

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 290 of 2001**

**Sukumar Mondal**

**-Vs-**

**The State of West Bengal**

For the Appellant : Mr. Soham Banerjee  
(Amicus Curiae)

For the State : Mr. Debashish Ray  
Mr. Avishek Sinha

Heard on : 02.02.2024, 01.04.2024, 21.05.2024,

Judgment on : 22.04.2025

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the judgment and order of conviction dated 08.06.2001 passed by the Learned Additional Sessions Judge, Tamluk, Midnapore in Sessions Trial No.3(5)99 arising out of Sessions Trial Case No.12(9)96 convicting the appellant under Section 411 of the Indian Penal Code and sentencing him to suffer simple imprisonment for 2½ (two and half) years and to pay a fine of Rs.2000/- in default of payment of fine further simple imprisonment for 2 months.
2. The prosecution case precisely stated on 18.05.1990 at 11:30 a.m., while the de-facto complainant and the others were searching for the daughter of

Tushar Kanti Jana, they heard an alarm from the north-eastern corner of the house following which they followed they found the dead body of deceased girl in the tank. On the call of wife of Ratneshwar Bera, he came and lifted the dead body from the tank. Swapan Maity had seen the appellant to take the deceased girl around the bush. Certain villagers interrogated the appellant and he admitted before the same that for the gold earring of deceased girl he killed her, took her earrings and threw the dead body in the tank of Ratneshwar Bera. Appellant took PW-2, PW-3, PW-4 and others to his house and handed over the earrings to PW-2.

3. On the basis of the aforesaid complaint, the Police initiated Haldia P.S. Case No.49/90 dated 18.05.1990 under Sections 302/201/379/411 of Indian Penal Code.
4. Charges were framed against the appellant under Sections 302/201/379/411 of Indian Penal Code to which they pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 10 witnesses and exhibited certain documents.
6. Learned Amicus Curiae representing the appellant submitted as follows:-
  - i. That whether the offence under Section 411 of the Indian Penal Code was made out against the appellant or not.
  - ii. On the basis of glaring discrepancies in the versions of the witnesses regarding the manner of alleged recovery:
    - a) Written Complaint: The appellant took Sukesh Bhowmick (PW-2). Bholanath Bhowmick (PW-4), Dulal Pattanayek (PW-3) and

others to his house and handed over earrings, wrapped in paper, to Sukesh Bhowmik. It was evident from the Written Complaint, which was lodged at around 15:35 hrs., that the Police was not in the scene during the recovery.

- b) PW-1 (de-facto complainant): Corroborates the version of the Written Complaint regarding such recovery of earrings, revealing that PW-2 got the earring at around 1:30-2:00 p.m. PW-2 was in the house of the appellant when the Police came.
- c) PW-2(Sukesh Bhowmick who turned hostile): The appellant handed over the earrings to him near the temple. Police already came and he handed over the same to the Police. Police went to the Place of Occurance after 4:30 p.m.
- d) PW-3(Dulal Pattanayak, Hostile): PW-3 did not disclose before the Police that the recovery was made as alleged in the Written Complaint. Police went to the P.O. at about 5:00 p.m.
- e) PW-4(Bholanath Bhowmickwho turned hostile): PW-4 did not state that the recovery was made as alleged in the Written Complaint.
- f) PW-10(I.O.): PW2- produced the recovered earrings.

It was not a case where the alleged recovery was done by the Police in pursuant to the statement of the accused person, and as such the version of the independent witnesses were of supreme importance. If the Written Complaint, version of PW-1 and the version of PW-10 was believed, the earrings were

handed over by the appellant to PW-2 at the house of the appellant, and the earrings were lying in the custody of PW-2 from 1:30 p.m. to 4:30 p.m., thereafter the same were handed over to PW-10 (I.O.).

But the PW-2 himself turned hostile and said that the appellant handed over the said earrings to him near the temple at around 4:30pm in the presence of the Police.

PW-3 and PW-4, who were projected as the witnesses of such recovery turned hostile and denied the version of the Written Complaint, PW-1 and PW-10. The legality of the recovery of the article, hence, becomes very doubtful, and conviction based on such doubtfulness could not sustain.

iii. Mob lynching of the appellant: Further, it is well settled the discovery statement must be made while accused is in custody. It was admitted that during the alleged discovery and recovery, the appellant was being lynched by mob.

- a) PW2 stated that appellant was getting assaulted.
- b) PW-3 stated that about 100/150 people encircled the appellant near the temple and the appellant was seriously assaulted, and he was crying and denying his guilt. Further says that the appellant was in no capacity to even talk after the assault.
- c) PW-5 stated that the appellant was assaulted.
- d) PW-10 stated that on 18.05.1990, the appellant was sent to Haldia hospital for his injuries.

So, any statement made by the appellant during such assault should be inadmissible, and conviction based on discovery and recovery during such distressed time cannot sustain.

7. The Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal shall be dismissed.

8. A circumspection of the evidence of the prosecution witnesses revealed as follows:-

- i. PW-1 deposed on 18.05.90 at 11:30 a.m., they were searching for the victim. At that time they heard a noise from the north-eastern corner. They followed and found the dead-body of deceased girl by the side of the tank. Wife of Ratneswar Bera saw the dead body to float. She called her husband who lifted the dead body from the water. Tank belonged to Ratneswar Bera. At that time deceased girl was 4/4½ years old. Swapan Maity told him that appellant took deceased girl to a bush which was on the side of the tank. He along with villagers asked appellant which he denied for the first time but later he admitted that he first caused death to the deceased girl by throttling and thereafter, took away her ear-rings and threw the dead body to the tank. PW-2, PW-3 and PW-4 were taken by the appellant to his house and handed over the ear-rings which he kept in his house. Thereafter, he went to Haldia P.S. and lodged F.I.R. which was marked as Exbt.-1.

- ii. PW-1 in his cross-examination stated that appellant's house was to the adjoining north of his house. PW-2, PW-3 and PW-4 lived by the side of their house. Besides them, many persons lived around it. Accused used to cross the path-way attached to the west of his house.
- iii. PW-2, PW-3, PW-4, PW-5, PW-6 and PW-8 were declared hostile by the prosecution.
- iv. PW-7 deposed that he had a studio named 'Studio Little' at Chiranjibpur. He took photograph of one dead child, the photo of which police took delivery along with negative print. He signed in the seizure list marked as Exbt.-3. Negatives were marked as Mat. Exbt.-III and two photos were marked as Mat. Exbt.-IV.
- v. PW-7 in his cross-examination stated that the photo did not show that he took photo, so also the negatives. Police did not give him any paper at the time of taking delivery.
- vi. PW-9 deposed that deceased girl was her grand-daughter and her dead body was found in a tank of Ratan Bera who found her dead body first and lifted it. The surrounding areas of the tank were full of jungles and bush. Suranjan Bera lived at a distance of 300 cubits from the tank and she was the nearest residence of the tank. On query she came to know that appellant caused her death by throttling by the side of the bush and took away her ear-ring and thereafter, threw her into the tank. Appellant confessed it before them and handed over the ear-rings to PW-2 from her house and

she handed it to police. Police seized the ear-ring in her presence. She supplied a photo of deceased girl to police and it was seized. Her signature in the carbon copy was marked as Exbt.3/1. The ear-rings were marked as Mat. Exbt.-I.

- vii. PW-9 in his cross-examination stated that ear-rings did not contain any seal or label. Police did not conduct any identification parade to identify Mat. Exbt.-I. Mat. Exbt.-I was not shown to him along with other similar ear-rings.
- viii. PW-10 deposed that on 18.05.90 he was at Haldia P.S. as S.I. of Police. The incident occurred in a bush and thereafter, the dead body was thrown into water of the 'Doba'. He prepared sketch map with index of the place of occurrence marked as Exbt.-5 series. He examined the witnesses and recorded their statements on several dates. He seized on a pair of ear-rings of deceased girl produced by PW-2 under a seizure list prepared and signed by him, marked as Exbt.-3/2.

He prepared one foot-print of the place of occurrence and seized it and one thin bamboo lathi marked as Exbt.-3 series. He also seized wearing apparels of deceased girl. He seized the photograph of the dead body and seized one post card photograph. The seizure list, prepared and signed by him, marked as Exbt.-3 series. He collected post mortem report. After taking permission from the court he took foot-print of the appellant and sent for comparison. That F.S.L.

report marked as Exbt.-6. He also interrogated PW-2, PW-3, PW-4, PW-5 and PW-6.

- ix. PW-10 in his cross-examination stated that on 18.05.90 he sent the appellant to Haldia Hospital for his injury. On that date he closed investigation at 23:15 hours. The opinion of the Autopsy Surgeon shows that it was a case of drowning. He did not agree with the opinion of the Autopsy Surgeon as his investigation stated otherwise. Sketch map and index did not show the name of the Mouza. Exbt.-3/2 did not show the specific place of seizure. He did not try to verify the seized ear-rings gold-smith.

9. Section 411 of the Indian Penal Code, 1860 states as follows:-

***“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”***

10. The Hon'ble Supreme Court observed the following in **Trimbak v. State of M.P<sup>1</sup>** :-

***“5. We are satisfied that this was not the correct way of approaching the decision of a case under Section 411IPC. It is the duty of the prosecution in order to bring home the guilt of a person under Section 411IPC to prove, (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the***

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<sup>1</sup>(1953) 1 SCC 397

*property was stolen property. There is no reliable evidence to prove either of these facts.”*

11. The Hon’ble Supreme Court ***Shiv Kumar v. State of M.P.***,<sup>2</sup> held the following:-

**“15.** *“Dishonestly” is defined under Section 24IPC as, “Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.” The key ingredient for a crime is, of course, mens rea. This was nicely explained by K. Subba Rao, J. in Vimla v. Delhi Admn. [Vimla v. Delhi Admn., AIR 1963 SC 1572] in the following paragraphs : (AIR pp. 1575-76, para 9-A)*

*“9-A. A Full Bench of the Madras High Court, in Kotamraju Venkatrayadu v. Emperor [Kotamraju Venkatrayadu v. Emperor, 1905 SCC OnLine Mad 87 : ILR (1905) 28 Mad 90] , ILR at pp. 96 and 97 had to consider the case of a person obtaining admission to the matriculation examination of the Madras University as a private candidate producing to the Registrar a certificate purporting to have been signed by the headmaster of a recognised High School that he was of good character and had attained his 20th year. It was found in that case that the candidate had fabricated the signature of the headmaster. The Court held that the accused was guilty of forgery. White, C.J., observed:*

*‘Intending to defraud means, of course, something more than deceiving.’ He illustrated this by the following example:*

*A tells B a lie and B believes him. B is deceived but it does not follow that A intended to defraud B. But, as it seems to me, if A tells B a lie intending that B should do something which A conceives to be to his own benefit or advantage, and which, if done, would be to the loss or detriment of B, A intends to defraud B.’ The learned Chief Justice*

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<sup>2</sup>2022 SCC OnLine SC 1164

*indicated his line of thought, which has some bearing on the question now raised, by the following observations:*

*'I may observe, however, in this connection that by Section 24 of the Code a person does a thing dishonestly who does it with the intention of causing wrongful gain or wrongful loss. It is not necessary that there should be an intention to cause both. On the analogy of this definition, it might be said that either an intention to secure a benefit or advantage on the one hand, or to cause loss or detriment on the other, by means of deceit is an intent to defraud.'*

*But, he found in that case that both the elements were present. Benson, J., pointed out at p. 114:*

*'I am of opinion that the act was fraudulent not merely by reason of the advantage which the accused intended to secure for himself by means of his deceit, but also by reason of the injury which must necessarily result to the University, and through it to the public from such acts if unrepressed. The University is injured, if through the evasion of its bye-laws, it is induced to declare that certain persons have fulfilled the conditions prescribed for Matriculation and are entitled to the benefits of Matriculation, when in fact, they have not fulfilled those conditions, for the value of its examinations is depreciated in the eyes of the public if it is found that the certificate of the University that they have passed its examinations is no longer a guarantee that they have in truth fulfilled the conditions on which alone the University professes to certify them as passed, and to admit them to the benefits of Matriculation.'*

*Boddam, J., agreed with the learned Chief Justice and Benson, J. This decision accepts the principle laid down by Stephen, namely, that the intention to defraud is made up of two elements, first an intention to deceive and second, the intention to expose some person either to actual injury or risk of possible injury; but the learned Judges were also inclined to hold on the analogy of the definition of*

*“dishonestly” in Section 24 of the Code that intention to secure a benefit or advantage to the deceiver satisfies the second condition.”*

**16.** *To establish that a person is dealing with stolen property, the “believe” factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable.”*

12. The Hon’ble Supreme Court held the following in **Hiralal Babulal Soni v.**

**State of Maharashtra<sup>3</sup>:-**

**“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 v. State of M.P’, (1953) 1 SCC 397 : AIR 1954 SC 39).*

**33.** *In “Mohan Lal v. State of Maharashtra”<sup>6</sup>, this Court held that the prosecution has to prove that the accused was in possession of property which he had reason to believe that it was stolen property.*

**34.** *In “Shiv Kumar v. State of M.P.”<sup>7</sup> this Court reiterated the essentials of the offence under Section 411 of the IPC:*

**“9.** *Assailing the legality of the guilty verdict against the appellant, Mr Lav Kumar Agrawal, the learned counsel would submit that the essential ingredients of Section 411 IPC offence are not at all made out as the prosecution has failed to adduce any evidence to show that the accused had knowledge that the seized articles were stolen*

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<sup>3</sup>2025 SCC OnLine SC 437

*from the looted truck. It is, therefore, argued that unless the knowledge of the accused on the nature of the articles sold by them is established, his conviction under Section 411 IPC cannot be sustained in law.*

*13. In this case, although recovery of items was made, the prosecution must further establish the essential ingredient of knowledge of the appellant that such goods are stolen property. Reliance solely upon the disclosure statement of accused Raju alias Rajendra and Sadhu alias Vijaybhan Singh will not otherwise be clinching, for the conviction under Section 411 IPC.*

*16. To establish that a person is dealing with stolen property, the “believe” factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable.”*

13. The ear-ring was seized by the PW-10 from PW-2. However, PW-2 turned hostile. Moreover, the investigating agency failed to prove the ear-rings to have been recovered by PW-2 from the house of the appellant. The ear-ring to have been seized by PW-10 was not labelled or sealed. The extrajudicial confession of the appellant in the presence of the prosecution witnesses who eventually turned hostile before the Court could not have been the cornerstone of the prosecution case, as such confession was legally untenable.

14. The prosecution failed to prove the dishonest intention for wrongful gain sufficing “mens rea” was absent. The medical evidences denoted the child to

have died due to drowning. PW-10 did not believe the report of the post mortem doctor and relied on the statements of the prosecution witnesses which were riddled with inconsistencies and aberrations deviating from the own criminal act of mob lynching. It was uncanny and weird that a police personnel to conceal his own lapses to conduct a flawless investigation believed the deliberately motivated statements of the witnesses and other persons evading the opinion of the post mortem doctor who was an uninterested and independent witness. The death of a child was indeed alarming and devastating which verklempt and frenzied the mob to have hysterically beaten up the appellant which could not have vindicated his criminal act to be rationalized and legitimized by PW-10.

15. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal being CRA 290 of 2001 is allowed.
16. Under such facts and circumstances, the judgment and order of conviction dated 08.06.2001 passed by the Learned Additional Sessions Judge, Tamluk, Midnapore in Sessions Trial No.3(5)99 arising out of Sessions Trial Case No.12(9)96 is set aside.
17. Accordingly, the appeal being CRA 290 of 2001 stands disposed of.
18. There is no order as to costs.
19. I record my appreciation for the able assistance rendered by Learned Advocate Mr. Soham Banerjee as Amicus Curiae, representing the appellant, in disposing of this appeal.

20. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
21. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**