IN THE COURT OF JUDL .MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.B.,
Judl.Magistrate First Class,
Banpur.

Date of Argument. : 02.08.2014

Date of Judgment. : 14.08.2014

G.R. No. 309/2001
T. R. No.471/2001

State ……Prosecution.

-Versus-

Tukuna @ Kartika Chandra Maharana, aged about 36 years,
S/o Nanda Kishore Maharana.
Vill: Karati Saranai, P.S:Balugaon,
Dist: Khurda. ….. ……Accused .
Offence : Under Sections 380 I.P.C.

For the prosecution :Sri Jaladhar Pradhan, APP.

For the Defence :Sri S.K.Lenka, Advocate
& his associates

J U D G M E N T

01 The accused stands Charged for the offences punishable Under Sections 380 of the I.P.C.

02. The case of the prosecution in brief runs thus:

On 10.11.2001 one Dillip Kumar Behera lodged a written report before Balugaon P.S that he was working as manager in the Patrol pump of Hemanta Kumar Sahoo. On the same morning at about 10 am while he was at counter collecting money at that time one Tukuna Maharana who was working as a helper previously in the patrol pump came there and requested him to give a job there. But the informant refused to give a job to him without intimating the owner. So Tukuna wait at the office. At that time he went to telephone booth to attend a phone call, after five minutes he returned and saw that Tukuna Maharana was not present there and found the draw was opened two bundles of 100 rupees note amounting Rs.20,000/- were

missing. On suspicion he along with another employee of patrol pump came to the village of the accused Tukuna. On the way he caught the accused and took him to Patrol pump. In presence of the staffs of the patrol pump recovered two bundles of 100 rupees note and the accused confessed that he committed the theft.

Upon such report P.S. Case No.146/2001 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused, the I.O. submitted charge sheet against him.

03. The defence plea is denial simplicitor

04. The points for determination in this case emerge as follows;

(i) Whether on 10th day of November, 2001 the accused committed theft of Rs.20,000/- from the drawer of the informant with a dishonest intention?

05. In order to prove its case, prosecution has examined as many as eight witnesses in its favour. Out of them P.W.1 is the inform ant, P.W.2 , 4,5,6 & 7 are the witnesses to the occurrence. P.W.3 is the witness to seizure. P.W.8 is the I.O of this case. Ext.1,1/1, ½, 2,2/1,2/2, 3,3/1,3/2, 3/3 are marked on behalf of the accused. On the other hand defence has examined none.

06. On perusal of the evidence available on record the P.W.1 the informant of this case in his evidence has stated that accused came to him in the patrol pump office. At that time he got a telephone call so he went to receive the phone call. The accused was standing in his office. The accused came to him and approached him to give a job in the patrol pump. He told him that without permission of owner he can not engage him in their patrol pump. In the mean time a telephone call came from nearby telephone booth. So he went to the phone booth to receive phone after five minutes he returned his office found the accused not present in the office and cash drawer was half opened. On verification of cash he found three bundles of hundred

rupee notes amounting to rupees 30,000/- was stolen away from the drawer. He searched for the accused but he could not trace him out. Then he along with another employee of their petrol pump went to his village to search him. They detected him near his village and brought him to patrol pump and asked him about the incident in presence of owner and other employees . They also recovered cash of Rs.20,000/- from his pocket. The accused also confessed his guilt. The he lodged the written report at Balugaon P.S. Police seized the recovered cash of Rs.20,000/- from the accused and gave it in his zima. P.W.2 in his evidence stated that on the alleged date the accused was sitting near the informant in the patrol pump office. A phone call of the informant came from telephone booth so he went to telephone booth to receive telephone call. When he returned to office the cash of Rs.20,000/- was stolen away from his office room so the informant raised hullah and did not found the accused. On suspicion he and informant went to the village of accused and they found him near his village. They caught hold the accused and brought him by their scooter to their patrol pump and conducted search of accused. On search police recovered two bundles of hundred rupees notes total Rs.20,000/- from the accused. Police seized the recovered cash and prepared seizure list. P.W.3 another witness to the seizure in his evidence stated that on that day he had been to that patrol pump to load fuel. At that time he heard shout from the office of the petrol pump when he went to the office to give money for fuel he found some persons gathered there and policed was also present and saw cash of Rs.20,000/- was kept on the table and police told him that they have recovered the money from the accused and police asked him to put his signature on the seizure list. P.W.4 in his evidence stated that he heard that the accused had committed theft from the patrol pump. P.Ws 5,6 & 7 pleaded their complete ignorance. P.W.8 the I.O in his evidence deposed that after F.I.R was lodged he took up investigation of this case and during the course of investigation he examined

the complainant and other witnesses, visited the spot and prepared spot visit report. He seized two bundles one hundred currency notes each bundle is of Rs.10,000/- from the possession of the accused in presence of witnesses and prepared the seizure list marked as Ext.3/2. Then he gave the seized articles in the zima of the informant on execution of zimanama. He arrested the accused and forwarded him to court and after completion of investigation he submitted charge sheet.

7. In order to prove the offence U/s 380 of the I.P.C. the prosecution must prove that the articles recovered from an accused person are the articles which had been removed during commission of theft. In this case the informant P.W.1 & 2 have categorically stated the stolen cash of Rs.20,000/- were recovered from the possession of the accused in their presence. The I.O of this case also in his evidence stated that he recovered cash of Rs.20,000/- from the possession of the accused in presence of witnesses and the seizure list also corroborated and supported the prosecution story. P.W.3 the another witness to the seizure also said that Rs.20,000/- was recovered by the police in his presence while pw4 categorically stated that the accused has committed theft from the petrol pump of informant. After carefully scrutinizing the evidence available on record, I found that from the testimony of P.W.1 it is evident that he had discovered the facts of commission of theft after the accused left the place. Admittedly, neither he had seen the accused person nor any other person committing the offence. P.W.2 and other witnesses are also the post-occurrence witnesses and they became aware of the fact of commission of theft either after disclosure of fact by P.W.1 or during seizure or else. In such circumstances, it is pertinent to mention here that as no direct evidences are available in the present case, the facts relating to the circumstances may be taken into consideration because a

"circumstantial evidence" is the testimony of a witness to other relevant facts from which the fact in issue may be inferred.

09. It is settled principle of law relating to the circumstantial evidence that there must be a chain of independent evidence so complete and unbroken as to show that within all human probabilities the act must have done by the accused. ***(Hanumant Govind Nargund Kar Versus State of M.P. AIR 1952 S.C. 343).***

Moreover, in ***Aftab Ahmad Anasari Versus State of Utteranchal ((2010) 45 O.C.R. (S.C.)-619)*** the Apex Court has held in para-4-

" In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/ themselves, is/ are not decisive." In the present case though the nobody has seen the accused at the time of commission of theft but it was very clear from the evidence of pw1 and 2 and also the stolen money was recovered from the accused.

So far as non-corroboration by the seizure witness and independent witnesses is concerned. Law is well settled that in **State of Kerla Vs. Kurissum Mottilal Antony 2007(1) Crimes 22(SC)** it was held *"an accused can not cling to a fossil formula and insist on corroborative evidence, even if taken as a whole , the case spoken by the victim strikes a judicial mind as probable. Judicial response to human rights can not be blunted by legal jugglery".*

Moreover, in **Appabhai and another v. State of Gujurat (AIR 1988 S.C -696)** the Apex Court has been observed that "*Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and vigilance. They keep themselves away from the court unless it is inevitable. They think that crime like the civil dispute is between two individuals or parties that they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there every where whether in village life , towns or cities. The court there fore instead of doubting the prosecution case for want of independent witness must consider the board spectrum of the prosecution version and then search for the nugget of truth with due regard to the probability ,if any suggested by the accused."*

More to that the Investigating agency is an agency for public benefit and where no previous enmity or else between the agency and the accused is not established, the seizure list prepared by the same and the version of the Investigating Officer are not to be distrusted unreasonably. IO is also a post occurrence witness and his version is also no less important provided any bias is proved on his behalf. But in the case in hand defence is not successful to prove any bias/enmity on part of the police against the accused.

On the basis of the above discussion and taking account to the evidence available on record, I came to an evitable conclusion that the circumstances available against the accused forms a complete chain which unerringly pointing to the guilt of the accused. As such I found him guilty under Section 380 of I.P.C.

At this stage it is to be seen whether the convict shall be dealt with the benevolent provision of the Probation of Offenders Act. Considering the nature and manner of the offences

committed by him, his antecedents, age I am of the humble view that the ends of justice will be better served if the convict shall be visited with substantial sentence of imprisonment rather being released on probation. As such, I am not inclined to extend the benefit of the Probation of the Offenders Act to the present convicts.

Judicial Magistrate First Class,

Banpur.

HEARING TO QUESTION OF SENTENCE.

Heard the convict and the Learned Counsel for the Defence and the Learned A.P.P. on the question of sentence. Considering the fact and circumstances of the case and taking into account both the aggravating and mitigating circumstances I'm of the humble view it is desirable that the convict should be visited for rigorous imprisonment of 1 (one) year and fine of Rs.500/- (five hundred) only for the offence punishable under Section 380 of I.P.C and in default to pay the same to under go S.I for one month. The UTP period if any be set off against the sentence of imprisonment as per the provision of section 428 Cr.P.C.

The zimanama executed in favour of the zimadar stands cancelled four months after expiry of appeal period, if no appeal is preferred and if preferred the same shall be dealt as per orders of Hon'ble appellate Court.

Judicial Magistrate First Class,

Banpur.

This judgment typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 14th day of August, 2014.

Judicial Magistrate First Class,

Banpur.

List of witnesses examined for Prosecution.

PW.1 Dillip Kumar Behera

PW.2. Surendra Rout

PW.3 Bansi Behera
P.W.4 Mahendra Maharana
P.W.5 Rajkishore Naik
P.W.6 Bipin Kumar Behera
P.W.7 Surendra Kuamr Dash
P.W.8 Alekh Chandra Pahi

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Ext.1. FIR
Ext.1/1 Signature of P.W.1 on Ext.1.
Ext. 1/2 Signature of P.W.8 on Ext.1.
Ext.2. Zimanama
Ext.2/1 Signature of P.W.2 on Ext.2.
Ext.2/2 Signature of P.W.8 on Ext. 3/2
Ext.3 Signature of P.W.2 on seizure list.
Ext.3/1 Signature of P.W.3 on seizure list.
Ext3/2 Seizure list.
Ext.3/3 Signature of P.W.8 on Ext.3/2.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,
Banpur