persons. He has further stated they have not intimated the RPF or GRP staff of Cuttack or TTE of the said train regarding the suspicious movement of the five culprits and they were travelling without railway ticket or valid authority. PW-1 does not remember the brand name of toy pistol recovered by Sri Barik and length and breadth and detail size of two Bhujalis recovered by him. PW-1 has further deposed that he does not remember which culprit was apprehended by which member of their team and the sequence of the same and no seizure list has been prepared in his presence at the spot.

During cross-examination, PW-3 has stated that he has not heard the conversation between the accused persons and he had not detected the suspicious movement of the culprits in the train and he could not say who first detected the same. He has also stated that many persons from public were present at Platform No.4 at the time of recovery and seizure, but the IO had not made any attempt to call any of them to be a witness to the recovery or seizure.

11. During cross-examination, PW-4 has stated that although many members of the public were present, they were not called to be the witnesses to search or seizure. He

does not remember the length or breadth of the size of the seized Bhujali and the denominations of the cash seized by the informant and the date of the seized train tickets

During cross-examination, PW-6 has stated that he could not say the station and the time at which, the accused persons boarded the train in question and also could not exactly say the coach number in which the accused persons were found, when the train reached at Jajpur Road, Railway Station. He has also stated that he has not ascertained the names of two suspected persons, who escaped from the train.

During cross-examination, PW-7 has stated that he does not remember the compartment number in which he was present at the time, the train reached Jajpur Road Railway Station

12. PW-5 has stated that on 30.11.2015 the IO P.K.Sasmal, ASI of GRPS, Bhubaneswar directed him to go to Platform No.4, Bhubaneswar Railway Station and from there, RPF personnel brought three persons from Platform No.4 to GRPS, Bhubaneswar, but he has stated that he does not know if any seizure was made in connection with this case. During cross-examination, he has stated that he has not been examined by the IO in connection with this case.

13. PW-8 has stated that on 29.11.2015 at about 11.45 PM the informant lodged written report at GRPS, Bhubaneswar and Sri Soubhagya Kumar Swain, IIC of GRPS, Bhubaneswar registered this case and directed him (PW-8) to take up investigation. PW-8 has also stated that during investigation, he examined the complainant and witnesses, recorded the statements of the accused persons, visited the spot and prepared spot map vide

Ext.7. PW-8 has further stated that he seized one packet of chilly powder, one M-Tech mobile set with SIM, one iron Bhujali kept in one carry bag, one master suitcase key, cash of Rs.340/- and two train tickets from accused Jyotish Mandal as per seizure list vide Ext.4 and he also seized one 9 mm live ammunition, one packet of chilly powder, one shaving razor (Khura), one packet of shaving blades, one iron Bhujali kept in one carry bag, one Samsung mobile with SIM, one master suitcase key, cash of Rs.410 and one train ticket from accused Milan Kumar Mandal as per seizure list vide Ext.5 and he further seized one toy pistol lighter, two 5.56 INSAS live ammunitions, one LG mobile set with SIM, one suitcase master key and cash of Rs.320/- from accused Amar Kumar Mandal as per seizure list vide Ext.6. PW-8 has also stated that the informant produced one command certificate bearing No.2621 dated 29.11.2015, CIB, RPF, Khurda before him (PW-8) at GRPS, Bhubaneswar on 30.11.2015 and he (PW-8) seized the same as per seizure list vide Ext.2 and he released the said command certificate in zima of the informant as per zimanama vide Ext.3. PW-8 has also stated that he arrested the accused persons on 30.11.2015 and on the same day he forwarded them to the Court. He has further stated that he(PW-8) handed over the charge of investigation to the IIC, Soubhagya Kumar Swain on 7.1.2015 along with all documents and materials in connection with this case.

14. During cross-examination, PW-8 has deposed that he reached the spot at Platform No.4, Bhubaneswar Railway Station at 3 AM and he found some passengers present there, but he has not examined any independent witness or any passenger in connection with this case and none of

them has been cited as witness to the seizure. He has also deposed that the informant had not produced any article before him and the articles were seized by him at GRPS. He has further deposed that there was no leading to discovery of any article by any of the accused and no prayer for conducting TI Parade was made by him (PW-8) and the faces of the accused persons were not covered, while forwarding them to the Court. He has also stated that no follow up action was taken by him to ascertain the real identities and permanent addresses of the accused persons and no step was taken by him to ascertain the ownership of the mobile SIMs and mobile sets in question.

15. PW-9 has stated that on 29.11.2015 he was working as IIC, GRPS, Bhubaneswar and on that day he received written report of the complainant Mahendra Barik, ASI, RPF, CIB, Khurda Road and registered BBSR GRPS Case No.160/2015 and Ext.1/3 is the formal FIR. PW-9 has also stated that he directed ASI Sri Prasant Kumar Sasmal to investigate the case and as per order of the SP, Railways, Cuttack, he took charge of investigation of the case on 7.1.2016 from Sri Sasmal with case records and mal objects. PW-9 has further stated that on 18.1.2016 the M.Os. (three live ammunitions) were despatched to SFSL, Bhubaneswar through the Court of SDJM, Bhubaneswar and Ext.8 is the forwarding letter to Director, SFSL, Bhubaneswar for sending the material objects. PW-9 has also stated that on 17.2.2016 he made prayer to Commissioner of Police, Commissionerate of Cuttack-Bhubaneswar through the SP, Railways, Cuttack for sanction of prosecution of the accused persons u/s. 25 of Arms Act and on 18.3.2016 he got the sanction order No.10/CP-Judicial dated 8.3.2016 vide Ext.9 of

Commissioner of Police. PW-9 has also stated that the report No.4767/FSL, dated 10.3.2016 of SFSL, Bhubaneswar vide Ext.10 is received and the final opinion is that two 5.56 mm INSAS caliber live cartridges and one 9 mm live cartridge come under the purview of the Indian Arms Act. PW-9 has further stated that on 11.5.2016 one examined closed cover envelope received from SFSL, Bhubaneswar, was received in Court Malkhana vide Mal Challan Ext.11 and M.O.-I is the said sealed cover envelope containing three fired/tested ammunitions and on 28.3.2016 after receipt of order from the SP, Railways, Cuttack, he (PW-9) submitted charge-sheet u/s.399, 402 of IPC read with Section 25 of Arms Act against the accused persons.

16. PW-9 has also stated that M.O.-II is one packet of chilly powder, M.O.-III is one M-Tech mobile phone, M.O.-IV is one iron Bhujali in one carry bag, M.O.-V is one master suitcase key, M.O.-VI is one envelope containing cash of Rs.340/-, Exts.12 and 13 are two general train tickets dated 28.11.2015 and the same were seized from accused Jyotish Kumar Mandal, M.O.-VII is one packet of chilli powder, M.O.-VIII is one shaving razor (Khura), M.O.-IX is one iron Bhujali, M.O.-X is one Samsung mobile phone, M.O.-XI is one master suitcase key, M.O.-XII is one envelope containing cash of Rs.410/- and the same were seized from accused Milan Kumar Mandal and M.O.-XIII is one toy pistol, M.O.-XIV is one LG mobile phone, M.O.-XV is one Samsung mobile phone, M.O.-XVI is one master suit case key and M.O.-XVII is one envelope containing cash of Rs.320/- and the same were seized from accused Amar Kumar Mandal.

17. During cross-examination, PW-9 has deposed that he has not made any seizure in connection with this case and that it has not been mentioned in the seizure list that if the seized Bhujali or any other sealed articles were separately sealed at the spot, soon after the seizure and that there is no mention in the case record to show that the said articles were sealed at any particular place at any particular time and in whose presence, the same were sealed. PW-9 has further deposed that the detail identifying features of the accused persons have not been mentioned either in the FIR or in the statements of witnesses recorded u/s.161 Cr.P.C. and no prayer was required to be made for conducting TI Parade, since allegation u/s.399 and 402 IPC was made against them and no special identifying mark of the seized articles have been mentioned in the FIR.

18. In the instant case, all the prosecution witnesses are the police personnel. PWs-3, 4 and 8 have stated that members of the public were present at the time of recovery and seizure, but none of them is examined on behalf of the prosecution to prove its case. The detail identifying features of the accused persons have not been mentioned either in the FIR or in the statements of witnesses recorded u/s.161 Cr.P.C. Further, no prayer has been made for conducting TI Parade and no special identifying mark of the seized articles have been mentioned in the FIR. There is no mention in the case record to show that the seized articles were sealed at any particular place at any particular time and in whose presence, the same were sealed. It has not been mentioned in the seizure list that if the seized Bhujali or any other sealed articles were separately sealed at the spot, soon after the seizure. The articles were recovered at Platform No.4 and seized at GRPS, Bhubaneswar. PWs-1, 2

and 6 have stated that they have not intimated the RPF or GRP staff of Cuttack or TTE of the train in question regarding the suspicious movement of the five culprits and their travelling without railway ticket or valid authority by the said train. Simply because, the accused persons might have been moving in a group inside different compartments of the train in question, do not prove by itself that they had assembled there and were preparing to commit dacoity, they might have gone there for the purpose of committing some other offences like murder or to attack somebody. Therefore, in the absence of any other piece of reliable evidence to show that they had, in fact, gone to the train in question 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.

19. If different articles were recovered from individual accused persons that too separately from their physical possession by the informant, then it was incumbent on his part to have prepared list to that effect and to produce the articles in question separately, so that, the IO could have been in a position to know which particular articles have been recovered from which particular accused. But, no such step has been taken by the informant. The said lacuna and omission by the informant goes to the root of the matter and throws doubt regarding recovery of any such particular articles from any particular accused. If the version of the IO (PW-9) so far as seizure of different articles at GRPS, Bhubaneswar from individual accused persons, as per separate seizure lists, is going to be believed for the sake of argument, then as a necessary

corollary statement given by the informant that those articles were already recovered by him from individual accused persons at Platform No.4, Bhubaneswar Railway Station has to be disbelieved. The statements of the informant and the IO in this particular context, are quite contradictory and appear to be improbable. Therefore, it will not be safe to rely upon their contradictory statements, which obviously are material particulars and important aspects of the prosecution case to believe regarding recovery of any such articles from individual accused persons. Therefore, taking into consideration the totality of the circumstances and from the evidence already discussed, this Court finds that the prosecution has failed to prove regarding recovery of any such articles or arms or ammunition from any of the accused persons, when no independent witness has been examined to support the said aspect. Admittedly, many persons and passengers were present at those places i.e. in the railway compartments, Platform No.4, Bhubaneswar Railway Station and near GRPS, Bhubaneswar. In absence of any explanation at all furnished by the prosecution for non-examination of the said independent witnesses, it will not be safe for this Court to rely upon the discrepant and contradictory statements of the prosecution witnesses regarding movement of the accused persons in the train in question and regarding seizure from them. PWs-1, 3, 4, 6, 7 and 8 have stated that they had no prior acquaintance with the accused persons prior to 29.11.2015.

20. 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, 402 of IPC and Section 25 of Arms Act beyond reasonable doubt.

21. In the result, the accused persons are found not guilty of the offences punishable under Sections 399, 402 IPC and Section 25 of Arms Act. They are acquitted u/s.235(1) of Cr.P.C. and are set at liberty. The seized cash of Rs.340/- in one envelope (M.O.-VI), Rs.410/- in one envelope (M.O.-XII), Rs.320/- in one envelope (M.O.-XVII) and mobile phones (M.Os.-III, X, XIV and XV) be confiscated to the State, three fired/tested ammunitions (M.O.-I), seized chilly powder packets (M.Os.-II and VII), iron Bhujalis (M.Os.-IV and IX), master suitcase keys (M.Os.-V, XI and XVI), toy pistol (M.O.-XIII) and shaving razor (Khura) (M.O.-VIII) be destroyed and zimanama in respect of seized command certificate be cancelled, 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 1st day of June, 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 Jitendra Kumar Mohanty.
PW-2 Mahendra Barik.

PW-3	Gyanendra Bhuyan.
PW-4	Kanduri Charan Pradhan.
PW-5	Chatrubhuja Das.
PW-6	Dusmant Kumar Rout.
PW-7	Santosh Kumar Pradhan.
PW-8	Prasanta Kumar Sasmal.
PW-9	Soubhagya Kumar Swain.

List of witnesses examined for the defence :-

Nil.

List of exhibits marked for the prosecution :-

Ext.1	Written complaint.
Ext.1/1	Signature of PW-2 in Ext.1.
Ext.2	Seizure list.
Ext.2/1	Signature of PW-2 in Ext.2.
Ext.3	Zimanama.
Ext.3/1	Signature of PW-2 in Ext.3.
Ext.4	Seizure list.
Ext.5	Seizure list.
Ext.6	Seizure list.
Exts.4/1, 5/1 & 6/1-	Signatures of PW-3 in Exts.4,5, 6 respectively.
Exts.4/2, 5/2 & 6/2-	Signatures of PW-4 in Exts.4,5, 6 respectively.
Ext.2/2	Signature of PW-5 in Ext.2.
Ext.7	Spot map.
Ext.7/1	Signature of Pw-8 in Ext.7.
Ext.4/3	Signature of PW-8 in Ext.4.
Ext.5/3	Signature of PW-8 in Ext.5.
Ext.6/3	Signature of PW-8 in Ext.6.
Ext.2/3	Signature of PW-8 in Ext.2.
Ext.3/2	Signature of PW-8 in Ext.3.
Ext.1/2	Endorsement with signature of PW-9.
Ext.1/3	Formal FIR.
Ext.1/4	Endorsement with signature of PW-9.
Ext.8	Forwarding letter to Director, SFSL.
Ext.8/1	Signature of PW-9 in Ext.8.
Ext.9	Sanction order No.10/CP-Judicial dt.8.3.16.
Ext.10	Report No.4767/FSL dt.10.3.2016 of SFSL, Bhubaneswar.
Ext.11	Mal Challan.
Ext.11/1	Signature of Fakir Mohan Saraf in Ext.11.
Exts.12 & 13	- Two general train tickets.

List of exhibits marked for the defence :-

Nil.

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

- | | |
|-----------|--|
| M.O.-I | Sealed cover envelope containing three fired/tested ammunitions. |
| M.O.-II | One packet of chilly powder. |
| M.O.-III | One M-Tech mobile phone. |
| M.O.-IV | Iron Bhujali. |
| M.O.-V | One master suitcase key. |
| M.O.-VI | One envelope containing cash of Rs.340/-. |
| M.O.-VII | One packet of chilly powder. |
| M.O.-VIII | One shaving razor (Khura). |
| M.O.-IX | One iron Bhujali. |
| M.O.-X | One Samsung mobile phone. |
| M.O.-XI | One master suitcase key. |
| M.O.-XII | One envelope containing cash of Rs.410/-. |
| M.O.-XIII | One toy pistol. |
| M.O.-XIV | One LG mobile phone. |
| M.O.-XV | Samsung mobile phone. |
| M.O.-XVI | Master suitcase key. |
| M.O.-XVII | One envelope containing cash of Rs.320/-. |

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

Nil.

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

