

N THE COURT OF THE ADDITIONAL SESSIONS JUDGE, BHUBANESWAR.

Present:-

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

CRIMINAL TRIAL NO.57/ 299 OF 2013

(Arising out of Bhubaneswar G.R.P.S case No.47/13,
corresponding to C.T case No. 1328 committed by the SDJM,Bhubaneswar)

Date of argument- 13.05. 2014

Date of Judgment- 14. 05. 2014

- S t a t e -

- V e r s u s -

Pratap Ku. Patjoshi, age – 39 years, S/o- Late Bankanidhi Patajoshi, At –
Gurujanga, Kochilakana, Nuasahi, P.S / Dist – Khurda.

....Accused

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

Counsels for the defence : S.D.C.

Offence U/ss.: 328/308/379/511/34, IPC

J U D G M E N T

The present accused Pratap Ku. Patjoshi is facing his trial being charged

U/s.328/308/379/511/ 34, IPC.

2. The case of the prosecution in short is that the on 8.4.13 at about 3.50 a.m in P.F No.2, at Khurda Road Rly. Station, the OC, RPF namely, Shri A.K. Jena along with others including some RPF personnels and one S.I along with two persons of GRPS, Bhubaneswar in order to detect the criminals who used to loot the passengers by administering stupefying and intoxicated drugs, during the course of their journey, kept watch over the movement of the suspected persons. At that time, train no.11019 Konark Express arrived at P.F. No.2 from Mumbai. After a short while, the OC, RPF, Sri A. K. Jena who is the informant of this case found that one person had entered in side the S-1 coach of Konark Express from the back side and his movement was very suspicious hence, as per his direction some RPF personnels entered into the S-1 coach to keep their vigil eye on that person. They found that the aforesaid person had concealed his presence by entering in side the toilet of that coach. The RPF personnel went there and after some time that person came out of the toilet. In the mean time, the said train had departed from the plat form in order to proceed to Bhubaneswar Rly. Station. During that period, the suspected person came out of the toilet and could not produce any Rly ticket in support of his journey in that train. On his personal search two number of Nokia Mobile phones, 4 sim cards of different companies and two strips of Ativan tablet each tablet having weight of 2 mg and cash of Rs.2100/- were recovered from his possession. On further interrogation, he had disclosed his name to be Susanta Ku. Rout belonging to Nayagarh. He further informed that he and his other associates used to remove the valuable articles of the passengers during the course of their journey by administering

drugs and after making the passengers unconscious. He led the RPF personnel to other coaches and identified his other accomplices from whose possession articles like mobile phone, sim card and ativan tablet were recovered. Similarly from S-1 coach, at the instance of the above suspected accused the present accused Pratap Patjoshi and another person namely, Lochan Naik were identified and on their personal search two strips of Ativan tablet and some powder of ativan tablet kept in a fold paper were recovered from the possession of the person of the accused Pratap Patjoshi. Similarly, from the other accomplices Lochan Naik some ativan tablets were recovered. In the mean time, the train arrived at Bhubaneswar Rly. Station. The informant Sri A.K. Jena had brought the present accused and all other accomplices who were arrested by the IIC, G.R.P.S. He also presented a written FIR at GRPS, Bhubaneswar. Basing on which the case was registered and investigation was taken up. During course of investigation, the I.O of this case has examined the informant, other witnesses, seized the articles, prepared the seizure list and handed over some of the seized articles like a gold chain and some other articles to the person concerned on execution of zimanama and the arrested accused persons were forwarded to the court. On the request of the I.O, T.I parade was conducted by the Magistrate, The I.O made a prayer before the learned SDJM, Bhubaneswar for sending the seized drugs for chemical examination, received the C.E report and issued query to the Drugs Inspector. He also examined other witnesses and recorded their statement U/s.161, Cr. P. C and on completion of investigation submitted charge sheet against the accused persons including the present accused under the above offences. Hence, this case. During pend-ency of the case, the case record was

split up as against other accused persons as a result of which, the present accused is facing his trial in accordance with law.

The accused had denied the incriminating circumstances that appeared against him during his examination U/s.313, Cr. P. C.

3. The plea of the defence is one of complete denial of the prosecution story.

4. Points for determination in this case are :

- i) Whether on 8.4.13 in between 3.50 A.M to 4.30 A. M in train number 111019 down Konark Express, in between Khurda Road to Bhubaneswar the accused in-furtherance of common intention with his other accomplices had attempted to administer Ativan tablet which is a stupefying drugs to the passenger in that train ?
- ii) Whether on the same date, time and place, the accused had attempted to commit culpable homicide in respect of the passengers during course of their Rly journey in between Khurda Road to Bhubanswar in that train by administering stupefying drugs i. e. ativan tablet in furtherance of their common intention of his other accomplices ?
- iii) Whether on the same date, time and place, the accused infurtherance of his common intention with other accomplices had attempted to commit the theft of bag, ticket, mobile phone and cash from the possession of the passengers making their journey in the above train?
- iv) Whether on the above date, time and lace, the accused infurtherance of his common intention with other accomplices attempted to commit the offence of theft from the

passengers of train by developing good relationship with them and in such attempt did certain act towards commission of the said offence, namely administering certain poison with tea ?

5. In order to prove it's case, the prosecution has examined as many as 14 number of witnesses, out of whom the P.W.1, P.W. 2, P.W.4, P.W.5, P.W. 6, P.W. 7, P.W.10, P.W. 11, P.W.12 are RPF personnels. P.W. 13 is the ASI of Police, GRPS, Bhubaneswar, P.W. 14 is the I.O of this case. P.W. 8 and P.W. 9 are the independent witnesses. P.W. 8 is the victim of this case, whose articles were stolen away by administering stupefying drugs during course of his Railway journey, and P.W. 9 is a person in whose presence police had managed to apprehend one person in the moving train on 8.4.13.

On the other hand defence has not examined any witness in support of the defence plea. Ext.1 to Ext.12 series are marked on behalf of the prosecution which include the FIR, seizure lists, zimanama, C.E report, and prayer made by the I.O before the SDJM, Bhubaneswar etc. On the other hand, no documentary evidence is adduced on behalf of the accused. No M.O is marked in this case.

6. The evidence of P.W. 3 who is the I. O of this case happens to be the OC, RPF post Khurda has deposed that on 8.4.13 at about 3.50 hours, the Konark Express arrived at P.F No.2 of Khurda Road Rly. Station and at that time, he along with other RPF personnels were present at Rly Plat form in order to detect the criminals looting the passengers by administering the drugs during the course of Rly journey. He has deposed

further that after the Konark Express arrived at P.F No.2, he found a person entering into S-1 Coach of Konark Express and he instructed to constable D. K. Rout to keep watch on the movement of that person. Then D.K Rout, constable followed that person and informed over phone that the aforesaid person had entered inside the lavatory of the train from the left side i. e. towards Bhubaneswar side direction. Then all of them entered into the S-1 coach and waited there, when the train departed, after few minutes that person came out of the lavatory and then on being asked that person failed to produce any Rly. Ticket in support of his journey in the train nor he could provide any answer relating to his destination. On search two mobile phones and cash of Rs.2100/- were recovered along with two strips of ativan tablets and some loose powder of ativan tablet kept in a paper. That person disclosed his name and identity and informed that four other accomplices were present in that train. He also gave recovery of 4 to 5 number of mobile sim cards. He had informed the patrolling party that he and his accomplices were in the habit of looting the passengers in Konark Express. At his instance his other accomplices were detected and some incriminating articles including 3 strips ativan tablet were recovered. In S- 8 coach the present accused was detected through that person. On personal search of the present accused two strips of Ativan tablet were recovered along with ativan powder which was kept in a paper. He could not produce any Railway Ticket in support of his train journey. In the mean time, the train had arrived at Bhubaneswar Rly. Station. The informant had handed over the present accused along with his other accomplices and the incriminating articles recovered from the possession of the accused persons before the IIC, GRPS, Bhubaneswar and lodged a written FIR. During

cross-examination P.W. 3 denied the suggestion that no ativan tablet was recovered from the possession of the accused. He also could not say if the present accused used to sell tea in the running train. Almost similar deposition was made by the P.W.1, P.W.2, P.W. 4, P.W.5, P.W. 6, P.W. 7, P.W.11, P.W.12 and P.W.13. In other words, all the above witnesses stated regarding the detection of the present accused from S-8 Konark Express and there was seizure of 2 strips of ativan tablet and some ativan powder kept in side a paper.

7. Evidence of P.W. 8 indicates that on 17.2.13, his articles were stolen by some unknown culprit during the intervening night in course of his journey from Secundarbad to Bhubaneswar in Konark Express. He found his articles were missing at Bhubaneswar Rly. Station and he informed the matter at GRPS, Bhubaneswar. He further deposed that during course of his journey two unknown persons had developed friendship with him and offered tea which he consumed and that tea was administered with some drugs. After taking tea he became unconscious and slept and after he got up from his sleep, he found himself to be sitting on Paltform bench at Rly. Station, Bhubaneswar. His gold chain, mobile phone, one suit case and dress , one T- shirt, 30 number of diary etc and his SBI ATM card were stolen away. At Jharpada Jail a T.I parade was conducted in presence of Magistrate on 20.5.13 and he identified one of the culprits. But in his evidence he has deposed that the present accused was not the person who was identified by him.

8. P.W. 9 has deposed that on 8.4.13, during course of his journey from Berhampur to Bhubaneswar in Konark Express, he occupied his seat. Three to four persons entered into the compartment and developed friendship with him and offered tea which he

refused. Thereafter, some police personnels present in that train came and apprehended those persons. At Bhubaneswar Rly. Station, police had brought the apprehended culprits to GRPS, Bhubaneswar and he had accompanied the police party. P.W. 14 who is the I.O of this case has deposed that after the case was registered, the IIC, GRPS, Bhubaneswar had entrusted her to investigate into the case for which she took up the investigation of the case. The I.O has further deposed that during course of her investigation, she had examined the complainant and other witnesses, recorded their statement U/s.161, Cr.P.C and the personal search of the accused persons including the present accused was taken, recovered and seized the incriminating articles, prepared the seizure list, examined seizure witnesses, interrogated the accused persons, sent the accused persons for their respective medical examination at Capital Hospital, Bhubaneswar, verified the command certificate of the RPF, personnel and obtained xerox copy of the same which was duly attested, forwarded the arrested accused persons to the court and through the court of SDJM, Bhubaneswar the sample ativan tablets were sent to the SFSL, Bhubaneswar for chemical examination and opinion, and examined P.W.8 and recorded his statement, who had identified the seized gold chain and his attachee and he received the same in his zima after execution of zimanama under Ext.8, seized the CCTV footage of 24.5.13 and prepared the seizure list under Ext.9, and on completion of investigation submitted charge sheet U/s.328/308/379/511/34,. IPC against the accused persons.

9. I have categorically gone through the oral evidence on record and the documentary evidence available in the case record. So far as the present accused Pratap

Patjoshi is concerned, excepting the seizure of ativan tablet strip, and ativan powder, no other article was recovered from his possession. The independent witness i.e. P.W. 9 has not stated any thing incriminating against the accused. P.W. 8 who was one of the victims of the drug addiction case during course of his journey has failed to identify the accused Pratapa Patjoshi in the court. Although in his evidence he deposed that during T.I. Parade he could identify one of the person still then in his evidence he has admitted to have not identified accused Pratap at the time of T.I. Parade.

10. During appreciation of the aforesaid facts and circumstances of the case and while considering the evidence on record, it is found that from P.W.1 to P.W. 13 excepting P.W. 8 and P.W. 9 have deposed regarding recovery of two strips of ativan tablet and some ativan powder from the possession of the present accused. But mere possession and recovery of the ativan tablet does not attract the basic ingredients of the offence U/s.328/ 308/ 379/511/34, IPC. In order to attract the aforesaid offences, no other evidence is available except recovery and seizure. So far as the present accused is concerned, the independent witnesses have not stated any thing against him relating to his involvement with the aforesaid offences. Basing only on suspicion and seizure, the case of the prosecution can not be proved against the accused since the evidence available against him is not sufficient. The Criminal Jurisprudence provides that in order to arrive at the conclusion of the guilt of the accused, there must be some basis which should point towards involvement of the accused with the alleged offence. But in the present case there is absence of any cogent, clear and quantity of evidence on record. When the independent witnesses have not stated any thing

against the accused, basing only on the evidence of other witnesses and I.O relating to recovery and seizure of Ativan tablet and powder, I do not feel it proper to convict the accused. Hence, after going through the evidence on record, and considering the facts and circumstances of the case, I am of the opinion that prosecution has failed to prove its case against the accused U/s.328/308/379/511/34, IPC beyond all reasonable doubt, and the accused is found not guilty thereunder, and he is acquitted as per provision U/s.235(1), Cr.P.C. He be set at liberty forthwith.

No order is passed relating to the zima of the seized articles, since the case is pending against other accused persons.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 14th day of May, 2014 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1	Upendra Das
P.W.2	Akshaya Ku. Parida
P.W.3	Alok KU. Jena
P.W.4	Prafulla Ch. Panda
P.W.5	Kishore Ku. Behera
P.W.6	Ajaya Ku. Nayak

P.W.7	Balabhadra Naik
P.W.8	Ranjan Ku. Mahanta
P.W.9.	Kabi Kishore Jena
P.W.10	Mirdal Borah
P.W.11	M.Vinod
P.W.12	Padmanav Rath
P.W.13	Bijaya Ku.Sahu
P.W.14	Smt. Priyadarsini Nayak

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1	FIR
Ext.1/1	Signature of P.W. 3 on Ext.
Ext.2	Seizure list
Ext.2/1	Signature of P.,W. 7 on Ext.2.
Ext.3	Seizure list
Ext.3/1	Signature of P.W. 7 on Ext.3
Ext.4	Seizure list
Ext.4/1	Signature of P.W.7 on Ext.4
Ext.5	Seizure list
Ext.5/1	Signature of P.W.7 on Ext.5
Ext.6	Seizure list

Ext.6/1	Signature of P.W.7 on Ext.6
Ext.2/2	Signature of P.W.10 on Ext.2
Ext.3/2	Signature of P.W.10 on Ext.3
Ext.4/2	Signature of P.W.9 on Ext.6
Ext.5/2	Signature of P.W.10 on Ext.5
Ext.6	Seizure list
Ext.2/2	Signature of P.W.10 on Ext.2
Ext.3/2	Signature of P.W.10 on Ext.3
Ext.4/2	Signature of P.W.10 on Ext.4
Ext.5/2	Signature of P.W.10 on Ext.5
Ext.6/3	Signature of P.W.10 on Ext.6
Ext.1/2	Endorsement with signature of IIC, GRPS
Ext.1/3	Formal FIR
Ext.6/3	Signature of P.W.14
Ext.6/4	Signature of accused
Ext.5/3	Signature of P.W.14
Ext.3/4	Signature of accused
Ext.4/3	Signature of P.W.14
Ext.4/4	Signature of accused Lochan
Ext.2/3	Signature of P.W.14
Ext.7	Seizure list

Ext.7/1 Signature of P.W. 14
Ext.7/2 Signature of accused Susanta
Ext.7/3 Signature of P.K. Reddy
Ext.7/4 Signature of P.Biswal
Ext.8 Zimanama
Ext.8/1 Signature of J.K. Mohanty
Ext.8/2 Signature of P.W.14
Ext.9 Seizure list
Ext.9/1 Signature of P.W.14
Ext.9/3 Signature of P. Behera
Ext.9/4 Signature of S.Tripathy
Ext.10 Prayer before SDJM, Bhubaneswar
Ext.10/1 Signature of P.W.14
Ext.11 Acknowledgment receipt.
Ext.12 C.E 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.

