

**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 : 05.09.2014

G.R. No. 82/2013
Trial Case No. 283/2013

S t a t e

vrs

Biswanath Pradhan @ Bulu, aged about 25 years,
S/o.- Baidyanath Pradhan
Vill-Jhagadapatta, PS-Khajuripada, Dist-Kandhamal,
A/P-Makundaprasad PS/Dist-Khurda.

... Accused

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

For the Prosecution : A.PP

For the Defence : Rashmi Ranjan Sundara &
his Associate Advocates.

J U D G M E N T

The accused stands charged for offences punishable u/s. 457/380 of IPC.

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

That on 05.02.2013 at about 12.30 P.M the informant Renu Bhoi appeared at Jatni PS and presented a written report to the effect that in the intervening night of 04/05.02.2013, there was theft in the Maa Mangala Temple in village-Uttaramundamuhana. Some unknown culprits had committed theft of one silver mukuta, one gold tikili, two silver eyes of the deity and and a cash of

Rs.10,000/- from the donation box by breaking open the lock of the temple. Basing upon such report of the informant Jatni PS Case No. 33 dtd. 05.02.2013 was registered and the matter was investigated into. During investigation the present accused along with other accused Minaketan Acharya were remanded in this case as they confessed their guilt while in police custody in Jatni P.S. Case 119/2013 and gave recovery of stolen cash of Rs.10,000/- from the house of present accused at Village-Mukundaprasad. After completion of investigation, charge sheet u/s 457/380 of IPC was submitted against three accused persons namely, Biswanath Pradhan, Minaketan Acharya and Mahesh Bera to face their trial in court of law.

During trial the case against the accused persons Minaketan Acharya and Mahesh Bera was split up vide order dtd on 15.05.2014. However the trial against the present accused proceeded. Hence this trial.

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

4. The points to be determined are as follows ;

(i) Whether in the intervening night of 04/05.02.2013 at Uttaramundamuhana Maa Mangala Temple the accused committed the offence of house breaking by night by entering into the aforesaid temple used as human dwelling and custody of property for the purpose of committing theft of the ornament and money of the deity ?

(ii) Whether on the aforesaid date, time and place of occurrence, the accused committed theft of one silver mukuta, one gold tikili, two silver eyes of the deity and a cash of Rs.10,000/- from the donation box from the Maa Mangala temple at village-Uttaramundamuhana used as a

human dwelling and custody of property ?

5. To substantiate the charge, prosecution has examined seven witnesses in all out of whom P.W.3, Renu Bhoi is the informant of this case. P.W.1, Abdul Samad, P.W.2, Ganesh Chandra Mangaraj are both witnesses to seizure. P.W.4, Rabindra Behera, P.W.5, Bharat Sahu and P.W.6, Kapila Pujapanda are witnesses to occurrence and zima. P.W.7, Pratap Chandra Pradhan is the I.O of this case. Examination of the rest witnesses has been declined by the prosecution. Defence has examined none on its behalf.
6. P.W.3, the informant, P.W.4, Rabindra Behera and P.W.6, Kapila Pujapanda have deposed that about one year back in one night there was theft in their village Maa Mangala Temple. Some culprits had stolen away silver mukuta of deity, one gold tikili and one gold eye along with a cash of Rs.10,000/- to 12,000/-. They deposed that they could know about the theft in the morning. During cross-examination, P.W.3, P.W.4 and P.W.6 have deposed that they cannot say who committed theft of articles and cash from their village temple. They also failed to say from whose possession cash of Rs.10,000/- was recovered. P.W.1 and P.W.2, who are witnesses to seizure have not supported the prosecution case nor the factum of seizure except admitting their signatures on seizure list. During cross-examination, they admitted to have got no knowledge about the seizure. They admitted that they were not read over or explained the contents of seizure list. P.W.5 has not supported the prosecution case. P.W.7, the I.O has deposed that on 05.02.2013 he took up the investigation of this case. On 21.07.2013, the present accused was arrested in Jatni PS Case No. 119/13 U/s. 392 of IPC r/w Sect 25 Arms

Act. During Police Custody, the accused confessed to have committed theft in this case and admitted to have sold the stolen ornaments. PW.7 deposed to have seized the cash of Rs.10,000/- from the house of accused at village-Mukundaprasad. During cross-examination PW.7 has deposed that the accused had confessed to have sold the stolen ornaments of the deity and gave him the sale out money i.e., a cash of Rs.10,000/-.

7. FIR was lodged against unknown persons. This accused has been implicated in this case on the alleged confessional statement given to PW.7 who is a Police Officer. Except PW.7 who is I.O of this case none of the witness has whispered a single word against the accused. Confession before Police is inadmissible as per provision U/s. 25 of Indian Evidence Act. It is alleged by the I.O that the accused had produced cash of Rs.10,000/- as the sale out money of the stolen articles. The stolen articles could not be recovered. The person to whom the articles were sold could not be apprehended. There is no other evidence to corroborate the evidence of I.O that the stolen articles were sold by the present accused. The witnesses to seizure of cash of Rs.10,000/- like PW.1 and PW.2 have not corroborated the evidence of PW.7 regarding the factum of seizure. The witnesses to seizure have admitted that nothing was seized in their presence. Under the above circumstances, the factum of seizure of cash from the possession of accused is not established beyond doubt. Moreover, it also cannot be safely held that the recovered money was nothing but the sale out money of the stolen articles. Under the above circumstances, the benefit of doubt is extended to the accused.

In the result, I hold the accused not guilty of the offences

punishable u/s 457/380 of IPC and acquit him there from u/s 248(1) of Cr.PC. The accused be released from custody forthwith, if his presence is not required in any other case.

No order in respect of the seizure of property or zima is hereby passed since split up case record against other two accused persons is pending for disposal.

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

Dictated, corrected and pronounced in the open court on this the 5th 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	Abdul Samad
PW.2	Ganesh Chandra Mangaraj
PW.3	Renu Bhoi
PW.4	Rabindra Behera
PW.5	Bharat Sahu
PW.6	Kapila Pujapanda
PW.7	Pratap Chandra Pradhan

List of witnesses examined for defence

N o n e

List of documents admitted in evidence for prosecution

Ext.-1	Signature of PW.1 on seizure list.
Ext.-1/1	Signature of PW.2 on seizure list.
Ext.-1/2	Seizure list.
Ext.-1/3	Signature of PW.7 on Ext.-1/2.
Ext.-2	FIR
Ext.-2/1	Signature of PW.3 on Ext.-2.
Ext.-2/2	Endorsement and Signature of PW.7 on Ext.-2.
Ext.-2/3	Endorsement and Signature of IIC on Ext.-2.
Ext.-2/4	Formal FIR.
Ext.2/5	Signature of IIC on Ext.-2/4
Ext.-3	Zimanama.
Ext.-3/1	Signature of PW.3 on Ext.-3.

Ext.-3/2	Signature of P.W.3 on Ext.-3.
Ext.-3/3	Signature of P.W.4 on Ext.-3.
Ext.3/4	Signature of P.W.7 on Ext.-3.
Ext.-4	Spot Map.
Ext.-4/1	Signature of P.W.7 on Ext.-4.

List of documents admitted in evidence for defence

N I L

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