

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST
CLASS(O), BHUBANESWAR, DIST-KHURDA**

Present : Sk. Md. Quais, M.A., LL.M.
J.M.F.C.(O), BHUBANESWAR

Date of conclusion
of argument : 01.09.2014

Date of Judgment : 08.09.2014

G.R. No. 341/2013
Trial Case No. 575/2014

S t a t e

v r s

1. Subrat Kumar Bhatta, aged about 25 years,
S/o. Nityananda Bhatta
Vill-Jayapur, PS-Baranga, Dist-Khurda.
2. Rakesh Kumar Routa @ Bapuni, aged
about 26 years,
S/o- Bhisnadev Routa @ Akash,
Vill-Ramkrushnapur PS-Nischintakoili
A/P- L-1052 Housing Board Colony
Phase-II Dumduma, P.S-Khandagiri,
Dist-Khurda.

... Accused Persons

For offences punishable u/s. 394/34 of IPC r/w Section 25(1-B)
of Arms Act.

For the Prosecution : A.P.P.

For the Defence : Laxmidhar Mohapatra &
his Associate Advocates.

J U D G M E N T

The accused persons stand charged for offences punishable u/s 394/34 of IPC r/w Section 25(1-B) of Arms Act for allegedly causing hurt to the informant in committing robbery of gold ornaments of the informant and his wife and three numbers of attache of the informant containing dress materials and cosmetics after sunset and before sunrise on the road in between Baranga-Pitapalli, on point of revolver and bhujali, in furtherance of their common intention.

2. The case of the prosecution shortly runs as hereunder ;

That on 21.05.2013 at about 11.00 P.M the informant, Laxman Roula appeared at Chandaka PS and presented a written report to the effect that on 20.05.2013 his marriage ceremony was solemnized at Sarpeswar Lord Siva Temple. After marriage function, the informant along with his newly married wife, his uncle Rabi Raula and brother-in-law Prakash Roula were returning to his village-Achyutpur in an Indica car. At about 8.00 P.M on the way near village-Gangapada Bhuasuni Temple humps two unknown culprits came in a CBZ motorcycle, one wearing helmet and another tying handkerchief

on his face and obstructed the car and took the key of car from the driver forcibly. The unknown culprits snatched away two numbers of gold chains and two numbers of gold finger rings from the informant and one mangalsutra, one golden mathamani and two numbers of gold ear rings from the wife of the informant and three attache from the dickey of the car on the point of revolver and bhujali. Basing upon such report of the informant Chandaka PS Case No. 57 dtd. 21.05.2013 was registered and the matter was investigated into. During investigation, while these two accused persons were arrested in Chandaka P.S. Case No. 74/2013 and while in Police custody they confessed to have committed robbery in this case and accused, Rakesh Kumar Rout gave recovery of stolen gold chains, one gold finger ring, one gold ear flower. A cash of Rs.11,000/- was seized from the possession of accused Subrat Bhatta and one revolver along with one live ammunition and one Bajaj Pulser Motorcycle having no registration no. displayed on it, were also seized from the possession of accused Rakesh Kumar Rout at the spot of apprehension at Patia. The seized stolen articles along with the cash of Rs.11,000/- were left in the zima of the informant. Accused persons were remanded in

this case. T.I Parade of both the suspects were held in presence of Judicial Magistrate by the informant. After completion of investigation, charge sheet u/s 394/34 of IPC r/w Section 25(1-B) of Arms Act was submitted against the accused persons to face their trial in court of law. Hence, this case.

3. The plea of the accused persons is clean denial and false implication.

4. The points to be determined are as follows ;

I) Whether on 20.05.2013 about 8.00 P.M the accused persons in furtherance of their common intention on the Baranga-Pitapalli road near village-Gangapada Bhuasuni Temple humps voluntarily caused hurt to informant and his newly married wife, while committing robbery jointly in respect of two numbers of gold chains, two numbers of gold finger rings, gold Mangalsutra, Mathamani, two gold ear rings three numbers of attache containing dress materials and cosmetics from them forcibly on point of bhujali and revolver ?

II) Whether on the same date, time and

place of occurrence the accused persons were in possession of any fire arm like revolver in contravention of Section 3 of the Arms Act ?

5. In order to prove its case prosecution has examined nine witnesses in all out of whom PW.4 Laxman Roula is the informant of this case. P.W.5, Prakash Roula is the brother-in-law of informant. P.W.6, Tuni Roula is the mother of the informant. P.W.7, Rabi Roula is the uncle of informant. P.W.8, Bishes Kumar Sahu is the Ld. J.M.F.C., Bhubaneswar who conducted the T.I. Parade of this case. P.W.9, Simanchala Bhanja is the I.O of this case. P.W.1, Murali Mahakuda, P.W.2, Satrugna Behera and P.W.3, Bijay Kumar Mahakuda are witnesses to occurrence. Defence has examined none on its behalf.

6. In order to prove the occurrence, PW.4 the informant has deposed that about one year back on the day of his marriage, he was returning with his wife in a car along with P.W.5, P.W.7 and his sister-in-law, Jhunu Roula to his house. On the way near Gangapada Chawk at about 7.00 PM the accused persons came in a CBZ Motorcycle and obstructed their car. On point of bhujali and pistol the accused persons snatched away two numbers of gold chains, two numbers of gold finger rings

and a cash of Rs.25,000/- from him and two numbers of golden ear ring, one mathamani and one gold mangalsutra from his wife, Sujata Roula and three numbers of attache containing wearing apparels and cosmetics from the dickey of the car and fled away from the spot in the aforesaid CBZ Motorcycle. P.W.4 testified that the accused in white complex (accused Rakesh Kumar Rout in the dock was noticeable with fair complex) was wearing a helmet on his head and accused Subrat Kumar Bhatta was tying one handkerchief on his mouth at the time of occurrence. P.W.4 deposed that accused Rakesh Kumar Rout had shown one bhujali and accused Subrat Kumar Bhatta had shown him a pistol while committing robbery. In Para-4 P.W.4 has deposed that after about 10 minutes of occurrence one P.C.R Van had come to the spot and he had disclosed about the occurrence to the police personnel. He further deposed that on the next morning he reported the matter in writing at Chandaka P.S. During investigation, P.W.4 deposed to had received the stolen, one golden chain, one golden finger ring, one golden ear ring and a cash of Rs.6,000/- in zima from Police.

P.W.5 who is a child witness was tested by the Court and after satisfaction of the Court that the witness was

intelligent enough to give rational answers, he was allowed to depose on oath. P.W.5 has corroborated P.W.4 regarding the occurrence, but he has failed to identify the accused persons present in the dock during trial. P.W.7 who is another witness to occurrence has also corroborated the evidence of P.W.4 regarding the occurrence, but has failed to identify the accused persons in dock during trial. P.W.7 has deposed that he was sitting on the front seat by the side of driver and the culprits had threatened him not to look back. P.W.6 is the mother of informant who arrived at the spot after occurrence. She has deposed that she could know from the informant that some unknown culprits had committed robbery of the ornaments from the informant and his wife along with a cash of Rs.25,000/- and three numbers of attaches. She failed to identify the accused persons present in the dock. She deposed that during investigation Police had left the stolen, one gold chain, one finger ring, one ear ring and a cash of Rs.6,000/- in zima of informant. She deposed that she had identified the gold ornaments to be of the informant and his wife. During cross-examination, she failed to disclose any specific identification of the ornaments recovered or stolen.

P.W.9, the I.O of this case has deposed that on 21.05.2013 he was working as S.I of Police attached to Chandaka PS. On that day, he took up investigation of this case i.e., Chandaka PS. Case No. 57/2013 on the written report of informant, Laxmana Roula. He testified that during investigation on 13.07.2013 he had apprehended the present accused persons in connection with Chandaka PS. Case No. 74/2013 in which he was also I.O. He deposed that while in Police custody in connection with PS. Case. 74/2013 the accused persons confessed to have committed robbery in this case. He further deposed that during apprehension of accused Rakesh Kumar Rout, he had seized one revolver along with one live ammunition and one Bajaj Pulsar Motorcycle from the possession of accused Rakesh Kumr Rout. He had also seized a cash of Rs.11,000/- from the possession of accused Subrat Kumar Bhatta. He further deposed that he recorded the statement of accused Rakesh Kumar Rout U/s. 27 of Indian Evidence Act in PS. Case No. 74/2013 and the accused led discovery of two numbers of gold chain, one gold finger ring, one gold ear flower and one Bajaj Pulsar Motorcycle without any Registration No. displayed on it from his house. He seized

the same from possession of accused Rakesh Kumar Rout. He further deposed that the seized gold ornaments and cash of Rs.6,000/- were left in zima of the complainant vide zimanama Ext.-4. He deposed that he had made prayer for conducting T.I Parade of the suspects and accordingly T.I Parade of the suspects was conducted by identifying witness Laxman Roula.

Ld. J.M.F.C., Bhubaneswar Sri B. K. Sahu has been examined as P.W.8. He has deposed that he conducted T.I Parade of both the suspects on 26.07.2013 in the Special Jail Premise Jharpada, Bhubaneswar by witness Laxman Roula. He deposed that the witness correctly identify both the suspects. He proved his report vide Ext.-1. He deposed that the I.O was present in front of the jail gate during conducting T.I Parade and the identifying witness was introduced to him by the I.O.

7. On close scrutiny of the evidence of witness, it reveals that, F.I.R was lodged against unknown persons. The present accused persons have been implicated in this case on the basis of their alleged confessional statement given to the I.O, thereafter, leading to discovery and seizure of the robbed articles from the possession of accused persons and on the basis

of the complainant identifying the accused persons in the T.I Parade ground.

Coming to the evidence of I.O regarding discovery and seizure, P.W.9 has deposed that the accused persons while in Police custody in connection with Chandaka P.S. Case No. 74/2013 had confessed their guilt to have committed robbery in this case. He has deposed to have recorded their statement and basing upon such statement he recovered some robbed ornaments and one Motorcycle from the possession of accused Rakesh Kumar Rout. He has also deposed to have seized one revolver, one live ammunition and one Motorcycle from the possession of accused Rakesh Kumar Rout and a cash of Rs.11,000/- from the possession of accused, Subrat Kumar Bhatta during their apprehension. None of the witness has corroborated the evidence of P.W.9 regarding such recovery and seizure from the possession of accused persons. The I.O himself has admitted during cross-examination that he has not prepared a single paper in this case relating to any seizure or statement U/s. 27 of Indian Evidence Act. He has also not seized the seizure list prepared in Chandaka P.S. Case No. 74/2013 in this case. No document of PS Case No. 74/2013 having any

connection with this case has been proved. The complainant himself has admitted that except the gold finger rings taken by him in zima, other articles doesn't belong to him and he does not know to whom the other articles belong to. Under the above circumstances and in absence of any corroboration either oral or documentary evidence of the I.O regarding factum of recovery and seizure from the possession of accused persons as well as the recovered articles were nothing but the robbed articles, remained under the shadow of doubt.

8. Regarding the identification of the accused persons by the informant, the informant has deposed during examination in chief that the person having fair complex was holding a bhujali and the other person having dark complex was holding a revolver at the time of occurrence. He has neither mentioned such nature of identification in his own FIR nor stated before Police during his examination U/s. 161 of Cr.P.C. He has also not disclosed such fact of specific role of the accused persons during occurrence at the time of T.I. Parade to the Magistrate. He has not explained the reason as to what prevented him to disclose such fact relating to the complexion of the accused persons while presenting F.I.R, stating before the

I.O and before the Magistrate while conducting T.I. Parade, prior to deposing in Court. Moreover, P.W.4 has admitted during cross-examination that he had seen the accused persons at Police station before appearing at the T.I. Parade ground. It is admitted by the informant in his F.I.R that one culprit was wearing helmet and other accused was tying one handkerchief on his face. The occurrence took place at 8.00 PM in the night. It is admitted by P.W.4 himself that there was no light at the spot. There were six persons in the alleged car of the informant at the time of occurrence including the driver, wife of informant, the sister-in-law of informant namely, Jhunu Roula, P.W.5 and P.W.7 as per evidence of P.W.4. The wife and sister-in-law of informant and the driver of the car have neither been cited as witness nor examined for the prosecution. P.W.6 and P.W.7 who were witnesses to occurrence have failed to identify the accused persons in the dock during trial. Under the above circumstances, P.W.4 describing the role of accused persons during occurrence by indicating their complexion is not believable beyond doubt, and seems to be after through conduct of the informant. P.W.8 has deposed that P.W.4 had identified the suspects during T.I. Parade. It is admitted by P.W.4 himself that prior to appearing at

T.I. Parade ground he had seen the accused persons at Chandaka PS. Under the above circumstances, no importance can be attached to the Test Identification Parade. In order to substantiate my view I rely upon the authority of Hon'ble Apex Court in case of **Balkishan Vrs. State of Himanchal Pradesh reported in 2008(41)OCR (SC) Page 999** wherein it is held taht *“If the witness deposed in the witness box that she had identified the accused persons at the police station before identification. In view of admission of the witness that the accused persons were shown to her before identification parade, no importance can be attached to the Test Identification Parade”*.

I also rely upon the authority of our own Hon'ble Court in case of **Bijay Pan Vrs. State of Orissa reported in 2011(49) OCR Page-622** wherein it is held that *“T.I Parade report cannot be considered to be a corroborative piece of evidence if the identifying witness deposed in Court that they had seen the accused at Police Station before Test Identification Parade”*. In view of the aforesaid authority of our Hon'ble Court as well as Hon'ble Apex Court the Test Identification Report in this case cannot be taken as a corroborative piece of evidence.

9. Regarding recovery and seizure of revolver and

ammunition from the possession of accused, Rakesh Kumar Rout neither the seizure list could be proved nor any witness has corroborated the evidence of P.W.9. The seized articles has not been produced in Court in connection with this case, nor any Balestic report from Forensic Laboratory is produced or proved for prosecution. Under the above circumstances, it cannot safely be accepted that the accused persons had possessed any arm or ammunition at the time of alleged occurrence.

10. In view of my discussions made in the forgoing paragraphs, I am at conclusion that the prosecution has failed to prove its case against the accused persons and their complicity with the alleged occurrence beyond all reasonable doubt. The benefit of such doubt is extended to the accused persons.

In the result, I hold the accused persons not guilty of the offence punishable u/s 394/34 of IPC r/w Section 25(1-B) of Arms Act and acquit them therefrom u/s 248(1) of Cr. P.C. The accused persons be released from custody forthwith, if their presence is not required in any other case.

Enter the case as mistake of fact.

The zimanama in respect of the seized ornaments

and cash be cancelled and made absolute after four months from the date of expiry of appeal period, if no appeal is preferred and in case of appeal as per direction of Appellate Court.

J.M.F.C.(O), Bhubaneswar

Dictated, corrected and pronounced in the open court on this the 8th day of September, 2014 under my hand signature and seal of this court.

J.M.F.C.(O), Bhubaneswar

List of witnesses examined for prosecution

PW.1	Murali Mahakuda
PW.2	Satrughna Behera
PW.3	Bijay Kumar Mahakuda
PW.4	Laxman Roula
PW.5	Prakash Roula
PW.6	Tuni Roula
PW.7	Rabi Roula
PW.8	Bishes Kumar Sahu
PW.9	Simanchala Bhanja

List of witnesses examined for defence

N o n e

List of documents admitted in evidence for prosecution

Ext.1	T.I. Parade
Ext.1/1	Signature of P.W.8 on Ext.-1.
Ext.2	FIR.
Ext.2/1	Endorsement and signature of IIC on FIR
Ext.2/2	Formal FIR.
Ext.2/3	Signature of PW.9 on Ext.-2/2.
Ext.3	Spot Map.
Ext.3/1	Signature of PW.9 on Ext.-3.
Ext.4	Zimanama of ornament and cash.

List of documents admitted in evidence for defence

N I L

J.M.F.C.(O), Bhubaneswar