

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,**

**BHUBANESWAR**

Present :- *Shri Bishes Kumar Sahu, LL.M.,  
Judicial Magistrate First Class,  
Bhubaneswar.*

**G.R. Case No. 3511/2012**  
**(Arising out of Tamando P.S. Case No. 17/2012)**  
**T.R. No. 1387/2014**

**State: -** .....Prosecution

**-Versus -**

- 1) Bijaya Kumar Sahoo, aged about 36 yrs,  
S/O- Laxman Sahoo, At- Kanjiapada,  
PS- Kanpur, Dist- Cuttack.
- 1) Babu Khan @ Arif Khan, aged about 30 yrs,  
S/O- Hanif Khan, At- Haldi padia Basti,  
PS- Laxmisagar, Dist- Khurda.

.....Accused

Counsels for the Prosecution: Shri Prakash Chandra Panda,  
Shri Laxmidhar Parida &  
Shri Sudhansu Sekhar Tripathy  
.....A.P.P., Bhubaneswar.

Counsel for the Defense : Shri D.B.Pattnaik & his associates  
.....Advocates, Bhubaneswar.

Date of Conclusion of Argument : 02.12.2014  
Date of Pronouncement of Judgment : 22.12.2014

---

**Offences under Sections- 379/34 of the I.P.C.-1860**

---

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

1. The accused named above stands prosecuted for the offences punishable under section-379/34 of the I.P.C. for in furtherance of their common intentions of Committing Theft of Gold chain from the neck of the mother of the Informant.
2. The abridgement of the prosecution case runs as follows:-

That, one Rosan Kumar Das, aged about 31 yrs, S/O- Raja Kishore Dash of Plot No.663, Bijipur, PS- Tamando, Dist- Khurda presented a written report before IIC of Tamando P.S., Khurda. The informant made an allegation therein that on 26.09.12 at about 07am while the mother of the informant namely Namita Rani Das was returning from the morning walk, two unknown culprit came to her with their motor bike at the spot MIG square, kalinga Nagar and snatched away the gold chain from the neck of his mother. For the reasons the informant lodged an FIR at Tamando Police Station, Bhubaneswar.
3. Basing upon the written report, law was set into motion and the matter was investigated into. In course of investigation; the concerned investigating officer visited the spot, examined the informant, and the witnesses present in the spot. The statements of the witnesses are also recorded u/s-161 of Cr.P.C. On completion of investigation, the I.O. submitted charge sheet against the accused namely1. 1. Bijaya Kumar Sahoo, 2. Babu Khan @ Arif Khan under sections 379/34 of the I.P.C. to face their trial in the court of law which gave rise to the present trial.
4. The plea of the accused is one of outright denial and of false implication.
5. The points for determination of this case are:-
  - i. Whether the above named accused, in furtherance of their common intentions have on the said date, time & place committed theft of the Gold chain from the neck of the mother of the Informant & thereby they are liable u/s 379/34 IPC?

6. To substantiate its case, the prosecution has examined eight vital witnesses i.e. the Informant as P.W.-1, PW-2, 3, 6, 7, & 8 are the occurrence witnesses of this case. PW-4 & 5 are the seizure witnesses of this case. On the other hand, defence has examined none.

7. After a careful perusal of the evidence of the informant-P.W-1, it is found that the informant has proved the F.I.R. vides Ext-1 and his Signature vides-Ext-1/1 thereon. In his evidence PW-1 stated before the court that on 26.09.12 at about 07am while the mother of the informant namely Namita Rani Das was returning from the morning walk, two unknown culprit came to her with their motor bike at the spot MIG square, kalinga Nagar and snatched away the gold chain from the neck of his mother. For the reasons the informant lodged an FIR at Tamando Police Station, Bhubaneswar. On perusal of the evidences of PW-2 who is the victim of the case she also narrated the prosecution story. However on perusal of the evidences of PW-3, 6, 7 & 8 it is revealed that they do not know anything about the case matter. Moreover they put their ignorance about the fact of the case. PW-4 & 5 are the seizure witnesses of this case. They also stated in their evidences that nothing has been seized in their presence. Thus the evidences of these witnesses do not support to the prosecution's case. Thus the evidences of above witnesses no way helpful to the prosecution's case.

8. Considering the evidence adduced on the case record, this court is of the opinion that there is no iota of evidence worthiness to the name to connect the alleged accused persons in the alleged crime.

9. In the result, I hold that the prosecution has failed to prove its case against the accused persons beyond all reasonable doubt and as such the accused namely 1. Bijaya Kumar Sahoo, 2. Babu Khan @ Arif Khan are not found guilty for the offences punishable under sections U/s 379/34 of the IPC and is acquitted thereof under section 248 (1) of Cr.P.C. and they be set at liberty forthwith and be discharged from their bail bonds.

The seized articles which are released in zima be kept with the zimanadar. The zimanama be cancelled after expiry of four months of the

period of limitation for appeal if no appeal is preferred and according to the order of the Appellate Court if appeal is preferred.

Enter the case as of "Mistake of Fact".

**Judicial Magistrate First Class,  
Bhubaneswar.**

This judgment is typed by and corrected by me and pronounced in the open court on this day i.e.; the 22<sup>nd</sup> day of December, 2014 and given under my hand and seal of this Court.

**Judicial Magistrate First Class,  
Bhubaneswar**

List of witnesses examined on behalf of the Prosecution.

P.W. 1	:	Rosan Kumar Das
P.W. 2	:	Namita Rani Das
P.W. 3	:	Sukumari Sahoo
P.W. 4	:	Trilochan Sahoo
P.W. 5	:	Biswanath Behera
P.W. 6	:	Deepak Kumar Das
P.W. 7	:	Sankar Paikray
P.W. 8	:	Amiya Kumar Nayak

List of witnesses examined on behalf of the Defence.

: None

List of Exhibits marked on behalf of the Prosecution.

Ext. 1	:	FIR
Ext. 1/1	:	Signature of PW-1 on the FIR
Ext. 2	:	Zimanama
Ext. 2/1	:	Signature of PW-2 on the Zimanama
Ext. 2/2	:	Signature of PW-2 on the Zimanama
Ext. 3	:	Signature of PW-4 on the Seizure list
Ext. 3/1	:	Signature of PW-5 on the Seizure list
Ext. 4	:	Signature of PW-4 on the Confessional Statement

List of Exhibits marked on behalf of the Defence.

: Nil.

**Judicial Magistrate First Class,  
Bhubaneswar**