

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 02-12-2019

Delivered on 10-01-2020

CRA No. 689 of 2003

- Chandra Prakash Soni s/o. Brajlal Soni, aged about 55 years, resident of Tata Line Kohka, Bhilai, Durg (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Patan, Durg (CG).

---- Respondent

For Appellant : Mr. Uttam Pandey, Advocate.

For respondent/State : Mr. Smita Jha, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 24-6-2003 passed by the First Additional Sessions Judge, Durg (CG) in Sessions Trial No. 132 of 1999 wherein the said Court has convicted the appellant for commission of offence under Section 413 of IPC, 1860 and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.500/- with default stipulations.

2. As per version of prosecution, on 1-3-1995 complainant Pawan Chandrakar along with his wife and daughter went to their relatives house at village Santara on his motor-cycle in the evening at about 7.00 p.m., and when he was coming back along with his

family members to his house, between the village Funda and Loharsi near the cannal two persons came from opposite direction and stopped his vehicle and demanded some tools and at the same time one of them suddenly turned towards the victim's wife and threatened at the point of knife and looted her one gold chain, two ladies rings and one gent's ring, one pair of ear rings, one wrist watch and Rs.250/- cash. The entire looted property was worth Rs.13,850/-. The matter was reported and two accused namely Job Thomas and Prabhu Singh were arrested and on the basis of their memorandum appellant Chandra Prakash Soni was also arrested. It is alleged that present appellant purchased robbed articles from the aforesaid two persons. Articles were seized from jewelery shop of the appellant. The appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) Ingredient of offence under Section 413 of IPC is not established, therefore, finding of the trial court is not sustainable.
- ii Description of articles which is mentioned in FIR is not tallied with the seized articles, therefore, charge as alleged is not established.

lii) Identification of article is not done properly, therefore, finding of the trial court is not liable to be sustained.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. For commission of offence under Section 413 of IPC, prosecution is under obligation to establish that the appellant was habitually receiving or dealing in property which he knows or has reason to believe to be stolen property. Stolen property is defined in Section 410 of IPC. The property of possession whereof has been transferred by theft or robbery and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed designated as stolen property. Offence of dishonestly receiving stolen property is made out when a person receives or retains any ornaments knowing or having reason to believe the same to be stolen property.

7. To substantiate the charge, prosecution has examined as many as 11 witnesses. Case of the prosecution is based on the

statement of the Sub Inspector and Incharge, Central Crime, Raipur namely R.C. Trivedi (PW/10). As per version of this witness, ornaments made of silver and gold were seized from the appellant which is 71 in number. Except the seizure, no evidence is adduced against the present appellant. The appellant stated in examination-in-chief under Section 313 of Cr.P.C that he is a jeweler and articles were seized from his jewelery shop which is forcible seizure and he is innocent. There is no evidence to show that the appellant had received any ornaments knowing or having reason to believe the same to be stolen property, therefore, in absence of evidence, he cannot be said to have committed offense of dishonestly receiving stolen property or habitually dealing in a stolen property. For any criminal act mens rea has to be established. Unless it is proved by evidence that the appellant was having guilty mind, charge cannot be said to be proved.

8. Accordingly, the appeal is allowed. Conviction and sentence of the appellant is set aside. He is acquitted of the charges framed against him. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of the Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju

