

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 Chhaka. 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 the 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. During the course of investigation T.I. Parade in respect of accused Musa @ Sankar Gouda was held and thereafter the I.O submitted preliminary charge sheet against these 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. Accordingly the present accused persons are facing trial for the aforesaid offences.

3. The plea of the accused persons is one of complete denial .
4. The points for determination in this case are :-
 - (i) Whether on 27/28th day of May, 2012 at about 1am the accused persons committed the offence of house trespass by 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?
5. To substantiate its case prosecution had examined as many as eighteen witnesses, whereas defence had examined none.

6. As mentioned earlier the above named accused persons are facing trial for having committed the offence U/s 457/395/412 I.P.C R/W 25 Arms Act. For substantiating its case prosecution had examined 18 witnesses including the informant as P.W.4 , his wife, son, daughter and nephew as P.Ws.15,16,14 & 10. Similarly his brother and his family members were examined as P.W.13,11,8 & 9. While being examined in the court these witnesses only described about the occurrence and involvement of two persons namely Bangali and Sesadev Ray. They did not whisper any word against these two accused persons. The basis of such allegation levelled against them is the recovery of stolen mobile phones from their possession and the T.I. Parade which was held in respect of accused Musa @ Sankar Gouda. So far as the accused Musa @ Sankar Gouda is concerned it was stated by the I.O (P.W.18) that on 13.06.2012 he seized one China Mobile phone from accused Musa @ Sankar Gouda vide seizure list marked as Ext.3/2. On perusal of the said seizure list it reveals that the alleged seizure of the stolen mobile phone was made in presence of witnesses namely Pitabas Mahakuda and Budhia Mahakuda. Both these said witnesses were examined by the prosecution as P.Ws 2 and 3. During their examination in the court they identified the accused Musa @ Sankar Gouda and admitted the fact of putting their signatures marked as Ext.3 and 3/1 only. However denied their knowledge about the seizure. As per the version of P.W.2 police had gone to their village and had asked him to identify the house of Daya Gouda who is father in-law of accused Musa Gouda and asked him

to put his signature. So as per the instruction of police he had put his signature. Similarly, P.W.3 the other witness to the seizure also stated that at the instance of police he puts his signature on the seizure list. Both these said witnesses were put to question by the learned Addl. Public Prosecutor U/s 154 of the Evidence Act but nothing much of importance was elicited from their mouth which could have supported the case of the prosecution. Apart from the aforesaid seizure the prosecution tried to establish the involvement of this accused by holding of a T.I. Parade. As per the statement of I.O P.W.18 on 13.06.2012 after seizure of the mobile from the possession of this accused he arrested him and forwarded him to the court. On the date of his forwarding i.e. on 14.06.12 he submitted a prayer to J.M.F.C., Banpur to conduct T.I. Parade in respect to accused Musa @Sankar Gouda vide requisition marked as Ext.16. But the T.I. Parade could not be conducted. So again on 22.06.2012 he submitted another prayer to Learned J.M.F.C., Banpur vide requisition marked as Ext.17 for conducting T.I. Parade. On 23.06.2012 the said T.I. Parade was conducted in respect of accused Musa Gouda. The said T.I. Parade report was marked on behalf of the prosecution as Ext.5/3. On perusal of the said T.I. Parade report it reveals that the witness namely Rabinarayana Patra, (P.W.4) Madhusudan Patra, (P.W.13), Manas Kumar Patra, (P.W.8) and Sunil Nayak (P.W.10) had attend the said T.I. Parade and out of them witness Rabinarayana Patra, Madhusudan Patra and Manas Patra had identified the suspect correctly whereas witness Sunil Nayak could not identify the said suspect.

However during their examination in the court they did not speak about the T.I.Parade. Only P.W.13 spoke about the conducting of T.I. Parade, but it was categorically stated by him in Para-6 of his examination in chief that though he had gone to the jail for identification he could not identify the accused Musa @Sankar Gouda in the jail. As because these witnesses did not speak about the T.I. Parade. The Magistrate who had conducted the T.I. Parade was not examined by the prosecution. So the question will arise as to the utility of the T.I. Parade report marked as Ext. 5/3 on behalf of the prosecution. In this context reliance can be placed on the judgment of the Hon'ble Apex Court decided between Haseeb – versus- State of Bihar AIR-1972 S.C-283. While deciding that case the Apex court has held that the purpose of test identification is to test the statement of the witnesses made in the court which constitutes substantive evidence. It being the safe rule that the sworn testimony of the witness in court as to the identity of the accused requires corroboration in the form of an earlier identification proceeding. Where there is no such substantive evidence at all as to identity of the accused the earlier identification parade can not be of any assistance to the prosecution”. So as held by the Apex Court the T.I. Parade only itself does not of any use in absence of any substantive piece of evidence in the form of a sworn testimonies made by the witnesses in the court. Under the aforesaid circumstances it can be said that the prosecution has not able to establish the case against the accused Musa @ Sankar Gouda.

7. So far as accused Tukuna @ Somanath Biswal is concerned the basis of allegation against him is the recovery of one Nokia mobile phone bearing Model No.2690 from his possession. As per the statement of the I.O (P.W.18) he had made requisition to S.P Khurda for obtaining C.D.R of the stolen mobiles vide letter marked as Ext.15. On 11.07.12 he received the C.D.R of the stolen mobile phones from S.P. Khurda. The said C.D.R. Was marked as Ext.18. Through that C.D.R he could know that the present accused Somlanath Biswal was using that stolen mobile. Thereafter he seized the said mobile phone from his possession vide seizure list marked as Ext.19. On perusal of the Ext.19 it reveals that as alleged by the I.O the stolen mobile whose documents was seized by the I.O under Ext.2 was recovered from the possession of the accused Tukuna @ Somanath Biswal in presence of witnesses namely Babuli Sahu and Prasanta Pradhan. But both these said witnesses were not examined by the prosecution. Under the said circumstance only basing upon the statements of the I.O it can not be said that the alleged seizure made under Ext.19 was proved.

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

No order is passed regarding the seized property as the case against the other accused persons was split up and they are to face their 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 25th day of November, 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 Rabinarayana Patra
P.W.5 Bikrama Keshari Jena.
P.W.6 Basanta Pradhan
P.W.7 Gouranga Pradhan.
P.W.8 Manasa 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 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.18 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.18 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.18 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.18 on Ext.4.
Ext.5	Signature of P.W.4 on T.I. Parade report.
Ext. 5/1	Signature of P.W.8 on T.I. Parade report.
Ext. 5/2	Signature of P.W.10 on T.I. Parade report.
Ext.5/3	T.I. Parade report.
Ext. 5/4	Signature of P.W.13 on Ext.5/3.
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	Medical requisition.
Ext. 7/2	Signature of P.W.18 on Ext. 7/1.
Ext. 7/3	Injury report received by P.W.18.
Ext.8	Signature of P.W.10 on injury report.
Ext.8/1	Medical requisition of P.W.10.
Ext.8/2	Signature of P.W.18 on Ext.8/1.
Ext. 8/3	Injury report received by P.W.18.
Ext.9	Injury report of Madhusudan Patra.
Ext.9/1	Signature of P.W.12 on Ext. 9.
Ext. 9/2	Signature of P.W.13 on Ext.9.
Ext. 9/3	Requisition for medical examination.
Ext.9/4	Signature of P.W.18 on Ext. 9/3.
Ext.10	Injury report of P.W.16.
Ext.10/1	Signature of P.W.16 on Ext.11.
Ext 10/2	Medical requisition of P.W.16.
Ext.10/3	Signature of P.W.18 on Ext.10/2.
Ext.11	Spot report prepared by P.W.18.
Ext.11/1	Signature of P.W.18 on Ext.11.
Ext.12	Spot map.
Ext.12/1	Signature of P.W.18 on Ext.12.
Ext.13	Report of scientific officer received by P.W.18.

Ext. 13/1 Signature of P.W.18 on Ext. 13.
Ext.14 Report of Dog Master received by P.W.18.
Ext.14/1 Signature of P.W.18 on Ext. 14.
Ext.15 Request letter to S.P Khurda.
Ext. 15/1 Signature of P.W.18 on Ext.15.
Ext. 16 Prayer for conduct T.I. Parade.
Ext.16/1 Signature of P.W.18 on Ext.16.
Ext.17 Prayer for conduct T.I. Parade.
Ext.17/1 Signature of P.W.18 on Ext.17.
Ext.18 C.D.A.R of stolen mobile received by P.W.18.
Ext.19 Seizure list regarding stolen mobile.
Ext.19/1 Signature of P.W.18 on Ext.19.
Ext.20 Prayer for passing order for investigation.
Ext.20/1 Signature of P.W.18 on Ext.20.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.