

**IN THE COURT OF THE ADDL.SESIONS JUDGE,
BHUBANESWAR**

Present:

Shri A.C. Behera, B.A.(Hons),LL.B.
Addl. Sessions Judge,
Bhubaneswar.

S.T.Case No.67/19/392/24 of 2013/08/03

(Arising out of G.R.Case No.3541 of 2001
corresponding to Laxmisagar P.S. Case No.195 of
2001 committed by the learned S.D.J.M.,
Bhubaneswar)

Dated, this the 10th day of February, 2015

The State of Odisha.

.....Complainant.

-Vrs.-

1. Ranjan Kumar Sahoo, aged 33 years,
S/o.Chandramani Sahoo of
Vill.Bhagabanpur, P.S.Sadar,
Dist.Dhenkanal.
2. Prafulla Naik, aged 52 years,
S/o.Late Nabadi Naik.
3. Bijaya Gochhayat, aged 40 years,
S/o.Akrura Gochhayat
Sl.Nos. 2 & 3 are of Vill.Baselia,
P.S.Sadar, Dist.Dhenkanal.
4. Pabitra Mohan Panda, aged 42 years,
S/o.Pankaja Lochan Panda of
Vill.Indupur, P.S.Sadar,
Dist.Dhenkanal.
5. Digambar Pradhan, aged 38 years,
S/o.Late Surendra Pradhan of

Vill. Baselia, P.S.Sadar,
Dist.Dhenkanal

..... Accused persons

Counsel for the Prosecution : Sri P.K.Dash, Addl.P.P.

Counsel for the accused
Nos.2 & 4 : Sri R.C.Baral & his
associate Advocates.

Counsel for the accd.Nos.1, 3
& 5 : Sri B.N.Ray & associate
Advocates.

Date of Argument :05.02.2015

Date of Judgment :10.02.2015

Offence U/s. 399 & 402 of the I.P.C.

J U D G M E N T

All the five accused persons have been charged U/s.399 & 402 of the I.P.C on the allegation of making preparation for committing dacoity and assembling for such purpose.

2. The case of the prosecution against the accused persons in brief as it culled out during trial is that, on dtd.02.11.2001 at about 8 P.M., the IIC Subash Chandra Mohapatra of Capital Police Station, Bhubaneswar got information from reliable source that, a gang of dacoits have come from Dhenkanal to Bhubaneswar through a Marshal Jeep for committing dacoity from a potato merchant namely Kabi Sahu of Unit-I market.

After getting such information, the said IIC S.C.Mohapatra made S.D.Entry No.84 dtd.02.11.2001 of Capital Police Station and came from the police station in the police jeep with his sub-ordinate police officers i.e. S.I. R.N.Mohapatra, S.I. B.K.Dutta, S.I.Niranjan Behera, ASI D.Majhi and Havildar Mohapatra for searching of the said dacoits, those had come from Dhenkanal to Bhubaneswar. They (police personals) being headed by IIC S.C.Mohapatra of Capital Police Station proceeded towards Raj Mahal-Kalpana railway over bridge thinking that, the said dacoits might have taken shelter in that area and accordingly they searched for them. During the course of their search in that night at about 8.45 P.M., they located a Marshal Van bearing Regd. No.0R-6D-R001, (in respect of which, they had got information) in Budhanagar area Bhubaneswar in a dark place having some persons inside the same and one person was loitering there near that Marshal Jeep.

3. Out of all the police persons, those had come for searching of the dacoits, except IIC S.C.Mohapatra of Capital Police Station, other police personals were not in police uniform and they were in plane clothes. Then as the direction of IIC S.C.Mohapatra of Capital P.S., the S.I. Niranjan Behera went near the said jeep, which was parked in a dark place at Budhanagar area, to collect information whether the dacoits have brought that Jeep from Dhjankanal

area to Bhubaneswar for committing dacoity or not. After returning from that jeep, the S.I. Niranjan Behera intimated to the IIC Subash Chandra Mohapatra that, there are five persons inside the jeep and they are talking to commit dacoity in respect of case from the business man of Unit-1 market.

After being confirmed from the above version of S.I. Niranjan Behera that, some dacoits have come from Dhenkanal area to Bhubaneswar for committing dacoity, then the IIC S.C.Mohapatra along with his staffs waited there by concealing themselves to avail an opportunity to apprehend all the persons, those were inside or near that Marshall Jeep. Thereafter, at about 9.30 P.M, they all the police personnels including IIC S.C.Mohapatra of Capital Police Station gheraoed that Marshal Jeep suddenly and captured five occupants therein i.e. the accused persons, but one person who was loitering out side the jeep had managed to escape in the darkness.

4. After apprehension of the above five accused persons, when they were asked by the IIC, they disclosed their respective names and so also they disclosed about their cause of coming to Bhubaneswar. They disclosed that, they had come to Bhubaneswar from Dhenkanal area in order to commit dacoity from the business man of Unit-1 market. Then the IIC S.C. Mohapatra made personal search to the

above apprehended five culprits (accused persons) one after another.

5. During the course of search of accused Poda Bijaya @ Bijaya Gochayat, a hand made pistol with two live cartridges were recovered from his person, to which he (IIC S.C.Mohapatra) seized the same in presence of the independent witnesses namely Chaitanya Mohanty and Apsar Khan through seizure list vide Ext.2/2.

6. On personal search of accused Pabitra Mohan Panda, an iron katuri was recovered from him and the same was seized by the IIC S.C. Mohapatra in presence of the aforesaid two independent witnesses through seizure list vide Ext.1/2.

7. On personal search of accused Prafulla Nayak, an iron katuri was also recovered from him, to which the IIC S.C.Mohapatra seized through seizure list vide Ext.3/2 in presence of the witnesses.

8. On search to the Marshal Jeep, (which was brought by the accused persons), he (IIC S.C.Mohapatra) found the incriminating materials i.e. two iron rods, one red colour cloth and two live hand bombs, to which, he seized the same in presence of the said independent witnesses through seizure list vide Ext.4/2.

9. Thereafter, he (IIC S.C.Mohapatra) took the above five accused persons and the seized articles to the nearest Laxmisagar Police Station, within whose jurisdiction the culprits were apprehended and presented a written report/F.I.R vide Ext.5 before the IIC Laxmisagar Police Station narrating the above incident in detail and so also produced the above apprehended five accused persons and seizure lists before him along with the seized articles.

10. Basing upon such F.I.R., vide Ext.5 lodged by IIC S.C.Mohapatra of Capital Police Station, the IIC B.Ghadei of Laxmisagar Police Station registered Laxmisagar P.S.Case No.195/dtd.02.11.2001 U/s.399 & 402 of the I.P.C r/w Sec.25 of the Arms Act and Sec.4 & 5 of the Explosive Substances Act against the accused persons and directed S.I. A.K.Jena of that police station to take up the investigation of the case.

11. On being directed by the IIC B.Ghadei of Laxmisagar Police Station, the S.I. A.K.Jena of that police station proceeded with the investigation of the case.

12. During investigation, he made spot visit in that night i.e. on dtd.02.11.2001 at 11.30 P.M on being identified by the informant S.C.Mohapatra (IIC Capital P.S.) and his staffs, prepared the spot map vide Ext.6, examined the informant and witnesses and at 2 A.M of that night, he

arrested all the five accused persons (those were apprehended from the spot) and came to know that, another culprit namely Bholeswar Nath has managed to escape and then forwarded to the above five arrested accused persons to the court on its next day i.e. on 03.11.2001 and kept all the seized articles at Laxmisagar P.S.Malkhana. He also examined other witnesses and conducted raid in the house of the absconded accused Bholeswar Nath, but could not able to trace him out and released the seized Marshal Jeep in the zima of its owner as per the order of the court through zimanama vide Ext.7. He also made prayer before the District Magistrate, Khurda for according sanction U/s.25 of the Arms Act and Sec.4 & 5 of the Explosive Substances Act for the prosecution of the accused persons under the above sections. He (I.O) sent the seized country made pistol, the live cartridges, some jute threats (those were collected after diffusal of bombs), two green colour cloth pieces, some metal chips, some glass pieces to S.F.S.L. Rasulgarh, Bhubaneswar as per the order of the court through copy of the forwarding report vide Ext.8 for chemical examination and report. Then after completing investigation preliminarily, he submitted preliminary chargesheet on dtd.01.03.2002 against six accused persons along with these five accused persons U/s.399 & 402 of the I.P.C Sec.25 of the Arms Act and Sec.4 & 5 of the Explosive Substances Act showing the accused Bholeswar Nath as absconder.

Thereafter, he (I.O., A.K.Jena) made prayer before the learned S.D.J.M., Bhubaneswar for issuance of N.B.W./A against the absconded accused Bholeswar Nath and got the said order and he also received the sanction order for prosecution granted by the District Magistrate, Khurda and then he submitted supplementary chargesheet against these accused persons along with the absconded accused Bholeswar Nath.

13. When, the attendance of the absconded accused Bholeswar Nath could not be procured before commitment of the case, for which the case against these five accused persons was committed to the court of sessions vide order dtd.12.11.2013 after splitting up of the record in respect of the absconded accused Bholeswar Nath for his separate trial.

14. Accordingly after commitment of the case, these five accused persons are facing this sessions trial having been charged with the offences U/s.399 and 402 of the I.P.C i.e. on the allegations of making preparation for committing dacoity and assembling for such purpose.

15. The plea of the defence is one of the complete denial and false implication of the accused persons. The specific plea/case of the defence, as it borne out from the statement of the accused persons U/s.313 of the Cr.P.C that, they (all the accused persons) have been apprehended/arrested by the

police from their respective houses at Dhenkanal District, but not at the alleged place of incident. They (accused persons) are in no way connected/concerned with the alleged incident.

16. In order to substantiate the aforesaid charges U/s.399 & 402 of the I.P.C against the accused persons, prosecution has examined altogether eight number of witnesses, but the defence has examined none on its behalf.

17. Out of the eight witnesses of the prosecution, P.W.6 is the IIC of Capital Police Station-cum-informant of the case. P.Ws. 1 and 2 are the two Sub-Inspectors of Capital police station namely B.K.Datta and Niranjan Behera, those had given their company with the IIC (P.W.6) to the spot for apprehension of the culprits as per the case of the prosecution. P.Ws. 3 & 4 are the independent witnesses to the seizure lists, those have turned hostile to the prosecution. P.W.7 is a witness, from whose shop the weapon i.e. katuries were allegedly purchased. P.W.5 is an independent witness, who has turned hostile to the prosecution. P.W.8 is the sole Investigating Officer of the case, who has submitted chargesheet against the accused persons after completing investigation.

18. Basing upon the aforesaid story of the prosecution with alleged criminal charges U/s.399 & 402 of the I.P.C.

against the accused persons and the plea of the defence, the following sole point is required to be determined for just decision of the case and the said point is :-

- (i) Whether on dtd.02.11.2001 night within 8.45 P.M to 9.10 P.M at Budhanagar area of Bhubaneswar in a dark place, these accused persons were making preparation for committing dacoity inside Bhubaneswar town and whether they were assembled there for such purpose ?

19. The above sole point relates to both the offences U/s.399 & 402 of the I.P.C., in which, the accused persons have been charged with.

20. In order to have a better appreciation and so also for just decision of the case, the above sole point fixed for determination is required to be discussed and analyzed by taking into account the materials and evidence available in the record.

21. Now it will be seen first, whether, the accused persons were present at the spot in the alleged night of incident i.e. on 02.11.2001 in between 8.45 P.M. to 9.10 P.M.

According to prosecution, the accused persons were apprehended from the spot. To which, the defence has seriously disputed and has taken the plea that, they (accused

persons) were apprehended/arrested from their respective houses in the District of Dhenkanal.

The informant i.e. P.W.6 has deposed in Para-2 of his examination-in-chief that, prior to the raid at 9.10 P.M., he collected two local witnesses from nearby spot. One was the tea shop owner and another one was garage shop owner. The said tea shop owner and garage shop owner have been examined as P.W.3 and 4. They are namely Chaitanya Mohanty and Apsar Khan.

According to prosecution, out of all the witnesses examined on its behalf, P.W.6 (informant-cum-IIC, Capital P.S.), P.W.1 (S.I. B.K.Datta of Capital P.S.), P.W.2 (S.I.Niranjan Behera), P.W.3 (Chaitanya Mohanty) and P.W.4 (Apsar Khan) were present at the time of alleged apprehension of the accused persons from the spot. So, it is very common that, the above five persons i.e. P.Ws.6, 1, 2, 3 and 4 are supposed to know the identity of the accused persons from the time of their apprehension. Because, in their presence, they (accused persons) were apprehended and that too they were apprehended by non-else but by P.Ws.6, 1 and 2.

It is curious enough that, P.Ws. 3 and 4 have not at all supported the case of the prosecution by turning hostile towards the prosecution. They (P.Ws. 3 and 4) have not at all whispered a single word in their evidence, whether, they have known to the accused persons or not. They have

specifically deposed in their respective evidence that, they do not know about the fact of the case or any incident happening near their shop. Likewise, the P.W.s 1 and 2 have not uttered any word in their entire evidence including in their respective examinations in chief regarding the identity of the accused persons. The star witness of the prosecution i.e. the informant (IIC of Capital Police station), who had allegedly apprehended the accused persons from the spot has specifically deposed in Para-7 of his cross-examination that, “now he is unable to identify the persons who are standing in the dock”.

In the above manner, none of the above eye witnesses of the spot i.e. none among P.W.6, 1, 2 3 and 4 has been able to identify any of the accused persons from the dock during trial as a culprit of the alleged incident, although the accused persons were alleged to have been apprehended by the P.W.s, 6, 1 and 2 in presence of P.W.3 and 4. So, the identity of the accused persons have not been duly established by the prosecution through legally admissible evidence showing their involvement and participation firmly with the alleged incident.

22. That apart, according to prosecution, P.W.2 (S.I.,Niranjan Behera) over heard the talk between the persons inside the jeep at the spot that, “ when in that night, the potato merchant Kabi Sahu collecting money from Unit-I market would proceed Aiginia with the money, they would

rob the money from him on the way”. Hearing that, he (P.W.2) came back and informed it to the IIC and other accompanying police officials.

The aforesaid evidence of P.W.2 is the only basis for the prosecution to show that, the persons those were sitting inside the jeep were preparing for committing dacoity. Now it will be seen, how far the above evidence of the P.W.2 regarding his hearing about the talking of the occupants in the jeep about the commission of robbery and then his disclosure to others about the same is believable.

The aforesaid version stated by the P.W.2 regarding his hearing from the occupants of the jeep that, they were preparing for commission of robbery in that night, when the potato merchant Kabi Sahu will return from Unit-I market after collecting money and will proceed to Aiginia with that money and his (P.W.2's) disclosure of the aforesaid things to his other accompanying police officials is not acceptable. Because, one of his accompanying police official i.e. P.W.1 has not stated that, he heard the above things from P.W.2, because he (P.W.1) has stated that, P.W.2 had informed them that, he (P.W.2) over heard the discussions of the occupants of the jeep that, they had come from Dhenkanal side and were planning to snatch away the cash, when the potato merchant Kabi Sahu will be proceeding from Unit No.1 market to Aiginia Godown to purchase potato.

In the above manner, there is contradiction between the evidence of P.W.2 and 1 in respect of the alleged over hearing of the discussions between the occupants of the alleged jeep by P.W.2 and disclosure about the same before the P.W.1. The evidence of the other witness i.e. P.W.6 in that matter is contradicting to the evidence of P.W.1 and 2. Because, P.W.6 has deposed in his examination-in-chief that, on his return, he (P.W.2) intimated that, five persons were inside the jeep and were talking to commit dacoity in respect of cash from the business man of Unit No.I market.

23. It is the own case of the prosecution that, P.W.1, 2 and 6 had moved to the spot by taking the P.W.3 and 4 with them. For which, according to prosecution, P.Ws.3 and 4 must have present at the time of any disclosure about the discussion of the occupants of the jeep by the P.W.2 near P.W.1 and 6. But it is curious enough that, P.W.3 and 4 have not at all whispered a single word in their entire evidence about any sort of hearing of discussion between the occupants of the alleged jeep by P.W.2 or any disclosure about the same by P.W.2 before P.Ws.1 and 6.

24. So, due to above discrepancies between the evidence of P.Ws. 1, 2, 3, 4 and 6, it can not at all be safely held that, P.W.2 had ever heard any discussion between the occupants of any jeep at the alleged spot and had made any disclosure about the same before P.Ws. 1 and 6. Therefore, due to in-

acceptability of the evidence of P.W.2 on the above aspect, the basic foundation of initiation of the case U/s.399 & 402 of the I.P.C by the prosecution against the accused persons has become baseless.

25. So far the seizure of the alleged articles from the spot at the time of alleged incident by the P.W.6 on dtd.02.11.2001 night is concerned ;

P.W.6 has specifically deposed in his examination-in-chief that, he had seized the alleged weapons and other incriminating articles including the jeep on dtd.02.11.2001 in between 9.20 P.M to 9.40 P.M through seizure list vide Ext.2/2, 1/2, 3/2 and 4/2 in presence of the witnesses i.e. Chaitanya Mohanty and Apsar Khan (P.W.3 & 4). But the said Chaitanya Mohanty and Apsar Khar (P.W.3 & 4) have bluntly denied about any seizure in their presence by the said P.W.6. They (P.W.3 & 4) have also stated in their evidence that, they do not have any knowledge about the contents of Ext.2/2, 1/2, 3/2 and 4/2.

26. According to the above evidence of P.W.6, all the seizure lists vide Ext.2/2, 1/2, 3/2 and 4/2 were prepared at the spot in the alleged night of incident in between 9.20 P.M to 9.40 P.M.

He (P.W.6) has deposed in para-6 of his examination-in-chief that, he lodged the written report vide Ext.5 at 10.30 P.M on dtd.02.11.2001 and produced the seizure lists and the

accused persons before the IIC of Laxmisagar P.S at the time of lodging of the F.I.R.

The I.O.(P.W.8) has deposed in his examination-in-chief that, the F.I.R vide Ext.5 was registered by the IIC of Laxmisagar police station on dtd.02.11.2001 at 11 P.M and thereafter the investigation was handed over to him (P.W.8) and then he (P.W.8) proceeded with the investigation of the case. The IIC handed over him the documents vide Ext.1/2, 2/2, 3/2 and 4/2 i.e. the seizure lists along with the articles those were seized.

27. From the aforesaid evidence of P.W.6 & 8, it is crystal clear that, by the time of the preparation of the alleged seizure lists vide Ext.1/2, 2/2, 3/2 and 4/2 within 9.20 P.M to 9.40 P.M on dtd.02.11.2001, the case at the police station was not registered. Because, the case has been registered at the P.S at 11 P.M on dtd.02.11.2001.

So, it is the own case of the prosecution that, the documents i.e. the seizure lists vide Ext.1/2, 2/2, 3/2 and 4/2 were prepared by the P.W.6 prior to the registration of the case at the Laxmisagar Police Station. But it is curious enough that, in all the seizure lists vide Ext.1/2, 2/2, 3/2 and 4/2, Laxmisagar P.S.Case No.195/dtd,02.11.2001 with the sections of the alleged offences (in respect of which the case was registered) has been mentioned in detail. The above mention of the P.S.Case number along with other things relating that P.S.Case on the seizure lists vide Ext. 1/2, 2/2,

3/2 and 4/2 is going to show that, the said seizure lists have been prepared at Laxmisagar Police Station much after registration of the case i.e. after 11 P.M on dtd.02.11.2001, but not at the alleged spot in that night in between 9.20 P.M to 9.40 P.M.

28. As it is held that, the seizure lists vide Ext. 1/2, 2/2, 3/2 and 4/2 are not beyond suspicion, for which the said documents can not at all be used against the accused persons. Therefore, the said documents of the prosecution vide Exts. 1/2, 2/2, 3/2 and 4/2 are excluded from the zone of consideration. Due to the exclusion of the Exts. 1/2, 2/2, 3/2 and 4/2 from the zone of consideration, it can not at all safely be held that, the accused persons were present at the alleged spot and the alleged incriminating materials were seized from them.

As per the discussions made above, when the identity of the accused persons has been failed to be established and the P.S case number found to be mentioned on the alleged seizure lists vide Exts. 1/2, 2/2, 3/2 and 4/2 prior to the registration of the case, then there is no other alternative for the court but to hold that, the case of the prosecution against the accused persons is not free from doubt and suspicion.

The above conclusion in doubting the case of the prosecution for the reasons stated above finds support from the ratio of the following decision :-

(2015) 60 O.C.R.345- State of Orissa Vrs. Sunadhar Madkami.

Criminal Trial- When prosecution failed to establish the identity – Case number found to be mentioned in some contemporaneous documents prior to registration of the police case—Held, case of the prosecution is not free from doubt and suspicion.

29. On analysis of the facts and circumstances of the case, when it is held that, the identity of the accused persons has not been clearly established by the prosecution showing their involvement and participation with the alleged incident and there is no material in the record to show the presence of the accused persons at the spot in the alleged night of incident and the documents relied upon the by the prosecution vide Ext.1/2, 2/2, 3/2 and 4/2 are not free from doubt and suspicion, then at this juncture, it can not at all safely be concluded that, on dtd.02.11.2001 night within 8.45 P.M to 9.10 P.M at Budhanagar area, Bhubaneswar the accused persons were preparing to commit dacoity and they were assembled there for such purpose.

Therefore, I found the accused persons not guilty with the charges U/s.399 & 402 of the I.P.C. Accordingly, all the five accused persons are acquitted U/s.235(1) of the Cr.P.C from the charges U/s.399 & 402 of the I.P.C on the ground of benefit of doubt. So all the accused persons (those are present today in the Court) are acquitted from the aforesaid charges U/s.399 & 402 of the I.P.C on the ground of benefit

of doubt. As such they (accused persons) are directed to be set at liberty forthwith.

No order as to disposal of the seized articles is passed due to the pendency of the split-up record against the absconded accused Bholeswar Nath.

Pronounced the judgment in open Court to day on this the 10th day of February, 2015 under my seal and signature.

Dictated & corrected by me

Addl. Sessions Judge,
Bhubaneswar.

Addl. Sessions Judge,
Bhubaneswar.

List of witnesses examined for the prosecution:

P.W.1	Bijaya Kumar Datta
P.W.2.	Niranjan Behera
P.W.3.	Chaitanya Mohanty
P.W.4.	Apsar Khan
P.W.5.	Rajkishore Sahoo
P.W.6.	Subash Chandra Mohapatra
P.W.7.	Madan Singh
P.W.8.	Alok Kumar Jena

List of witnesses examined for the defence:

N i l

List of documents marked on behalf of prosecution:

Ext.1.	Seizure list.
Ext.2.	Seizure list.
Ext.3.	Seizure list.
Ext.4	Seizure list.

Ext.1/1	Signature of P.W.4 in seizure list.
Ext.2/1	Signature of P.W.4 in seizure list.
Ext.3/1	Signature of P.W.4 in seizure list.
Ext.4/1	Signature of P.W.4 in seizure list.
Ext.2/2	Seizure list.
Ext.2/3	Signature of P.W.6.
Ext.2/4	Signature of accd. Bihaya
Ext.1/2	Seizure list.
Ext.1/3	Signature of P.W.6
Ext.1/4	Signature of accd. Pabitra Panda.
Ext.3/2	Seizure list.
Ext.2/3	Signature of P.W.6.
Ext.3/4.	Signature of accd. Prafulla Naik.
Ext.4/2.	Seizure list.
Ext.4/3.	Signature of P.W.6.
Ext.4/4.	Signature of driver Ranjan Sahu.
Ext.5.	F.I.R.
Ext.5/1.	Signature of P.W.6.
Ext.5/2.	Signature of P.W.6.
Ext.5/3. B.Ghadei.	Endorsement and signature of IIC
Ext.5/4.	Formal F.I.R.
Ext.5/5.	Signature of B.Ghadei.
Ext.6.	Spot map.
Ext.6/1.	Signature of P.W.8.
Ext.7.	Zimanama.
Ext.7/1.	Signature of P.W.8.
Ext.8.	Copy of forwarding report.
Ext.8/1.	Signature of P.W.8.

List of documents marked on behalf of defence:

N i l

List of M.O. on behalf of prosecution:

N i l

List of M.O. on behalf of defence:

Nil

Addl. Sessions Judge,
Bhubaneswar.

