Shiv Kumar vs The State Of Madhya Pradesh on 7 September, 2022

Author: Hrishikesh Roy

Bench: K.M. Joseph, Aniruddha Bose, Hrishikesh Roy

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO._1503 OF 2022
(Arising out of SLP (Crl.) No. 9141 OF 2019)

Shiv Kumar Appellant(s)

VERSUS

The State of Madhya Pradesh Respondent(s)

J U D G M E N T

Hrishikesh Roy, J.

Leave granted.

2. Heard Mr. Lav Kumar Agrawal, the learned counsel appearing for the appellant. Also heard Mr. Gopal Jha, the learned counsel appearing for the respondent-State of Madhya Pradesh.

3. The challenge in this appeal is to the judgment dated 12.03.2019 in the Criminal Appeal No. 1261 of 2006 whereunder the appellant's conviction by the trial Court under Section 411 of the Indian Penal Code, 1860 (for short "IPC"), was sustained by the High Court. For such conviction, the appellant was sentenced to rigorous imprisonment (for short "R.I.") for 2 years and fine of Rs. 1,000 and in default of fine payment, additional R.I. for 3 months was ordered.

4. In this appeal, limited notice was initially issued on 4.10.2019 only on the quantum of sentence but on 9.5.2022, after considering the submission of the learned counsel for the appellant, the Court decided to examine the challenge to the conviction itself. Earlier, the appellant was exempted from surrendering by the Court's order dated 6.9.2019.

5. In the common judgment, the High Court had disposed of three appeals including the appeal filed by one Sadhu Singh alias Vijaybhan Singh Patel who was convicted for murder and other offences and was sentenced, inter alia, to imprisonment for life. The appellant and one Shatrughan Prasad were not charged in the murder case, but were charged with the offence of receiving stolen property and were convicted for the offence punishable under Section 411 of the IPC.

6. The prosecution's case, as revealed from the impugned judgment, is that on 14.2.2003, complainant Abhay Kumar Jain (PW-26) gave a written report to the Town Inspector, City Kotwali, Satna with the information that a truck loaded with household articles operating under the informant's Excel Transport Agency had proceeded from Indore for delivering goods at Satna. The truck driven by Gurmel Singh after starting from the transport office at Indore on 8.2.2003 had, however, failed to reach its destination at Satna until 12.2.2003. On 14.2.2003, the informant, on learning that the truck was standing on Galla Mandi, Satna, found that the loaded goods from the truck were missing. Initially, an FIR was registered for offence under Section 406 of the IPC in the Crime No. 183/2003 but during police investigation, it came to light that the truck driver was murdered by Sadhu Singh alias Vijaybhan Singh with co-accused Raju alias Rajendra. The loaded goods in the truck were looted and those stolen articles were dishonestly received by the present appellant Shiv Kumar and co-accused Shatrughan Prasad allegedly knowing the articles to be stolen property. It is the further case of the prosecution that the goods in question were sold at cheaper rate by the two accused who were, accordingly, charged for offences under Section 411 of the IPC.

7. The trial Court convicted the co-accused Sadhu Singh for the offence of murder and related charges. It was also held that the prosecution is able to prove that the appellant Shiv Kumar and co-accused Shatrughan Prasad had received the articles looted from the truck knowing fully well that those are stolen property, and thereby, both accused committed the offence punishable under Section 411 of the IPC.

8. The learned trial Judge noted that the articles looted from the truck were seized from the possession of the appellant and co-accused Shatrughan Prasad, through the seizure memos (Ext. P-4 and Ext. P-5). Both accused were found selling articles at cheaper rates. It was, therefore, concluded that the accused were aware of the fact that the articles seized from them were stolen property. The appellant was, accordingly, convicted by the trial Court and such conviction under Section 411 of the IPC was affirmed on appeal, by the High Court, through the impugned judgment.

Counsel's Submissions 9.1 Assailing the legality of the guilty verdict against the appellant, Mr. Lav Kumar Agrawal, the learned counsel would submit that the essential ingredients of Section 411 IPC offence are not at all made out as the prosecution has failed to adduce any evidence to show that the accused had knowledge that the seized articles were stolen from the looted truck. It is, therefore, argued that unless the knowledge of the accused on the nature of the articles sold by them is established, his conviction under Section 411 of the IPC cannot be sustained in law.

10.1 On the other hand, Mr. Gopal Jha, the learned Counsel appearing for the Respondent – State supported the view taken by the Courts below. According to him, there are adequate material and evidence on record which establishes the guilt of the accused, beyond reasonable doubt. The State

Counsel has further placed reliance on Sambhu Das alias Bijoy Das & Anr. V. State of Assam1 for sustaining the impugned conviction where Justice H.L. Dattu for invoking Article 136 power, opined the following: -

> "16. This Court, in exercise of its powers under Article 136 of the Constitution, will not reopen the findings of the High Court when there are concurrent findings of facts and there is no question of law involved and the conclusion is not perverse. Article 136 of the Constitution, does not confer a right of appeal on a party. It only confers a discretionary power on the Supreme Court to be exercised sparingly to interfere in suitable cases where grave miscarriage of justice has resulted from illegality or misapprehension or mistake in reading evidence or from ignoring, excluding or illegally admitting material evidence." 10.2 It is pointed out by the State's counsel that the appellant was in possession of the property from 10.02.2003 till those were recovered on 27.06.2003, on the basis of the disclosure statement of other accused Raju alias Rajendra and Sadhu alias Vijaybhan Singh.

As the articles were being sold at cheaper rates would lead to the logical inference that the ingredients under Section 411 of the IPC are satisfied against the appellant. In support of his argument, Mr. Jha has 1 (2010) 10 SCC 374 placed reliance on Nagappa Dondiba Kalal v. State of Karnataka2, where Justice S. Murtaza Fazal Ali observed as under: -

> "3. ...At the utmost as the ornaments have been proved to be stolen property received by the appellant knowing that they were stolen property. The accused can thus be convicted on the basis of presumption under Section 114 of the Evidence Act and under Section 411 of Indian Penal Code as a receiver of stolen property knowing the same to be stolen." Analysis & Findings
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> 11. The law governing disclosure statement was discussed by this Court in the case of Haricharan Kurmi & Anr. Vs. State of Bihar3. It was observed:
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> "12. .....In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right...."

2 1980 (Supp) SCC 336 3 AIR 1964 SC 1184

12. In this case, although recovery of items was made, the prosecution must further establish the essential ingredient of knowledge of the appellant that such goods are stolen property. Reliance solely upon the disclosure statement of accused Raju alias Rajendra and Sadhu alias Vijaybhan Singh will not otherwise be clinching, for the conviction under Section 411 of the IPC.

13. Section 411 IPC:

"411. Dishonestly receiving stolen property.– Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both." The penal Section extracted above can be broken down into four segments namely: Whoever, I. Dishonestly; II. Receives or retains any stolen property; III. Knowing; or IV. Having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

14. "Dishonestly" is defined under Section 24 of the IPC as, "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". The key ingredient for a crime is, of course, Mens Rea. This was nicely explained by Justice K. Subba Rao in the case of Dr. Vimla v. Delhi Administration4 in the following paragraphs: -

> "9A. A Full Bench of the Madras High Court, in Kotamraju Venkatraadu v. Emperor [(1905)ILR 28 Mad 90, 96, 97] had to consider the case of a person obtaining admission to the matriculation examination of the Madras University as a private candidate producing to the Registrar a certificate purporting to have been signed by the headmaster of a recognized High School that he was of good character and had attained his 20th year. It was found in that case that the candidate had fabricated the signature of the headmaster. The court held that the accused was guilty of forgery. White, C.J., observed:
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> "Intending to defraud means, of course, something more than deceiving." He illustrated this by the following example:
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> "A tells B a lie and B believes him. B is deceived but it does not follow that A intended to defraud B. But, as it seams to me, if A tells B a lie intending that B should do something which A conceives to be to his own benefit or advantage, and which, if done, would be to the loss or detriment of B, A intends to defraud B." The learned Chief Justice indicated his line of thought, which has some bearing on the question now raised, by the following observations: "I may observe, however, in this connection that by Section 24 of the Code person does a thing dishonestly who does it with the intention of 4 AIR 1963 SC 1572 causing wrongful gain or wrongful loss. It is not necessary that there should be an intention to cause both. On the analogy of this definition, it might be said that either an intention to secure a benefit or advantage on the one hand, or to cause loss or detriment on the other, by means of deceit is an intent to defraud." But, he found in that case that both the elements were present. Benson, J. pointed out at p. 114:
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> "I am of opinion that the act was fraudulent not merely by reason of the advantage which the accused intended to secure for himself by means of his deceit, but also by

> reason of the injury which must necessarily result to the University, and through it to the public from such acts if unrepressed. The University is injured, if through the evasion of its bye-laws, it is induced to declare that certain persons have fulfilled the conditions prescribed for Matriculation and are entitled to the benefits of Matriculation, when in fact, they have not fulfilled those conditions for the value of its examinations is depreciated in the eyes of the public if it is found that the certificate of the University that they have passed its examinations is no longer a guarantee that they have in truth fulfilled the conditions on which alone the University professes to certify them as passed, and to admit them to the benefits of Matriculation." Boddam, J., agreed with the learned Chief Justice and Benson, J. This decision accepts the principle laid down by Stephen, namely, that the intention to defraud is made up of two elements, first an intention to deceive and second the intention to expose some person either to actual injury or risk of possible injury; but the learned Judges were also inclined to hold on the analogy of the definition of "dishonestly" in Section 24 of the Code that intention to secure a benefit or advantage to the deceiver satisfies the second condition."

15. To establish that a person is dealing with stolen property, the "believe" factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable.

16. On the above aspect, Mr. Gopal Jha for the State refers particularly to the seizure memo as also the evidence of PW-5, PW-22, and PW-24 to contend that the evidence therefrom establish that the appellant was aware that he was dealing in stolen goods. On this, crucially it can be noticed that in the FIR No. 407/2003 (25.6.2003), Rs. 12,50,000/- is shown as the total value of the goods (utensils, clothes, hosiery goods and electrical goods) loaded in the truck No. MP 09/D0559. However, in the seizure memo (27.6.2003), only Rs.20,000/- is shown as the value of the articles (steel articles, torch, aluminium box) allegedly seized from the appellant's possession. Considering the disparate and incomparable figures, those values cannot be reasonably inter-linked to support the guilt finding under Section 411 of the IPC. Moreover, the appellant in usual course, sold utensils in his shop and nothing is unnatural about him possessing such household articles, as seized from him.

17. The learned counsel for the State next points out that the accused Shiv Kumar had a shop of steel utensils and some of the articles stolen from the truck were sold in his shop. On this, the testimony of Nitin Jain (PW-5) becomes relevant. PW-5, however, stated that the utensils of a particular mark are not sold in the shop of the appellant. More importantly, he does not remember the special marks of the utensils carried in the truck. According to PW-5, he is unable to remember whether the details of the seized goods were noted in the appellant's house or was prepared subsequently. His testimony also mentioned that he met S.I., G.P. Tiwari (PW-24) at the shop of the other accused Shatrughan Prasad and only after Shatrughan Prasad was arrested, the police effected the arrest of the present

appellant, Shiv Kumar. The evidence of PW-5, by no stretch establishes that the appellant Shiv Kumar was conscious that the goods seized from his shop, were stolen articles.

18. Furthermore, one Bharat Singh Thakur (PW-22) was the Sub-Inspector at Police Station, Pannagarh who received information about clothes and utensils being sold at low prices. This PW-22 while proving his signature on the seizure memo, had acknowledged that the accused Shiv Kumar had a utensil store and most pertinently "because of hastiness", seal has not been put on the seizure memo (Ext. P-4). The testimony of PW-22 suggests that a defective procedure was followed in preparing the seizure memo and importantly, his testimony does not show that the appellant was aware that he received articles, which had any connection with the stolen goods in the truck.

19. Likewise, G.P. Tiwari, the S.I. at Police Station Kotwali, Satna in his testimony as PW-24 while acknowledging that he had not conducted the seizure procedure for the articles seized from the appellant, Shiv Kumar, nowhere mentioned that the appellant was aware that the goods seized from him were stolen property.

20. The contradiction in the testimonies of Nitin Jain (PW-5), Sub-Inspector Bharat Singh Thakur (PW-22), and Sub-Inspector G.P. Tiwari (PW-24) are also quite glaring. For instance, the utensils as per PW-5, were seized by Sub-Inspector G.P. Tiwari (PW-24) in the presence of Nitin Jain (PW-5), however, the S.I. G.P. Tiwari (PW-24) in his testimony has denied seizing any property, owing to lacking Jurisdiction, stating "seizure must have been done by Police Station, Panagarh" and not by the officer from the Police Station Kotwali, Satna. Apart from the above, interestingly, the support for the testimony of Sub- Inspector G.P. Tiwari (PW-24) is provided by Sub- Inspector Bharat Singh Thakur (PW-22) of Police Station, Panagarh to the effect that PW-24 was not present at Shiv Kumar's house during the seizure process. He has also denied that PW-24 called Nitin Jain (PW-5) to the house of Shiv Kumar to witness the seizure. Moreover, the seizure memo being written by Sub-Inspector G.P. Tiwari (PW-24) is also not supported by PW-24. Noticing all these discrepancies, the seizure evidence is found to be totally unreliable.

21. In Trimbak vs. State of Madhya Pradesh5, this Court discussed the essential ingredients for conviction under Section 411 of the IPC. Justice Mehr Chand Mahajan, in his erudite opinion rightly observed that in order to bring home the guilt under Section 411 IPC, the prosecution must prove, "5. (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property...."

22. When we apply the legal proposition as propounded to the present circumstances, the inevitable conclusion is that the prosecution has failed to establish that the appellant had the knowledge that articles seized from his possession are stolen goods. This essential element was not established against the appellant to bring home the charge under Section 411 of the IPC against him.

5 AIR 1954 SC 39

23. That apart, the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens Rea is clearly not established for the charge under Section 411 of IPC. The Prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing."6

24. In a case like this, where the fundamental evidence is not available and the law leans in appellant's favour, notwithstanding the concurrent finding, the Court has to exercise corrective jurisdiction as the circumstances justify. As such, taking a cue from Haryana State Industrial Development Corporation vs. William Shakespeare. Merchant of Venice, Act 1 Scene 1. Cork Manufacturing C07., the exercise of extraordinary jurisdiction under Article 136 is found to be merited to do justice to the appellant who was held to be guilty, without the requisite evidence to establish his mens rea in the crime.

25. In these circumstances where it is not established that the appellant dishonestly received stolen property with the knowledge and belief that the goods found in his possession were stolen, the conviction of the appellant under Section 411 IPC, in our view, cannot be sustained. Therefore, applying the test in Trimbak [supra], it must be held that the appellant was erroneously convicted. Therefore, we order the acquittal of the appellant. The appeal stands allowed with this order.

.....J. [K.M. JOSEPH] .....J. [HRISHIKESH ROY] NEW DELHI SEPTEMBER 7, 2022 7 (2007) 8 SCC 120