

Delhi District Court

State vs . Neetu & Anr on 18 February, 2021

IN THE COURT OF SH. ANIMESH KUMAR, METROPOLITAN MAGISTRATE-06,
SOUTH EAST DISTRICT, SAKET COURTS, NEW DELHI

STATE	VS.	Neetu & Anr
FIR NO:		130/19
P. S		Kalkaji
U/s		454/380/411/34 IPC
Crc No./2962/2019		

JUDGMENT

Sl. No. of the case	:	227/2
Date of its institution	:	15/04/2019
Name of the complainant	:	Mrs. Shashi Taneja, W/o Late Sh. Tilak Taneja, R/o H. NO. K-71, 2nd Floor, Kalkaji, New Delhi.
Date of Commission of offence	:	18.02.2019
Name of the accused	:	1. Neetu, W/o Sh. Nitesh @ Sunny, R/o S-74/066, Harijan Camp, Khanpur, New Delhi. 2. Nitesh @ Sunny, S/o Sh. Jawaharlal, R/o S-74/066, Harijan Camp, Khanpur, New Delhi.
Offence complained of	:	454/380/411/34 IPC
Plea of accused	:	Not Guilty
Case reserved for orders	:	28.01.2021
Final Order	:	Convicted u/s 411/34 IPC
Date of orders	:	18.02.2021

BRIEF STATEMENT OF FACTS FOR THE DECISION:-

1. Vide this judgment, I seek to dispose off the case of the prosecution filed against the accused persons namely Neetu and Nitesh @ Sunny for having committed the offence punishable u/s 454/380/411/34 of Indian Penal Code, 1861 (hereinafter referred as "IPC").

2. Briefly stated, it is the case of prosecution that on 18.02.2019 at about 04:00 PM at H. No. K-67B, 2nd Floor, Kalkaji, New Delhi, the accused persons in connivance with each other broke the door of the complainant and committed theft. Further, on 04.03.2019, the accused persons were apprehended and some stolen articles and cash of Rs. 90,000/- which were stolen from the house of the complainant were recovered from the possession of the accused persons. Therefore, it has been alleged that the accused persons have committed the offence punishable u/s 454/380/411/34 IPC.

3. After completing the formalities, investigation was carried out by PS Kalkaji and a charge sheet was filed against the accused persons. Thereafter, charge u/s 454/380/411/34 IPC was framed against the accused persons namely Neetu and Nitesh @ Sunny vide order dated 16.04.2019, to which they pleaded not guilty and claimed trial.

4. In order to prove the guilt of accused persons, the prosecution examined following six witnesses:

Mrs. Shashi Taneja who is the complainant in the present case deposed as PW-1;
Mrs. Rama Chopra, the neighbour of complainant deposed as PW-2; W/Ct. Manju deposed as PW-3;

Ct. Sanju deposed as PW-4;

HC Jaspal deposed as PW-5; and ASI Nathi Lal deposed as PW-6.

5. After examination of all prosecution witnesses, at the request of Ld. APP, PE was closed on 18.12.2019. Thereafter, statement of the accused persons were recorded on 17.02.2020 u/s 313 Code of Criminal Procedure, 1973 ("Cr.P.C") wherein they denied the allegations and chose to lead DE.

6. I have heard the Ld. APP and Ld. defence counsel and have perused the case file.

7. PW-1 who is the complainant in the present case has supported the case of the prosecution. During the examination in chief, she deposed that on 14.02.2019, she went to the house of her daughter at Dwarka and returned home on 20.02.2019 at about 10.00 a.m. Thereafter, she went inside the house and noticed that the door of her almirah was opened and after checking she found that sum Rs.1 lakh, four wrist watches (imported), one mobile phone, one titan watch, two pairs of earrings, one finger ring of gold, one silver chhalla (ring) was missing. She further stated that the said locks were opened by using duplicate keys and accused persons again locked the same after stealing the articles. Thereafter, she called at 100 number and consequently two police persons arrived at her house and made certain inquiries. She further deposed that she got checked the CCTV footage installed at the ground floor of her neighbor PW-2 wherein she saw that on 18.02.2019 her maid along with her husband went inside the house and came out after two hours and again on 19.02.2019 accused Neetu again came and took something alongwith her in plastic bag. Thereafter, she made a complaint to the police which is Ex. PW-1/A and also provided a list of stolen articles which is Ex. PW-1/B. After some days, police had informed that they have recovered Rs.94,210/- and stolen articles from the possession of the accused persons. PW-1 correctly identified the case property in the photographs which is Ex.P-1 and P-2. PW-1 also correctly identified the accused

Neetu and Nitesh @ Sunny who were present in the court.

8. PW-2 in her testimony also supported the case of the prosecution. During her examination in chief, she proved the CCTV footage collected by the police during the course of investigation vide Ex. PW-2/A. She also deposed she was the neighbour of the complainant Smt. Shashi Taneja and theft had taken place at her house in the last week of February. Police also obtained her signature on certificate 65-B Indian Evidence Act for providing the CCTV footage from her DVR and the same is Ex.PW-2/B. The pendrive is Ex.PW-2/C.

9. PW-3 also supported the case of the prosecution. During her examination in chief she deposed that on 04.03.2019, at about 9.00 a.m. ASI Natthi Lal asked her to join the investigation. PW-3 along with IO and Ct. Sanju went at H. No.S-74/66, Harijan Camp, Khanpur, New Delhi where they found accused Neetu at the first floor. Thereafter, they made formal inquiry regarding theft and accused Neetu disclosed that she along with her husband had committed the theft occurred 15 days before at K-71, Kalkaji. Thereafter, IO had recorded the disclosure statement of Neetu in her presence and the same is Ex.PW- 3/A. They also got recovered certain stolen articles i.e. cash about Rs.4200/-, two wrist watches, one bracelet and one single locket pendant and five artificial tops and one silver ring. The said seizure memo of articles are Ex.PW-3/B.

10. PW-4 was examined by the prosecution in order to prove the factum of theft and recovery of the stolen properties from the possession of the accused Nitesh. During his examination in chief PW-4 stated that on 03.03.2019, complainant had given a written complaint regarding a theft at her house. Thereafter, IO had prepared a rukka and got registered the FIR. CCTV footage was also checked by him. On 04.03.2019, he along with lady constable and IO went to the address of the accused persons given by the complainant at about 10.00 a.m. where they found both the accused staying in a room and during the inquiry, they both admitted the commission of offence. He further proved the factum of recovery of stolen articles recovered from the possession of the accused persons which were seized by the IO. He also corroborated the factum of recording of disclosure statements of the accused persons by the IO. He further proved the factum of recovery of Rs. 50,000/- and a wrist watch from the possession of the accused Nitesh which was seized by IO vide Ex. PW-3/C. He also deposed that duplicate keys and other stolen articles were also recovered at the instance of the accused persons.

11. PW-6 also supported the case of the prosecution to the extent of involvement of accused persons in the present case. He gave a very detailed account of the incident of theft which had taken place in the house of the complainant, obtaining of CCTV footages and subsequent recovery of the stolen properties from the possession of the accused persons.

12. During his examination in chief, he deposed that on 03.03.2019, the complainant came to PS and informed about theft in her house by her housemaid and her associate. PW-6 got recorded aforesaid information vide DD No.36B. He prepared rukka Ex.PW-6/A and handed over the same to DO for registration of FIR. He along with the complainant and W/Ct. Manju went to the spot i.e. K-73, 2 nd Floor, K-Block, Kalkaji. He checked the aforesaid CCTV footage and collected the same from PW2 by giving her a notice.

13. PW 6 further deposed that on 04.03.2019, he along with Ct Sanju and W/Ct. Manju went to Jhuggi no.74/66, harijan camp, Khanpur and after reaching to the address of the accused persons, accused Nitu along with his husband / accused Nitesh @ Sunny were found present at the first floor. He interrogated them both the accused persons and accused Neetu and Nitesh admitted their guilt. He recorded disclosure statements of both accused persons as Ex.PW-3/A and Ex.PW-4/A. A portion of stolen case property was recovered from the possession of accused Neetu and Nitesh and the same was seized by him vide seizure memo already Ex.PW-3/B and Ex.PW-4/B. He arrested aforesaid accused person and conducted their personal search vide memos already Ex.PW-3/C, Ex.PW-3/D, Ex.PW-4/D and Ex.PW-4/F. Thereafter, accused Nitesh was taken on police remand and was taken to his residence where he got recovered three duplicate keys of the house of complainant near a nala situated in the locality of his jhuggi. He also got recovered Rs. 40,000/- from his residential jhuggi and also the handkerchief which was used by the accused to hid his identity. Accused also identified the spot and PW6 prepared pointing out memo which is Ex.PW-4/E. He seized the case property after sealing the same with the seal of "NL" and handed over to Ct. Sanju already Ex.PW-3/E. He also prepared recovery site plan as already Ex.PW-3/C. He got deposited the case property in malkhana in duly sealed condition and accused was sent to J/C by concerned Magistrate. On 08.03.2019, he got conducted TIP proceedings of case property and the same was identified by the complainant. On 16.03.2019, the case properties were released to the complainant on superdari.

14. The Ld. APP urged that testimonies of the material witnesses have remained unchallenged in the cross-examination and there is no reason to doubt their testimonies.

The Ld. Counsel for the accused, on the other hand, argued that material contradictions have appeared in the testimonies of the PWs and prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. Hence, benefit of doubt must be given to the accused.

15. I have considered the rival submissions.

16. It should be noted that the accused has been charged for the offence of lurking house trespass and theft punishable u/s 454/380/34 IPC and also for the offence of dishonestly receiving stolen property punishable u/s 411/34 IPC. For the sake of convenience, I shall be discussing the culpability of the accused vis-a-vis these offences separately.

CULPABILITY OF ACCUSED PERSONS FOR THE OFFENCE OF THEFT

1. As discussed in the preceding paragraphs of this judgment, in order to prove the guilt of the accused for the offence of theft, the prosecution has primarily relied upon the testimonies of PW1, PW2, PW3, PW4 & PW6. PW1 is the complainant and star witness of the present case. She has given a detailed account of the incident of theft which has happened in her absence. Perusal of her testimony would reveal that her allegation of lurking house trespass and theft against the accused persons is entirely based on the CCTV footage of her house. The said CCTV footage has been duly proved by PW-2, the owner of the house where the CCTV camera was installed.

2. It should be noted that the said CCTV footages do not at all show the accused persons committing the offence of lurking house trespass and theft from the house of PW-

1. While the said footages show the accused persons entering in the said building, however, the same are not sufficient enough to prove the guilt of the accused persons beyond reasonable doubt. There are many flats in the said building, and, therefore, it cannot be conclusively proved as to whether the accused persons had entered into the house of the complainant only. Apart from the accused persons, many other persons could also be seen entering or leaving the building of the PW1 during the time period wherein theft had taken place in the house of PW1. It is a settled proposition of law that the prosecution is required to prove the guilt of accused beyond reasonable doubt in a criminal case. Accused cannot be convicted merely on the basis of conjectures or suspicion of the victim or prosecution witnesses. In the instant case, the accused persons cannot be convicted merely on the ground that they were found to be entering or leaving the premise of the complainant. This is nothing but conjecture or suspicion of the prosecution.

3. Moreover, the perusal of the cross-examination of PW-1 would show that she had categorically admitted the fact that she did not see the accused committing theft by opening the almirah with the use of a duplicate key. She also admitted the fact that the lock of the almirah was not broken. Keys of the said almirah always remained with her. Therefore, when the keys of the almirah were with her, the locks of almirah were not broken and she had not seen the accused persons opening the said almirah with duplicate locks, it could not be inferred that the accused persons had committed the offence of theft from the house of the complainant.

4. PW-3, PW-4 & PW-6 who have been examined by the prosecution in order to prove the guilt of the accused persons for the offence of theft are police witnesses who come into the scene after the commission of offence. Their entire testimonies are based on the disclosures made by the accused persons which are not admissible in evidence. They gave detailed account in which the stolen articles were recovered from the possession of the accused persons, however, the same would not be sufficient enough for convicting the accused persons for the offence of theft allegedly committed by them.

5. It should also be noted that the PW-6 in his cross-examination has categorically admitted the fact that no efforts were made by him to collect the finger prints/chance prints from the spot. This was a crucial piece of evidence which should have been collected by the police officials in the investigation. Moreover, it is quite ironic that the FIR in the present case was lodged on 03.03.2019 when the incident had taken place on 18.03.2019 or 19.03.2019. This delay in the registration of FIR has not been explained by the prosecution. Police officials had not taken any efforts whatsoever to collect the evidences from the spot. The CCTV footages which have been relied upon by the prosecution have also been collected by the complainant herself.

6. Hence, the testimonies of the police officials are insufficient to convict the accused persons for the offence of lurking house trespass and theft. CCTV footages available on record do not conclusively prove the guilt of the accused persons beyond reasonable doubt. They cannot be convicted merely on the basis of conjectures, suspicion and inferences deduced from the circumstances.

7. Further, it should also be noted that apart from the CCTV footages, the prosecution has also relied upon the disclosure statement of the accused persons wherein they admitted the factum of house breaking and stealing from the house of the complainant. The said disclosure statements of both the accused persons have been duly proved by the police witnesses.

8. Section 25 of the Indian Evidence Act, 1872 (hereinafter referred as "Evidence Act") provides that no confession made to a police officer, shall be proved as against a person accused of an offence. The terms of section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. Such statements have also been made inadmissible u/s 162 Cr.P.C.

9. While section 25 of Evidence Act and section 162 Cr.P.C make a statement given by the accused to a police official inadmissible, however, section 27 of Evidence partially lifts this embargo by making admissible information given by the accused which leads to discovery of a fact. It provides that when any fact is discovered as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved against the accused in evidence.

10. At this stage, reference can also be taken from the decision of the Hon'ble Supreme Court in the case of Aghnoo Nagesia vs. State of Bihar 1966 SCR (1) 134, wherein while discussing the admissibility of a confessional statement vis-à-vis section 27 of the Evidence Act, the Hon'ble Apex Court has inter alia held the following:

A little reflection will show that the expression "confession" in ss. 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by ss. 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus, fall within the purview of ss. 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession.

11. Perusal of the above discussed case law makes it very clear that the confessional statement of the accused persons regarding their involvement in the commission of house breaking and theft in the house of the complainant is neither admissible u/s 25 Evidence Act nor admissible u/s 27. In the instance case, although, certain stolen properties and duplicate keys of the house and almirah of the complainant were recovered subsequent to the disclosure made by the accused persons, however, the same would not be of any help to the prosecution to draw an inference regarding their culpability for the offence of house breaking and theft. It would only highlight the fact that the accused persons had the knowledge about the stolen properties which were recovered at their instance.

12. Therefore, in view of the above discussion, I am of the considered view that the prosecution has failed to conclusively prove the guilt of the accused persons beyond reasonable doubt for the offence of theft involved in the present case. Hence, the benefit of doubt in the present case regarding culpability of accused persons for the offence of lurking house trespass and theft punishable u/s 454/379/34 IPC must be extended to them.

CULPABILITY OF ACCUSED PERSONS FOR OFFENCE PUNISHABLE U/S 411/34 IPC

13. Section 411 IPC deals with the offence of dishonestly receiving stolen properties. In the case of Rajender Kumar Vs. State (Delhi Administration), (1983) 23 Del LT 42, it was held that in order to bring home the guilt of the person under this provision, it is the duty of the prosecution to prove the following;

(i) That the stolen property was in the possession of the accused;

(ii) That some person, other than the accused had the possession of the property before the accused got possession of it, and

(iii) That the accused had knowledge that the property was the stolen property.

14. Further, in every case u/s 411 IPC, the prosecution must establish two facts by the direct evidences i.e. (i) That a theft was committed and certain articles were stolen and

(ii) That the stolen articles were recovered from the possession of the accused. If these two facts are established by the prosecution through direct evidences and if the recovery has been made from the accused recently, then the court may raise a presumption u/s 114 Indian Evidence Act, 1872 (herein after referred as 'Evidence Act') regarding the fact that the accused is either the thief or a receiver of the stolen property. Reference can be taken from illustration (a) to section 114 of Evidence Act.

15. This has to be read in the backdrop of section 4 of Evidence Act which gives rise to a legal fiction. All the presumptions provided therein are rebuttable and unless rebutted, unless contrary is established, a fictitious state of affairs is presumed to exist as if it is an actual reality. Reference can be taken from the decision of Hon'ble Gujarat High Court in the case of Ambala Vallabh Bhai vs. Mangal Bhai Dula Bhai AIR 1978 Guj 208 (213).

16. It should be noted that in order to raise presumption u/s 114 (a) Evidence Act the interval between the theft and recovery of the stolen articles from the possession of the accused should be short. Although there is no strait jacket formula to decide the length of such intervening period, however, the same would depend upon the facts and circumstances of each case. If the possession vis-a-vis stolen articles recovered from the accused does not seem to be natural one then the accused can be convicted even if this intervening period is a bit longer than usual. Reference can be taken from the decision of Hon'ble Supreme Court in the case of Ali Sher vs. State of U.P. AIR 1974 SC 1830.

17. In the instant case, in order to bring home the culpability of accused for the offence dishonestly receiving stolen property punishable u/s 411 IPC, the prosecution has primarily relied upon the testimony of police witnesses i.e. PW3, PW-4 and PW-6. Ld. Counsels for the accused persons submitted that their testimonies could not be relied upon in the present case on account of them being interested witnesses. It was also contended that no public witnesses were examined by the prosecution in order to prove the guilt of the accused persons for the offence u/s 411 IPC. Even notices were also not given to the public witnesses in order to join the investigation.

18. In the instant case, perusal of the cross-examination of PW-4 would suggest that the relatives of the accused persons who were present at the time of recovery did not join the investigation and they also refused to sign the seizure memo. He further deposed that no other public witnesses were present at the time of arrest of the accused persons apart from their relatives. He also stated that IO had tried to join the public witnesses present in the nearby areas in the investigation, however, they declined to join. This fact can be corroborated from the testimony of PW-6, the IO of the present case, who during his cross-examination had stated that no public persons had joined the investigation during apprehension and arrest of the accused persons. He further admitted that no notice was given to the public persons to join the investigation.

19. Be that as it may, it is a settled proposition of law that the testimony of police officials cannot be discarded away merely because of the fact that no public witnesses were examined. It is another matter that their testimonies should be scrutinized in more detail. At this stage, reference can be taken from the decision of the Hon'ble Supreme Court in the case of Tahir vs. State of Delhi [(1996) 3 SCC 338], wherein dealing with a similar question, the Hon'ble Apex Court held the inter alia the following:

"In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case. The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record."

20. Further, the Hon'ble Supreme Court in the case of Pradeep Narayan Madgaonkar v. State of Maharashtra (1995) 4 SCC 255 dealt with the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Hon'ble Apex Court held that though the same must be subject to strict scrutiny, however, the evidence of police officials cannot be discarded merely on the ground that they belong to the police

force and are either interested in the investigation or in the prosecution. However, as far as possible the corroboration of their evidence on material particulars should be sought.

21. Therefore, in view of the above mentioned case law, it becomes clear that while the testimony of the police officials cannot be discarded away forthwith in the absence of any public witnesses, however, it would be prudent to examine or scrutinise their testimonies more closely and should preferably be corroborated. Accused may be convicted on the basis of the testimonies of the police officials if their testimonies are found to be reliable and trustworthy.

22. Perusal of the testimony of PW-6 would show that the stolen properties were recovered from the possession of the accused persons or at their instance. PW-6 in his testimony has categorically stated that a part of the stolen properties has been recovered from the possession of the accused persons vide seizure memo Ex. PW-3/B and PW-4/B. An amount of Rs. 40,000/- was also recovered from the jhuggi of the accused Nitesh. This fact of recovery of stolen properties could be corroborated from the testimony of PW-3 who deposed that certain stolen articles i.e. Rs. 4200 cash, two wrist watches, one bracelet, one single locket pendant, five artificial tops and one ring were recovered from the possession of the accused Neetu vide seizure memo Ex. PW-3/B. Similarly, PW-4 in his testimony deposed that stolen properties including cash of Rs. 50,000/- and a wrist watch were also recovered from the possession of the accused persons vide seizure memo which is Ex. PW-4/C.

23. Further, the said recovered case properties were correctly identified by the complainant i.e. PW-1 during the TIP proceedings and also in the Court. Therefore, there is no ground to discard the testimonies of the PWs regarding the recovery of the case properties merely on the ground that they were police witnesses. These witnesses have been found to be reliable and their testimonies do not suffer from any material contradictions on the point of recovery of case properties from the possession of the accused persons.

24. While the factum of recovery of the stolen properties has been denied by the accused Neetu in her testimony as DW-1, however, the same does not gain the confidence of this Court. During her examination-in-chief, she simply deposed that she was arrested by the police from her house and nothing was recovered from her possession or from her house. She did not examine any other witness who was present at the time of her arrest. Moreover, it should be noted that there are certain material contradictions in her testimony which raise serious doubts on her credibility. During her examination-in-chief, she deposed that she went to the house of complainant on 18.02.2019 when called by her. However, it should be noted that the complainant in her testimony has categorically deposed that she was not present at her house between 14.02.2019 and 20.02.2019. It is very difficult to believe that the complainant would call the accused Neetu to her house on 18.02.2019 when she was not even present at her house. The factum of non-presence of the complainant at her house on 18.02.2019 has also not been disputed by the accused Neetu in her testimony. Hence, it seems that there are some material contradictions in the testimony of accused Neetu as DW-1, and, therefore, cannot be relied upon.

25. Further, it should be noted that the recovery of the stolen properties has been made from at the instance of the accused Nitesh. Although, as discussed in the separate part of this judgement, said disclosure statement is not admissible u/s 25 of the Evidence Act, however, if any other fact is discovered on the basis of such disclosure, same is admissible u/s 27 of the Evidence Act. Therefore, disclosure statement of the accused Nitesh to the extent of the discovery of stolen properties at his instance is admissible in the present case. It would go on to show that the accused Nitesh had the knowledge about the stolen properties. Thereafter, the prosecution has successfully connected the recovered stolen properties from the present case by relying upon the testimony of the complainant PW-1 wherein she has identified the said properties.

26. Moreover, the factum of recovery of stolen properties has also been denied by the accused Nitesh in his statement recorded u/s 313 Cr.P.C. It is a settled proposition of law that the statement u/s 313 Cr.P.C does not have any substantive evidentiary value and can be used for the purpose of corroboration in order to complete the chain of evidence. The statement given by the accused Nitesh is nothing but a bald and evasive statement. No evidence has been filed by him in order to prove his claim.

27. Hence, in view of the above discussion, I am of the considered view that the prosecution has successfully proved the factum of recovery of stolen properties from the possession of the accused persons. Also, as discussed in the preceding paragraphs, the prosecution has successfully established the factum of theft of the stolen properties from the house of the complainant

28. Therefore, in view of the above discussions, I can safely raise a presumption u/s 114 (a) Evidence Act regarding the fact that the accused is either a thief or has dishonestly received stolen bike. As already discussed in the preceding part of the judgment, there is insufficient material on record to convict the accused for the offence of lurking house trespass and theft u/s 454/379/34 IPC. Hence, a presumption can be raised from the facts and circumstances that the accused persons committed the offence of dishonestly receiving stolen properties punishable u/s 411 IPC. As already discussed, the accused has failed to rebutt this presumption. No reasonable explanation regarding the same has been provided by either of the accused persons. Testimony of the accused DW-1 cannot be relied upon. A bald and evasive denial by the accused Nitesh in his statement recorded u/s 313 Cr.P.C is also not sufficient enough to explain the factum of recovery of stolen properties from his possession.

29. Therefore, in view of the above discussion and findings, I am of the considered view that the prosecution has successfully proved the guilt of the accused persons for the offence of dishonestly receiving the stolen property u/s 411/34 IPC beyond reasonable doubt.

30. Hence, the accused persons Nitesh and Neetu stand acquitted for the offence punishable u/s 454/379/34 IPC. However, they stand convicted for the offence punishable u/s 411/34 IPC. They be heard on the point of sentence.

Announced in the open court on 18.02.2021 (Animesh Kumar) MM-06, South East, New Delhi It is certified that this judgment contains 15 pages and each page bears my signatures.

(Animesh Kumar) MM-06, South East, New Delhi/18.02.2021