

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHUBANESWAR.

Present:-

Shri M. K. Mishra, LL. B,
Addl. Sessions Judge, Bhubaneswar.

CRIMINAL TRIAL NO.55/290 OF 2013

(Arising out of Bhubaneswar GRPS Case No.103,
2013, corresponding to C.T. case No.2965/
2013, committed by the SDJM, Bhubaneswar)

Date of argument- 12.08. 2014

Date of Judgment- 13.08. 2014

- S t a t e -

- V e r s u s -

Deba Behera, aged about 40 years, S/o: Arun
Behera of village: Madhab, P.S.Niali, Dist:
Cuttack.

.....Accused.

Counsel for the prosecution : Sri R.R. Brahma, Addl. P. P

Counsels for the defence : Sri A.K.Acharaya and his

assts.

Offence U/ss.: 328/307/379/34 of IPC.

J U D G M E N T

The present accused namely: Deba @ Deba Kumar Behera is facing his trial being charged U/s. 328/307/379/34 of the Indian Penal Code (hereinafter referred as IPC).

2. The case of the prosecution in short is that on dtd.4.8.2013 during evening time, near the booking counter of Bhubaneswar Rly. Station, the informant was present there, and purchased a ticket in order to proceed to Rayagada by train. Two unknown persons came in the guise of railway passengers and on the pretension of proceeding to Rayagada by train they had developed friendship with him. Taking advantage of the situation, they offered one Maza drink to the informant which he consumed. Immediately, after the consumption of the aforesaid drink, he felt reeling sensation, and thereafter he became unconscious. He regained his sense at about 9 AM on dtd. 5.8.2013, and found that

his bag, the Rly. Ticket, a mobile phone and a cash of Rs.3700/- kept in his money purse was missing. Hence, he lodged a written report before the IIC, GRPS, Bhubaneswar on the same day i. e. on 5.8.2013. Basing on this, the case was registered and investigation was taken up. During course of investigation, the IO had visited the spot, examined the witnesses, and during raid they had apprehended the accused persons, and recovered some intoxicant tablets (Ativan tablet) which was a stupefying drug, a mobile phone, some cash from the present accused as well as the other accused. The accused persons failed to furnish any reasonable explanation regarding possession of the incriminating drugs and the accused persons were arrested. The IO had examined the complainant and other witnesses U/s.161 Cr.P.C and sent the sample vomiting substance to the SFSL, Rasulgarh through the court for chemical examination. On receiving the chemical examination report, and on completion of investigation and after observing the formalities, submitted Charge sheet against the accused persons U/s. 328/307/379/34 of I.P.C. Accordingly, charge was framed against

the accused persons. During the trial stage, accused Basant Ku. Sahu has absconded for which the case was split up as against him vide order passed by this court on 11.8.2014. Hence, the present accused Deba Ku. Behera has faced his trial as per law.

3. Plea of the accused is that of complete denial of prosecution story. He has denied his complicity with the alleged offence.

4) Considering the rival contention of the parties the points for determination in this case are:

i) Whether on 4.8.2013 during evening hour near the Rly. ticket booking counter, Bhubaneswar, the present accused by sharing his common intention with other absconding accused Basanta Ku. Sahu had administered Ativan tablet which is stupefying drug in the Maza drink, and offered the same to the informant which he consumed?

ii) Whether on the same date, time and place the the present accused by sharing his common intention with other absconding accused Basanta Ku. Sahu had attempted to cause the death of the informant by administering the stupefying drugs in the drink of

the informant?

iii) Whether on the same date, time and place the the present accused by sharing his common intention with other absconding accused Basanta Ku. Sahu had committed theft of a bag, Rly. Ticket, mobile phone, money purse containing Rs.3700/- belonging to the informant by removing the same from his possession without his consent?

5. In order to prove it's case, prosecution has examined as many as 5 nos. of witnesses. Out of whom, the victim/informant has been examined as P.W.5, the P.W.1, the P.W.3 are the RPF constables, the P.W.2 is a Habildar attached to GRPS, Bhubaneswar, the P.W.4 is the Investigating Officer of this case. The rest of the prosecution witnesses have been declined. On the other hand, no oral or documentary evidence adduced on behalf of the accused. Prosecution has exhibited the FIR, formal FIR, the chemical examination report, the prayer made by the IO to the Ld. SDJM, Bhubaneswar for dispatching the seized exhibits to the Director, SFSL, Rasulgarh, Bhubaneswar and some other

connecting documents as per the list of exhibits. No MO is marked by either side.

6. P.W.1 in his evidence has deposed that on 5.8.2013 while he was performing night patrolling duty at Rly. Station area from 6 PM to 2 AM, as per the information of the ASI, GRPS, Bhubaneswar namely: Mr. Dhal, he along with his colleague namely: Sk. Yakub and Akhaya Parida along with Sri Dhal had gone towards the auto-stand area of main gate, Bhubaneswar Rly. Station and found two persons sitting in front of the auto-stand in a park. The ASI had interrogated both of them who failed to give any satisfactory reply. On personal search, of those persons he recovered one micro max mobile phone and cash of Rs.900/- and a strip of tablet ativan-200 from the possession of accused Deba Behera. Similarly, he recovered a cash of Rs.1400/- from the possession of the accused Basant Ku. Sahu. He also recovered Maza cold drink bottle from the possession of the accused persons. During interrogation, he came to know that the accused persons were using the ativan tablet in order to make the rly. Passenger

unconscious and in the process they remove their articles. The ASI had seized the same.

Similar type of evidence has been adduced by the P.W.3. The P.W.2 who happens to be police Havildar attached to GRPS, Bhubaneswar has stated that on 5.8.13, as per the instruction of the IIC, GRPS, Bhubaneswar, he escorted the informant to Capital Hospital, Bhubaneswar for his examination. The doctor had collected froth out of the vomiting substance of the informant Suresh Kauslya and kept the same in a sealed bottle and handed over the same him. Later he gave the aforesaid articles to the IO of this case.

7) P.W.5 who is the informant of this case and basing on whose report the investigation was taken up has not supported the case of the prosecution. In his entire evidence he had not identified the accused Deba Behera who was present at the time of his deposition. Although, he identified his signature appearing in the FIR, but he has deposed to have not lodged the FIR. The informant was subjected to a volley of leading questions by the prosecution but nothing fruitful could be obtained from his mouth in support of

the prosecution case in any manner.

8) The IO of this case who was examined as P.W.4 has deposed that during course of investigation, he visited the spot and basing on reliable information, he had gone to Rly. Park located at a close range from the reservation counter along with the P.W.1, the P.W.3 and some other RPF staffs. There, on finding two persons he had apprehended them including the present accused and recovered the incriminating articles including ativan tablet from their possession and cash and maza drink bottle. He had seized the same and prepared the seizure list. He has also deposed to have conducted the formalities of investigation and on completion of investigation submitted Charge sheet against the accused as per legal procedure. His entire evidence indicates that being the IO he has investigated into the case and on finding the present accused and other co-accused sitting at a park near the Rly. Station they were apprehended after incriminating articles were recovered from their possession. But the informant who is the victim of this case has dealt a blow to the prosecution by stating that he is not the informant

of this case. He has not identified the accused. He has expressed his ignorance relating to the facts of this case. Being the important witness of this case, the informant has not supported the case of the prosecution. Nothing fruitful could be obtained from his mouth in support the case of the prosecution. Prosecution has not linked the accused persons and the role of the accused person with the prosecution story as narrated in the FIR. In other words the informant has not stated anything against the accused persons of this case.

8) In absence of any cogent and clinching evidence relating to the charge levelled against the accused persons and as the prosecution story has not been elaborately deposed by the informant in any manner for that basing on the evidence of the the IO and the other official witnesses the case of the prosecution can't stand independently beyond all reasonable doubt. Hence, after going through the materials on record, both oral and documentary, and taking into consideration the evidence of the informant who has given a blow to the prosecution case, and as there is lack of

sufficient corroboration regarding the role of the accused persons for that the case of the prosecution is extremely vulnerable. Accordingly, in view of the above discussion, prosecution has miserably failed to prove its case against the accused U/s. 328/307/379/34 of I.P.C beyond all reasonable doubt, and the accused is found not guilty thereunder, and acquitted U/s.235(1) of the Cr.P.C and set at liberty forthwith.

No order is passed regarding to the seized article and the zimanama since the case is pending against the absconding accused Basant Sahu.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 13th day of August, 2014 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1 Dusmant Ku. Rout

P.W.2 Amulya Kumar Mohanty
P.W.3 Sk. Yakub
P.W.4 Biswanath Dhalsamant
P.W.5 Suresh Kauslya

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1 Seizure list
Ext.1/1 Signature of P.W.1
Ext.1/2 Signature of accused Deba Behera
Ext.2 Seizure list
Ext.2/1 Signature of P.W.1
Ext.2/2 Signature of accused Basant Ku. Sahoo
Ext.3 Medical requisition
Ext.3/1 Signature of P.W.2 on Ext.3
Ext.2/3 Signature of P.W.3 on Ext.2
Ext.4 FIR

Ext.4/1 Signature and endorsement of IIC, GRPS, BBSR

Ext.4/2 Formal FIR

Ext.4/3 Signature of P.W.5 on Ext.4

Ext.5 & 6 Prayer made to SDJM, BBSR for sending exhibit to the
SFSL, Bhubaneswar.

Ext.5/1 & 6/1 Signature of P.W. 4 on Ext.5 & 6

Ext.7 & 8 Forwarding report

Ext.7/1 & 8/1: Signature of P.W.4 on Ext.7 and Ext.8

Ext.9 Chemical Examination report.

List of Exts. Marked on behalf of the defence

Nil.

List of M.Os marked on behalf of the prosecution

Nil

List of M.Os marked on behalf of the defence

Addl. Sessions Judge, Bhubaneswar.

