

State vs Pappu on 12 August, 2025

CNR No. DLWT02-000802-2015

IN THE COURT OF SH. ANSHUL SINGHAL
JUDICIAL MAGISTRATE FIRST CLASS-04, WEST
TIS HAZARI COURTS, DELHI

CNR No.: DLWT020008022015

Cr. Case: 60815/2016
FIR No.: 334/2015
PS: Moti Nagar
U/s.: 454/380/411 IPC

State

versus

Pappu
S/o Sh. Govind
R/o M-184, Raghbir Nagar, New Delhi

.... Accused

JUDGMENT

Date of Commission of Offence	:	15.04.2015
Name of Complainant	:	Sh. Chetan Kumar Seth
Offence Complained of	:	u/s. 454/380/411 IPC
Plea of Accused	:	Not Guilty
Date when judgment was reserved	:	22.07.2025
Date of pronouncement of judgment	:	12.08.2025
Final Order	:	Convicted

CNR No. DLWT02-000802-2015

BRIEF STATEMENT OF REASONS FOR THE DECISION

1. In the present case, the accused Pappu is facing trial for the offences punishable under Section 454/380/411 Indian Penal Code (hereinafter referred to as IPC) on the allegation that on 15.04.2015 at about 04:20 pm at H.No. 7/17 Ground Floor, Moti Nagar near Bhatia Bhawan, Delhi within the jurisdiction of PS Moti Nagar, the accused committed lurking house trespass and house breaking by

entering into the aforementioned house with the intention to commit theft and committed theft of two gold necklaces, two set of gold bangles (four gold bangles), two gold chains, three gold rings, two set of gold earrings, one gold mangalsutra, one gold plated silver mangalsutra and Rs.2.5 Lakh in cash belongs to the complainant from the aforesaid house. Further, Rs.121 in cash, two gold colour metal chains, one gold colour chain with pendant, one mangalsutra, one small gold colour chain, two brown colour metal chains and one gold colour metal ring was recovered from the possession of the accused which he dishonestly received or retained knowing or having reason to believe the same to be the stolen property.

COMMENCEMENT OF TRIAL

2. Chargesheet was filed against the accused on 05.06.2015 on which cognizance was taken by this court on the same day. Accused entered appearance on 18.06.2015 and copy of the chargesheet was supplied to the accused on the same day. After due compliance of Section 207 CrPC, charge for offences u/s. 454/380/411 IPC was framed against the CNR No. DLWTo2-000802-2015 accused on 02.07.2015 by this court, to which the accused pleaded not guilty and claimed trial. Statement of accused u/s. 294 CrPC was recorded on 18.12.2019, pursuant to which the accused admitted TIP proceedings of case property without admitting its contents and the same was exhibited as Ex.A1.

PROSECUTION EVIDENCE

3. To prove its case, the prosecution has examined 12 witnesses, i.e., Sh. Chetan Kumar Seth (PW-1), HC Nafe Singh (PW-2), HC Rakesh Kumar (PW-3), HC Amrit Singh (PW-4), Ct. Devender Singh (PW-5), Ct. Ram Bharosi (PW-6), SI Kalyan Singh (PW-7), ASI Raj Singh (PW-8), SI Akhileshwar (PW-9), HC Jagat Singh (PW-10), Dr. Irshad Hussain (PW-11) and HC Lalit Kumar (PW-12), whose respective testimonies are discussed hereinafter. During prosecution evidence, following evidence has come on record:

1. Complaint Ex.PW1/A
2. Site plan Ex.PW1/B
3. Seizure memo Ex.PW1/C
4. Arrest memo Ex.PW1/D
5. Personal search memo Ex.PW1/E
6. Case property i.e. one gold ring, two metal Ex.P1 to Ex.P5 chains of gold colour, one gold chain with pendent, one gold chain, one silver anklet and one mangalsutra with silver pendant of gold colour
7. Print out of FIR Ex.PW3/A

8. Endorsement on tehrir Ex. PW3/B CNR No. DLWT02-000802-2015

9. Rukka Ex.PW4/A

10. Report regarding chance prints Ex.PW7/A

11. Entry of one sealed parcel at serial no.2906 Ex.PW8/A

12. Applications for getting TIP proceedings qua Ex.PW9A & the property recovered Ex.PW9/B

13. Photographs of the place of incident Ex.PW10/A (colly)

14. MLC prepared by PW-11 Ex.PW11/A

4. PW-1, Sh. Chetan Kumar Seth has deposed that on 15.04.2015 he alongwith his mother Usha Seth went to B L Kapoor Hospital before leaving the home and he locked the back gate of his home from inside and he put the lock of main gate from outside and at about 04.20 pm he returned back to his home alongwith his mother and when he opened the lock of the main gate and entered the room, he found the room and the articles kept in the room disarrayed and accused alongwith his associate managed to flee from the spot and thereafter, he shouted 'chor chor' and followed the accused and after some distance he managed to catch hold of accused and there, some public persons were gathered and gave beatings to accused and thereafter, the police arrived at the spot and he handed over accused to police and then accused were taken to Acharya Bhikshu Hospital by police and when he returned to his home he found that two gold chains, two pairs of gold kangan, three gold rings, two pairs of gold earrings, two gold pendants, one pair of silver anklet, one golden mangalsutra, one silver mangalsutra and Rs.2,50,000/- were missing from the almirah. It is further stated by PW-1 that he made a complaint which is Ex. PW1/A and thereafter, IO prepared the tehrir and handed CNR No. DLWT02-000802-2015 over the same to one constable for registration of FIR and site plan as Ex. PW1/B. Thereafter, he called by police and he went to the police station and thereafter, IO prepared the seizure memo which is Ex. PW1/C and thereafter, accused was interrogated by IO and accused was arrested vide arrest memo as Ex. PW1/D and also accused was personally searched as Ex. PW1/E and thereafter, he was called by IO at Tis Hazari Courts for identification of the recovered articles on 23.05.2015 and he identified the articles before the Ld. Magistrate and he brought the case property which were recovered and exhibited them. Case property i.e. one gold ring as Ex. P1, two metal chains of gold colour as Ex. P2 (colly), one gold chain with pendant as Ex. P3(colly), one gold chain as Ex. P4, one silver anklet as Ex. P5 and one mangalsutra with silver pendant of gold colour as Ex.P6. PW-1 was duly cross-examined by Ld. Defence Counsel and discharged.

5. PW-2, HC Nafe Singh, deposed that on 15.04.2015 he was posted at PS Moti Nagar as HC and on that day, he was on duty at PCR motorcycle with rider Ct. Krishan from 08.00 am-08.00 pm and at about 04.20 pm they reached at H.No. 7/17 Moti Nagar after receiving call and saw that accused was apprehended by public persons and also beaten by them as accused had committed theft and

thereafter, accused was taken by PW-2 to Acharya Bhikshu Hospital for medical examination and at the hospital, accused was examined by doctor and jewellery articles i.e. gold chains and some silver articles and cash of Rs. 121/- received from pocket of accused's pant and all articles were put by the doctor in a plastic jar and sealed with the seal of ABGH and then the jar was handed CNR No. DLWTo2-000802-2015 over to Ct. Ram Bharose who was on duty at the hospital and the case property i.e. jewellery articles are already Ex. P1 to P6 and two photographs of jewellery articles i.e. gold chain, gold ring, mangal sutra and silver pajeb which were recovered from accused's pant as Ex. P7 and P8. PW-2 was duly cross-examined by Ld. Defence Counsel and discharged.

6. PW-3, HC Rakesh Kumar, deposed that on 15.04.2015 he was working as Duty Officer at PS Moti Nagar and his duty hours from 04.00 pm to 12.00 midnight and on that day at about 07.45 pm Ct. Devender brought tehrir sent by HC Amrit and the basis of tehrir, PW-3 registered the FIR on the computer installed at police station and the printout of the said FIR as Ex. PW3/A and PW-3 also made endorsement on the tehrir about the registration of FIR as Ex. PW3/B. Opportunity to cross-examine PW-3 was given but the same is not availed.

7. PW-4, HC Amrit Singh, deposed that on 15.04.2015 he was posted at PS Moti Nagar as HC and on receiving of DD No.57 he alongwith Ct. Devender went to the spot and met the complainant namely Sh. Chetan and the complainant told him that accused was taken to ABG Hospital by PCR Van and then PW-4 called the crime team and the crime team arrived and inspected the spot and further, PW-4 recorded statement of complainant as Ex. PW1/A and also prepared rukka as Ex. PW4/A and handed it over to Ct. Devender for registration of FIR and after half an hour Ct. Devender came at the spot and handed over the copy of rukka and FIR to PW-4 and then at the instance of CNR No. DLWTo2-000802-2015 complainant, PW-4 prepared site plan as Ex. PW1/B and then PW-4 alongwith Ct. Devender and complainant went to ABG Hospital and met with HC Nafe Singh and Ct. Ram Bharose and then HC Nafe Singh handed over the accused and then Ct. Ram Bharose handed over one jar sealed with seal of ABGH and the jar which which was containing some jewellery articles and cash was taken into possession by PW-4 vide seizure memo as Ex. PW1/C and then MLC of accused was collected and accused was arrested vide memo Ex. PW1/D and personal search of accused was conducted vide memo Ex. PW1/E and then accused was interrogated and made a disclosure statement as Ex. PW1/DA. PW-4 was duly cross-examined by Ld. Defence Counsel and discharged.

8. PW-5, Ct. Devender Singh, deposed that on 15.04.2015 he was posted at PS Moti Nagar as constable and on emergency duty from 08.00 am to 08.00 pm alongwith IO HC Amrit Singh and on that day, on receipt of DD No.57 B at around 04.28 PM PW-5 alongwith IO reached at H.No.7/17 Ground Floor, Moti Nagar and complainant namely Chetan Kumar Seth met them who apprised them about the incident and IO recorded statement of complainant as Ex. PW1/A and at the same point of time, crime team was called and the officials of crime team inspected the spot and then IO prepared the tehrir and same was handed over to PW-5 for registration of FIR and then PW-5 reached at police station and got the FIR registered and after registration of FIR, PW-5 returned at the spot and then IO prepared the site plan as Ex. PW1/B and then PW-5 alongwith IO and complainant went to ABG Hospital and on inquiry, accused apprised his name to IO and you got examined by IO and IO has CNR No. DLWTo2-000802-2015 also recorded your statement u/s 161

CrPC and then IO seized one plastic jar as Ex.PW1/C and the same point of time, IO also collected the MLC, IO recorded statement of Ct. Ram Bharose and then accused was arrested and interrogated and IO also recorded disclosure statement of the accused as Ex. PW1/DA. PW-5 was duly cross-examined by Ld. Defence Counsel and discharged.

9. PW-6, Ct. Ram Bharosi, deposed that on 15.04.2015 he was posted as Duty constable at ABG Hospital and on that day, PCR van had taken accused for his medical examination and in the abovementioned hospital, concerned doctor recovered eight gold metal articles from accused's possession including chains and mangalsutra and the recovered articles were placed by the concerned doctor in plastic jar and sealed with seal of ABGH and the same was seized vide seizure memo as Ex. PW1/C. Opportunity to cross-examine PW-6 was given but the same is not availed.

10. PW-7, SI Kalyan Singh, deposed that on 15.04.2015 he was posted in Mobile Crime team West District as In-charge and on the said day after receipt of information PW-7 alongwith HC Lalit (Proficient), HC Sanjeev Kumar (Photographer) reached at H.No.7/17 Moti Nagar and at the spot, chance prints were taken and developed and same was handed over to IO HC Amrit Singh and the said report as Ex. PW7/A and then the chance prints were taken from the spot to Crime Record Bureau for analysis. Opportunity to cross-examine PW-7 was given but the same is not availed.

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11. PW-8, ASI Raj Singh, deposed that on 15.04.2015 he was posted at PS Moti Nagar as Head Constable and on that day, he was deputed to perform the duty of MHC (M) and IO HC Amrit deposited with him one sealed parcel and then the entry of same was made by PW-8 as per seizure memo in register no.19 at serial no. 2906 and as Ex. PW8/A . It was further stated by PW-8 that the case property was handed over to SI Akhileswar for producing the same before the Hon'ble Court of Ms. Swati Singh, Ld. MM for the purpose of investigation Opportunity to cross-examine PW-8 was given but the same is not availed.

12. PW-9, SI Akhileswar, deposed that on 15.04.2015 he was posted at PS Moti Nagar as SI and the on that the investigation of the present case was marked to PW-9 for further proceedings and on 21.05.2015, applications for getting TIP Proceedings qua the property recovered in the present case was filed before the concerned court as Ex. PW 9/A and Ex PW9/B. It is further stated by PW-9 that the case property was released to its registered owner and the photographs of the same were taken as Ex. P7 and P8 and after that the chargesheet was filed against the accused u/s 173 (3) CrPC. PW-9 was duly cross-examined by Ld. Defence Counsel and discharged.

13. PW-10, HC Jagat Singh, deposed that on 15.04.2015 he was posted at office of Mobile Crime Team as Constable and on that day, PW-10 alongwith SI Kalyan and HC Lalit went at H.No.7/17 Moti Nagar where the offence of theft was committed and the spot, photographs of the spot were taken by PW-10 and the photographs of the same were CNR No. DLWTo2-000802-2015 handed over to IO and the negatives of the same were retained by PW-10 as Ex.PW10 (colly). PW-10 was duly cross-examined by Ld. Defence Counsel and discharged.

14. PW-11, Dr. Irshad Hussain, deposed that on 15.04.2015 he was posted at Acharya Bhikshu Hospital and on the said day, PW-11 examined accused vide MLC No.8744/15 dated 15.04.2015 and after medical observations i.e abrasion on left knee and swelling and bruises on left side of middle back, detailed MLC was prepared by PW-11 as Ex.PW11/A and during the treatment, Rs. 121 cash, 2 goldent colour metal chain, one gold colour chain, one pendent, one mangalsuter, one small gold colour chain, two brown colour metal chain, one gold colour metal ring were recovered from accused's pocket. PW-11 was duly cross-examined by Ld. Defence Counsel and discharged.

15. PW-12, HC Lalit Kumar, deposed that on 15.04.2015, he received a call from control room regarding theft and thereafter PW-12 alongwith IO SI Kalyan Singh and other staff personnel's went to the spot i.e. H.No.7/17, Ground Floor, Moti Nagar, Delhi and upon reaching the spot, PW-12 saw the household items scattered all over the floor and at the directions of IO and IC, PW-12 checked the fingerprints at the spot and also lifted three chance prints from the spot and thereafter, PW-12 prepared the file and sent the fingerprints to Fingerprints Bureau, Kamla Market, Delhi. PW-12 was duly cross-examined by Ld. Defence Counsel and discharged.

16. PE was closed vide order dated 09.04.2024 on submissions of Ld. FIR No. 334/2015 State vs. Pappu Page No. 10 of 25 CNR No. DLWT02-000802-2015 APP for the state.

STATEMENT OF ACCUSED u/s. 313 Cr.P.C.

17. Statement of accused was recorded separately u/s. 313 Cr.P.C on 02.09.2024, in which all the incriminating testimonies and other pieces of evidence were put to him. The accused denied the allegations leveled against him and stated that he was only going through the street when he was apprehended by the complainant and the neighbours. He has further stated that no recovery has been effected from him and a false case has been filed against him. Accused opted to lead defence evidence. However, despite opportunities he did not lead any defence evidence and vide separate statement dated 01.07.2025 of the accused, defence evidence was closed.

FINAL ARGUMENTS Ld. APP for the State

18. Ld. APP for State argued that prosecution witnesses have supported the prosecution and their testimony has remained unrebutted. He has stressed on the fact that the accused has been duly identified by the witnesses in court, the case property has been duly identified, the witnesses have supported the prosecution and that the accused was caught red-handed by PW-1, Sh. Chetan Kumar Seth and the neighbours. He has further submitted that on a combined reading of testimony of prosecution witnesses, commission of offences u/s. 454/380/411 IPC is proved beyond reasonable doubt.

FIR No. 334/2015 State vs. Pappu Page No. 11 of 25 CNR No. DLWT02-000802-2015 Ld. Counsel for the Accused

19. On the other hand, Ld. Counsel for the accused stated that there is no legally sustainable evidence against the accused. The case, he argued, is based on circumstantial evidence at best and

there is no incriminating evidence against the accused. He has further pointed out several contradictions in the case of the prosecution. All of the said contradictions as pointed by Ld. Counsel have been stated and dealt with hereinafter. Ld. Counsel has further stated that accused is liable to be acquitted as the prosecution has failed to prove the case beyond reasonable doubt as there are material contradictions, omissions and inconsistencies in the testimonies of the prosecution witnesses.

APPRECIATION OF EVIDENCE

20. Arguments were heard at length from both the sides and the case file has been carefully perused.

In respect of charge u/s. 380 IPC

21. The first offence under consideration is offence u/s. 380 IPC. Section 380 IPC prescribes punishment for theft in a dwelling house, etc. Theft is defined under section 378 IPC. Sections 378 and 380 IPC are reproduced as under:

378. Theft.--Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

380. Theft in dwelling house, etc.--Whoever commits theft in any building, tent or vessel, which building, tent FIR No. 334/2015 State vs. Pappu Page No. 12 of 25 CNR No. DLWT02-000802-2015 or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

22. Thus, a person is said to have committed theft in a dwelling house, if he moves a movable property in a building used for human dwelling or for custody of property, with dishonest intention out of the possession of another person and without such person's consent.

23. PW-1, i.e., the complainant, has deposed before the court that the accused entered his house and committed theft of various articles including two gold chains, two pairs of gold kangan, three gold rings, two pairs of gold earrings, two gold pendants, one pair of silver anklet, one golden mangalsutra, one silver mangalsutra and Rs.2,50,000/- in cash. He has further deposed that he had gone out with his mother to B L Kapoor Hospital and when he returned he found that the accused was in the house and was attempting to flee the house as soon as he saw the complainant/ witness. Thereafter he shouted 'chor chor' and followed him and caught hold of him after some distance. Thereafter one of the public persons called the police and accused was then handed over to the police officials who took the accused to ABG Hospital. The witness has also stated that thereafter some of the articles were recovered from the accused at the hospital itself. The witness has duly supported the case of the prosecution and has identified the accused and the case property during his testimony before the court.

24. Ld. Counsel for the accused, while submitting that the case against FIR No. 334/2015 State vs. Pappu Page No. 13 of 25 CNR No. DLWTo2-000802-2015 the accused has not been proved beyond reasonable doubt, has pointed out various contradictions in the statements of the witnesses.

25. Ld. Counsel for the accused has drawn the attention of the court towards the fact that there are no CCTV cameras in the neighbourhood or in the house and there is no other eye witness apart from the complainant himself. He has further submitted that the crime scene photographs have not been placed on record. He has further submitted that after getting beatings from the public, the accused became unconscious and in that state, the articles were planted on him and were shown to be recovered from him.

26. Ld. Counsel has further submitted that the articles were very bulky and it is difficult that the articles were not noticed by the complainant or by the public at the time when he was apprehended. He has further submitted that accused was not searched before he was taken to the hospital which would have proved that there was nothing in the possession of the accused.

27. Ld. Counsel has stressed that the omissions/ contradictions as mentioned above are material which go to the root of the matter. Ld. Counsel has further submitted that the omission to record the statement of any of the other neighbours/ public persons shows that the recovery is planted mentioned in seizure memo Ex.PW1/C is planted on the accused and that the complainant, PW-1 is deposing falsely in order to implicate the accused in this false case.

28. Ld. Counsel has further stated that the accused never entered the FIR No. 334/2015 State vs. Pappu Page No. 14 of 25 CNR No. DLWTo2-000802-2015 house of the complainant and accused is facing trial due to a concocted story by the complainant. He has further stated that the accused was merely roaming of the street and was caught by the complainant and other public persons who started beating the accused.

29. The mere fact that there is no CCTV footage which has captured the present incident or that no other public persons apart from the complainant have been made witnesses or that the crime scene photographs are not on record does not invalidate the testimony of the complainant given on oath before the court. Furthermore, the recovery of the stolen articles and the fact that the articles are stolen is duly proved from the testimony of PW-2 HC Nafe Singh, PW-6 Ct. Ram Bharose, PW-11 Dr. Irshad Hussain and the TIP proceedings of case property placed on record as Ex.A1. The jar containing the stolen articles was seized vide seizure memo Ex.PW1/C and the case property was duly identified during trial by PW-1, PW-2, PW-6 & PW-11. The complainant has remained consistent in his stand regarding the theft of gold articles from his house by the accused.

30. It is to be noted that testimony of even one witness is sufficient to convict the accused if the said testimony inspires confidence of the court. It is also to be noted that there does not appear to be any break in the chain of circumstance from the time when the accused was seen in the house of the complainant by the complainant till the time part of the stolen case property was recovered from his possession by PW-11 Dr. Irshad Hussain. The complainant has remained consistent in his FIR No. 334/2015 State vs. Pappu Page No. 15 of 25 CNR No. DLWTo2-000802-2015 testimony and has not

resiled from any of his previous statements.

31. In Appa Bhai vs. State of Gujarat, AIR 1998 SC 694, the Hon'ble Supreme Court has observed that undue importance must not be given to minor discrepancies and if the same do not shake the basic version of the prosecution case, such discrepancy may be discarded. The testimony of PW-1 is consistent with his statement given to the police, save for minor inconsistencies, if any, and nothing has been elicited in his cross- examination to impute falsehood.

32. In respect of the infirmities pointed out by Ld. Counsel regarding non conduct of personal search of the accused before he was taken to the hospital, it is to be noted that it is not mandatory that the accused be personally searched at that stage and there is nothing on record to suggest that the recovery from the accused is planted as the recovery has been made in presence of a reputed doctor and the recovered articles have been immediately sealed using seal of ABG Hospital.

33. In respect of PW-1 i.e., the complainant, there are imputations by way of suggestions during cross-examination that the complainant is falsely implicating the accused because the complainant did not pay daily wages to the accused. During cross-examination a different stand has been taken by the accused wherein he states that he was inside the house of the complainant lawfully for doing some work, however, in his statement u/s 313 CrPC, the accused states that he was merely going through the street. Thus the stand taken by the accused is not consistent. Except for bald statements there is nothing on record to suggest that the FIR No. 334/2015 State vs. Pappu Page No. 16 of 25 CNR No. DLWT02-000802-2015 complainant is trying to falsely implicate the accused. It is well settled law that the complainant cannot be stated to be an interested witness unless and until any cogent motive to falsely implicate the accused is imputed and proved on the basis of preponderance of probabilities. Moreover, accused was duly identified by the complainant. No material or evidence has been placed on record to show any animosity or even prior acquaintance between PW-1, the complainant and the accused.

34. Reliance in this regard is placed upon the judgment of the Hon'ble Supreme Court in Dalip Singh vs. State of Punjab, AIR 1953 SC 364 (as reaffirmed by the Hon'ble Supreme Court in Yogesh Singh v. Mahaveer Singh & Anr., AIR 2016 SC 5160) where it has been observed as follows:

A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

35. When the facts of the present case are viewed from the prism of the above stated legal position, it is clear that except the imputations on the complainant by way of suggestions during

cross-examination, there FIR No. 334/2015 State vs. Pappu Page No. 17 of 25 CNR No. DLWTo2-000802-2015 is nothing on record to show that there was any motive on the part of the complainant for falsely implicating the accused in the present case.

36. All the ingredients of the offence of theft u/s. 378 and 380 IPC have been fulfilled in the present matter. The moving of movable property, i.e., gold articles by the accused from the custody of the complainant and from his house with dishonest intention and without the consent of the complainant stands proved beyond reasonable doubt. Accordingly, prosecution has been able to prove beyond reasonable doubt that the accused has committed offence punishable u/s. 380 IPC, i.e., theft in dwelling house, etc. In respect of charge u/s. 411 IPC

37. The second offence under consideration is offence u/s. 411 IPC. Section 411 IPC prescribes punishment for dishonestly receiving stolen property. Section 410 IPC defines stolen property. Sections 410 and 411 IPC are reproduced as under:

410. Stolen property.--Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Dishonestly receiving stolen property.--Whoever dishonestly receives or retains any stolen property, FIR No. 334/2015 State vs. Pappu Page No. 18 of 25 CNR No. DLWTo2-000802-2015 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.

38. Hon'ble Supreme Court of India in Hiralal Babulal Soni vs. State of Maharashtra & Ors., 2025 INSC 266, reiterated the ingredients of offence u/s. 411 IPC and same are reproduced as under:

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).

39. In respect of the second ingredient of the offence u/s. 411 IPC, Hon'ble Allahabad High Court has held in *Rajjaua vs The State*, AIR 1959 All 718, as follows:

While pointing out the second ingredient of Section 411 I. P. C., their Lordships of the Supreme Court were only reiterating the well recognised distinction between a receiver and a thief. When the thief removes the stolen property from the possession of its owner and takes it into his own possession, he not only commits theft but is also in possession of stolen property knowing it to be stolen. He cannot, however, be convicted of both the offences. If he is the thief he possesses the stolen property in his capacity as a thief, and not as a receiver.

FIR No. 334/2015 State vs. Pappu Page No. 19 of 25 CNR No. DLWT02-000802-2015 It has, therefore, been held that the same person cannot be convicted of theft as well as of receiving stolen property knowing it to be stolen."

40. It is proved from the statement of PW-1, the complainant, that the accused had stolen gold articles from the house of the complainant and was caught red-handed while he was attempting to flee. Part of the stolen case property was recovered from the possession of the accused by the doctor conducting his medical examination. It is in view of the recovery of stolen gold articles from the possession of the accused that Ld. APP for the State has sought conviction of the accused for commission of offence u/s. 411 IPC.

41. However, in view of the above-mentioned judgments of Hon'ble Supreme Court and of Hon'ble Allahabad High Court, this court is of the considered opinion that since the accused has been found guilty for the offence of theft, having stolen gold articles from the house of the complainant, accordingly, the accused cannot also be held guilty of receiving or retaining stolen property in terms of the provisions of section 411 IPC. As already held by Hon'ble Superior Courts, "A thief possesses the stolen property as a thief and not as a receiver." Thus, the charge u/s. 411 IPC does not hold any water and accused cannot be said to have committed offence u/s. 411 IPC.

In respect of charge u/s. 454 IPC

42. The third offence under consideration is offence u/s. 454 IPC which prescribes punishment for commission of lurking house-trespass, FIR No. 334/2015 State vs. Pappu Page No. 20 of 25 CNR No. DLWT02-000802-2015 or house-breaking, in order to the committing of any offence punishable with imprisonment. Section 454 IPC reads as under:

454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.--

Whoever commits lurking house-trespass or house- breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; And if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

43. In order to prove either of the two, i.e., Lurking house-trespass or house-breaking, it is essential for the prosecution to establish that the accused has committed house trespass. The offence of criminal trespass is defined u/s. 441 IPC, offence of house trespass is defined u/s. 442 IPC and aggravated offences are defined thereafter. Section 441 and 442 IPC define criminal trespass and house trespass as under:

441. Criminal trespass.--Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

442. House-trespass.--Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation.--The introduction of any part of the FIR No. 334/2015 State vs. Pappu Page No. 21 of 25 CNR No. DLWT02-000802-2015 criminal trespasser's body is entering sufficient to constitute house-trespass.

44. As stated above, PW-1, i.e., the complainant, has deposed before the court that the accused entered his house and committed theft of gold articles. He has further deposed that he caught hold of the accused while the accused was attempting to flee. This statement of the complainant proves that the accused had entered the house of the complainant with intent to commit an offence, i.e., theft and had in fact committed theft of abovesaid gold articles.

45. As already discussed above, accused has failed to bring anything on record to prove that PW-1 is an interested witness and that the witness is trying to falsely implicate the accused in the present matter. Complainant has also duly identified the accused before the court.

46. Commission of either of the two offences, i.e., lurking house- trespass, or house-breaking results in punishment u/s. 454 IPC. Section 443 IPC defines lurking house-trespass as under:

443. Lurking house-trespass.--Whoever commits house-

trespass having taken precautions to conceal such house- trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

47. After careful perusal of testimonies of all the prosecution witnesses from PW-1 to PW-3, there is nothing on record to remotely show that the accused had tried to conceal such house-trespass from the FIR No. 334/2015 State vs. Pappu Page No. 22 of 25 CNR No. DLWT02-000802-2015 owner thereof, i.e., PW-1, the complainant. There is not even a single allegation in this regard by any of the

prosecution witnesses.

48. It is clear from the perusal of the evidences placed on record and the testimonies of the witnesses, that the accused did not take any active steps to conceal his presence in the house of the complainant. Hence, in absence of any evidence in this regard, oral or documentary, it cannot be said that the accused has committed lurking house-trespass or lurking house-trespass within the meaning of sections 443 or 454 IPC.

49. The complainant, i.e., PW-1 has categorically stated in his statement before the court that he had locked the back gate of the house from the inside and he had put a lock on the main gate from outside. All the entry points to the house were duly locked. The crime scene report Ex.PW7/A states that the backside door of the house appears to be possibly opened. In view of the testimony of PW-1 and the crime scene visit report Ex.PW7/A, it become apparent that the accused entered the house in terms of Section 445 (fourthly), i.e. entering the house by opening a lock in order to committing of house trespass. Thus it stands proved that the accused had committed house breaking in order to commit theft within the meaning of Section 445 & 454 IPC.

50. In view of the above discussion, it is established that accused had committed criminal trespass in a building used as a human dwelling, and thus, he had committed house breaking with intent to commit theft in a dwelling house and accordingly, prosecution has been able to prove beyond reasonable doubt that the accused has committed offence FIR No. 334/2015 State vs. Pappu Page No. 23 of 25 CNR No. DLWT02-000802-2015 punishable u/s. 454 (II) IPC, i.e., house-breaking in order to commit offence punishable with imprisonment, when the offence intended is theft.

FINDINGS OF THE COURT

51. All the material particulars deposed by PW-1 has been corroborated by the police witnesses. No material contradiction has been brought forth in the cross-examination of any of the prosecution witnesses. This goes on to support the version of the complainant given in his testimony before this court and the complaint given immediately after the theft to the police. The reliable deposition given by the witnesses against the accused, read with the identification of the accused by the witnesses before the court, imply that the disclosure statement is not the only evidence against the accused. There is continuity in the entire chain of events narrated by the prosecution witnesses, where there is no contradiction as regards the event of entering the house and the theft and the fact that the accused was caught red handed.

52. Thus, there is no reason to doubt the testimony of the complainant and the other prosecution witnesses and there is nothing that has come in the testimony of the complainant and the other prosecution witnesses which would amount to any material contradiction or inconsistency. Hence, the case as against the accused stands established by the prosecution. The accused on the other hand has failed to explain the incriminating prosecution evidence in his statement u/s 313 Cr.PC. Thus the accused has failed to raise any reasonable doubt in the case of the FIR No. 334/2015 State vs. Pappu Page No. 24 of 25 CNR No. DLWT02-000802-2015 prosecution, which is otherwise consistent.

53. From the testimony of the witnesses and material present on record, as discussed above, it has been established beyond reasonable doubt that the accused entered the house of the complainant with intent to commit theft and thereby committed theft of abovesaid gold articles. The accused has been correctly identified by the witnesses who have supported the case of the prosecution and the defence has not brought any evidence to discredit these testimonies.

54. As a cumulative effect of the observations made above, I am of the opinion that the prosecution has proved its case beyond reasonable doubt against accused Pappu S/o Sh. Govind and he is hereby convicted for offences punishable under sections 380 and 454 (II) Indian Penal Code. The accused is acquitted of offence under sections 411 IPC.

55. One copy of this judgment be given to the accused free of cost and against due acknowledgment. Digitally signed by ANSHUL ANSHUL SINGHAL SINGHAL Date: 2025.08.12 17:10:21 +0530 Announced in Open Court (Anshul Singhal) on 12.08.2025 JMFC-04, West District, Tis Hazari Courts, Delhi.

Note: This judgment contains 25 pages and each page has been signed by the undersigned. ANSHUL ANSHUL SINGHAL SINGHAL Date: 2025.08.12 17:10:26 +0530 (Anshul Singhal) JMFC-04, West District, Tis Hazari Courts, Delhi.

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