

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

G.A. 19 of 1988

The State of West Bengal

-Vs-

Debabrata @ Bapi Goswami and Ors.

For the Appellant/State : Ms. Sreyashee Biswas
Ms. Puja Goswami

For the Respondent nos.1 & 3 : Ms. Monami Mukherjee
(*Learned Amicus Curiae*)

Judgment on : 24.02.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of acquittal dated 31.03.1988 passed by the Learned Additional Sessions Judge, Purulia in Sessions Case No.4 of 1985 (Sessions Trial No.1 of 1988) under Sections 395/412 of the Indian Penal Code.

2. The prosecution case precisely stated that one Sukumar Sarkar, being the Junior Accountant at C.A.D.P. Office at Begunkodar, alleged as follows:-

“On July 31, 1982 at about 07:30 p.m. while the complainant along with his wife namely Smt. Amita Sarkar, being examined as PW-7, and one Bijan Kumar Banerjee being examined as PW-9 and one Sunil Kumar Ghosh were

gossiping at his quarter at that time one person of black complexion and short in height with turban on his head entered in the said room with a Tangi in his hand. Subsequently, three more persons followed that black complexion short build person inside the room being armed with deadly weapon. Some other persons were also gathered outside the said room of the complainant. Those persons who got inside the room of the showed them deadly weapons and demanded the valuable articles from the room, the wife of the complainant the PW-7 handed over them her Jewelleries and also took away cash amount of Rs.858/- and one wrist watch from the said Bijan Kumar Banerjee, being examined as PW-9. Thereafter, they fled away from the backside of the said quarter.”

3. On the basis of the aforesaid complaint Jhalda Police Station registered the case which was subsequently culminated into charge-sheet on completion of investigation and charges were framed under Section 395 of the Indian Penal Code against the respondents No. 1 and 2 and under Section 412 of the Indian Penal Code against the respondent No. 3 and vide Judgement and order dated March 31, 1988 the respondents have been acquitted from the charges so framed against them by the Court of the Learned Additional Sessions Judge, Purulia in Sessions Trial No. 1 of 1988 arising out of Sessions Case No. 4 of 1985.
4. During the trial, the prosecution had examined total 12 witnesses whereas the defence had examined none. The accused pleaded not guilty and claimed to be tried.

5. The circumsppection of evidence of the prosecution witnesses revealed as follows:-

- i. PW-1 went to the house of the respondent No.1 and the police arrested him. Subsequently the police arrested the respondent No.2 and both of them had taken the police to the house of respondent no.3, where the police prepared a seizure list on which he signed. PW-1 further deposed to have been not examined by the police and was subsequently declared hostile by the prosecution.
- ii. PW-2, a member of raiding team, deposed that a search and seizure had been conducted at the house of respondent nos.1 and 2 but incriminating articles had not been recovered, although pursuant to their leading statement further raid was conducted at the house of respondent no.6 and from his house one wrist watch had been recovered and he signed the seizure list.
- iii. PW-3 conducted raid along with others at the house of the respondent no.1 and 2 on October 8, 1982 but incriminating articles had not been recovered from their house and pursuant to their leading statement conducted raid at the house of the respondent No.3 and wherefrom one wrist watch had been recovered.
- iv. PW-4, the Learned Magistrate, had conducted Test Identification Parade of recovered wrist watch. PW-9 identified the wrist watch in his presence.

- v. PW-5 was the colleague of the *de facto* complainant and he was a post occurrence witness. He heard the incident from the *de facto* complainant.
- vi. PW-6 was the *de facto* complainant and one of the victims.
- vii. PW-7, the wife of the *de facto* complainant was one of the victims.
- viii. PW-8, one of the neighbours of the de-facto complainant was a post occurrence witness. He heard the incident from PW-6.
- ix. PW-9, one of the neighbours of the complainant deposed the miscreants to have taken his wrist watch. He was one of the victims. He deposed that four miscreants entered with deadly weapons and on point of those weapons he was forced to give away his wrist watch. Subsequently, he identified the said wrist watch before the Learned Magistrate.
- x. PW-10 one of the neighbours of the de-facto complainant was a post occurrence witness. He heard the incident from the complainant.
- xi. PW-11 independent seizure witness was declared hostile by the prosecution.
- xii. PW-12 was the Investigating Officer.

6. The Learned Advocate representing the appellant submitted as follows:-

- i. Upon the facts and circumstances of the case, evidence and other materials on record, the order of acquittal was unwarranted and had caused a grave failure of justice.
- ii. The finding of the Learned Trial Judge, as the lamp which was seized by the police and which was given in the Zimma of PW-6 was not

produced in Court, no reliance could be placed upon the identification of the accused, was unwarranted.

- iii. The finding of the Learned Trial Judge that the statement made by the accused's under Section 27 of the Indian Evidence Act, was recorded after 8 days of the occurrence and as such no reliance could be placed upon it's unwarranted.
- iv. The Learned Trial Judge disbelieved the evidence regarding seizure of the wrist watch because two out of four seizure list witnesses had not support the prosecution case regarding seizure at the trial.
- v. The Learned Judge disbelieved the identification of the wrist watch by PW-4 in the T.I. Parade which had caused a grave failure of justice.

7. Learned Advocate for the appellant further submitted as follows:-

- i. PW-7 and PW-9 being the eye witnesses had corroborated with the version of the PW-6, i.e. the *de facto* complainant.
- ii. All the eye witnesses deposed 4 persons had entered inside the room armed with deadly weapon and took away all the valuables from them on point of weapons which attracted the ingredients of Section 394 of the Indian Penal Code.
- iii. Pursuant to the leading statement of the respondent nos.1 and 2, the police conducted a raid at the house of the respondent no.3 and from his house the wrist watch of PW-9 had been recovered and the same attracted the ingredients of Section 411 of the Indian Penal Code.

- iv. The recovered wrist watch had been duly identified by the PW-9 before the Learned Magistrate who had subsequently been examined as PW-4.
 - v. PW-2 and PW-3 were the police personnel who signed the seizure list and they had corroborated the version of the prosecution.
 - vi. Although PW-1, the independent seizure witness, had been declared hostile, however he deposed he had signed a seizure list at the house of the respondent no.3.
 - vii. The statements of the respondents had been recorded after a considerable period but the same was recorded immediately after the seizure. However such delay in recording the statement of the respondents did not vitiate the prosecution case.
8. The Learned Trial Court had rightly considered that the Investigating Agency failed to trace the actual ownership of the stolen wrist watch. The alleged incident of dacoity occurred on 31.07.1982 and the subsequent statement of Bijan Kumar Banerjee was recorded on 21st of February, 1982 nearly after 3 months of the alleged incident.
9. The Learned Trial Court expressed doubt regarding the memory of said Bijan Kumar Banerjee (PW-9) to remember the number of wrist watch which he failed to cite at the very first instance. Despite the fact of initial denial of Bijan Kumar Banerjee to recollect the number of the wrist watch.
10. There had been contradictions with regard to the seizure of the wrist watch. PW-1 and PW-11 did not support the seizure of the same. The statement

recorded under Section 27 of the Indian Evidence Act, 1872 divulging their involvement to the Investigating Officer did not have legal credibility.

11. The claim of identification of the charged persons in the light of a lamp gets blurred since PW-6 Sukumar Sarkar, PW-7 Anita Sarkar and PW-9 Bijan Kumar Banerjee stated to have failed to identify any miscreants. PW-6 stated the lamp to have been lost in course of time. The statement of the opposite party Debabrata @ Bapi Goswami before the Investigating Officer under Section 27 of the Indian Evidence Act as per the document marked as Exhibit-4 depicts a confession which leads to discovery of an incriminating article and, therefore, such a statement becomes inadmissible in evince being hit by the provisions of Section 27 of the Indian Evidence Act.
12. There had been substantial lacunae in the prosecution case as far as the identification is concerned. Moreover, the veracity of the wrist watch to have been stolen as regards the ownership of the same could not be proved by the prosecution. This Court, in view of the aforesaid discussions as well as a lapse of 38 years in disposing of the instant appeal and the incident, is not inclined to interfere with the impugned judgment and order passed by the Learned Additional Sessions Judge, Purulia in Sessions Case No.4 of 1985.
13. Accordingly, the instant appeal being GA 19 of 1988 stands dismissed.
14. There is no order as to costs.
15. I record my appreciation for the able assistance rendered by the Learned Advocate Ms. Monami Mukherjee, as *Amicus Curiae* in disposing of the appeal.

16. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
17. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)