

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 : 20.09.2014

Date of Judgment : 27.09.2014

G.R. No. 864/2013
Trial Case No. 321/2014

S t a t e
vrs.

1. Kanhu @ Ranjan Kumar Barik, aged about 23 years,
S/o. Bhagirathi Sutar,
Biswabansi Colony, Nuagaon, PS-Jatni,
Dist-Khurda.
2. Kanhu @ Jhulu Samal, aged about 23 years,
S/o- Narendra Samal,
Vill-Nuagaon, Bhoi Sahi, PS-Jatni, Dist-Khurda.
3. Kanha @ Kartika Moharana, aged about 22
years,
S/o- Bidu Moharana,
Vill- Mundia Sahi PS- Jatni, Dist-Khurda.

... Accused Persons

For offences punishable u/s 454/380/34 of IPC

For the Prosecution :A.P.P

For the Defence : For accused no. 1) Sri Jaya
Prakash Trivedi & his
Associate Advocates.
For accused no. 2) Sri P. K.
Mohanty & his Associate
Advocates.
For accused no. 3) Sri K. C.
Mohanty, State Defence Counsel

J U D G M E N T

The accused persons stand charged for offences punishable u/s 454/380/34 of IPC for allegedly committing theft of gold and silver ornaments, one laptop, one note pad and a cash of Rs.10,10,000/- from the dwelling house of the informant, by breaking open the window of the house, in furtherance of their common intention.

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

That on 24.12.2013 the informant and his family members except his son Amit Ray had been to their native village at Dasapalla. They left their house at Ramachandrapur Bazar at 9.30 A.M. Thereafter, the son of the informant Amit Ray left his house with proper lock and key to his office at Janla at 10.30 A.M. At about 7.00 PM when the son of informant returned back to his house, he found there was theft in his house. Some unknown culprits had entered into his house by breaking open the front window grill of worship room. They had broken away the C.C.T.V Camera affixed to the residential premise of informant. They had broken away the locks of four steel almirahs of the rooms and had

committed theft of 8 pieces of gold bangle, 3 pieces of gold mangalsutra, 3 pieces of gold chain, two gold sets, 18 pieces of gold finger ring, 10 pieces of gold ear ring, 2 pieces of gold Tulasi Mala, 2 pieces of gold Patla (bangle), silver ornaments weighing about 1 kg, one laptop, one PSP, one note pad and a cash of of Rs.10,10,000/-. After receiving the the telephonic message about the incidence from his son, the informant came back to the spot and lodged a written report at Jatni P.S. Basing upon such report of the informant Jatni PS Case No. 306 dtd. 24.12.2013 for offence U/s. 454/380 of IPC was registered and the matter was investigated into. During investigation, witnesses were examined, leading dog was utilized and scientific team verified the spot. Two numbers of weapons of offence i.e., one crowbar and one handle of the motorcycle were seized from the spot, the video camera and system of C.C.T.V affixed to the residential premise of informant was seized. Two numbers of glasses were seized from the spot suspected to having some finger prints of the culprits on it. On 11.01.2014 the present accused persons were arrested and while in police custody accused Kanha @ Kartika Moharana led the police and other witnesses, to

discovery of some stolen ornaments from within his latrine tank at Village-Mundia Sahi, Jatni. Accused, Ranjan Kumar Barik while in police custody led the police and witnesses, to discovery of some stolen ornaments from his residential house at village Biswabansi, Jatni. The recovered stolen articles were seized and were left in zima of the informant. The accused persons were forwarded to Court. The seized C.C.T.V Camera and system was sent to its company, Raykon Systems, for examination and it was ascertained that the video footage, photos and the videos were the part of the machine and was not edited outside. After completion of investigation, charge sheet u/s 454/380 of IPC was submitted against the accused persons and later on charged U/s. 454/380/34 of IPC was framed against the accused persons to which they pleaded not guilty and claimed for trial. Hence, this trial.

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

4. The points to be determined are as follows ;

I) Whether on 24.12.2013 in between 10.30 A.M to 7.00 PM at Ramachandrapur Bazar

the accused persons in furtherance of their common intention, committed the offence of house breaking, by entering into the house of informant for the purpose of committing theft ?

II) Whether during the aforesaid period at the aforesaid place, the accused persons in furtherance of their common intention, committed theft of 8 pieces of gold bangle, 3 pieces of gold mangalsutra, 3 pieces of gold chain, two gold sets, 18 pieces of gold finger ring, 10 pieces of gold ear ring, 2 pieces of gold Tulasi Mala, 2 pieces of gold Patla (bangle), silver ornaments weighing about 1 kg, one laptop, one PSP, one note pad and a cash of of Rs.10,10,000/- from the building of informant which was used as human dwelling by taking the same dishonestly out of possession of the informant without his consent ?

5. To substantiate the charge, prosecution has

examined seven witnesses in all out of whom PW.1 Bijay Kumar Ray is the informant of this case. PW.2, Biswanath Agarwala is the cousin brother of the informant. PW.3, Amit Kumar Ray is son of the informant. PW.4, Umakanta Sahoo is the I.O of this case. PW.5, Rup Narayan Agarwal is a witness to seizure. PW.6, Pratap Keshari Baral and PW.7, Pratap Ch. Kara are the witnesses to leading to discovery U/s. 27 of Indian Evidence Act and the seizure of stolen articles. Defence has examined none on its behalf.

6. In order to establish an offence U/s. 380 of IPC the prosecution must prove that the accused persons with dishonest intention and without the consent of victim, took away some movable articles which were in possession of the victim, from a dwelling house or from a building meant for custody of property. Let us scrutinize the evidence of prosecution witnesses in order to come to any conclusion whether prosecution has able to establish its case. PW.1, the informant of this case and PW.3, his son have deposed that on 24.12.2013 PW.3 had left their house at Ramachandrapur Bazar, Jatni with proper lock and key. PW.1 and PW.3 have deposed that after return of PW.3 to his house at 7.00 P.M., he

found the front window of worship room was broken. P.W.1 and P.W.3 have both deposed that on their return to house they had found the articles of the house were laying in scattered manner and four numbers of almirahs of different room were laying on the beds and the lock of those almirahs were broken. P.W.1 has deposed in Para-3 that the culprits had committed theft of 8 numbers of gold bangle, 3 numbers of gold necklace, 18 numbers of gold finger ring, 3 numbers of gold Tulasi Mala, 2 numbers of gold Patla (bangle), gold ear rings and nose rings, one laptop and a cash of Rs.10,10,000/- along with some other gold ornaments form his house. P.W.1 has corroborated his FIR vide Ext.-1 regarding the nature and description of stolen ornaments. P.W.2, Biswanath Agarwal and P.W.5, Rup Narayan Agarwal have corroborated the evidence of P.W.1 and P.W.3. Both of them deposed that after occurrence they had visited the spot and found the front window of the house of the informant was broken. The almirahs inside the rooms were also broken and were laid down on the floor. The C.C.T.V Camera affixed to the residential premise of the informant was also found broken. P.W.1 has deposed that there was live footage of the

occurrence for a period of seven minutes in the C.C.T.V Camera and thereafter, the camera was broken by the culprits. P.W.1 deposed that from C.C.T.V Camera Footage, he could identify the accused Ranjan Kumar Barik who was entering into the residential house of the informant at the time of occurrence. P.W.1 also identified the accused, Ranjan Kumar Barik and other two accused person in dock during trial. He deposed that he was having prior acquaintance with the accused persons on the date of occurrence. P.W.3 has deposed that he could identify the accused Ranjan Kumar Barik from the C.C.T.V Camera Footage, however, during cross-examination P.W.3 admitted that he had not stated such fact to the Police. He failed to identify the other two accused persons in dock. P.W.4, the I.O of this case has deposed that during investigation he had seized the four channels digital video recorder on production by the complainants vide seizure list Ext.-6. Such factum of seizure of C.C.T.V video recorder by I.O has been corroborated by the evidence of P.W.1. P.W.4 has deposed that he had sent the seized video recorder to its company Raykon System at Rasulgarh for verification of authenticity of the disk and photo of the video recorder so

seized and had received the certificate vide Ext.-9 which revealed that the photo and D.V.D in the Digital Video Recorder System was the part of the system and not edited outside of the system. P.W.4 deposed that the video recorder was left in zima of P.W.1 vide zimanama Ext.-5.

P.W.4 has deposed that on 11.01.2014 he arrested all three accused persons. He further deposed that while in police custody, the accused persons Kartik Moharana and Ranjan Kumar Barik confessed their guilt to have committed theft in the house of informant on the date of occurrence. He recorded the statement of accused, Kartika Moharana vide Ext.-10 U/s. 27 of Indian Evidence Act. and as per his statement, the accused, Kartika Moharana led discovery of some stolen ornaments from his latrine tank. P.W.4 deposed to have seized such stolen ornaments from the possession of accused, Kartika Moharana vide seizure list Ext.-12. He further deposed to have recorded the statement of accused, Ranjan Kumar Barik vide Ext.11 U/s. 27 of Indian Evidence Act and as per his statement, the accused, Ranjan Kumar Barik led discovery of some stolen ornaments from his house from under a cot. P.W.4 deposed to have seized such stolen

ornaments vide seizure list Ext.-13. P.W.4 deposed that he had left the seized ornaments vide Ext.-12 in zima of the complainant vide zimanama Ext.-3. He had also left the seized articles vide seizure list Ext.-13 in zima of the complainant vide zimanama Ext.-2. P.W.1 has corroborated the evidence of P.W.4 regarding receipt of the seized articles in his zima vide zimanama Ext.-2 and Ext.-3. During cross-examination, P.W.1 has deposed that he had not produced any document pertaining to the ownership of stolen ornaments, however, he denied that such type of ornaments are not available in common market. During cross-examination in Para-12 P.W.1 has deposed that he along with his family members could identify the seized ornaments to be the stolen articles and thereafter, he took the same in his zima. P.W.1 has deposed that he had received the stolen ornaments in zima at P.S.

P.W.6 and P.W.7 have corroborated the evidence of P.W.4 regarding, accused, Ranjan Kumar Barik leading the Police party and them to his house at Village-Biswabansi, Jatni and thereafter, producing the some stolen ornaments covered in a paper from under a cot of his house. P.W.6 and P.W.7 have also corroborated the evidence of P.W.4 regarding,

accused, Kartika Moharana leading the Police party and them to his house at Village-Mundia Sahi, Jatni and thereafter, producing some stolen ornaments kept in a steel teaffen box from within his latrine tank. P.W.6 and P.W.7 have corroborated the evidence of P.W.4 regarding seizure of stolen articles from the possession of accused persons, Kartika Moharana and Ranjan Kumar Barik vide seizure list Ext.-12 and Ext.-13 respectively. However, P.W.6 and P.W.7 have contradicted the evidence of P.W.4 regarding the time of recording of statements of the accused persons as well as the place of preparing seizure list. While P.W.4 has deposed that statement of the accused persons U/s. 27 of Indian Evidence Act was prepared at 5.00 P.M on 11.01.2014 and all the seizure were made at the very spot of recovery, P.W.6 has deposed that all the papers were prepared after 9.30 A.M on 11.01.2014 at police station. P.W.7 has also deposed that after return from the house of accused, Ranjan Kumar Barik, he had put his signature on the seizure list and statement of accused vide seizure list Ext.-13 and statement vide Ext.-11.

P.W.4 has deposed that on 25.12.2013 he had seized one crowbar and one handle of motorcycle from the

spot suspected to be the weapon for breaking open the window of house of informant vide seizure list Ext.-7. P.W.4 has deposed that he had left the same in zima of the informant vide Ext.-5. P.W.1 and P.W.5 have corroborated the evidence of P.W.4 regarding seizure under Ext.-7. P.W.1 has corroborated the evidence of P.W.4 regarding zimanama vide Ext.-5.

7. From the aforesaid evidence of prosecution witnesses and documents admitted in evidence on behalf of the prosecution, it appears that the informant has corroborated his own FIR story regarding theft of ornaments and cash of Rs.10,10,000/- along with other valuable articles from his house at Ramachandrapur, Jatni in his absence and absence of his family members. P.W.2, P.W.3 and P.W.5 have corroborated the evidence of P.W.1 regarding theft in the house of P.W.1 and mark of violence of the spot occurrence i.e., breaking open of the window and C.C.T.V. Camera, breaking of steel almirahs inside the room and the household articles laying in scattered manner. The evidence of witnesses seems to be clear, cogent and reliable. Hence, theft in the house of informant is believable. The plea of the defence

regarding non-occurrence of the incident of theft has got no force.

FIR was lodged against unknown persons. Accused, Ranjan Kumar Barik has been implicated in this case on the basis of his image found in the C.C.T.V Camera Footage and leading the police party and others to his house and for seizure of some stolen ornaments from his house. Accused Kartika Moharana is implicated in the case for leading the police party and witnesses to his latrine tank and for recovery and seizure of some stolon articles from his concealed possession. Regarding the statement of accused persons U/s. 27 of Indian Evidence Act there is discrepancy regarding preparation of statement vide Ext.-10 & Ext.-11 prior to seizure. However, the oral evidence of witnesses like P.W.6 and P.W.7 corroborating the evidence of P.W.4, the I.O of this case, cannot be ignored due to non-preparation of document at proper time. Moreover, the seizure of some stolen ornaments has been proved from the house and possession of accused, Ranjan Kumar Barik and from the concealed possession of accused Kartika Moharana. The factum of seizure has also been corroborated by the evidence of P.W.6 and P.W.7. There is

no material on record that P.W.4, P.W.6 and P.W.7 were inimical to the accused persons. There is also no evidence that the witnesses P.W.6 and P.W.7 were anyway related to either P.W.4 or P.W.1. Hence, they cannot be held to be interested witnesses. Rather, P.W.6 and P.W.7 who are independent witnesses have corroborated the evidence of P.W.4 regarding recovery and seizure. Admittedly, sole evidence of leading to discovery U/s. 27 of Indian Evidence Act and seizure of stolen articles from the possession of accused persons cannot form basis of conviction of the accused persons, however, when seizure of stolen articles is proved from the possession of accused persons presumption U/s. 114 illustration(a) can be drawn. The accused persons have failed to account for their possession of stolen articles. Moreover, such evidence is corroborated by the evidence of P.W.1 who deposed that he had found the image of accused, Ranjan Kumar Barik in the C.C.T.V Camera Footage, recorded during the time of occurrence. Such evidence of P.W.1 has remained unassailed. The defence has not put a single question during cross-examination to P.W.1 rebutting such evidence of P.W.1. Moreover, the evidence of P.W.1 in this regard has been

corroborated by P.W.3. It is also evident from Ext.-9 that the footage in the C.C.T.V Camera was not edited outside of the system as certified by the Company of the Video Camera. Ext.-9 was marked for the prosecution without objection from defence. The unassailed testimony of P.W.1 corroborated by recovery and seizure of stolen articles from the possession of accused persons, Kartika Moharana and Ranjan Kumar Barik can be relied upon by the Court in favour of prosecution and against the accused persons. In order to substantiate my view I rely upon the following Authorities of our Apex Court as well as High Court of Himachal Pradesh

(2005)30 O.C.R.(S.C.)294 Saikou Jabbi(v) State of Maharashtra:- *CRLTRL-Appreciation of evidence-Failure to cross-examine to point out falsity of fact-Facts held to be proved.*

2000(II) C.G.R.(S.C)113 State of Karnataka (v) Manjanna(Para-14):-*CRLTRL-Appreciation of evidence-Court cannot ignore the unshaken or unassailed evidence of the witnesses.*

1983 Cr.C.J.(H.P)1694-Para-26 State of Himachal Pradesh(v) Thakur Dass:- *Evidence Act-1872-Sec.137:-*

Statement of fact made by a witness-Not challenged in cross examination-Fact in question must be held to be not disputed.

Hence, in view of my aforesaid discussion, I am at conclusion that the prosecution has able to establish that some stolen articles of the informant were recovered and seized from the possession of accused persons Ranjan Kumar Barik and Kartik Moharana after occurrence and such accused persons have failed to account for the possession of the same. The unassailed evidence of P.W.1 regarding presence of accused, Ranjan Kumar Barik at the spot during the time of occurrence also corroborates the factum of recovery and seizure of stolen articles from the possession of accused persons, Ranjan Kumar Barik and Kartika Moharana. Hence, it can safely be held that the accused persons, Ranjan Kumar Barik and Kartika Moharana are the author of crime.

8. It is evident from testimony of P.W.1, P.W.2, P.W.3 and P.W.5 that the front window of the house of informant was found broken. Some weapons like crowbar and handle of motorcycle have seized from the spot. No other entry point to the house of informant is established. The house was under lock and key. Under the above circumstances, it is believable

that the accused persons Kartika Moharana and Ranjan Kumar Barik entered into the house of informant by breaking open the window of house by means of weapons seized. Hence the accused persons are also held liable for house breaking by entering into the house of informant for committing theft.

9. Both accused persons Kartika Moharana and Ranjan Kumar Barik having made preparation entered into the house of informant and committed theft of property of informant. Both of them have shared common intention in commission of the offences.

10. So far as allegation against the accused, Jhulu Samal is concerned, no prosecution witness has whispered a single word against him except the I.O who deposed to have arrested the accused, Jhulu Samal and forwarded him to Court. Furthermore, the accused persons Kartika Moharana and Ranjan Kumar Barik during their statement U/s. 27 Indian Evidence Act vide Ext.-10 and Ext.-11 respectively have stated that they had committed theft along with their associate-accused, Jhulu Samal. Nothing has been seized from the possession of accused, Jhulu Samal. He has also not led

the police party and witnesses to discovery of any incriminating object in connection with this case. The confessional statement of co-accused without any corroboration cannot form basis of conviction. Hence, in absence of any other evidence against the accused, Jhulu Samal, a reasonable doubt arises regarding his involvement in the occurrence. The benefit of such doubt is extended to the accused.

11. From my discussion made in the forgoing paragraphs, I am at conclusion that the prosecution has successfully proved its case against the accused persons, Kartika Moharana and Ranjan Kumar Barik for offences U/S. 454/380/34 of IPC. At the same time, it has miserably failed to bring home the charge against the accused, Jhulu Samal beyond all reasonable doubt. In the result, I hold the accused persons Kanha @ Kartika Moharana and Kanhu @ Ranjan Kumar Barik guilty of the offences punishable u/s 454/380/34 of IPC and convict them thereunder. At the same time, I hold the accused, Kanhu @ Jhulu Samal not guilty of the offences punishable U/s. 454/380/34 of IPC and acquit him therefrom. The accused persons produced today in Court are in Judicial

Custody. The accused, Kanhu @ Jhulu Samal be released from custody forthwith, if his presence is not required in any other case.

Having regard to the facts and circumstances of this case including the nature of offence and the value of the stolen properties, I am not inclined to extend the beneficial provisions of P.O Act to the convicts.

Pronounced in the open court on this the 27th day of September, 2014 under my hand signature and seal of this court.

J.M.FC(O), Bhubaneswar

HEARING ON QUESTION OF SENTENCE

Heard, the convicts, their counsel as well as learned APP on the question of sentence. It is submitted by the learned counsel for the convicts that the convicts are young persons, hence prayed for taking lenient view while imposing sentence. On the contrary, learned APP has made prayer to pass exemplary sentence against the convicts. The convicts have committed theft of all valuable properties of the informant of more than Rs.20,00,000/- (Rupees Twenty

Lakhs), by breaking open the house of informant in broad day light. Considering the nature and gravity of offences committed and its impact on society, I sentence each of the convicts to undergo S.I. for three years and to pay a fine of Rs.2,000/- (Rupees two thousand) I.D. to undergo S.I. for three months, on each account for offences punishable U/s. 454/380/34 of IPC. The sentences shall run concurrently. The UTP period of the convicts be set off u/s 428 of Cr. PC.

The zimanamas be cancelled and made absolute and the seized glasses be destroyed, 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.

Pronounced in the open court on this the 27th day of September, 2014 under my hand signature and seal of this court.

Dictated and corrected by me.

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

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

List of witnesses examined for prosecution

PW.1	Bijay Kumar Ray
PW.2	Biswanath Agarwal
PW.3	Amit Kumar Ray

PW.4	Umakanta Sahoo
PW.5	Rup Narayan Agarwal
P.W.6	Pratap Keshari Baral
P.W.7	Pratap Ch Kara

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 PW.1 on Ext.-1.
Ext.1/2	Endorsement and signature of P.W.4 on Ext.-1.
Ext.1/3	Formal FIR.
Ext.1/4	Signature of P.W.4 on Ext.1/3.
Ext.2	Zimanama
Ext.2/1	Signature of PW.1 on Ext.-2.
Ext.2/2	Signature of P.W.4 on Ext.-2.
Ext.3	Zimanama
Ext.3/1	Signature of PW.1 on Ext.-3.
Ext.3/2	Signature of P.W.4 on Ext.-3.
Ext.4	Seizure list.
Ext.4/1	Signature of PW.1 on Ext.-4.
Ext.4/2	Signature of P.W.2 on Ext.-4.
Ext.4/3	Signature of PW.4 on Ext.-4.
Ext.4/4	Signature of P.W.5 on Ext.-4.
Ext.5	Zimanama.
Ext.5/1	Signature of PW.1 on Ext.-5.
Ext.5/2	Signature of P.W.4 on Ext.-5.
Ext.6	Seizure list.
Ext.6/1	Signature of PW.1 on Ext.-6.

- Ext.6/2 Signature of PW.4 on Ext.-6.
- Ext.7 Seizure list.
- Ext.7/1 Signature of PW.3 on Ext.-7.
- Ext.7/2 Signature of P.W.4 on Ext.-7.
- Ext.7/3 Signature of P.W.5 on Ext.-7.
- Ext.8 Spot Map.
- Ext.8/1 Signature of PW.4 on Ext.-8.
- Ext.9 Certificate of Raykon System.
- Ext.10 Statement of accused Kartika Maharana.
- Ext.10/1 Signature of P.W.4 on Ext.-10.
- Ext.10/2 Signature of P.W.6 on Ext.-10.
- Ext.10/3 Signature of P.W.7 on Ext.-10.
- Ext.11 Statement of accused Ranjan Kumar Barik.
- Ext.11/1 Signature of P.W.4 on Ext.-11.
- Ext.11/2 Signature of P.W.6 on Ext.-11.
- Ext.11/3 Signature of P.W.7 on Ext.-11.
- Ext.12 Seizure list.
- Ext.12/1 Signature of P.W.4 on Ext.-12.
- Ext.12/2 Signature of P.W.6 on Ext.12.
- Ext.12/3 Signature of P.W.7 on Ext.12.
- Ext.13 Seizure list.
- Ext.13/1 Signature of P.W.4 on Ext.-13.
- Ext.13/2 Signature of P.W.6 on Ext.-13.
- Ext.13/3 Signature of P.W.7 on Ext.-13.

List of documents admitted in evidence for defence

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