

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHUBANESWAR.

Present:-

Shri M. K. Mishra, LL. B,
Addl. Sessions Judge, Bhubaneswar.

CRIMINAL TRIAL NO.03 OF 2014

(Arising out of Kharavelanagar
P.S. Case No.236/2013, corresponding to
C.T.case No.3811/ 2013,committed by the
SDJM,Bhubaneswar)

Date of argument-27.11 2014

Date of Judgment- 29.11. 2014

- S t a t e -

- V e r s u s -

- 1) Dinesh Dur, aged about 29 years, S/o:
Late Madan Dur, Village: Raipur Pandari,
P.S. Debanagar,Dist: Raipur.
- 2) Aman Tandi, aged about 29 years, S/o:
tulasiTandi, Village: Tatabanji Behera palli,
P.S. Civilline, Dist:Raipur.

.....Accused persons.

Counsel for the prosecution : Sri A.K.Pattnayak, Addl. P. P

Counsels for the defence : Sri Atulya Acharya,SDC.

Offence U/ss.: 399/402 of IPC.

J U D G M E N T

The present accused persons of this case
namely: Dinesh Dur and Aman Tandi are facing their trial
being charged U/s. 399/402 of the Indian Penal Code

(hereinafter referred as IPC).

2. The case of the prosecution in short is that during the intervening night of 29/30.9.2013 at about 1.30 AM while the then SI of police, Kharavelanagar namely: Nilakantha Sarangi alongwith other Police Officers were performing night patrolling within the territorial jurisdiction area of Kharavelanagar P.S. On getting reliable information that some culprits have assembled together at the backside of Reliance Super market near Rly. Station area, Bhubaneswar, he proceeded to the spot after procuring the presence of two independent persons who had accompanied the police party on the way. After their arrival near the spot, the informant had found some persons were sitting and discussing among themselves at a lonely place. Immediately, he directed the police party to surround the area. On seeing the police personnels, the culprits wanted to leave the place. But the police party had managed to catch hold of the present two accused persons alongwith three others. The others managed to escape. During the personal search the informant had recovered some incriminating articles like knife, cigarettes, match box, used candles, bhujali including the mobile phone, money purse and some cash etc. The informant came to know that the culprits had assembled there and made preparation to commit the operation of dacoity in a jewellery shop at Bhubaneswar. Hence, he apprehended the accused persons alongwith the co-accused persons, and brought them to

Kharavelanagar P.S, and handed over the accused persons alongwith articles recovered from them at the spot in custody of the IIC, Kharavelanagar P.S and lodged a written FIR narrating about the incident, presented the FIR before the IIC, Kharavelanagar P.S in the same night. Accordingly, on receipt of FIR, the IIC, kharavelanagar had registered PS Case No-236/2013 U/s.399/402 of I.P.C and directed the Sub-Inspector Sri B.C.Mallick to take up the investigation of the case. The IO had visited the spot, examined the witnesses, interrogated the accused persons who were apprehended, seized the incriminating articles and prepared the seizure list, recorded the statement of the complainant and witnesses U/s.161 Cr.p.C., and produced the arrested accused persons before the Court. On completion of investigation and after observing the legal formalities , he has submitted Chargesheet against the accused persons U/s.399/402 of I.P.C.

During the pendency of the case, the aforesaid accused persons namely: Dinesh Dur and Aman Tandi had faced their trial separately in this case since, the case against the other accused persons has been split up. The case record was transferred to this court from the court of Sessions. Accordingly charge was framed against the above named accused persons U/s.399/402 of I.P.C in accordance with law and the hearing was taken up. Hence, this case.

3. Plea of the accused is that of complete denial of prosecution story. It is the further plea of the accused

persons that they have been falsely implicated by the police in this case without any basis.

4) Considering the facts and circumstance of this case, the points for determination in this case are:-

i) Whether in the intervening night of 29/30.9.2013 at about 1.30 AM at the backside of Reliance Super Market, Bhubaneswar, the accused persons alongwith their he associates numbering more than five had congregated and made preparation to commit dacoity at Mallika Jewellery shop located at Subham Market, Bhubaneswar?

ii) Whether on the above noted date, time and place the accused persons alongwith the other co-accused persons numbering five and more had assembled together for the purpose of committing dacoity at Mallika Jewellery located at Subham Market, Bhubaneswar?

5. In order to prove it's case, prosecution has examined as many as 15 nos. of witnesses which include the informant, the IO, the other police officers who are present at the time of raid and the independent witnesses who had accompanied the police party to the spot and the seizure witnesses including one PCR van driver and a Home guard.

On the other hand, no oral evidence is adduced on behalf of the accused persons. Similarly Ext.1 to Ext.9 series are marked on behalf of the prosecution which include the

FIR, the signature of the informant in the FIR, the seizure lists relating to the seizure of the incriminating articles, the spot map, the formal FIR etc. On the other hand, no documentary evidence is adduced on behalf of the accused persons. No MO is marked on behalf of the prosecution or the defence.

6. Considering the aforesaid facts and circumstances of this case and the nature of allegation and the contents of the charge, I feel it proper to go through the evidence on record and to examine the quality of the oral evidence recorded in the court in respect of the witnesses.

The P.W.1 who is an independent seizure witness has deposed that at the instance of police he has put his signature on six papers which are marked as Ext.1 to Ext.6 respectively. He has further deposed that police has not examined him. His cross-examination discloses that police has collected his signature on blank papers at the PS and thereafter the other witness Nasim has put his signature. He has deposed that the IO has not examined him. The P.W.1 was examined U/s.154 of I.E. Act by the Ld. Addl. PP. But he has not stated anything incriminating against the accused persons.

The P.W.2 namely Nasim Rehman has made his deposition which is almost the replica of the evidence of P.W.1.

Similarly, the P.W.3 has deposed to have not known anything about this case. His cross-examination

discloses that police has not examined him.

The P.W.4 who is a Home-guard has deposed that on getting information regarding the apprehension of the accused persons, he went to the spot. But by that time the accused persons were already shifted to P.S. His cross-examination disclosed that he has not been examined by the IO of this case. He could not say as to at which specific area the accused persons were apprehended by the police.

The P.W.5 who happens to be an ASI of police attached to Kharavelanagar P.S has deposed that at about 1.30 AM the informant namely: Sri N.Sarangi on acting on reliable information had come to the spot located near station area behind Reliance Super Market, and found that five to six persons had congregated there and prepared to commit dacoity. Then two persons were called by SI-N.Sarangi namely: Sk. Ismile and Nasim Rehaman. The PCR van had also arrived there prior to their arrival. The accused persons were apprehended, and during personal search of the culprits, the SI N.Sarangi had recovered and seized two nos. of bhujali, one Katri, one small knife, some cigarette etc.

Similar type of evidence is coming from the mouth of P.W.6, P.W.11, P.W.12, P.W.13 and P.W.14. But the independent witnesses i.e. the P.W.7 and P.W.8 who are the two independent seizure witnesses have not at all supported the case of the prosecution in any manner. Although they were examined U/s.154 of I.E.Act by the Ld.

Addl. PP still then they have not supported the case of the prosecution in any manner nor they have uttered anything incriminating against the accused persons.

The P.W.9 who happens to be a Home guard was present with the other police staffs at the spot has deposed to have not remembered anything about the facts of this case. The evidence of P.W.9 in Paragraph-9 of his evidence indicates that he could not identify the accused persons present in the court at the time of his deposition.

The P.W.10 is an independent witness, who is a witness to the seizure, has deposed that he is ignorant if in his presence police has seized any article at any point of time. Although he has identified his signature appearing in the seizure list, still then, he has not stated anything regarding the seizure of any article.

The evidence of the IO discloses that at the relevant time while he was performing patrolling alongwith his colleague within the jurisdiction area of Kharavelanagar P.S, acting on reliable information, he had gone to the spot and procured the presence of independent witnesses and he found that the accused persons had congregated at the spot and were discussing among themselves making preparation to commit dacoity in the jewellery shop of Mallika Jewellery. The present two accused persons and their accomplices were apprehended, and another managed to escape from the spot. He had searched the spot, as well as the accused persons and recovered incriminating articles like bhujali,

mobile phone, knife, cigarettes, match box, used candles, money purse and some cash and brought the accused persons to the PS in the same night alongwith the articles recovered at the spot and handed over the same to the IIC. He lodged the written FIR against the accused persons at the P.S. His evidence indicates that the seized articles were recovered at the spot. He deposed regarding the articles seized from the respective accused persons. But in his evidence he has not stated regarding the crux of the discussion of the accused persons who had congregated at the spot and talking with each other. In other words, he has made it clear as to how he came to know that the accused persons had congregated there and made preparation to commit the offence of dacoity. He has not stated regarding the exact overt-act of the accused persons which could indicate that they were making preparation for dacoity at the spot. Moreover, the evidence is coming from the mouth of the IO and other Police Officers, that the accused persons had congregated there for the purpose of committing dacoity. He has not stated the exact overt-acts basing on which he could know that the accused persons had assembled there and making preparation to commit dacoity. I have gone through a citation reported in **AIR 1958, Calcutta at Page-25 in the matter of Madhusudan...Vrs...State, wherein it is held “ so some act amounting to preparation must be proved and it has further to be proved that the act for which**

the preparation was being made was a dacoity. Similarly, in the matter of Gholtu Mudi....Vrs....State reported in 1986, Crl. Law Journal Page-1031(Patna) it is held that “the mere fact that the accused persons were in a lonely place at night in a house under construction and incriminating articles like fire arms, guns and bhujali were recovered from their possession is not sufficient to prove the charge that they assembled for making preparation for committing dacoity”.

In the present case, the police party had found the presence of the accused persons in the odd hour of the night at a lonely place. The evidence of the informant and other Police Officer indicates that some articles like knife, bhujali etc. were recovered. But the fact of the seizure has not been proved by the independent witnesses. Mere presence of the accused persons in the dark night at a lonely place is not sufficient to hold that the accused persons had assembled there making preparation to commit dacoity, or if they had congregated there for the purpose of committing dacoity. The above fact is not sufficient to attract the offence U/s.399 or 402 of I.P.C, in absence of any cogent and overt-acts. In other words, there must be some overt act committed by the accused persons to give effect to the offence of U/s.399/402 of I.P.C. The mere recovery of the articles like knife, bhujali, cigarettes, used candles, match box which are commonly available in

the market never indicate that the accused persons had congregated there making preparation for commission of offence of dacoity, or they had assembled there in order to commit dacoity. In absence of any cogent and overt-acts, the offences levelled against the accused persons have neither been corroborated, nor proved in any manner. Hence, after going through the evidence on record, both oral and documentary and considering the nature of the case, I am of the opinion that prosecution has miserably failed to prove its case against the accused persons U/s.399/402 of Indian Penal Code beyond all reasonable doubt, and they are acquitted thereunder as per provision 235(1), Cr. P. C. They be set at liberty forthwith, being discharged from their bail bond.

No order is passed relating to the seized article as the case is pending against other accused persons.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 29th day of December, 2014 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1	Sk.Ismile
P.W.2	Naseem Rehman
P.W.3	Sk.Rakesh
P.W.4	Alok Ranjan Routra

P.W.5 Prasahanta kumar Behera
P.W.6 Kailash Chandra Panday
P.W.7 Sk. Islam
P.W.8 Md. Islam
P.W.9 Chittaranjan Behera
P.W.10 Narendra Kumar Barik
P.W.11 Md. Sajid
P.W.12 Bibhu Bhusan Barik
P.W.13 Gyana Ranjan Mohapatra
P.W.14 Bishnu Charan Mallick
P.W.15 Nilakantha Sarangi

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1 to Ext.6: Signatures of P.W.1 in seizure list
Ext.1/1 to 1/6: Signature of P.W.2 in Ext.1 to Ext.6
Ext.7 Signature of P.W.10 on seizure list
Ext.8 : FIR
Ext.8/1 : Signature of the informant in Ext.8
Ext.8/2 : Endorsement of IIC
Ext.8/3 : Formal FIR
Ext.8/4 : Signature of the IIC on formal FIR
Ext.9 : Spot map
Ext.9/1 : Signature of P.W.14 in Ext.9
Ext.7/1 : Seizure list
Ext.7/2 : Signature of P.W.14 on Ext.7
Ext.2/1 to Ext.6/2: Seizure list

Ext.3/1 to Ext.6/3: Signature of Nilakantha Sarangi on the
seizure list.

List of Exts. Marked on behalf of the defence
Nil.

List of M.Os marked on behalf of the prosecution
Nil

List of M.Os marked on behalf of the defence

Addl. Sessions Judge, Bhubaneswar.