

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, BANPUR  
PRESENT:

Sri Satya Ranjan Pradhan  
Asst.Sessions Judge, Banpur

**S.T. Case No. 87/37 of 2014**

(Arising out of G.R. Case No. 187 (A) /2012  
corresponding to Banpur P.S. Case No. 117/2012)

State. ... Prosecution.

-Versus-

1. Seshadev Ray @ Raul, aged about 30 years  
S/o Shyama Raul of Vill:Darpanarayanpur,  
P.S: Sarankul, Dist: Nayagarh.
2. Bangali Barik, aged about 45 years,  
S/o Benudhar Barik of Vill: Marjuriapali,  
P.S: Itamati, Dist: Nayagarh.

... Accused persons.

For the Prosecution : Sri S.Mishra, Addl. P.P.

For the Defence : Sri G.S.Sarangi & M.K.Mahapatra  
& Associates, Advocates.

Date of Argument : 20.11.2014

Date of Judgment : 25 .11.2014

Offence U/s 457/395/412 I.P.C. R/W 25 & 27Arms Act.

**JUDGMENT**

1 The above named accused persons stand charged U/s 457/395/412 of the I.P.C. read with 25 & 27 of Arms Act for having committed the offence of house trespass, for dacoity, for receiving the stolen property knowing or having reason to believe the same to be stolen, for possessing arms and ammunitions without any authority and for using the same without the authority.

2 The brief fact of the prosecution story as narrated in the FIR is that,-

The informant and his brother have their grocery shops in their residential house situated at village Brahamapada. Apart from the grocery shop the informant was also having a mobile shop in the said house. On 27.05.2012 the family members of the informant as well

as his brother after taking dinner were sleeping in their house. As because it was Summer Season the doors of the house were opened. However the grills attached to the doors were locked from inside. At about 1 AM in the night the informant heard shout from the house of his brother. Hearing the shout the informant woke up and tried to come out of the house but found the dacoits were standing outside the house being armed with guns. Thereafter the said dacoits broke the lock of the grill using the crowbar and entered inside the house. From the house of the informant they had taken away a sum of Rs. 5,000/-, Rs.22,000/- and 19 numbers of mobile phones from the mobile shop along with cash of Rs.12,000/-, cigarettes and Amul packets worth Rs.3,000/- from his grocery shop. Similarly the said dacoits also took away one pair of gold ear ring, one finger ring, one pair of payals and cash of Rs. 1800/- from the house of his brother. While taking away the aforesaid articles the dacoits had also assaulted the informant, his brother and their family members causing injuries. So far as their identity and number is concerned it was mentioned in the FIR that they were 6- 7 in number and were aged in between 25-30, apart from the leader of the group who was aged about 45. It was claimed in the FIR that they can identify the accused persons. This report of the informant was registered by the I.I.C Banpur as Banpur P.S. Case No.117 dated 28.05.2012 U/s 457/395 of the I.P.C read with 25 of the Arms Act. During the course of the investigation the I.O apprehended the accused Musa @ Sankar Gouda and Tukuna @ Somanath Biswal. Thereafter the I.O submitted preliminary charge sheet against those two accused persons on 09.10.2012 U/s 457/395/412 of the I.P.C. R/W with 25 Arms Act keeping the investigation open and that case was committed to the court of sessions. After apprehension of Sesadev Ray further investigation continued. T.I Parade was conducted on 3.10.2013. Thereafter the final C.S was submitted showing other accused persons as absconder. On 3.2.14 the accused Bangali Barik was produced from from Sub- Jail Nayagarh. In this case, one other Judhistira Pradhan could not be apprehended despite of issuance of NBW. So his case was split up on 19.02.14 and this case was committed to the Court of Sessions. Accordingly this present two accused persons are facing trial.

3. The plea of the accused persons is one of complete denial .

4. The points for determination in this case are :-

- (i) Whether on 27/28<sup>th</sup> day of May, 2012 at about 1am the accused persons committed the offence of house trespass in the night by entering into the house of the informant for the purpose of committing dacoity?

- (ii) Whether on the aforesaid date, time and place of occurrence the accused persons committed dacoity in the house & shop of the informant and his brother?
  - (iii) Whether the accused persons dishonestly received or retained the stolen property belonging to the informant knowing or having reason to believe the same to be stolen property obtained by the commission of dacoity?
  - (iv) Whether on the aforesaid date, time and place of occurrence the accused persons were possessing the arms and ammunition without any authority or license?
  - (v) Whether on the aforesaid date, time and place of occurrence the accused persons used or fired the pistol without any authority or license?
5. To substantiate its case prosecution had examined as many as nineteen witnesses, whereas defence had examined none.
6. As revealed from the case record the dacoits have committed dacoity in the house of the informant Rabinarayan Patra and in the house of his brother Madhusudan Patra in the same night. Both these houses situated adjacent to each other. The said two people were examined by the prosecution in the court along with their family members. The informant, his wife, son and daughter were examined as P.W.4, 15, 16 and 14 whereas the witness namely Madhusudan Patra his wife, son and daughter in-law were examined as P.W.13, 11, 8 and 9. It further reveals from the statement of these witnesses that at the time of occurrence family members of both these families had there in their respective house and had not come to the outside. That apart there also exist some differences in the statements of the members of both these families regarding the identity of the accused persons. So it would be prudent to discuss the evidence as deposed by the family members of each family at once. First the evidence of the informant and his family members is taken into account for discussion. All these said witnesses except P.W.14 had categorically stated that on the fateful night after taking dinner they were sleeping. In between 11PM to 1 AM in the night they heard sound from the house of Madhusudan Patra. When they tried to come out they found the dacoits were standing near their grill holding gun. When the informant tried to close the door the dacoits showed him gun as well as bomb and threatened him to kill. Thereafter they broke open the lock of the grill using the crowbar and entered inside the house. After assaulting the informant and his son and the dacoits took away cash, mobile phones and grocery items from their house as well as shops. So far as the articles which were taken away by the dacoits it was stated by the informant that the dacoits had taken

away a sum of Rs.12,000/- from his house, Rs.5000/- and some grocery items from his grocery shop, cash of Rs. 22,000/- , 17-18 numbers of mobile phones from the mobile shop. The son of the informant P.W.16 stated that the dacoits had taken away two numbers of Paragan sandals , some packets of Amul spray and cigarettes, cash of Rs.3,500/-, 19 numbers of mobile phones with chargers, two sets of personal mobile phone bearing Sim Nos. 9937904084 and 9178730549. Apart from the aforesaid items they had also taken away Rs.5000-6000/- from the grocery shop, 12,000 -13,000/- from almiraha of his house and 22,000-23,000/- from the mobile shop. Similarly P.W.15 wife of the informant had stated that the dacoits had taken away Rs.5000/- from the shop Rs. 22,000/- and Rs.18,000/- from the almirah of her house along with some grocery items, cigarettes and sandals P.W.14 the daughter of the informant only stated that the dacoits had entered into their house and took away their house hold articles after assaulting his father and brother. In her cross examination she stated that, at the time of occurrence she was sleeping. So her evidence is of no help to the prosecution. The rest of the witnesses except the informant i.e. P.W.14 though stated about the occurrence, did not implicate the present accused persons in the commission of the alleged crime. They also could not identify the accused persons standing in the dock. They further stated that all the dacoits at the time of dacoity were wearing mask so they could not identify them. (Para-5 of P.W.15 and para-7 of P.W.16). Additionally it was stated by P.W.15 in para-6 of the cross examination the wife of the informant that the dacoits were wearing mask and as there was no electricity connection in their village, it was not possible on her part to identify the dacoits. Apart from these witnesses P.W.10 the nephew of the informant had also been to the house of the informant hearing the shout. According to him at the time of the occurrence she was sleeping in his house. In the midnight he and his mother heard the shout so his mother asked him to go to find out the reason of such shouting. Thereafter he went and found somebody standing in front of the house of his uncle. On being asked that person told him that he is there to purchase petrol. He also saw another person standing in front of the house of the informant pointing a gun towards his house. Thereafter before he could do anything those persons assaulted him and was threatened on the gun point and was taken to the house of the informant. Although this witnesses stated about the alleged occurrence he did not disclose anything regarding the identity of the dacoits or involvement of the present accused persons in the said crime. He further stated that although he had gone to the Jail for T.I. Parade but could

not identify any body in the said T.I. Parade. As revealed from the aforesaid discussion although the said witnesses i.e. P.Ws 10,15 and 16 were present at the spot that means the house of the informant and stated about the occurrence could not identify the dacoits, but the informant could able to identify both the present accused persons standing in the dock.

7. So far as accused Sesadev Ray is concerned the informant had identified him in the court during trial. Although he had been to the Sub-Jail Banpur he did not identify him there. Though he admitted his signature on the T.I. Parade report but did not disclose about the fact of going to Sub-Jail, Banpur or the fact for which he had put his signature on the said report, rather stated that he does not remember as to why he had put his signature on the said paper. In this circumstances when a witness could not identify the accused earlier during holding of T.I.Parade but could able to identify him subsequently in the court more than 2 years after the occurrence, raises suspicion over the credibility of such identification. Moreover the identification so made in the court for the first time after such a long period of time he has no significant utility. Likewise he also for the first time had identified the accused Bangali Barik in the court. Previously no T.I.Parade was conducted in respect of the accused Bangali Barik.. In this connection when the witness identifies the accused for the first time in the court after long gap of time, to find out its evidentiary value, reference can be made to the decision of the Hon'ble Court rendered in the case between Republic of India – Versus- Rabindra Kumar Pal @ Dara Singh – (2005) 31 OCR-421 wherein the Hon'ble Court has held that “ evidence of identification of an unknown accused for the first time before the trial court is of no value unless it is corroborated by previously held T.I.Parade. Only in exceptional case departure from this general rule of prudence is permissible”. Here in this case the witness identified the accused persons for the first time in the court after a long gap of time, but failed to disclose the role played by them during such dacoity. Under the aforesaid circumstances the identification so made by the witness P.W.4 can not be accepted as a evidence against the accused persons. Similarly if the said identification made by P.W.4 will be compared with his own statement made in para-7 of his cross examination and the statements of P.Ws 15 and 16 the credibility of such identification will also be, in doubt. Because in para-7 of his cross examination he himself had admitted that at the time of dacoity the dacoits were wearing mask. Likewise P.Ws 15 and 16 also stated something. Under the aforesaid circumstances I am of the opinion that such an identification made

by the informant in the court for the first time after gap of more than 2 years from the date of the occurrence can not be given much weightage.

8. .Now we will consider the statement of the brother of the informant and his family members. On perusal of the evidence of those witnesses it will be found out that P.Ws 8,9 and 11 although had stated about the occurrence of dacoity did not implicate the present accused persons in the said crime. They also did not disclose the names of any other persons or descriptions of the persons who were so involved. Only P.W.13 Madhusudan Patra had stated about the occurrence and involvement of the present accused persons in the alleged crime. While deposing in the court P.W.13 stated that two years and 15 days back the occurrence took place in the mid night. At that time he was sleeping in his house. As it was Summer season the grills of the house were locked from inside and the doors were kept open. In the night the accused Bangali and Seshadev called him to give patrol to them. When he denied they showed him gun and threatened to kill him if he will close the door. But he closed the front door. However three others broke into the house by breaking open the lock of the backside grill. Thereafter the dacoits after assaulting him and his son took away Rs.1000-1500/- from a vanity bag, three mobile phones, Rs.500/- from his almirah one set of gold ear rings of his daughter in-law and wife , one finger ring, 2 sets of payals from his house. Thereafter they went to the house of his brother but at the same time some dacoits were keeping a guard on them. It was further stated by this witness that after lodging of the F.I.R and apprehension of the accused persons he had been to the Sub-Jail Banpur for identification where he had identified both these accused persons through him the prosecution had proved the T.I. Parade report as Ext. 5/1 . After his examination in chief this witness was put to a searching cross examination by the counsels of the accused persons wherein the learned counsels appearing for the accused persons pointed out the improvements or exaggerations which were made by this witness during his examination in chief upon the earlier statement made before the investigating officer. One of such improvement which was pointed out by the learned counsel for the defence is, although he stated in his examination in chief that "in the night accused Bangali and Sesadev to called him to give petrol. When he denied they showed him gun and threatened to kill if he will close the door. However he closed the door of the front side but three others entered into his house by breaking the lock of the backside grill, but the same was not stated by him to the I.O while confronting this to the witness, although he

claimed to have stated the same during his examination by the I.O but did not find support from the I.O who was examined as P.W.19. Although the statement made before the I.O has got no evidentially value and has limited use so far as contradiction is concerned still then the said portion of his statement made before the I.O needs to be quoted to find out the amount of exaggerations or improvements made by the witness upon his earlier statement. According his statement made before the I.O "..... at about 1 am in the night two dacoits entered into the house by breaking the lock of the backside grill. At that time his son and daughter in-law woke up. Both his son and daughter in-law tried to restrain the dacoits, but they could not enter into the house and then the said dacoits had assaulted his son. At that time two to three more dacoits entered into the room where he was sleeping and broke the lock of front side grill. At that time he and his wife woke up.....'. This fact should not be considered as mere improvement or additions because it has got some bearing upon of the identification of the accused persons. To find out as to when he got up and came to know about the dacoits in his house and the veracity of his statement made in the court, We have to rely upon the statement of his daughter in-law PW.9 who had stated that '.....at about 1AM in the night two dacoits came and broke the backside lock of the grill. Thereafter she called her husband. Then her husband went to the door to close it but the dacoits obstructed it by a crowbar for which that door could not be locked. So she went to call her father in-law (P.W.13) but by that time the dacoits had entered into his house.....'. So if the statement of P.W.9 is compared with P.W.13's statement made before the I.O it will be found out that he came to know about the dacoits after their entry into his house and not before that. So if he at all had seen them, had seen inside the house. But in para-7 of the cross examination P.W.13 stated that before the dacoity and assault he had seen these two accused persons once on the focus of the torch light from a distance of 7 feet. Further he had stated that Inside the house he had not focused the torch light as they had snatched it away from him. So if this witness woke up after entry of the dacoits inside his house then it can be said that he has not seen these accused persons because inside the house he had not focused the torch light and as there was no electricity in their village. Here in this case, the case of the prosecution entirely rests upon the identification of accused persons in the court and in the Sub Jail Banpur during the test identification parade held by the J.M.F.C., Banpur, P.W.18. So far as accused Bangali Barik is concerned no T.I. Parade was conducted for

his identification. However the witness P.W.13 identified him in the court. As discussed earlier there exist an element of doubt on the fact that P.W.13 had seen him at the time of occurrence as his statement seems to be a \_sort of cooked up story . Even though he identified him first time in the court it is a weak piece of evidence as this identification was made 2 years after the occurrence. So far as accused Seshadev Ray is concerned. Two witnesses i.e. P.Ws 4 and 13 had been to the Sub- Jail Banpur for identification of the accused Seshadev Ray. Out of them P.W.4 could not identify him in the said T.I. Parade but only P.W.13 could able to identify him. During course of the argument the learned Addl. P.P. argued that as because the identified witness P.W.13 had correctly identified the accused Seshadev Ray in the presence of Learned J.M.F.C., Banpur who was examined as P.W.18 there is no point in disbelieving his statement. On the other hand learned counsel for the accused raised suspicion over the credibility of such T.I. Parade conducted after more than one year of the occurrence. On perusal of the case record it reveals that the identifying witness P.W.13 had no previous acquaintance with the accused Seshadev Ray. He had only seen the accused once during the occurrence by the focus of a torch light. Neither prior to the occurrence nor after occurrence he had seen him ( para- 7 of the cross examination, P.W.13). As per the F.I.R. the occurrence took place on 27.05.2012 and the T.I. Parade was conducted on 19.06.13. That means more than one year after the occurrence. In the circumstances when there was no previous acquaintance of the witness with the accused it can be difficult to rely upon the statement of the witness that he could remember the face of the accused even though he had seen the accused once that too with the focus of the torch. It is also be kept in mind at the time of occurrence there was no electricity connection in the village of the witness. That apart the identifying witness (P.W.13) also did not disclose the reason for identifying the suspect during the T.I parade or during the course of trial. Similarly for eradication of confusion and fair T.I. Parade it is necessary that the identifying witness must identify the suspect by touching him or holding his hand and bringing him out of the line but that procedure was not followed. The witness p.w.13 in his cross examination para 7 had stated that at the time of T.I. Parade he was standing at a distance of 6-7 feet away from the accused. The T.I. Parade report also does not reveal about the aforesaid things. So considering the aforesaid thing I am of the opinion that it would not be proper to convict the accused persons only basing upon such Test .Identification. Apart from the identification so made there is nothing in

the record to implicate the accused persons in the alleged crime. Even no seizure was made from the possession of either of the accused persons.

9. In the result I hold the accused persons not guilty for the offence U/s 457/395/412 I.P.C. & 25 & 27 Arms Act and acquit them u/s. 235(1) Cr.P.C. They be set at liberty forthwith and accused Bangali Barik be discharged from his bail bond

No order regarding disposal of property is made as nothing more was seized before submission of the final charge sheet and as another accused is yet to be apprehended and face his trial.

Asst. Sessions Judge, Banpur.

Typed to my dictation & corrected by me. Judgment being sealed and signed is pronounced in the open court today i.e. on 25.11.2014.

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1.	Manguli Mahakuda
P.W.2.	Pitabasa Mahakuda
P.W.3.	Budhia Mahakuda
P.W.4	Rabi Narayana Patra.
P.W.5	Bikram Keshari Jena
P.W.6	Basanta Pradhan.
P.W.7	Gouranga Pradhan.
P.W.8	Manas Kumar Patra.
P.W.9	Swapna Rani Patra.
P.W.10 .	Sunil Nayak.
P.W.11	Tuni Patra
P.W.12	Prabodh Pal.
P.W.13	Madhusudan Patra
P.W.14	Jamuna Patra
P.W.15	Minati Patra
P.W.16	Biranchi Patra
P.W.17	Gadadhar Das
P.W.18	Sarmistha Das, J.M.F.C., Banpur
P.W.19	Prasanta Kumar Malla.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1.	Seizure list.
Ext.1/1.	Signature of P.W.1 on Ext.1.
Ext.1/2	Signature of P.W.17 on Ext.1.
Ext. 1/3	Signature of P.W.19 on Ext.1.
Ext.2	Seizure list.
Ext.2/1	Signature of P.W.1 on Ext.2.
Ext. 2/2	Signature of P.W.17 on Ext.2
Ext.2/3	Signature of P.W.19 on Ext.2.
Ext.3	Signature of P.W.2 on seizure list.
Ext.3/1	Signature of P.W.3 on seizure list.
Ext. 3/2	Seizure list.
Ext.3/3	Signature of P.W.19 on Ext. 3/2.
Ext.4	F.I.R.
Ext.4/1	Signature of P.W.4 on Ext.4.
Ext. 4/2	Signature of P.W.5 on Ext.4.
Ext. 4/3	Signature of P.W.19 on Ext.4.
Ext.5	Signature of P.W.4 on T.I. Parade report.
Ext. 5/1	T.I. Parade report.
Ext. 5/2	Signature of P.W.13 on T.I. Parade report.
Ext.5/3	signature of p.w.18 on the T.I. Parade report.
Ext.6	Zimanama
Ext.6/1	Signature of P.W.4 on Ext.6.
Ext.7	Signature of P.W.8 on Injury report.
Ext.7/1	Injury requisition of P.W.8
Ext.7/2	Signature of P.W.19 on Ext.7/1.
Ext.7/3	Injury report of P.W.8.
Ext. 8	Injury report of P.W.13.
Ext. 8/1	Signature of P.W.12 on Ext.8.
Ext. 8/2	Signature of P.W.13 on Ext. 8.
Ext. 8/3	Injury requisition of P.W.13.
Ext. 8/4	Signature of P.W.19 on Ext.8/3.
Ext.9	Medical report of P.W.16.
Ext.9/1	Signature of P.W.16 on Ext.9.
Ext.9/2	Injury requisition of P.W.16.
Ext. 9/3	Signature of P.W.19 on Ext.9.
Ext.10	S.R of witnesses.
Ext.11	S.R. of witnesses.
Ext.12	Spot report.
Ext.12/1	Signature of P.W.19 on Ext.12.
Ext.13	Spot map.
Ext.13/1	Signature of P.W.19 on Ext.13.
Ext.14	Injury requisition of Sunil Naik.
Ext.14/1	Signature of P.W.19 on Ext. 14.
Ext.14/2	Injury report of Sunil Naik.
Ext.15	Report of scientific officer.
Ext. 15/1	Signature of P.W.19 on Ext.15.
Ext. 16	Report of dog master.
Ext.16/1	Signature of P.W.19 on Ext.16.
Ext.17	Prayer to S.P to obtain C.D.A.R.

Ext.17/1	Signature of P.W.19 on Ext.17.
Ext.18	Prayer to conduct T.I. Parade.
Ext. 18/1	Signature of P.W.19 on Ext.18.
Ext.19	Prayer to conduct T.I.Parade.
Ext.19/1	Signature of P.W.19 on Ext.19.
Ext.20	C..D.A.R report received.
Ext.20/1	Signature of P.W.19 on Ext.20.
Ext.21.	Seizure list.
Ext. 21/1	Signature of P.W.19 on Ext.21.
Ext.22	T.I. Parade report of Musa Gouda.
Ext.23	Prayer for keeping the investigation open.
Ext.23/1	Signature of P.W.19 on Ext.23.
Ext.24	Prayer for conducting T.I. parade of Seshadev Ray
Ext. 24/1	Signature of P.W.19 on Ext.24.
Ext.25	Sanction order receipt from DMO Khurda.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.