2025 INSC 999

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO 3605 OF 2025
(ARISING OUT OF SLP (CRL) NO. 16117 of 2024)

SD. SHABUDDIN **...APPELLANT**

VERSUS

THE STATE OF TELANGANA **...RESPONDENT**

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.

2. This appeal, preferred on behalf of the appellant, takes exception to the judgment dated 7th March, 2024, passed by the High Court for the State of Telangana at Hyderabad[1] whereby the criminal appeal[2] preferred by the present appellant and Moulana (accused No. 1)[3] was partly allowed.

3. The High Court, while partly allowing the appeal against the judgment of conviction dated 5th March, 2010, passed by the

1 Hereinafter, referred to as "High Court".
2 Criminal Appeal No. 439 of 2010.
3 For short, "accused-Moulana".

Principal Sessions Court, Warangal[4] in Sessions Case No. 229 of 2008, had reduced the sentence of imprisonment from three years, as awarded by the Trial Court under Section 411 of the Indian Penal Code, 1860[5], to one year.

BRIEF FACTS OF THE CASE:

4. The prosecution story, in a nutshell, is narrated hereinbelow:

4.1. The complainant, namely K. Vikram, cousin brother of deceased-M. Narsaiah[6], registered an FIR bearing No. 344 of 2005 with Mills Colony Police Station, District Warangal alleging, *inter alia*, the deceased was in a business of selling paddy to the rice mills at Warangal. In this regard, the deceased had gone to Warangal on 22nd December, 2005 to collect outstanding dues amounting to Rs. 2,92,629/-.

4.2. Around 07:00 P.M., the deceased's brother-in-law made a phone call to him asking his whereabouts. The deceased informed that he has collected the cash and was then headed to Laxmi Narsimha Rice Mill, Rampur. After an hour, when the phone call was again made by the deceased's brother-in-law, the person who received the call replied that it was a wrong number and since then the phone has been switched off.

4.3. The complainant and his family made efforts to locate the deceased and when they remained unsuccessful, the present FIR[7]

4 Hereinafter, referred to as "Trial Court".
5 For short, 'IPC'.
6 Hereinafter, referred to as "deceased".
7 Exhibit P.35.

came to be registered on 24th December, 2005. The police began with their investigation.

4.4. The investigation culminated in a chargesheet, submitted by the police on 16th June, 2007 against accused-Moulana and the present appellant. The chargesheet stated that after working with accused-Moulana, who was a leading paddy broker, for 3 years as *Gumasta*, the deceased had begun his separate paddy business. In a very short span, the deceased's business profits skyrocketed and overtook accused-Moulana's business, who on that account began to incur heavy losses in his business. Recently, the two were involved in an altercation with respect to the price at which the deceased was selling his paddy. Thus, on 22nd December, 2005 when the deceased was visiting Warangal, accused-Moulana saw an opportunity to do away with his business nemesis permanently.

4.5. On the fateful day, after consuming alcohol together, accused-Moulana and the deceased left together for their homes. It was there that accused-Moulana murdered the deceased near Ursa Hillock area by slitting his throat, thereafter, concealing the body in nearby bushes and stealing away his cash, bike and phone. He immediately abandoned the place and reached Warangal Railway Station and left the deceased's bike parked in the parking area. He boarded a passenger train, disposed of the deceased's cellphone in the bath-room of the said train and then de-boarded.

4.6. On the following day, i.e. on 23rd December, 2005, with the assistance of the present appellant, who had agreed to help accused-Moulana for a consideration of ₹30,000, the dead body was retrieved and wrapped in a polythene sheet. Both started their journey towards Khammam with the wrapped dead body. Their initial plan was to dispose of the dead body in some canal, however, when they reached Appalraopet, they came across a burning pyre. Taking advantage of the fact that there was no one present there, both the accused threw the dead body on the burning pyre to obliterate the final piece of evidence.

4.7. The next day, i.e. 24th December, 2005, accused-Moulana partially deposited the stolen amount to the tune of Rs. 2,40,000/- in Laxmi Vilas Bank and retained the remaining amount.

4.8. According to the prosecution, the breakthrough in their investigation came when the police secured the presence of PW12-M. Khaja Pasha, who disclosed that accused-Moulana had approached him and made an extra-judicial confession, in his presence admitting that he had murdered the deceased and incinerated the dead body in a pyre at the outskirts of Appalraopet. The police thus, apprehended both the accused persons on 31st August, 2006 at Gudur. Chargesheet was filed against them after concluding investigation.

5. In this regard, the Trial Court on 16th December, 2008 framed charges against the accused-Moulana under Sections 302, 201 and 379, IPC and against the present appellant under

Section 379 and 201 IPC. As both the accused pleaded not guilty, the trial was therefore proceeded against them. In order to bring home the charges, the prosecution examined 31 witnesses and exhibited 40 documents and 3 material objects.

6. The Trial Court, *vide* judgment dated 5th March, 2010, acquitted both the accused persons from the charges for the offences punishable under Sections 302, 201 and 379 IPC however, returned a finding of guilt *qua* both the accused persons under Section 411 IPC and therefore, sentenced them to undergo 3 years of rigorous imprisonment and ordered fine to the tune of Rs. 5,000/-. In default, the accused were ordered to undergo simple imprisonment for an additional period of 9 months.

7. Accused-Moulana and the appellant assailed the aforesaid order of conviction before the High Court *via* a common appeal[8]. During the pendency of the appeal, on account of death of accused-Moulana, his legal representatives were brought on record. The High Court *vide* judgment dated 7th March, 2024, partly-allowed the appeal by reducing the sentence of 3 years so awarded by the Trial Court to a period of one year.

8. Aggrieved, the appellant has preferred this appeal by special leave before us laying challenge to the judgment passed by the High Court.

ARGUMENTS ON BEHALF OF THE PARTIES:

8 Criminal Appeal No. 439 of 2010.

9. Learned counsel for the appellant strenuously urged that the prosecution has failed to prove beyond reasonable doubt that the property held by the appellant is a stolen property, and belonged to the deceased. To bring home the charges under Section 411 IPC, the prosecution must establish that the person receiving or retaining the stolen property must have knowledge or belief that the same is a stolen property. Mere possession of the stolen property is not enough, and it must be proved by the prosecution that there was knowledge about the property being stolen. Hence, the belief or knowledge factor is *sine qua non* to give a finding of guilt for offence punishable under Section 411 IPC.

9.1. It was further contended that in the present case, the prosecution has failed to prove that the appellant had either knowledge or belief that the money that he had received from accused-Moulana was stolen property. This assertion is further fortified by the concurrent acquittal of both of the accused persons under Section 379 IPC by the High Court and the Trial Court. As both of them were acquitted for the offence of theft, the Courts below grossly erred to return a finding that the appellant was guilty for dishonestly receiving stolen property under Section 411 IPC.

On these grounds, learned counsel implored the Court to allow the present appeal and set aside the impugned order of conviction.

10. *Per contra*, learned counsel appearing for the respondent vehemently and fervently opposed the submissions made on behalf of the appellant. It was contended that the appellant was offered Rs. 30,000/- by the accused-Moulana for disposing of the dead body of the deceased. The accused-Moulana offered said sum of Rs. 30,000/- from Rs. 2,92,629/- which belonged to the deceased. In this regard, the appellant has suffered a confessional statement on the basis of which recovery was made. The appellant led the investigating officer (PW-30) to his house, where he had produced Rs. 25,000/-[9] in the form of cash. The appellant had also confessed that out of Rs. 30,000/- which was his share as agreed with accused-Moulana to commit the illegal act of disposing of the dead body of deceased, he had already spent an amount of Rs. 5,000/-.

On these grounds, learned counsel thus, urged to dismiss the appeal and uphold the order of conviction as recorded by the High Court.

11. We have given our thoughtful consideration to the submissions advanced at the bar and have also gone through the material available on record.

ISSUES BEFORE THIS COURT:

12. The issues in the present appeal that have fallen for our consideration are two-fold: -

9 Material Object No. 3.

I. Whether the judgment dated 7th March, 2024, passed by the High Court places a reverse burden of proof upon the appellant and is thus, legally unsustainable?

II. Whether the conviction under Section 411 IPC for dishonestly receiving stolen property can be sustained in view of the fact that both the accused stand acquitted for the offence of theft punishable under Section 379 IPC?

ANSWER TO QUESTION NO. (I):

13. The present case being one totally based on circumstantial evidence, the prosecution therefore, owed a greater duty to prove each and every circumstance beyond reasonable doubt so much so that the circumstances so proved should form a complete chain of evidence, leaving no reasonable ground for a conclusion consistent with the innocence of the accused.

13.1. The prosecution initially knit a story that the successful growth of deceased's business formed an enmity between him and his erstwhile employer, i.e. accused-Moulana. Thus, when the deceased was visiting Warangal on 22nd December, 2005 to collect his money due from the rice mills in Warangal, accused-Moulana saw a perfect opportunity to do away with his old employee turned competitor.

13.2. However, the Trial Court, *vide* judgment dated 5th March, 2010, found no merit in the allegation that accused-Moulana committed homicide of the deceased, and returned a finding that the prosecution has failed to bring home the guilt of accused-

Moulana by proving complete chain of circumstances that may point to his guilt. Further, the Trial Court ruled out the possibility that accused-Moulana had sought the help of the present appellant to cause the disappearance of the body of the deceased by throwing it on a burning pyre in the outskirts of Appalraopet and thus, proceeded to acquit accused-Moulana from the charge under Section 302 IPC and accused-Moulana and the present appellant from the charge under Sections 201 and 379 IPC.

13.3. Finally, the Trial Court returned a finding that the fact that accused-Moulana and the appellant were found in possession of Rs. 2,60,000/-[10] and Rs. 25,000/-[11] respectively, coupled with their inability to account for their possession of such a huge amount of cash, thus, liable to be convicted for being guilty of the offence punishable under Section 411 IPC.

13.4. In an appeal preferred by accused-Moulana and the present appellant, the High Court confirmed the aforesaid finding of conviction under Section 411 IPC and held that a mere claim by the accused persons that the cash belongs to them is not sufficient to prove that the cash so recovered from them is their personal cash. The High Court noted that accused-Moulana is unable to explain the cash deposited by him in his brother-in-law's account soon after the murder of the deceased.

14. In our considered opinion, the High Court has grossly erred by placing reverse burden of proof on the accused to account for

10 Material Object No. 1.
11 Material Object No. 3.

the cash in their possession. The High Court clearly erred in applying the presumption under Section 114 of the Evidence Act to convict the appellant for the offence punishable under Section 411 IPC. The illustration (a) under the said provision reads as below: -

> **"114. Court may presume existence of certain facts.**
>
> …
>
> (a) that a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

The aforesaid illustration would only apply where the prosecution establishes the foundational fact of the theft of goods and the possession thereof by the accused soon after the incident. There is no evidence on record as to the total amount which the deceased was carrying with him when the incident took place. In absence of any convincing evidence regarding the amount being carried by the deceased, by the mere fact of recovery of a cash amount of Rs.25,000/- from the possession of the accused, it cannot be inferred that the said amount was stolen goods. Suffice it to say, that the cash so recovered had no special or distinct identification characteristics and thus, the same could not be linked to amount allegedly stolen from the deceased even if such allegation was proved by tangible evidence.

14.1. In a criminal prosecution, the initial burden is always on the prosecution to discharge, whereby the allegations raised by it against the accused person are preliminarily satisfied. If the prosecution is unable to do so, by virtue of Section 102 of Evidence Act, the criminal trial initiated against the accused deserves to be dismissed without asking the accused to lead any evidence from the side of defence.

14.2. In our view, to base a conviction under Section 411 IPC solely on the ground that both the accused were unable to account for being in possession of such huge amount of cash is both incorrect and untenable. Therefore, the approach adopted by the High Court in upholding the order of conviction of Trial Court for inability of the accused to account for the cash so recovered from their possession is alien to the criminal jurisprudence of our legal system.

ANSWER TO QUESTION NO. (II):

15. Even if for the sake of argument, it is accepted that the appellant had received the sum of Rs. 25,000/-[12], as recovered from him, from accused-Moulana out of the money that was stolen by the latter from the deceased, the prosecution was required under law to prove that accused-Moulana had committed theft and the appellant had knowledge that the said money belonged to the deceased.

12 Material Object No. 3.

15.1. Initially, the Trial Court, *vide* order dated 16th December, 2008, did frame the charge of theft under Section 379 IPC against accused-Moulana and the present appellant. However, both the Courts below proceeded to acquit accused-Moulana as well as the appellant for the offence of theft punishable under Section 379 IPC and instead convicted both the accused under Section 411 IPC. In our opinion, this approach adopted by both the Courts below is completely erroneous.

15.2. This Court in the case of ***Shiv Kumar v. State of Madhya Pradesh***,[13] had the occasion to deal with the ingredients of Section 411 IPC and noted that: -

> **"14.** Section 411 IPC:
>
> "**411. *Dishonestly receiving stolen property***.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."
>
> **The penal section extracted above can be broken down into four segments, namely : Whoever, (*i*) dishonestly; (*ii*) receives or retains any stolen property; (*iii*) knowing; or (*iv*) having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."**
>
> **(emphasis supplied)**

15.3. Thus, to establish culpability under Section 411 IPC, it must be proved that the accused had dishonestly received or retained the stolen property and in doing so, he either had knowledge or reason to believe that the same is a stolen property. The natural corollary being if the courts upon trial

13 (2022) 9 SCC 676.

reach a conclusion that the property in question is not a stolen property, therefore, the accused cannot be charged for the offence punishable under Section 411 IPC especially when the whole case of the prosecution relates to the events forming part of the same transaction.

15.4. Since the very beginning, the case of the prosecution is that accused-Moulana committed the homicide of the deceased, stole his belongings, including the sum of Rs. 2,92,629/-, while the deceased was on a business trip to the distant town of Warangal. The accused-Moulana had also paid Rs. 30,000/- out of the total money that he had stolen from the deceased to the present appellant. During the trial, the Trial Court has outrightly rejected this theory of theft, against which no appeal till date has been preferred by the prosecution or the complainant before the High Court.

15.5. Therefore, once the Trial Court has acquitted both accused-Moulana and the present appellant under Section 379 IPC, we fail to understand how the Trial Court reached a conclusion that the accused persons are liable under Section 411 IPC. In order to uphold conviction under Section 411 IPC, it is *sine qua non* that the property in the possession of accused is a stolen property. If the property is not a stolen property, the charge under Section 411 IPC cannot be sustained.

15.6. Hence, when both the Courts below reached a conclusion that there is no commission of theft on the part of

the accused persons, there arises no question of them committing an offence of dishonestly receiving a stolen property punishable under Section 411 IPC. In our view, the High Court has committed grave error in upholding the order of conviction of the present appellant under Section 411 IPC.

CONCLUSION:

16. For what has been discussed and held hereinabove, the points formulated at paragraph (12) are answered as follows: -

I. The judgment of the High Court dated 7th March, 2024, is unsustainable as it erroneously places the burden of proof on the appellant and the co-accused when in fact it lied on the prosecution to prove their case beyond reasonable doubt.

II. The conviction under Section 411 IPC for dishonestly receiving stolen property is unsustainable in view of the fact that both the accused (including the present appellant) stand acquitted by the High Court and the Trial Court for the offence of theft punishable under Section 379 IPC.

17. As a result, the judgment under challenge dated 7th March, 2024, passed by the High Court for the State of Telangana at Hyderabad in Criminal Appeal No. 439 of 2010 is not sustainable and is hereby set aside.

18. The appeal is allowed accordingly.

19. The appellant is acquitted of all the charges. Appellant is on bail. The bail bonds stand discharged.

20. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

New Delhi
August 19, 2025