

## IN THE COURT OF THE ACJM-ASJ, B H U B A N E S W A R.

Present:  
Sri P.L.Satpathy,LL.B.,  
Addl.C.J.M-ASJ,Bhubaneswar.

**S.T.CASE NO.46/54/2002**  
**S.T. CASE NO.30/315/2003**  
**S.T.CASE NO.3/53/2004**

Code No.3732/14

(Arising out of GR.2364/99 corresponding to Capital P.S. Case No.325/99)

S T A T E ..... Prosecution.  
.....Versus.....

1. Sk.Hyder, aged about 51 years,  
S/o- Late Sk.Ayub, At/:Ranapada, PS-Kendrapada, Dist: Kendrapada
2. SK.Salim @ Pinku@Chinku, aged about 32 years,  
S/o- Late Mirja Gora, At: Gorapur,PS:Kendrapada, Dist: Kendrapada
3. SK.Masuque @ SK.Yusuf, aged about 42 years, S/o Late SK.Isaque,  
At-Ranapada, PS:Kendrapada, Dist:Kendrapada

..... Accused persons

OFFENCE U/S.120B,395,216,286I.P.C & U/s.25/27 Arms Act.

Counsel for the prosecution : . Addl.P.P, BBSR

Counsel for the Defence : Sri Sudam Das,Arup Chand &amp; Associates,Adv., BBSR.

Date of argument: 23.12.14Date of judgment: 27.12.14**J U D G M E N T**

1. As the aforesaid three sessions trial cases have arisen out of GR. Case No.2364 of 1999 corresponding to Capital PS Case No.325 dtd 3.8.99, as such they are clubbed up & a common judgment is passed for the same.
2. Accused persons namely Ramesh Das, Banua @ Abhinas @ Lalbihari Das, Pinku @ Chinku @ Sk.Salim, Sk.Masuque @ Sk.Yusuf & Mirza Islambeg are the accused persons in ST.46/54/2002. This case has been split up against the accused Ramesh Das and Mirza Islam Beg which is evident vidie order no.122 dtd 18.10.12. This case stands abated against accused Banua @ Avinas @ Lalbihari Das which is evident from the order no.119 dtd 4.4.12
3. Accused Mallik Suleman & Chandan Das are accused in ST.30/315/03. The case

against both the accused is abetted as they both are died during trial which is evident vide order sheet no.97 dtd 19.9.09 and order no.116 dtd 1.12.11 respectively. Accused Sk.Hyder is the only accused in ST.3/53/04

4. Accused persons namely SK.Hyder, Pinku @ Chinku @ SK.Salim stands charged U/s.120B ,395,216,286IPC & U/s.25/27 Arms Act & accused Masuquee @ SK.Yusuf stands charged U/s.395/120B IPC
5. The prosecution case, in short, is that:

On 3.8.99 at 2 pm Sri Nirmal Ku. Choudhury, Branch Manager, LIC,Surya Nagar Branch, BBSR lodged a written report at Capital PS, BBSR alleging there in that on the same date at about 12 noon while he along with Martin Kindo a sub-staff of the office left their office with pass books of the employees of LIC office with withdrawal slips against pass book no.2056,6679,2206 & 952 kept in a brown colour lazer bag ( medical representative type) for depositing the cash in UC0o Bank, Suryanagar Branch, BBSR with a car. The Suryanagar Branch, UCO Bank slip were affixed in the aforesaid currency note bundles containing signature of the cashier of the LIC office. It is further alleged that when the car stopped in front of the bank pw.1 alighted from the car with cash bag and while proceeding with the cash bag to UCO bank for depositing , a person putting black colour pant and yellow shirt having helmet on the head covering his entire face shouted and putting a revolver on the chest of pw.4 snatched away the cash bag from pw.4 despite protest of pw.4. When the said culprits carrying the cash bag was running away pw.4 shouted as "CHORA CHORA". Some persons who had awaited at the outside of the gate threw bombs at pw.4 which exploded near a Hero-Honda motorcycle. The culprits fled away behind the smoke screen. Hearing the sound explosion of bombs the Bank staffs and many others came to the occurrence spot. It is further alleged that as per pw.4 the description of the person who committed the alleged crime is as follows:

1. Height-5.9"
2. Build-Thin
3. Colour-Sabana
4. Full cover black helmet
5. Shirt-Yellow colour full shirt
6. Pant-Black
7. Pistol-Barrel of pistol was black colour.

It is further alleged that the cash looted was with following denominations

1.	Rs.500 x 435 bundles =	Rs.2,17,500/-
2.	Rs.100 x3494 bundles =	Rs.3,49,400/-
3.	Rs.50 x 1579 bundles =	Rs.Rs.78,950/-
4.	Rs.20 x 117 bundles =	Rs.2,340/-
5.	Rs.10 x1476 bundles =	Rs.14,760/-
6.	Coins =	<u>14.20</u> paisa
	Total =	Rs.6,62,964.20 Paisa

Basing on the written report Ext.5 Capital PS Case NO.325 dtd 3.8.99 was registered against two unknown persons U/s.394 U/s.25 &27 Arms Act, U/s.9 of the Indian Explosive Act. During the course of investigation the first IO of this case namely Ashok Ku. Choudhury (pw.34) examined the informant and other witnesses, visited the spot and prepared spot map and spot visit report marked as Ext.9 & 9/2 respectively, seized a Hero-Honda splendor motorcycle bearing No.-OR-02-F-1122 from the occurrence spot which was damaged due to bomb blast under seizure list (Ext.2/2). PW.34 on the date of occurrence at 3.30 pm seized some torne jute rope having baruda smell, some stone chips having baruda smell from the spot under seizure list Ext.1/2., seized cash in transit book of LIC Branch, Suryanagar, BBSR under seizure list Ext.4 and left the said register in the zima of Administrative Officer of LIC (PW.26) vide Ext.7, left the seized Hero Honda motor cycle seized under Ext.2/2 in the zima of its owner (pw.9) vide zimanama Ext.3. As per the directions of State Police Headquarters communicated vide office letter no.305/CID and District Order No.2782 dtd 3.8.99 PW.34 made over charge of the investigation of this case to Narayan Bisi, Inspector of police, Crime Branch for investigation. PW.35 during the course of his investigation visited the spot, examined the witnesses and got information that accused SK.Hyder and his associates who alleged to have committed dakayati had already been fled away. PW.35 proceeded to Hyderabad where he examined the IIC of Bahadurpura PS namely G.Ramanganeyulu & received a confessional statement cum seizure list from the IIC, Bahadurpura PS seized in Bahadurpur PS Case No.123/99 U/s.25(1) (a) Arms Act R/w. U/s.216 IPC. The said confessional stateent was of the accused Banua, Pinku @ SK.Salim & Mirja islambeg. The confessional statement cum seizure list of accused Banua @ Lalbihari Das (Carbon copy) marked as Ext.10 & the confessional statement cum seizure list of accused SK.Salim (marked Ext.11). PW.35 prayed the Ld.SDJM,BBSR for production of the accused persons namely Banua @ Lal Bihari Das, Pinku @ SK.Salim, Mirza Islambeg and Ramesh Das for production of the accused persons in this case. As per the direction of 2<sup>nd</sup> Metropolitan magistrate, Nampali, Hyderabad received accused persons namely Mirza Islambeg & Ramesh Das from Muradabad jail and produced them before SDJM,BBSR for remanding in this case. With the permission of the Ld.SDJM,BBSR, PW.35 took both the accused named above for three days on police remand for their custodial interrogation and after expiry of

custodial interrogation both the accused named above were produced before the Court of Ld.SDJM,BBSR for their judicial remand. Further on 18.9.99 pw.35 made a prayer before Ld.SDJM, BBSR for issue of production warrant in favour of accused Banua @ lalbihari Das and Pinku @ SK.Salim who were in Kendrapada jail and to remand them in this case. PW.35 took both the accused Lalbihari Das and SK.Salim on police remand for four days for custodial interrogation and after expiry of their remand both the accused were produced before the court of Ld.SDJM,BBSR for their judicial remand. On 20.10.99 pw.35 arrested accused SK.Masquee @ SK.Yusuf and forwarded him to the court of LD.SDJM,BBSR on 21.10.99, send the articles seized under seizure list Ext.1/2 to DSFL,BBSR through SDJM, BBSR vide Ext.no.13(Chemical Examination Report). On 10.12.99 pw.35 made a prayer before SDJM, Khorda for remand of the accused Babula @ Krushnapriya Singh in this case. On 13.12.99 pw.35 made a prayer before the Court of Ld.SDJM,BBSR for issue of warrant for accused Babula @ krushnapriya Singh. Pw.35 also made a prayer before the court of Ld.SDJM, BBSR for moving 2<sup>nd</sup> Metropolitan magistrate, Hyderabad for handing over the seized articles in Bahadurpura PS Case No.123 of 1999 U/s.216 IPC R/w Sec.25(1) (a) of Arms Act. On 20.12.99 pw.35 submitted remand report to SDJM, Kendrapada for remanding accused Kalia @ Siba Ku. Das in tis case. On 21.12.99 pw.35 made a prayer before the Court of Ld.SDJM,BBSR for issue of production warrant in respect of accused kalia @ Siba Ku. Das. As per the direction of the SDJM,BBSR pw.35 proceeded to Hyderabad on 25.12.99 for receiving the articles seized in Bahadurpu Case No.123/99 from 2<sup>nd</sup> Metropolitan Magistrate, Nampali. On 27.12.99 PW.35 seized one delivery note (Ext.15) of vehicle bearing Regd. NO. AP9L-9212 (Maruti Van) executed by Dr.Ajit Khan of Hyderabad vide seizure list Ext.14. On 30.12.99 pw.35 received a sealed cover packet containing one RC Book of vehicle bearing Regd. NO. AP-09L-9212, Insurance police slip no.1368925 of Oriental Insurance, Insurance policy schedule of Oriental Insurance bearing no.431206, Form NO.28(Transfer letter), Cash of Rs.4300/- & Rs.1700/- with slip of deposit , with slip of deposit of Surya Nagar branch from the Court of 2<sup>nd</sup> Metropolitan Magistrate along with copy of Orders. PW.35 produced those articles before the court of Ld.SDJM who after verification send the same in a close sealed cover with his signature to him. On 1.1.2000 pw.35 made prayer before Dist.Magistrate, Khurda to accord sanction for

launching prosecution against the accused persons namely SK.Hyder, Chandan Das, Mallik Suleman, Banua @ lalbihari Das, SK.Salim @ Pinku, Kabula Singh, SK.Masaquee @ SK.Yusuf, Kalia Das @ Srikumar, Mirza Islambeg, Ramesh Das U/s.25/27 of the Arms Act and received the necessary sanctions (Ext.17) for launching prosecution against the above named accused persons U/s.25/27 Arms Act. On 7.1.2000 pw.35 received the chemical examination report (Ext.8/4). After completion of the investigation pw.35 submitted charge sheet against the above named accused persons U/s.395/120B,216(A),286IPC, U/s.25/27 Arms Act & U/s.9(b) Indian Explosive Act showing accused persons namely SK.Hyder, Chandan Das & Mallik Suleman as absconder before the court of Ld.SDJM,BBSR to face their trial in the court of law. The case was committed to the court of sessions and subsequently this case was transferred to this court for disposal according to law.

6. The case of the defence is one of completely denial to the prosecution allegations and false implications.

7. The points for determination in this case are as follows:

i) Whether on 2.8.99 at GGP Colony, Rasulgarh, BBSR the above named accused persons who are now facing trial along with their other associates had entered into criminal conspiracy for commission of dakayati in respect of cash transacted from LIC office at Suryanagar to UCO Bank ,Suryanagar Branch in pursuance of the said criminal conspiracy, dakayati was committed on 3.8.99.?

ii) Whether on 3.8.99 at about 12 noon inside the UCO Bank Campus, Surya Nagar, BBSR the present accused persons along with their other associates numbering about more than five had committed dakayati in respect cash of Rs.6,62,964.20paise along with some pass books and withdrawal slips.?

iii) Whether on 3.8.99 at about 12 noon inside the UCO Bank, Suryanagar Branch the present accused persons along with their other associates had exploded bombs, explosive substance while doing the above illegal Act, rashly and negligently endangering human life?

iv) Whether on 3.8.99 at about 12 noon inside the UCO bank campus the present accused persons along with their other associates were in illegal possession of fire arms such as revolver without license and had used the same for unlawful purpose while committing dakayati?

v) Whether on 3.8.99 at about 12 noon inside the UCO Bank campus ,Suryanagar, BBSR the accused persons named above were in illegal possession of explosive substance like bomb without any authority or license ?

8. In order to establish its case, prosecution examined 35 witnesses in all. PW.13 is the informant. PW.4 is the sub-staff of LIC office , Surya Nagar Branch. PW.13 is the Branch

Manager, Sales, at Suryanagar, LIC Branch Office, BBSR. Both Pws.13 & 4 on the alleged date and at time taking the cash of Rs.6,62,964.20paise had been to UCO bank, Suryaagar Branch to deposit. Pw.2 ,10,13,14,17,18,19,26,29 are the LIC staffs to whom prosecution has examined to prove the fact that pws.13 & 4 taking the cash of Rs.6,62,964.20 paise had been to UCO Bank, Suryanagar Branch to deposit on 3.8.99 at about 12 noon and the said cash was looted away in UCO Bank premises. Pws.5,12,15,16 are the UCO Bank employees, Suryanagar Branch who were the post occurrence witness to the dakayati. Pws.1 & 8 were the witnesses to the seizure in respect of the articles seized under Ext.1/2. Pws.6 & 7 were the witnesses in respect of the damaged motorcycle seized under seizure list Ext.2/2. PW.9 is the zimadar of the damaged motorcycle seized under seizure list Ext.2. PW.3 and 11 were the independent witnesses to the alleged dakayati. PW.20,21,22,24,33 were the public witnesses. To whom prosecution examined to establish that the accused persons had made criminal conspiracy to commit the alleged dakayati taking a house in GGP Colony area on rent basis. Pws.27 & 28 were the employees of council of professionals social workers who had cum at the relevant time to the UCO Bank, Sasheed Nagar Branch for depositing their office cash. PW.23 & 25 are the man of Hyderabad to whom prosecution has examined to prove the fact of transaction of maruti car alleged to have been used by the accused persons for the commission of the offence of dakayati. Pws.30 is an independent post-occurrence witness. PW.31 was the Ex-IIC of Kendrapada PS to whom prosecution has examined to prove the incidents of the accused persons involved in this case. PW.32 was te scientific officer in SFSL, Rasulgarh, BBSR who had chemically examined the articles seized under seizure list Ext.1/2. PW.34 & 35 were the two IOs in this case. On the other hand defence adduced no evidence on its side.

9. Defence has no dispute regarding the commission of alleged dakayati but the Ld. Counsel for the accused persons vehemently urged that the present accused persons were noway involved in the commission of alleged dakayati but they have been falsely implicated in this case. Merely because defence has no dispute regarding the commission of alleged dakayati it can not be said as a gospel truth that the present accused persons had participated in the commission of alleged dakayati. Now it is to be examined as to how far the prosecution with the materials available on record has able to establish that the culprits those who had committed the alleged commission of dakayati were nonetheelse but the present accused persons were amongst the culprits who had committed the alleged offence.

10. True it is that none of the prosecution's witnesses examined in this case has whispered a single word against the present accused persons that these present accused persons were the members of the dakayati gang who had committed thte alleged offences of dakayati. In order to fasten the present accused persons with the commission of alleged dakayati prosecution has mainly relied upon the confessional statement of accused Lalbihari Das and Mirja IslamBeg recorded by Inspector of police, Bahadurpura PS at Hyderabad under Ext.10 and 11 respectively. The Ext.10 & 11 are the carbon copy of confessional statement of both the above named

accused. The original confessional statement of the above named accused persons have not been produced in the court. The police officer who had recorded the confessional statement has also not been examined. Similarly the public witnesses in whose presence both the accused named above made their confessional statement and in whose presence the IIC, Bahadurpura PS recorded the confessional statement has also not been examined in this case. Prosecution has furnished no explanation for non-examination of the IIC, Bahadurpura PS who has recorded Ext.10 ad 11 and the independent persons in whose presence Ext.10 ad 11 were prepared as well as non production of the original confessional statement of both the accused named above. For the aforesaid infirmities basing upon Ext.10 and 11 a definite opinion can not be formed that the present accused persons were the members of the dakayati gang who had committed the alleged dakayati. Moreover the confessional statement of the accused before the police is clearly inadmissible in evidence. Besides Ext.10 and 11 prosecution has no other circumstantial evidence or any other legal evidence against the accused persons in order to support the charges leveled against the present accused persons. In view of the infirmities in the prosecution's evidence as mentioned above as well as in view of my aforesaid discussion i am of the opinion that the prosecution has failed to connect the present accused persons with the commission of alleged dakayati and other ancillary offences leveled against the accused persons beyond all reasonable doubt and as such the present three accused persons named above are entitled to be acquitted.

In the result, I hold the accused persons Sk.Hyder, S.K.Salim @ Pinku @ Chinku, SK.Masaquee @ SK.Yusuf, not guilty U/s.120B,395,216,286,IPC & U/s.25/27 Arms Act & acquit them therefrom U/s.235(1) Cr.P.C. The accused persons are on court bail as such they be discharged from their respective bail bonds. .

AC.J.M-ASJ,BBSR

No order passed as to the disposal of the seized property because of the split up case record against the accused persons namely Ramesh Das, Mirza IslamBeg are still pending for disposal..

ACJM-ASJ,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 27<sup>th</sup> December,2014 under my hand and seal of this court.

AC.J.M-ASJ,BBSR

List of P.w.s. Examined for prosecution.

P.w.1	Ratan Pattnaik.l
P.w.2	Bijaya Tripathy
P.w.3	Tapan Jena
p.w. 4	Martin Kindow
pw.5	Ratiranjana Pattnaik
pw.6	Sunakar Rout
p.w.7	Susasnt Ku.Behera
pw.8	Bamadab Jena

pw.9	A.R.Senapati
pw.10	Swadesh Ranjan Bhola
pw.11	Alok Mandal
pw.12	Prahallad Naik
pw.13	Nirmal Choudhury
pw.14	Sanjukta Mallick
pw.15	Pradipta Ku. Brahama
pw.16	Gagan Bihari Rout
pw.17	Mahanta Ch. Naik
pw.18	Madhabananda Behera
pw.19	Sabeswar Pandi
pw.20	Sudhakanta Ratha
pw.21	Pragya Nanda Mishrra
pw.22	Brahma Behera
pw.23	Md. B.N.Misri
pw.24	S.P.Goswami
pw.25	Md.Asif Alli
pw.26	Smt.Rashmi Singh
pw.27	Prafulla Ku. Jena
pw.28	Chitresen Nayak
pw.29	Tapas Ranjan Mallik
pw.30	Amreswar Lenka
pw.31	Bhagban Mishra
pw.32	Pradip Ku. Samantroy
Pw.33	Debraj Nayak
pw.34	Ashok Ku. Choudhury
pw.35	Narayana Bisi

List of D. W.s. Examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1	Signature of pw.1 in seizure list
Ext.2	Signature of p.w.6 in seizure list
Ext.2/1	Signature of pw.7 in seizure list
Ext.1/1	Signature of pw.8 in seizure list
Ext.3	signature of pw.9
Ext.4	Seizure list
Ext.4/1	Signature of pw.10 on seizure list
Ext.5	FIR
Ext.4/2	Signature of pw.17 in Ext.4
Ext.6	Cash Transit Register
Ext.6/1	Entries dtd 3.8.99 in Ext.6
Ext.6/2	Signature of pw.26 in Ext.6/1
Ext.6/3	Signature of TR.Mallik in Ext.6/1
Ext.7	Zimanama maintained in book of Ext.4
Ext.7/1	Signature of pw.26 in Ext.7
Ext.4/3	Signature of pw.26 in Ext.4
Ext.8	Examination report of SFSL, BBSR dtd 7.1.00
Ext.8/1	Signature of pw.32 in Ext.8
Ext.8/2	Signature of B.K.Das in Ext.8
Ext.8/3	Signature of SN.Padhi in Ext.8
Ext.5/1	Endorsement of pw.34 in Ext.5
Ext.5/2	Endorsement & Signature of Chitaranjan Patra
Ext.5/3	Formal FIR
Ext.5/4	Signature of C.R.Patra on Ext.5/3
Ext.9	Spot Map
Ext.9/1	Signature of pw.34 in Ext.9
Ext.9/2	Spot visit report dtd 3.8.99

Ext.9/3 Signature of pw.34 in Ext.9/2  
 Ext.2/2 Seizure list dtd 3.8.99 at 3.30 pm  
 Ext.2/3 Signature of pw.34 in Ext.2/2  
 Ext.1/2 Seizure list dtd 3.8.99  
 Ext.1/3 Signature of pw.34 in Ext.1/2  
 Ext.4/4 Signature of pw.34 in Ext.4  
 Ext.7/2 Signature of pw.34 in Ext.7  
 Ext.3/2 Signature of pw.34 in Ext.3  
 Ext.8/4 Examination report of FSL, BBSR  
 Ext.10 Carbon copy of confessional statement cum seizure list of accused L.B.Das  
 Ext.11 Carbon copy of confessional statement cum seizure of accused SK.Suleman  
 Ext.12 Carbon copy of confessional statement cum seizure of accused Mirja Islam Beg  
 Ext.13 Forwarding report of SDJM, BBSR to SFSL, Rasulgah  
 Ext.14 Seizure list  
 Ext.14/1 Signature of pw.35 in Ext.14  
 Ext.14/2 Signature of Md.Abdul Suttar in Ext.14  
 Ext.14/3 Signature of Md.Faisal in Ext.14  
 Ext.14/14 Signature of Md.Salim in Ext.14  
 Ext.15 Delivery note dtd 28.7.99  
 Ext.16 Closed cover packet containing document in GR.2364/99  
 Ext.16/1 & 16/2 Signature of A.k.Mishra, SDJM, BBSR in Ext.16  
 Ext.17 Sanction Order dtd 14.1.2000 of Dist. Magistrate, Khurda  
List of exhibits marked for defence.  
 Nil.  
List of M.Os.  
 Nil

AC.J.M-ASJ, BBSR