

**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 : 11.08.2014

Date of Judgment : 12.08.2014

G.R. No. 195/2002
Trial Case No. 509/2003

S t a t e

vrs

Baikuntha Sutar @ Biswanath Sarma, aged
about 55 years,
S/o. Bhagirathi Sutar
Vill : Kakhadi,
PS : Chouduar
Dist : Cuttack.

... Accused

For offences punishable u/s 457/380/34 of IPC

For the Prosecution : A.PP

For the Defence : Sri Laxmidhar Mohapatra & his
Associate Advocates.

J U D G M E N T

The accused stands charged for offences punishable u/s 457/380/34 of IPC for allegedly committing house breaking by night by breaking open the lock and doors of the rooms of the College of Engineering, Bhubaneswar and committing theft of one C.PU from such college building in furtherance of his common intention with other accused persons.

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

That on 20.01.2002 at about 9.15 A.M, the informant Subash Chandra Pattnaik, Superintendent of College of Engineering, Bhubaneswar appeared at Chandrasekharpur PS and presented a written report to the effect that in the night of 19/20.01.2002 some unknown culprits had entered inside the rooms of the Principal and Office Superintendent by breaking open the doors of such rooms and had committed theft of one C.PU kept in the Office of Principal. The culprits had broken away the lock of Almiras kept inside the rooms of Principal and Superintendent and had thrown away such Almiras in the open lawn. Basing upon such report of informant Chandrasekharpur PS Case No. 08 dtd. 20.01.2002 was registered and the matter was investigated into. Finding no clue the I.O submitted final report. Subsequently, during investigation in Chandrasekharpur PS. Case No. 191/2002 U/s. 457/380/34 of IPC, the present accused, Baikunthanath Sutar along with other two accused persons, Pahali @ Prahallad Sahu and Subodh Kumar Samantaray while in Police Custody confessed their guilt for this occurrence and gave recovery of the stolen C.PU from the house of present accused. Accordingly, this case was reopened and after completion of investigation charge-sheet U/s. 457/380/34 of IPC was submitted against the present accused along with other five accused persons to face their trial in court of law.

During trial the case against the accused persons namely, Aswini Das, Tutu @ Amar Das and Subash Behera were split up vide order dtd on 19.04.2003 and the case against accused persons namely, Pahali @ Prahallad Sahu, Subal Kumar Samantaray was split up vide order dtd. 11.08.2014. However the case against the present accused proceeded.

Hence this trial.

3. The plea of the accused is one of denial simplicitor and false implication.

4. The points to be determined are as follows ;

I) Whether in the intervening night of 19/20.01.2002, the accused committed the offence of house breaking after sunset and before sunrise by entering into the building of College of Engineering, Bhubaneswar for the purpose of committing theft in furtherance of his common intention with other accused persons ?

II) Whether during the aforesaid period at the aforesaid place, the accused committed theft of one C.P.U from the building of College of Engineering, Bhubaneswar which was used as custody of property and dwelling house by taking the same dishonestly out of possession of the informant without his consent in furtherance of his common intention with other accused persons ?

5. To substantiate the charge, prosecution has examined five witnesses in all out of whom PW.5 Subash Chandra Pattnaik is the informant of this case. P.W.3, Efren Kiro is the I.O of this case. PW.1 Sarbeswar Behera and P.W.4, Babaji Patra are the witnesses to confession and seizure, PW2, Jayadev Adhikari is a witness to occurrence. Defence has examined none on its behalf.

6. In order to prove the occurrence of house breaking and theft the informant PW.5 has deposed that in the intervening night of

19/20.01.2002 one Jayadev Adhikari, P.W.2 was sleeping inside the room of Additional Director. In the morning, when he wake up he found the door of his room was bolted from outside. He came out of his room with the help of one Birendra supervisor of the college and could found that the doors of the room of the Principal and Superintendent were broken and two Almiras were thrown away to the lawn from inside such room. One C.PU was missing from the Office of Principal. P.W.5 reported the matter in writing to Police vide F.I.R Ext.-1. During investigation, he had received the stolen C.PU in his zima from Police. P.W.2 has also corroborated such evidence of P.W. 5 and has stated that in the relevant night there was theft in the College of Engineering, Bhubaneswar. However, he deposed that hearing the occurrence he had been to the college at 7.00 A.M where P.W.5 arrived. He has deposed that there was theft of one C.PU from the College.

P.W.2 and P.W.5 who are staff and officers of College of Engineering, Bhubaneswar have not whispered a single word against the accused persons. P.W.5 is silent as to from whose possession stolen C.PU was recovered.

7. FIR was lodged against unknown persons. The present accused along with other accused persons have been implicated in this case basing upon their confessional statement recorded U/s. 27 of Indian Evidence Act, leading to discovery and seizure of stolen article from the possession of present accused. Let us examine the evidence of I.O, P.W.3. He has testified that he closed the case finding no clue and submitted final report. Subsequently, while his IIC was investigating the PS Case No. 191/2002, the present accused along with other two accused persons were arrested in such

case and while in custody they confessed their guilt to have committed theft in this case. Confession before IIC or P.W.3 is in-admissible U/s. 25 of Indian Evidence Act. P.W.3 has deposed that the present accused confessed and led discovery of stolen C.PU from his house. P.W.3 has deposed that he recorded the statement of accused U/s. 27 of Indian Evidence Act vide statement Ext.-6 in presence of witnesses, Sarbeswar Behera (P.W.1) and Babaji Patra (P.W.4). Thereafter, he recovered and seized the stolen C.PU from the possession of accused. P.W.1 and P.W.4 have not corroborated the evidence of P.W.3 regarding any statement of the accused persons recorded in their presence. They have also not corroborated the factum of recovery or seizure. The signature of accused on Ext.-6 has not been proved by the I.O or witnesses. While the I.O has deposed that statement was recorded first then articles were recovered, however, from Ext.-6 it appears that the accused has given statement to have given and delivered the stolen articles to the I.O. Hence, the statement vide Ext.-6 cannot be said to be a statement U/s. 27 of Indian Evidence Act leading to discovery of stolen articles. It is like a confessional statement given to Police and same cannot be accepted. Moreover, it is alleged that the stolen C.PU was recovered from the rented house of present accused. The I.O has deposed that the accused was residing in the house of one Alul Sina, but from the seizure list vide Ext.-9 it appears that the accused was residing in the house of one Mahendra Samal. It is admitted by the I.O that neither the owner of the house has been examined nor any document occupying the house by present accused has been verified. While the I.O has given self-contradictory statement regarding the ownership of the house and none of the witnesses to seizure has

corroborated the evidence of I.O, it is unsafe to rely upon the evidence of P.W.3 that the stolen C.PU was recovered and seized from the conscious and exclusive possession of present accused. Under the above circumstances in absence of any corroboration to the contradictory evidence of P.W.3, his evidence cannot be relied upon beyond doubt. The benefit of such doubt is extended to the accused.

From my discussion made in the forgoing paragraph, I am at conclusion that the prosecution has miserably failed to bring home the charge against the accused beyond all reasonable doubt. In the result, I hold the accused not guilty of the offences punishable u/s 457/380/34 of IPC and acquit him therefrom u/s 248(1) of Cr. P.C. The accused be set at liberty forthwith and he be released from the custody, if his presence is not required in any other case.

No order in respect of seized properties is hereby passed since the split up case records against other accused persons are pending for disposal.

J.M.FC(O), Bhubaneswar

Dictated, corrected and pronounced in the open court on this the 12th day of August, 2014 under my hand signature and seal of this court.

J.M.FC(O), Bhubaneswar

List of witnesses examined for prosecution

PW.1	Sarbeswar Behera
PW.2	Jayadev Adhikari
PW.3	Efren Kiro

PW.4 Babaji Patra
PW.5 Subash Chandra Pattnaik

List of witnesses examined for defence

N o n e

List of documents admitted in evidence for prosecution

Ext.1 FIR.
Ext.1/1 Endorsement and signature of IIC, D.K. Barik.
Ext.2 Spot map.
Ext.2/1 Signature of PW.3 on Ext.-2.
Ext.3 Seizure list.
Ext.3/1 Signature of PW.3 on Ext.-3.
Ext.4 Seizure list.
Ext.4/1 Signature of PW.3 on Ext.-4.
Ext.5 Zimanama.
Ext.5/1 Signature of PW.3 on Ext.-5.
Ext.6 Confessed statement of accused Baikuntha Sutar.
Ext.6/1 Signature of PW.3 on Ext.-6.
Ext.7 Confessed statement of accused Subala Samantaray.
Ext.7/1 Signature of PW.3 on Ext.-7.
Ext.8 Confessed statement of accused Pahali @ Prahallad Sahu.
Ext.8/1 Signature of PW.3 on Ext.-8.
Ext.9 Seizure list.
Ext.9/1 Signature of PW.3 on Ext.-9.
Ext.10 Report of Dog Squad.
Ext.11 Report of Scientific Team.

List of documents admitted in evidence for defence

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