[2025] 2 S.C.R. 708 : 2025 INSC 266

Hiralal Babulal Soni
v.
The State of Maharashtra & Ors.

(Criminal Appeal No(s). 579-580 of 2012)

25 February 2025

[B.R. Gavai, Prashant Kumar Mishra,* and K.V. Viswanathan, JJ.]

Issue for Consideration

Issue arose as regards the sustainability of the conviction of the accused u/s.120B and 411 IPC, when the seized gold bars are not the same gold bars linked to the fraudulent transactions.

Headnotes†

Penal Code, 1860 – ss.120B, 411 rw s.120B – Dishonestly receiving stolen property – Criminal conspiracy – Possession of stolen property – Commission of fraud by remittance through fake Telegraphic Transfers-TT and subsequent withdrawals amounting to Rs. 6.7 crores at the Bank – Bank account opened for a fictitious firm using forged documents – TTs made and said amount credited to the account of the firm and thereafter withdrawn by preparing demand drafts in favour of two companies – Amount involved in the demand drafts allegedly used against purchase of seized gold bars delivered to the appellant-accused no. 3 – Search at the shop of accused no. 3 leading to seizure of 205 gold bars and other documents – Trial court convicted two officers of the bank, however acquitted by the High Court – Accused no. 3 held guilty of the offence punishable u/ss.120B, 411 rw 120B, however directed that 205 gold bars be returned to the accused no. 3 – High Court upheld the conviction of accused no. 3, however quashed the direction to return the gold bars to accused no. 3 and the property stood confiscated – Challenge to:

Held: Once the courts below found that the seized gold bars are not the same gold bars linked to the fraudulent transactions, conviction u/ss.120B and 411 cannot be sustained – On consideration of the pre-requisite evidence to bring home the charge u/s.411, even if it is proved that the appellant was handed over the demand drafts and gold bars were purchased by the appellant from the company,

* Author

still it was necessary for the prosecution to prove that the appellant either had knowledge or reason to believe that the demand drafts had been obtained through fraudulent process to make the gold bars as stolen property in the hands of the appellant or that the appellant was part of the conspiracy – Moreover, the appellant has been not charged and tried for the first part of the offence relating to criminal conspiracy vis-à-vis fraudulent TTs – Furthermore, the trial court held that the prosecution ought to have produced evidence to show that there was a stock of the same brand with the company and out of that stock some gold bars with the markings were sold to the so called fictitious firm – In the absence of this evidence and especially due to delay of four years in the recovery of the property the very basis of its identification is found shattered, and the possibility of mistaken identification cannot be ruled out – Invocation of s.114 of the 1872 Act not at all permissible since the prosecution failed to discharge its initial burden – Prosecution has to prove its case beyond all reasonable doubts by positively completing the chain of circumstances against the appellant, which the prosecution utterly failed – Thus, the conviction and sentence of the accused no.3 u/ss.120B and 411 set aside – Since the seized gold bars were recovered from the appellant, he is entitled to the possession thereof – Seized gold bars be handed over to the appellant – Since the identity of the seized property being the stolen property not established, the bank not entitled to the possession of the seized gold – Evidence Act, 1872. [Paras 30, 35, 37-39]

Penal Code, 1860 – s.411 – Dishonestly receiving stolen property – Charge u/s.411 – Duty of the prosecution to prove:

Held: Prosecution has to prove that the stolen property was in the possession of the accused; that some persons other than the accused had possession of the property before the accused got possession of it; and that the accused had knowledge that the property was stolen property. [Para 32]

Case Law Cited

Trimbak v. State of M.P, **AIR 1954 SC 39;** *Nagendra Sah v. State of Bihar* **(2021) 10 SCC 725 – relied on.**

Kamal v. State (NCT of Delhi), **2023 INSC 678 : [2023] 11 SCR 49;** *Mohan Lal v. State of Maharashtra* **(1979) 4 SCC 751;** *Shiv Kumar v. State of M.P* **[2022] 7 SCR 493 : (2022) 9 SCC 676 – referred to.**

List of Acts

Prevention of Corruption Act, 1988; Penal Code, 1860; Evidence Act, 1872.

List of Keywords

Dishonestly receiving stolen property; Criminal conspiracy; Commission of fraud by remittance through fake Telegraphic Transfers; Fictitious firm; Forged documents; Demand drafts; Seizure of 205 gold bars; Return of 205 gold bars; Confiscation; Suspicion; Proof beyond reasonable doubt; Demand drafts obtained through fraudulent process; Mistaken identification; Prosecution failed to discharge initial burden; Chain of circumstances; Duty of the prosecution to prove charge u/s. 411 IPC.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 579-580 of 2012

From the Judgment and Order dated 16.07.2009 of the High Court of Bombay in CRLA No. 363 of 2009 and CRLA No. 638 of 2006

With

Criminal Appeal No(s). 581-583 and 584 of 2012

Appearances for Parties

Advs. for the Appellants:
Uday Gupta, Sr. Hiren Dasan, Chand Qureshi, Mrs. Shivani Lal, Mujahid Ahmad, Harish Dasan, Rajive Ranjan, Raj Kumar Yadav, Dhirendar Kumar Verma, Mrs. Arpana Soni, Chand Qureshi, Mrs. Shivani Lal, Mujahid Ahmad, Harish Dasan, Rajive Ranjan, Raj Kumar Yadav, Dhirendar Kumar Verma, Mrs. Arpana Soni, A. P. Singh, Naman Saraswat, Tavinder Sidhu, M/S. M. V. Kini & Associates.

Advs. for the Respondents:
Upmanyu Tewari, Mrs. V. D. Khanna, Mahesh Kumar, Akshay Kumar Sharma, Ms. Devika Khanna, Ms. Suhasini Sen, Mukesh Kumar Maroria, Sachin Sharma, Chinmayee Chandra, Siddhant Kohli, Vinayak Sharma, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Shrirang B. Varma, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Uday Gupta, Sr. Hiren Dasan, Chand Qureshi.

Judgment / Order of the Supreme Court

Judgment

Prashant Kumar Mishra, J.

1. These criminal appeals are disposed of by this common order as they are directed against the common judgment and order dated 16.07.2009 of the High Court of Judicature at Bombay whereunder the High Court dismissed the appeal of the appellant/Hiralal Babulal Soni (Criminal Appeal Nos. 579-580/2012) and the appeal of the appellant/ accused No. 3 namely, Nandkumar Babulal Soni, (Criminal Appeal No. 581-583/2012) whereas the appeals of Mr. S.K. Sheenappa Rai (accused no.1), Devdas Shetty (accused no.2) and Vijaya Bank were allowed. We shall later notice the conviction and sentence awarded by the courts below.

2. The offence pertains to commission of fraud by remittance through fake Telegraphic Transfers[1] and subsequent withdrawals to the tune of Rs. 6,70,00,000/- at Vijaya Bank, Nasik Branch, Maharashtra.

   2.1. On 30.01.1997, one person disclosing as a representative of M/s. Globe International, a proprietary concern, approached the bank for opening an account which was not immediately accepted by the accused no. 1 (S.K. Sheenappa Rai), Branch Manager as he wanted to verify the documents as there was difference in signatures. However, since one Surendera Bhandary, Assistant General Manager, Vijaya Bank, Fort Branch, Bombay confirmed the letter of introduction issued by him, the personal presence of the proposed account holder was dispensed with, and the account was opened.

   2.2. It is the case of the prosecution that the documents submitted at the time of account opening were forged and the person representing the firm namely, Surendra Jain or the firm Globe International were fictitious. The account was eventually opened on 06.02.1997. On 25.04.1997, Nasik Branch received TT of Rs. 10,00,000/- in the account of Globe International and thereafter till 28.07.1997, 11 TTs were sent from Delhi issued by

1 "TT"

Vijaya Bank, Ansari Road Branch, New Delhi. On 06.08.1997, Vijaya Bank, Nasik Branch received TT of Rs. 4,00,000/- which was credited to the account of Globe International. Thus, total amount of Rs. 6,70,00,000/- was credited in this account. Simultaneously, with the credit of TT amount, the same was withdrawn and subsequently, the TTs were found to be bogus and forged and the entire fraud was committed not only by accused nos. 1 and 2 but was done with the help of absconding and unknown persons like Mukesh Shah @ Mayur Desai or Ashok Agarwal @ Surender Jain and so on. On 12.08.1997, it was found that no payment of the said TTs was ever made at Vijaya Bank, Ansari Road Branch, Delhi. On this date, accused no. 1 informed Vijaya Bank, Fort Branch, Bombay about the fraud and the payments against 19 demand drafts for a total amount of Rs.1,61,44,000/- were stopped.

3. During the investigation, the Investigating Officer recorded the statements of the owner of Jewellary firms i.e. M/s. Chenaji Narsinghji[2] and M/s. V.P. Jewellers and thereafter filed the chargesheet against accused nos. 1 and 2 by mentioning that further investigation is going on. Later, Central Bureau of Investigation[3] found that most of the DDs were issued in favour of M/s. CN against the purchase of gold bars and the delivery of those gold bars were given to accused no. 3 or through him to Mayur Desai @ Mukesh Shah. CBI found link between absconding accused Mukesh Shah and accused no. 3 to whom gold bars were delivered from M/s. CN. On 01.06.2001, a search was carried out at the shop of accused no. 3 effecting seizure of 205 gold bars and other documents. Thus, chargesheet was filed against accused no. 1 (S.K.Sheenappa Rai), accused no. 2 (M. Devdas Shetty), accused no. 3 (Nandkumar Babulal Soni) whereas accused no. 4 (Mayur Desai @ Mukesh Shah @ M.P. Jain @ Mukesh Jain) could not be traced and declared proclaimed offender by the Trial Court on 12.02.2002.

4. The Trial Court framed charges against the accused persons for offences under Section 120B read with Sections 403, 409, 411, 420,

2 'M/s. CN'

3 'CBI'

471, 477A and 109 of the Indian Penal Code, 1860[4] read with Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. While the accused nos. 1 and 2 submitted that they are innocent; the account was opened as per the banking procedure; they have been given a clean chit in the departmental inquiry conducted by the Vijaya Bank. The accused no. 3 set up a defence that he has no connection with either M/s.CN or with Mukesh Shah @ Mayur Desai and, thus, he is falsely implicated without there being any evidence against him. He claimed that the seized gold bars are his property, legally acquired by him. At the end of trial, accused nos. 1 and 2 were convicted for the offences under Sections 120B, 467, 409, 471, 477A, 403 of the IPC as also under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Accused No. 1 was also held guilty of the offence punishable under Sections 403 and 465 read with Section 120B of the IPC and accused no. 2 was held guilty under Section 403 of the IPC. The accused no. 3 was held guilty of the offence punishable under Section 120B of the IPC as well as under Section 411 read with Section 120B of the IPC. The Trial Court directed that the muddemal articles consisting of 205 gold bars be returned to the accused no. 3.

5. While the accused persons preferred separate appeals challenging their conviction and sentence, the CBI preferred Criminal Appeal No. 638 of 2006 for challenging that part of the judgment of the Trial Court by which the gold bars were returned to accused no. 3. Criminal Appeal No. 363 of 2009 has been preferred by Hiralal Babulal Soni challenging the order regarding return of gold bars to accused no. 3.

6. The High Court under the impugned judgment has allowed the Criminal Appeal preferred by accused nos. 1 and 2 and their conviction and sentence has been set aside. The Criminal Appeal No. 428 of 2006 preferred by accused no. 3 (Nandkumar Babulal Soni) was dismissed. The Criminal Appeal No. 363 of 2009 (converted from Criminal Application No. 463 of 2007) preferred by Hiralal Babulal Soni was also dismissed. The Criminal Appeal No. 638 of 2006 preferred by CBI challenging the Trial Court's direction to return 205 gold bars to the accused no. 3 (Nandkumar Babulal Soni) has been allowed and the direction is quashed and set aside by the High

4 'IPC'

Court. The property stood confiscated and placed at the disposal of the State Government.

7. Aggrieved by the High Court's judgment, accused no. 3 (Nandkumar Babulal Soni) has preferred Criminal Appeal Nos. 581-583 of 2012 challenging his conviction as also seeking return of 205 gold bars whereas Criminal Appeal No. 579-580 of 2012 has been preferred by Hiralal Babulal Soni and Criminal Appeal No. 584 of 2012 has been preferred by Vijaya Bank, both seeking return of gold bars.

Submissions:

8. Mr. Uday Gupta, learned senior counsel appearing for the appellant(s) has vehemently argued that the appellant is wrongly convicted for the offence under Section 411 of the IPC without there being any evidence against him. It is put forth by him that incomplete chain of circumstantial evidence has been relied upon for appellant's conviction which is legally unsustainable, and the appellant has been convicted only on the basis of suspicion. According to him, the yawning gap between the charge for the offence under Section 411 of the IPC and the evidence adduced by the prosecution. Learned counsel referred to the judgment in the matter of **'Kamal vs. State (NCT of Delhi)**.[5]

9. Mr. A.P. Singh, learned counsel appearing for the Vijaya Bank/ appellant has argued that since the gold bars have been acquired by using forged TTs/DDs by defrauding the bank, the gold bars should be returned to the bank. Learned counsel appearing on behalf of the appellant/Hiralal Babulal Soni has also prayed that on the basis of evidence on record, appellant/Hiralal Babulal Soni is entitled for return of the gold bars.

10. *Per Contra,* Ms. Suhasini Sen, learned counsel for the respondent (CBI) has argued that there is independent evidence on record to link the appellant (Accused No. 3) with Mukesh Shah @ Mayur Desai and the fraudulent transactions. She has also referred to the statements of PW-22 (Dhiraj Ganeshmal Jain), PW-26 (Prakash Kumar Deoraj Jain), PW-32 (Ashok Kumar Bhavarlal Jain) and PW-33 (Chandramohan A. Shetty) (IO). She would also refer to the evidence regarding the identification of the gold bars. Learned counsel

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would sum up the arguments with submission that the conviction of Accused No. 3 as well as the order of the High Court regarding the custody of the gold bars be upheld.

The nature of fraud – "Telegraphic Transfer"

11. At the relevant time, Vijaya Bank offered a service facility to all its customers whereby money could be remitted through the means of "Telegraphic Transfer" (TT). If a customer desired to remit funds urgently from one place to another, he could deposit cash and request the remitting branch to send the amount to the credit of a particular account. Upon receipt of money, the remitter branch would generate a code which was then sent via telegram to the concerned branch in which account of the beneficiary was operational. Upon decoding, the receiving branch would then credit the amount to the account of the beneficiary and send *"Bank adjustment Requisition Form" (BARF)* to the remitting branch which upon receiving the BARF would send a credit advice to the receiving branch.

Role of different persons including the accused:

12. One unknown person representing M/s. Globe International with its sole Proprietor being one Surender Kanti Lal Jain approached the bank for opening an account. Despite several irregularities in the process of opening of account, Accused No. 1 (S.K. Sheenappa Rai – acquitted), the Branch Manager, Vijaya Bank, Nasik Branch allowed the opening of the account. All the documents presented at the time of opening of the account were found bogus during the investigation. It was also found that the firm M/s. Globe International and its Proprietor Mr. Surender Kanti Lal Jain are fictitious. Mr. Surender Kanti Lal Jain was never identified or traced nor has been arrayed as an accused.

13. Accused No. 1 (S.K. Sheenappa Rai) and Accused No. 2 (M. Devadas Shetty) both officers of the bank allegedly credited the amount to the account of M/s. Globe International and also allowed withdrawal of the amount in conspiracy with Mr. Surender Kanti Lal Jain and Mayurkumar Manubhai Desai @ M.J. Shah @ M.P. Jain @ Mukesh Jain @ Mukesh Shah.

14. Mayurkumar Manubhai Desai @ M.J. Shah @ M.P. Jain @ Mukesh Jain @ Mukesh Shah was involved in cash withdrawals of Rs. 98,00,000/- at Vijaya Bank, Nasik Branch.

15. A sum of Rs. 2,59,78,504/- was withdrawn by preparing demand drafts in favour of M/s. CN and M/s. V.B. Jewellers by Mayurkumar Manubhai Desai @ M.J. Shah @ M.P. Jain @ Mukesh Jain @ Mukesh Shah. These demand drafts were honoured by Vijaya Bank, Fort Branch, Mumbai and Tamil Nadu Mercantile Bank, Mandvi Branch upon withdrawal of the said amount from the account of M/s. Globe International. The amount involved in these demand drafts were allegedly used against purchase of seized gold bars.

Discovery of fraud and investigation:

16. The accused no. 1 became suspicious of the transactions taking place in the account of M/s. Globe International. On 12.08.1997, he informed Vijaya Bank, Fort Branch, Mumbai about the fraud and the resultant payment against 19 demand drafts amounting to Rs. 1,61,44,000/- was stopped. On this date, there was a balance of Rs. 1,53,27,178/- in the account of M/s. Globe International, as against the total credit amount through 12 TTs amounting to Rs. 6,70,00,000/-. The bank initiated departmental proceedings against the accused nos. 1 and 2. However, subsequently, both of them were exonerated of all the charges.

17. On 04.09.1997, a formal complaint was lodged by Vijaya Bank and on 09.09.1997, the CBI registered the crime against the accused Nos. 1, 2 and Surender Kantilal Jain (not traced) as Proprietor of M/s. Globe International and against unknown private persons. The appellant/accused no. 3 was summoned by the CBI after 1½ years i.e. on 03.02.1999. However, he denied his involvement in the alleged crime. After nearly 4 years i.e. 24.05.2001, the CBI conducted a search in the shop of appellant/Accused No. 3 on 28.05.2001. However, in the absence of appellant/Accused No. 3, the shop was sealed. On 30.05.2001, appellant/Accused No. 3 requested the Investigating Officer for removing the seal mentioning in his communication the details of cash, gold (in stock). The 205 gold bars mentioned in appellant/Accused No. 3's communication dated 30.05.2001 were later on seized by the CBI on 01.06.2001. The details of 205 gold bars were as under:

(i) 110 T.T. bars of ARY make;

(ii) 30 T.T. bars of HARMONY make;

(iii) 57 T.T. bars of Johnson Mathew make;

(iv) 06 T.T. bars of Credit Suisse make;

(v) 02 T.T. bars of PAMP Suisse make;

18. The CBI filed the chargesheet on 31.05.2002 whereupon the charges were framed, trial was conducted, and all the three accused were convicted by the Trial Court as mentioned *infra.* However, the High Court acquitted the Accused Nos. 1 and 2 but convicted the appellant/Accused No. 3 in Criminal Appeal Nos. 581-583 of 2012 for offence under Section 120B IPC and Section 411 IPC read with Section 120B IPC.

ANALYSIS:

19. There being no appeal by the CBI challenging the acquittal of the Accused Nos. 1 and 2 by the High Court, our discussion would confine to the case against appellant/Accused No. 3 only.

20. The prosecution sought to prove the charges against the appellant/ Accused No. 3 on the basis of evidence of PW-19- Praveen Champalal Jain (who was working with the firm Babulal Soni Bhutajilal Soni), PW-21- Bhavarlalji Jawaratrai Jain (owner and partner of M/s. CN), PW-22- Dhiraj Ganeshmal Jain (Manager of M/s. CN), PW-26- Prakash Kumar Devraj Jain (Manager of M/s. CN), PW-32-Ashok Kumar Bhavarlal Jain (owner of M/s. V.B. Jewellers) and PW-33-Chandramohan A. Shetty (Investigating Officer). To establish the identity of the gold bars, the prosecution examined PW-24 (Manish Srivastav), PW-25 (Sudhakar Tamhane), PW-27 (Dr. Piyush Bhansali), PW-29 (Bien Nanavati) and PW-31 (Vinod Kumar Niranjanlal Jain).

21. The Trial Court having noted that the charge against appellant/ Accused No. 3 is mainly for receiving dishonestly stolen property, recorded a finding in Para 94 of the judgment that the prosecution admittedly, have not brought any evidence against appellant/Accused No. 3 in respect of the first part of the conspiracy i.e. receipt and coding, decoding of TTs. The evidence of the aforementioned witnesses on the charge of conspiracy revolves around Mukesh Shah @ Mayur Desai (absconding), who purchased the gold bars along with appellant/Accused No.3. It is said that Mukesh Shah delivered the demand drafts to the appellant/Accused No.3 and appellant/Accused No.3 in turn delivered the said drafts to M/s. CN. The Trial Court mainly relied on Exhibit 119, a letter written by

PW-26 (Prakash Jain) to the CBI on 02.01.2002 giving details of the markings of gold bars which were sold to M/s. Globe International. In this letter, endorsement was made to the appellant/Accused No.3 basing which the Trial Court inferred that if appellant/Accused No.3 was not at all connected with the gold bars why letter was endorsed to him. Interestingly, the Trial Court has noted that the witnesses belonging to the jewellery firm have in their evidence denied any link of appellant/Accused No.3 with M/s. Globe International. Contrary to this, the Trial Court recorded a finding in para 103 that on the basis of this letter no inference can be drawn that the gold bars sold to M/s. Globe International were of the markings mentioned in the letter.

22. The Trial Court has also referred to the evidence of PW-32 (Ashok Kumar Jain) who was declared hostile. This witness gave a statement to the CBI about business relations between appellant/Accused No.3 and M/s. CN. However, he did not support the prosecution and in cross-examination he stated that he was compelled by the CBI to make such statement. Another important witness is PW-26 (Prakash Jain). However, he too was declared hostile. The Trial Court recorded that the entire evidence of these three hostile witnesses is conspicuously silent about the appellant/Accused No.3 and proceeded to infer that they did not want to support the prosecution. Basing on the evidence of hostile witnesses, the Trial Court concluded the following:

> "**108**. Conversion of money into gold bars itself brings accused no. 3 near to the offence. If conversion would have been into land or savings certificates then that would have been a remote circumstance. Accused No. 3 is a jeweller and his family is in the same profession. In the evidence of PW-21 Bhawarlal Jawartaj and PW-26 Prakash Jain, they have stated that Mukesh Shah was a new party. Hence there is reasonable ground to believe that the dealings of gold bars through Nandlal Soni (Accused No. 3) was easily accessible and workable."

RECEIPT OF STOLEN PROPERTY BY APPELLANT/ACCUSED NO. 3

23. For proving the charge under Section 411 IPC against the appellant/ accused no. 3, the prosecution relied on Section 106 of the Evidence Act to say that the appellant/accused no.3 having been

found in possession of 205 gold bars, it was for him to explain the source of acquisition. The Trial Court examined the witnesses i.e. PW-24 (Manish Srivastav), PW-25 (Sudhakar Tamhane), PW-27 (Dr. Piyush Bhansali), PW-28 (Anichandra Mahadeorao Bhujade), PW-29 (Biren Vinodchandra Nanavati) and PW-31 (Vinodkumar Niranjanlal Jain). The prosecution tried to establish the negative fact that the gold claimed was not purchased from the brother of appellant/accused no. 3 i.e. Ambalal Soni who was also examined as defence witness. On the contrary, appellant/accused no. 3 set up a defence *firstly,* that there is a delay of four years in finding out the property though the name of appellant/accused no. 3 was already disclosed to the police much earlier, *secondly*, appellant/accused no. 3 himself is a jeweller and, *thirdly*, the gold bars are not proved to be the same stolen property due to the difference of markings.

24. The Trial Court discussed the statements of the above witnesses and the documentary evidence in detail and observed thus in para 115:

> "**115**. Letter Exh 119 was given by Chenajee Narsingjee to CBI in 2002. At that time the prosecution was aware that the gold bars which are seized and produced before the court are of different brands. Prosecution ought to have been produced evidence to show that there was a stock of the same brands with Chenajee Narsinghjee and out of that stock some gold bars with markings of Harmony Suisse, Johnson Mathew, Arya were sold to Globe International. In the absence of this evidence and especially due to delay of four years in the recovery of the property the base of its identification is found weak and the degree of proof required is higher. The possibility of mistaken identification cannot be ruled out."

25. Having said so, as extracted above, the Trial Court proceeded to hold in para 120 that the property Article 2 (seized gold bars) before the Court is not proved as the same property which was sold by M/s. CN to M/s. Globe International. However, surprisingly, the trial court concluded that, the fact that the gold was sold through fraudulent demand drafts from M/s. CN to M/s. Globe International, it can be held that appellant/accused no. 3 has received stolen property with knowledge. It was held that gold bars found with him may be a

stolen property or he might have handed over to the absconding accused Mukesh Shah or any other accused. It was also held that after receiving the stolen property, it may change the hands, so accused may not have entertained the property but the fact that he has received the property is proved beyond reasonable doubt. Therefore, the evidence brought forth by the prosecution is sufficient to hold that accused is guilty under Section 120B and 411 of the IPC. Significantly, the Trial Court observes in the same breath in the following words in Para 120:

> "**120**. However, the gold bars i.e. Article 2 may be or may not be the same gold bars which were sold by Chenajee Narsinghjee to Mr. Mukesh of Globe International. The distance between may and not is very vast and prosecution has to cover that distance to reach the destination of must, however, the prosecution in this case could not achieve that level of proof."

FINDINGS BY THE HIGH COURT:

26. While addressing the charge of commission of fraud the High Court observed that circumstantial evidence does not establish the guilt of the accused nos. 1 and 2 in committing fabrication of the documents and, therefore, the conclusions drawn by the Trial Court on this aspect are erroneous. In respect of the charge against the appellant/accused no. 3 his statement recorded under Section 313 of the Code of Criminal Procedure, 1973, particularly his answer (to question no. 133 regarding the seizure of 205 gold bars from him) that these were legally acquired by him, the High Court proceeded to examine as to whether he has proved lawful acquisition of the gold bars and eventually concluded that the appellant/accused no. 3 has failed to prove his case about the acquisition of the seized gold from DW-1 (Ambalal), owner of M/s. Babulalji Bhutaji Soni. The finding was recorded despite observing that the witnesses PW-19, PW-21, PW-22, PW-26 and PW-32 have not fully supported the prosecution and have stated that against the demand drafts drawn in the name of M/s. CN and M/s. V.B. Jewellers, the gold was delivered to Mukesh Shah. It is also noted that M/s. CN was admittedly dealing with the appellant/accused no. 3 and the letter written by M/s. CN was endorsed to the appellant/accused no. 3 and further that the witnesses relating to M/s. CN have stated before the court that the

gold which forms muddemal property was not the one which was sold by the said firm to Mukesh Shah of M/s. Globe International against the tainted demand drafts.

It seems, the High Court was impressed with the fact that at the time of search, the appellant/accused no. 3 resisted the CBI by wrongfully confining its officers. Basing this, the High Court observed that the act of resisting the police from taking search is not consistent with the innocence of the appellant/accused no. 3 and that if he had substantiated his case of lawful acquisition of gold, failure of the witnesses connected with M/s. CN to identify the seized gold would have become relevant as there is no description of gold except for quantity and weight in the bills under which the gold was allegedly sold to M/s. Globe International. The High Court proceeds to conclude that basing above evidence and finding; notwithstanding the delay in seizure, the clause (a) of Section 114 of the Evidence Act will have to be invoked.

27. While dismissing Hiralal's appeal for return of seized gold bars to him, basing an ex-parte decree in his favour, the High Court reasoned that in the ex-parte decree the State was not a party and there is no proof that Hiralal has acquired the seized gold bars. The High Court, thus, dismissed the appeal preferred by the appellant/accused no. 3 as well as Hiralal while the appeal of the CBI against return of seized gold bars to the appellant/accused no. 3 has been allowed.

28. The circumstances considered by the courts below to sustain the appellant's conviction under Section 411 and 120B of the IPC can be summarised as follows:

    (i) CBI officials were resisted at the time of search and seizure in the appellant's jewellery shop;

    (ii) Letter issued by M/s. Chenaji Narsinghji to CBI (Exhibit-119) containing an endorsement in favour of the appellant;

    (iii) Gold purchased by utilizing demand drafts drawn on the account of M/s. Globe International was stolen property;

    (iv) The appellant have business relations with M/s. Chenaji Narsinghji and M/s. V.B. Jewellers;

    (v) The appellant failed to substantiate his defence set up in his accused statement while answering question no. 133.

(vi) The appellant having failed to substantiate his defence, clause (a) of Section 114 of the Evidence Act will have to be invoked;

(vii) The evidence of handing over of demand drafts by the appellant to M/s. Chenaji Narsinghji and M/s. V.B. Jewellers and taking delivery of gold bars (finding by the Trial Court).

29. It is settled law that however, strong a suspicion may be, it cannot take place of proof beyond reasonable doubt. This Court in "**Kamal vs. State (NCT of Delhi)**" (supra) has held thus:-

> **"18.** It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned "must or should" and not "may be" established. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
>
> **19.** It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonablele doubt. In the light of these guiding principles, we will have to consider the present case."

30. In the case at hand, the Trial Court has held in para 120 that whether the gold bars which were sold by M/s. CN to Mr. Mukesh Shah of M/s. Globe International are the same or not has not been proved beyond reasonable doubt. It is held by the Trial Court that the distance between may and must is very vast and prosecution has

to cover that distance to reach the destination of must, however, the prosecution in this case could not achieve that level of proof. With this finding of the Trial Court, it is surprising as to how the appellant can be convicted for committing offence under Sections 120B and 411 of the IPC. Once the courts below have found that the seized gold bars, (Article 2) are not the same gold bars, conviction under Sections 120B and 411 of the IPC cannot be sustained.

31. Similarly, the High Court impliedly held that witnesses connected with M/s CN have failed to identify the seized gold. However, in the opinion of the High Court, the same is not relevant because the appellant has failed to prove lawful acquisition of gold. We fail to understand, when the prosecution has failed to prove the identity of seized gold as being the same gold which were sold by M/s. CN to M/s. Globe International, how the appellant is liable to prove lawful acquisition of gold vis-à-vis the stolen gold.

32. In order to bring home the charge under Section 411 of the IPC, it is the duty of the prosecution to prove (i) that the stolen property was in the possession of the accused; (ii) that some persons other than the accused had possession of the property before the accused got possession of it and (iii) that the accused had knowledge that the property was stolen property (See: 'Trimbak vs. State of M.P'- AIR 1954 SC 39).

33. In "**Mohan Lal vs. State of Maharashtra**"[6], this Court held that the prosecution has to prove that the accused was in possession of property which he had reason to believe that it was stolen property.

34. In "**Shiv Kumar vs. State of M.P.**"[7] this Court reiterated the essentials of the offence under Section 411 of the IPC:

> "**9.** 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

6 (1979) 4 SCC 751

7 (2022) 9 SCC 676

knowledge of the accused on the nature of the articles sold by them is established, his conviction under Section 411 IPC cannot be sustained in law.

13. 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 IPC.

16. 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.

17. ……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."

35. When the pre-requisite evidence to bring home the charge under Section 411 of the IPC is considered in the present case, even if it is proved that the appellant was handed over the demand drafts by Mr. Mukesh Shah and gold bars were purchased by the appellant from M/s. CN and M/s. V.B. Jewellers, still it was necessary for the prosecution to prove that the appellant either had knowledge or reason to believe that the demand drafts had been obtained through fraudulent process to make the gold bars as stolen property in the hands of the appellant or that the appellant was part of the conspiracy. Moreover, the appellant has not been charged and tried for the first part of the offence relating to criminal conspiracy vis-à-vis fraudulent TTs.

36. Yet another aspect of the case which needs consideration is invocation of Section 106 of the Evidence Act by the courts below. Under Section 106 of the Evidence Act if certain facts are established, a reasonable inference can be drawn regarding existence of certain other facts

which are within the special knowledge of the accused. On this, we may profitably refer to this Court's judgment in "**Nagendra Sah vs. State of Bihar**"[8]

> **"22.** Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.
>
> **23.** When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

37. Significantly, the Trial Court has held that in para 115 that the prosecution ought to have produced evidence to show that there was a stock of the same brand with M/s. CN and out of that stock some gold bars with markings of Harmony Suisse, Johnson Mathew, Arya were sold to M/s. Globe International. In the absence of this evidence and especially due to delay of four years in the recovery of the property the very basis of its identification is found shattered, and the possibility of mistaken identification cannot be ruled out. With this finding of the Trial Court, invocation of Section 114 of the Evidence Act is not at all permissible since the prosecution has failed to discharge its initial burden. The weakness in the defence or the appellant's failure to substantiate the fact while answering question (no. 133) in his accused statement cannot become the strength of the prosecution. The prosecution has to prove its case

8 (2021) 10 SCC 725

beyond all reasonable doubts by positively completing the chain of circumstances against the appellant, which the prosecution has utterly failed in the present case.

38. For all the aforestated reasons, we are inclined to allow the appeals preferred by the appellant/accused no. 3 (Nandkumar Babulal Soni). Accordingly, Criminal Appeal Nos. 581-583 of 2012 preferred by the appellant-Nandkumar Babulal Soni are allowed. His conviction and sentence under Sections 120B and 411 of the IPC is set aside. Since the seized gold bars were recovered from the appellant-Nandkumar Babulal Soni, he is entitled to the possession thereof. Therefore, we direct that the seized gold bars- 205 in number (Article 2) be handed over to the appellant- Nandkumar Babulal Soni.

39. In view of the fact that the identity of the seized property being the stolen property has not been established, Vijaya Bank is not entitled to the possession of the seized gold. Accordingly, Criminal Appeal No. 584 of 2012 preferred by Vijaya Bank stands dismissed. We, however, make it clear that the findings are for the purpose of the criminal appeal and will not come in the way of other remedies, if any, as may be available in law to the parties.

40. Similarly, the Criminal Appeal Nos. 579-580 of 2012 preferred by Hiralal Babulal Soni seeking return of gold bars is also dismissed.

Result of the case: Appeals disposed of.

†*Headnotes prepared by:* Nidhi Jain