

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 : 16.09.2014

Date of Judgment : 22.09.2014

G.R. No. 463/2013
Trial Case No. 274/2013

S t a t e

vrs

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- Bhisudev Routa @ Akash,
Vill-Ramkrushnapur PS-Nischintakoili
A/P- L-1052 Housing Board Colony
Phase-II, Dumduma, PS-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 one Rohit Kumar Dhala a sales man of Budheswar Kishan Seva Kenda Petrol Pump at Chhatabar, in committing robbery of a cash of Rs. 29,137/- from said Petrol Pump and committing robbery of cash of Rs.15,000/- from Kishan Seva Kenda Petrol Pump at Paniora in furtherance of their common intention on point of revolver.

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

That on 10.07.2013 at about 3.00 PM the informant, Raghunath Nayak appeared at Chandaka PS and presented a written report to the effect that on the same day at about 1.20 PM two unknown culprits came in a motor cycle to the petrol pump at Chhatabar where the informant was working as a Manager and snatched away a cash of Rs.29,137/- from his employees, one Rohit Kumar Dhal, Sales man of the Petrol Pump from his office on point of revolver. The culprits had also assaulted another sales man

Bijay Kumar Moharana and snatched away his mobile phone. Some while thereafter, two unknown culprits also committed robbery of some money from Kishan Seva Petrol Pump at Paniora on point of revolver. Basing upon such report of the informant Chandaka PS Case No. 74 dtd. 10.07.2013 was registered and the matter was investigated into. During investigation, on 13.07.2013 the present accused persons were arrested near Patia Chowk and while in police custody they confessed their guilt for committing alleged robbery in this case. One Motorcycle, one revolver and one live ammunition was seized from the possession of accused, Rakesh Kumar Rout and a cash of Rs.11,000/- alleged to be robbed money was seized from the possession of accused, Subrat Bhatta. During police custody, accused Rakesh Kumar Rout led discovery of some stolen ornaments alleged to be robbed articles in Chandaka P.S. Case No. 57/2013. T.I Parade of the suspects was conducted. Seized fire arm and ammunition were sent to S.F.S.L for balestic report. 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 10.07.2013 at about 1.20 PM at Budheswar Kishan Seva Kendra Petrol Pump at Chhatabar the accused persons in furtherance of their common intention voluntarily caused hurt to one Rohit Kumar Dhala and Bijay Kumar Moharana, sales man of the petrol pump, while committing robbery jointly in respect of a cash of Rs.29,137/- from them and from the cash counter forcibly on point of revolver ?
 - ii. Whether on the aforesaid date at Kishan Seva Petrol Pump at Paniora the accused persons in furtherance of their common intention voluntarily caused hurt to any staff of the aforesaid petrol pump while committing robbery jointly in respect of a cash of Rs.15,000/- from said petrol pump forcibly on point of revolver ?
 - iii. Whether on the same date, time and place of

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

5. To substantiate the charge, prosecution has examined seven witnesses in all out of whom PW.3 Raghunath Nayak is the informant of this case. PW.1, Bijay Kumar Moharana is a sales man of Chhatabar Petrol Pump and a witness to occurrence, PW.2, Purna Chandra Behera, PW.4, Kanhu Charan Parida and PW.6, Manoranjan Behera are the witnesses to seizure. PW.5, Sudarsan Mohanty is the sales men of the Paniora Petrol Pump and witness to occurrence. PW.7, Seemanchala Bhanja is the I.O of this case. Defence has examined none on its behalf.

6. In order to prove the occurrence, PW.3 the informant has deposed that on 10.07.2013 he was working as Manager of Budheswar Petrol Pump at Chhatabar. On that day, in between 1.00 PM to 1.30 PM he had been to his house to take lunch. At the relevant time, he received telephonic message from PW.1 that two culprits of age group between 20 to 25 years had

come in a motorcycle and committed robbery of the money of petrol pump on point of pistol. Hearing such occurrence, P.W.3 deposed to had arrived at the spot and found one salesman Rohit Kumar Dhala had sustained bleeding injury on his head. P.W.3 immediately shifted him to Hospital. P.W.3 also testified that he found the glasses of cash counter and the drawer of his office table were broken and on his verification he found a cash of Rs.18,000/- and some coins were robbed. At about 3.00 PM he lodged FIR at Chandaka PS vide Ext.-1. After two day of occurrence police had called him to Mendhasala Outpost under Chandaka PS and left a cash of Rs.15,000/- in his zima by executing zimanama vide Ext.-2.

P.W.1 has deposed that on the relevant day at about 1.00 PM when he was present in the petrol pump as he was working as sales man there, two persons came in a motorcycle and entered into the cash counter where another employee Rohit Kumar Dhala was present. After sometime, said Rohit Kumar Dhala informed him that the alleged two persons had snatched away from

money from him. During cross-examination, P.W.1 testified that at the time of occurrence except himself and Rohit Kumar Dhala no other person were present. He deposed that during occurrence or thereafter said Rohit Kumar Dhala had not raised any hullah. He admitted to have not seen those two persons nor can he identify them.

P.W.2, P.W.4 and P.W.6 have not corroborated the factum of seizure. P.W.4 has deposed that on 10.07.2013 he was working as sales man in Kishan Petrol Pump at Paniora. On that day, he heard from other staff of the said petrol pump that there was robbery of cash of Rs.15,000/- from their petrol pump. He admitted that he was not present in the Petrol Pump at the time of occurrence. P.W.4 and P.W.6 have deposed that nothing was seized by police in their presence and they had put their signatures on seizure list on blank papers.

P.W.5 has deposed that on 10.07.2013 he was working as sales man in the Paniora Kumar Kishan Petrol Pump. At about 1.00 PM while he was present

near the petrol point two persons came in a motorcycle and asked him to fill their motorcycle tank with petrol of Rs.100/-. While he was filling petrol in their motorcycle one of them snatched away his bag containing sale out money. In fear, he ran away towards the road. Thereafter, the culprits entered into the cash counter and took away cash of Rs.11,000/- from the drawer of the table. He deposed that he could not identify the culprits.

P.W.7, the I.O of this case has deposed that on 10.07.2013 he was working as S.I of Police attached to Chandaka PS. On that day, on the written report of informant Raghunath Nayak, the then IIC, Chandaka PS, Sri Gangadhar Dalei registered Chandaka PS Case No. 74/2013 U/s. 394 of IPC r/w Section 25 of Arms Act and directed him to take up investigation of this case. During investigation, P.W.7 deposed to had examined the complainant and other witnesses, issued injury requisition in favour of one Rohit Kumar Dhala to M.O.C.H.C., Mendhasala. On the same day, he seized one Apache Motorcycle bearing Regd. No. OR-05.-R-

1040 along with a cash of Rs.15,000/- kept within the seat of the motorcycle from near Chunupur Forest area vide seizure list Ext.6/1. P.W.7 testified that on 13.07.2013 while conducting raid near Patia Chowk, Bhubaneswar, he apprehended the accused persons Rakesh Kumar Rout and Subrat Kumar Bhatta while proceeding in a motorcycle. On search of the person of accused, Rakesh Kumar Rout he recovered one revolver having mark of "made in USA-0.765 mm" and one live ammunition as well as one Bajaj Pulsar Motorcycle from the possession of accused. He seized the same vide seizure list Ext.-5/1. He also seized a cash of Rs.11,000/- from the possession of accused, Subrat Kumar Bhatta vide Ext.-3/1. He arrested both the accused persons and during police custody both accused persons confessed their guilt to have committed robbery in this case. The accused, Rakesh Kumar Rout also led discovery of some stolen ornaments and one Bajaj Motorcycle without having any registration no. from his house at Dumduma. P.W.7 recorded the statement of accused U/s. 27 of Indian

Evidence Act vide Ext.-9. He also seized the aforesaid article vide seizure list Ext.-4/1. On 16.07.2014 P.W.7 made prayer for conducting T.I Parade of suspects by the occurrence witnesses of both the spots and accordingly T.I Parade was conducted. P.W.7 deposed to had sent the seized revolver and ammunition to S.F.S.L through Court and had obtained the Balestic report. He had made prayer for sanction to Commissioner of Police, Bhubaneswar-Cuttack and had obtained sanction order from District Magistrate, Khurda vide Ext.12. He had left the seized cash of Rs.15,000/- in zima of the complainant. He left cash of Rs.5,000/- out of seized Rs.11,000/- in zima of one Gajendra Kumar Samantaray owner of Paniora Petrol Pump. He left the seized ornaments in zima of the complainant in PS Case 57/2013 and one gold chain in zima of the I.O in Saheed Nagar PS Case No. 224/2013 as the stolen ornaments were involved in the afore-cited cases.

During cross-examination P.W.7 admitted that no separate FIR was lodged for occurrence in Paniora Petrol Pump. He deposed that one Rohit Kumar Dhala

and Bijay Moharana are the witnesses to occurrence at Chhatabar Petrol Pump and witnesses Sudarsan Mohanty and Gajendra Kumar Samantaray are the witnesses to occurrence at Paniora Petrol Pump. He admitted that no damaged note as per allegation of the informant has been seized in this case. He admitted that P.W.4 Kanhu Charan Parida and other witness Biswa Bhusan Behera are not local residence of Patia. He admitted that the confessional statement vide Ext.-9 doesn't contain the endorsement that the accused was read over and explained the contents of Ext.-9 prior to putting his signature thereon. He admitted that the articles seized vide Ext.4/1 are not involved in this case. He failed to disclose how many members were residing with the accused Rakesh Kumar Rout in his house at Dumduma during the time of seizure. He admitted to have not cited any neighbouring witness during seizure. He admitted to have not entered into the house of accused and seized the articles on production by the accused. He admitted that the seized revolver was kept in PS from 13.07.2013 till 22.07.2013

when it was sent to S.F.S.L., Rasulgarh.

7. FIR was lodged against unknown persons. The present accused persons have been implicated in this case for seizure of stolen cash and weapons of offence from their possession and for accused, Rakesh Kumar Rout leading to discovery of some stolen ornaments and a motorcycle involved in other cases. Let us scrutinize the evidence of prosecution witnesses regarding the factum of recovery and seizure. It is alleged by the I.O that he had 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 at Patia Chowk in presence of witnesses. The evidence of the I.O has not been corroborated by any other witnesses. He has cited one Kanhu Charan Parida and one Biswa Bhusan Behera as witnesses to seizure of aforesaid articles vide seizure list Ext.-3/1 and Ext.-5/1. Kanhu Charan Parida has been examined as P.W.4. P.W.4 has deposed that nothing was seized in his presence. He had put his signature on a

blank paper on being asked by police. He failed to identify the accused persons in dock during trial. Other witness to seizure namely, Biswa Bhusan Behera has been declined by the prosecution. While the informant has deposed and has mentioned in his FIR that some damaged note and coins were robbed from his petrol pump, it is admitted by the I.O that no damaged note was seized. It is alleged that a cash of Rs.15,000/- along with a motorcycle was seized from near Chunupur Forest. He is silent as to how could he know that the seized cash were nothing, but the stolen money. The seizure was made from open place. He has failed to establish the ownership of seized motorcycle. Hence, the I.O has failed to establish any connection with the seizure of cash of Rs.15,000/- and motorcycle with the present accused persons. The stolen articles in this case are money. The ornaments so seized has nothing to connect the accused persons with this case. Since, the evidence of I.O regarding the seizure of money from the possession of present accused persons is not corroborated by any witness, the factum of

seizure from the possession of accused persons remained under shadow of doubt.

8. P.W.1 and P.W.5 are the witnesses to occurrence in Chhatabar and Paniora Petrol Pumps respectively. Both of them have failed to identify the accused persons in dock during trial. Other two witnesses to occurrence namely, Rohit Kumar Pradhan and Gajendra Kumar Samantaray have been withdrawn by the prosecution to be examined for the reasons better known to prosecution. T.I Parade of suspects was held by the witnesses Rohit Kumar Dhala and Sudarsan Mohanty, but both of them failed to identify the accused persons during T.I. Parade. Under the above circumstances, the involvement of present accused persons in the alleged offence is doubtful.

Regarding leading to discovery U/s. 27 of Indian Evidence Act, the witnesses who were alleged to have been led by the accused, have not corroborated the evidence of I.O regarding discovery and seizure. It is admitted by the I.O that the statement U/s. 27 of Evidence Act doesn't contain any endorsement

regarding reading over or explaining the contents to the accused. It creates a doubt regarding the proper recording of the version of the accused. Such recording of statements by I.O is also not corroborated by independent witness. Under the above circumstances, the factum of leading to discovery cannot be relied upon beyond doubt. Moreover, the property recovered has got no connection with this case.

9. Since, the seizure of arm and ammunition from the possession of accused, Rakesh Kumar Rout is not proved beyond doubt and no Balestic report has been proved, the prosecution has failed to establish its case for offence U/s. 25(1-B) of Arms Act against the accused persons.

10. In view of my discussions made in the forgoing paragraphs, I am at conclusion that the prosecution has failed to establish its case against the accused persons beyond all reasonable doubt. The benefit of 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 are in custody. 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 cash and ornaments be cancelled and made absolute, the seized motorcycles be released in favour of its rightful owner and in case of no claim, the same be confiscated to state, the seized arm and ammunition be confiscated to state and shall be deposited in the State Armory. The seized properties be disposed of accordingly 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 22nd 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 Bijay Kumar Moharana
PW.2 Purna Chandra Behera
PW.3 Raghunath Nayak
PW.4 Kanhu Charan Parida
PW.5 Sudarsan Mohanty
PW.6 Manoranjan Behera
PW.7 Simanchala Bhanja

List of witnesses examined for defence

N o n e

List of documents admitted in evidence for prosecution

Ext.1 FIR.
Ext.1/1 Signature of P.W.3 on Ext.-1.
Ext.1/2 Endorsement and signature of IIC.
Ext.1/3 Formal FIR.
Ext.-1/4 Signature of IIC on Ext.1/3.
Ext.2 Zimanama.
Ext.2/1 Signature of P.W.3 on Ext.-2.
Ext.2/2 Signature of P.W.3 on Ext.-2.
Ext.2/3 Signature of P.W.7 on Ext.-2.
Ext.3 Signature of P.W.4 on Seizure list.
Ext.3/1 Seizure list.
Ext.3/2 Signature of P.W.7 on Ext.3/1.

- Ext.4 Signature of P.W.4 on Seizure list.
Ext.4/1 Seizure list.
Ext.4/2 Signature of P.W.7 on Ext.4/1.
Ext.5 Signature of P.W.4 on Seizure list.
Ext.5/1 Seizure list.
Ext.5/2 Signature of P.W.7 on Ext.-5/1.
Ext.6 Signature of P.W.6 on Seizure list.
Ext.6/1 Seizure list.
Ext.6/2 Signature of P.W.7 on Ext.6/1.
Ext.-7 Spot Map.
Ext.7/1 Signature of P.W.7 on Ext.7.
Ext.8 Injury Requisition.
Ext.8/1 Signature of P.W.7 on Ext.-8.
Ext.9 Confessional statement of accused Rakesh
 Kumar Rout.
Ext.9/1 Signature of P.W.7 on Ext.-9.
Ext.10 Examination Report.
Ext.10/1 Signature of P.W.7 on Ext.-11.
Ext.11 Zimanama.
Ext.11/1 Signature of P.W.7 on Ext.-12.
Ext.12 Sanction order.
Ext.12/1 Signature of P.W.7 on Ext.-13
Ext.-13 Seizure list.
Ext.-13/1 Signature of P.W.7 on Ext.-14.

List of documents admitted in evidence for defence

N I L