

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 285 of 1992**

**Adam Molla  
-Vs-  
The State of West Bengal**

For the Appellant : Mr. Smartajit Sarkar  
(*Amicus Curiae*)

For the State : Ms. Faria Hossain  
Mr. Saryati Dutta

Judgment on : 25.03.2026

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against judgment and order of conviction dated 05.09.1992 passed by the Learned Sessions Judge, Krishnagar, Nadia in Sessions Trial No.1(6)/91 arising out of Sessions Case No.09(3)/91, convicted the appellant under Section 411 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of 2 years only.
2. The prosecution case precisely stated a dacoity or robbery was allegedly committed in the house of PW-4. The complaint had been registered against unknown miscreants being Nakashipara Police Station Case No.13 dated 09.02.1980. The investigation of the aforesaid case culminated in submission of "FRT" No.61 dated 02.04.1981. Subsequently the gun allegedly fleeced by the miscreants had been recovered from the possession

of the appellant. Tehatta Police Station Case No.22 dated 22.05.1981 under Sections 25/27 of the Arms Act was registered against the appellant. The Investigating Agency submitted charge-sheet being No.142 dated 30.09.84 against the appellant. The prosecution case elicited the actual owner of the alleged gun was PW-5, the elder brother of PW-4, in respect of which PW-5 had valid licence. The alleged gun was recovered from the possession of appellant constituting an offence of dishonestly receiving stolen property.

3. Based on the aforesaid complaint, the Officer-in-Charge, Nakashipara Police Station, had registered the case of Nakashipara P.S. being Case No.13 dated 09.02.1980 under Sections 394/397 of the Indian Penal Code read with Sections 25/27 of the Arms Act against the appellant.
4. Charge was framed on 18.05.1991 against the appellant under Section 41 of the Indian Penal Code to which he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 7 witnesses and exhibited certain documents.
6. The Learned Advocate representing the appellant submitted as follows:-
  - i. There was no proper compliance with the procedure of Section 100 and 102 of the Code of Criminal Procedure at the time of conducting of the search and seizure of the gun which had vitiated the entire trial.
  - ii. An adverse presumption against the prosecution for its failure to adduce the independent witnesses should have been drawn.
  - iii. The examination of the appellant under Section 313 of the Code of Criminal Procedure was not in accordance with law since it did not

offer a full and complete opportunity to the appellant to explain the circumstances appearing against him during the trial.

- iv. The appellant suffered the agony of a long criminal trial since 1980 as such must have been dealt leniently.
- v. The charge against the appellant under Section 411 of the Indian Penal Code was not properly established.

7. The Learned Advocate representing the State submitted as follows:-

- i. The alleged gun was owned by PW-5. The gun was stolen by certain miscreants who committed dacoity in the house of PW-4 and that gun had been subsequently recovered and seized from the possession of appellant by the police personnel of Tehatta Police Station. The only witness to the recovery and seizure of the gun from the possession of the appellant was PW-1 (police witness) and the only independent witness to the said seizure was PW-3 who turned hostile during his evidence and did not support the prosecution case. The fact seizure list (Exbt.-5), prepared by PW-1, revealed the signature of PW-3 which he admitted during the course of trial and such fact had not been objected by the defence during the course of evidence.
- ii. PW-5 deposed in the year 1981 he received information that his stolen gun had been recovered by the officials of Tehatta Police Station. Subsequently he identified the gun in police station as well as in Court during the course of evidence. Thus, the evidence of PW-5 corroborated with the evidence of PW-1 and the seizure list (Exbt.-3) in respect of seizure of the alleged gun.

iii. PW-4 specifically deposed the miscreants looted articles from her househ on 09.02.1980 and had taken away the licenced gun of her elder brother (PW-5). During the course of investigation, police seized the gun licence of D.B.B.L Gun. The item no.10 in the seizure list was the gun licence in the name of Kamal Prasad Bagchi (PW-5). It further appeared from the seizure list that the number of the licence was 6820 in respect of a D.B.B.L Gun No.13597 manufactured by Indian Ordnance Factory. Such particulars corroborated that PW-5 was the owner of the said gun which was allegedly taken away by the miscreants on 09.02.1980 and the said gun had been allegedly recovered from the possession of the appellant on 22.05.1981. Thus the appellant had committed an offence under Section 411 of the Indian Penal Code which the prosecution had proved beyond reasonable doubt.

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

i. PW-1 deposed on 22.05.1981 to have been posted as the Officer-in-Charge of Tehatta Police Station. At about 07:00 a.m., he visited Srinathpur village for conducting search in connection with Tehatta P.S. Case No.7(5) 81 and 8(5)81 along with the police associates when they noticed two people escaping from the village. They chased and arrested them. A D.B.B.L. Gun was recovered from the appellant. A seizure list was prepared in presence of witnesses and the article was seized marked as Exbt.-1. The D.B.B.L. Gun, was marked as Mat.

Exbt.-I. On return to the P.S., he initiated a case *suo moto* case against the appellant which was marked as Exbt.-2. The D.B.B.L. Gun was marked as Mat. Ext.-I as seized by the Nakashipara P.S.

- ii. PW-1 in his cross-examination stated all the facts connected with the investigation would be noted in the official diary of the P.S. He raised alarm when he was chasing the appellant. The cultivators of the field arrived there. He did not cite any cultivator as witness to the seizure list. He did not examine any cultivators who assembled there. He did not receive any requisition slip from the Officer-in-Charge Nakashipara P.S. regarding the seizure from the appellant's possession of the article seized by him. The Mat. Exbt.-I did not show his signature of the witnesses in whose presence it was seized. He was examined by the I.C. of P.S. in connection with the case on which seizure list was prepared at the P.S. on 16.11.1981.
- iii. PW-2 deposed on 09.02.1980, he was attached to Nakashipara P.S. as S.I. of Police and taking charge of investigation, he perused the materials already collected by the previous Investigating Officer and on the basis of those materials, he submitted charge-sheet against the appellant.
- iv. PW-3 was declared hostile by the prosecution.
- v. PW-4 deposed the miscreants looted articles from her house on 09.02.1980. A D.B.B.L. Gun was also taken away by the dacoits and the licensed gun of her elder brother (PW-5). She could not recognize any member of the gang of dacoits. After the departure of the dacoits

she took her elder brother, who was assaulted, to the village doctor and rang the police station. Thereafter, the police came to her house at about 11:30 p.m. At her request and instruction, one Ashoke Kumar Maitra, a local boy wrote the complaint in her presence which was marked as Exbt.-4 and her signature was marked as Exbt.-4/1. Police seized the broken lock and other articles and also the gun licence under a seizure list, marked as Exbt.-5 and Exbt.-5/1. The broken articles were subsequently left in her *jimma* under *jimmanama* which was marked as Exbt.-6/1.

- vi. PW-4 in her cross-examination stated she stated to Ashoke Kumar Maitra, the scribe of the written complaint that 9/10 persons raided her house. She also stated to him she personally saw about 5 persons of the gang. She did not state the gun licence was taken away by the miscreants. The written information was prepared at their residence after the arrival of police.
- vii. PW-5 deposed on 09.02.1980, a dacoity was committed at his house. At that time, he was walking to and from on his verandah attached to his room when 5/6 persons entered into his house and assaulted his wife. They also assaulted him causing bleeding injury and thereafter, they started breaking the almirahs, trunks etc., and looted away gold ornaments, cash and they also took away cartridges and his licenced gun. His licenced gun was numbered as 13597. It was a D.B.B.L. Gun of Indian Ordinance Factory and his licence number was 6820. He was removed to Bethuadhahari hospital and his sister i.e., PW-4

informed the Nakashipara P.S. over telephone call and police arrived at his house at about 11:30 p.m. The police seized the gun licence from him and marked as document no.7 for identification. In the year 1981, he received information that his gun was recovered by the Tehatta P.S. When he saw the gun there, it was shortened on both sides. The gun bearing number 13597, was the stolen D.B.B.L. Gun, was marked as Mat. Exbt.-I.

He could not recognize the member of the gang of dacoits either at the time of commission of offence or even in the Test Identification Parade held subsequently.

- viii. PW-5 in his cross-examination stated he reported the missing of his licenced gun to D.M. Nadia. He did not hand over any copy of that information to D.M. to the Police Officer at the P.S. The number of the gun was also depicted on the hilt end. He did not receive any written requisition from any Police Officer about recovery of his stolen gun but he could learn that a gun was recovered and he went to Tehatta P.S. He stated to the police that the gun licence was seized from his house subsequently.
- ix. PW-6 deposed on 09.02.1980, he was attached to Nakashipara P.S. as A.S.I. of Police, at about 23:45 hrs., he was the duty officer at the P.S., when the driver constable handed over to him a written complaint purported to have been written by PW-4 and as a cognizable case transpired, he started Nakashipara P.S. Case No.13

dated 09.02.1980 by drawing up formal F.I.R., which was marked as Exbt.-4/2 and Exbt.-7.

- x. PW-6 in his cross-examination stated the driver constable who handed over the written complaint to him, was Mani Dutta, Constable No.623.
- xi. PW-7 deposed he was attached to the Nadia Collectorate as the Arms Clerk. He retired from service on 31.12.1991. Licence for one D.B.B.L. Gun bearing no.13597 by Indian Ordinance Factory was issued in the name of Kamal Prosad Bagchi. The original licence was issued from the Nadia Collectorate bearing the seal of the Collectorate and also the signature of the officer concerned. The witness proved document no.7, which was marked as Exbt.-7.
- xii. PW-7 in his cross-examination stated that under the rules if any licenced arms was lost or stolen, in that event the fact must be reported to the Licencing Authority as well as the police.

9. The Hon'ble Supreme Court, in the case of **SHIV KUMAR vs. STATE OF MADHYA PRADESH<sup>1</sup>**, has made the following observations: -

*“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 411IPC.*

**14. Section 411IPC:**

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<sup>1</sup>(2022) 9 SCC 676

**“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.

**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.....

**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.

**22.** In *Trimbak v. State of M.P.*, this Court discussed the essential ingredients for conviction under Section 411IPC. Mehr Chand Mahajan, J., in his erudite opinion rightly observed that in order to bring home the guilt under Section 411IPC, the prosecution must prove : (SCC p. 399, para 5)

“5. ... (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 property was stolen property.”

**23.** When we apply the legal proposition as propounded to the present circumstances, the inevitable conclusion is that the prosecution has failed to establish that the appellant had the knowledge that articles seized from his possession are stolen goods. This essential element was not established against the appellant to bring home the charge under Section 411IPC against him.

**24.** That apart, the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens rea is clearly not established for the charge under Section 411IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, “you speak an infinite deal of nothing.” [ William Shakespeare, Merchant of Venice, Act 1 Scene 1.]

....

**26.** In these circumstances where it is not established that the appellant dishonestly received stolen property with the knowledge and belief that the goods found in his possession were stolen, the conviction of the appellant under Section 411IPC, in our view, cannot be sustained. Therefore, applying the test in Trimbak, it must be held that the appellant was erroneously convicted. Therefore, we order the acquittal of the appellant. The appeal stands allowed with this order.”

10. The Hon'ble Supreme Court, in the case of **MANOJ KUMAR SONI vs. STATE OF MADHYA PRADESH**<sup>2</sup>, has made the following observations: -

**“Conviction of Manoj under Section 411IPC**

**33.** *Manoj has been convicted under Section 411IPC which is reproduced below:*

**“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.”

**34.** *The trial court convicted Manoj based on a presumption under Section 114(a) of the Evidence Act, asserting that his possession of stolen articles shortly after the theft, with knowledge of its stolen nature, was adequate enough to hold him guilty under Section 411IPC. As a result, he was held liable for the offence under the said provision. Illustration (a) of Section 114 of the Evidence Act has been noted above but the entire provision reads as follows:*

**“114. Court may presume existence of certain facts.**—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

*Illustrations*

*The Court may presume—*

*(a) That a man who is in the 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.”*

**36.** *A presumption of fact under Section 114(a) of the Evidence Act must be drawn considering other evidence on record and without corroboration from other cogent evidence, it must not be drawn in*

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<sup>2</sup>(2024) 17 SCC 401

*isolation. The present case serves as a perfect example of why such a presumption should have been avoided by the trial court. Manoj's conviction, solely relying on the disclosure statements made by himself and the other co-accused, does not suffice to warrant a presumption under Section 411IPC. It would not be unreasonable to presume that a goldsmith, who has to deal in ornaments and jewelleries on a day-to-day basis, would obviously be in possession of a significant quantity of ornaments at his shop. Given the circumstances, such a presumption drawn under Section 114(a) stands vitiated.*

**37.** *At this juncture, even if we assume the veracity of the claim that the items sold to Manoj were indeed stolen articles, it would not be sufficient to attract Section 411IPC; what was further necessary to be proved is continued retention of such articles with a dishonest intent and knowledge or belief that the items were stolen. No evidence worthy of consideration was adduced by the prosecution to prove that Manoj had retained the articles either with dishonest intent and with knowledge or belief of the same being stolen property.*

...

**45.** *For all the foregoing reasons, Manoj and Kallu are acquitted and set free. Consequently, conviction of Manoj and Kallu as recorded by the trial court and the sentence imposed upon them, since affirmed by the High Court, stand set aside. Manoj and Kallu, reportedly, have been enlarged on bail pending decision on their respective appeals; hence, they shall stand discharged of their bail bonds.”*

11. The Hon'ble Supreme Court, in the case of **SD. SHABUDDIN vs. STATE OF TELANGANA**<sup>3</sup>, has made the following observations: -

**“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*

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<sup>3</sup>2025 SCC OnLine SC 1734

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.

....

**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-inlaw'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 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.

**14.2.** 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.

**15.2.** This Court in the case of *Shiv Kumar v. State of Madhya Pradesh*, 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)**

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**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 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.*

.....

**15.5 ....** *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.”*

12. At the outset it becomes imperative to emphasize that a conviction under Section 411 of the Indian Penal Code is not to be sustained on mere recovery simpliciter. The prosecution must, with a degree of certainty that meets the threshold of criminal jurisprudence, establish (i) the property in question is stolen property; (ii) the accused has been in conscious possession thereof and (iii) he knows or has reason to believe the same to be stolen.
13. Scrutinizing the evidence on record, this Court finds that the prosecution suffers from material infirmities which erode the very substratum of the charge.

14. The edifice of the prosecution case rests substantially on the alleged recovery of the D.B.B.L. Gun from the appellant. However PW-1, the Seizing Officer admitted in cross-examination that no independent witness from amongst the cultivators present at this spot was associated with the seizure. The omission is not a mere irregularity but strikes at the credibility of the recovery itself. The seizure list (Exhibit-1) conspicuously does not bear the signatures of independent witnesses thereby rendering the recovery doubtful and susceptible to embellishment.
15. Further, the absence of contemporaneous documentation in the General Diary despite PW-1's categorical assertion that such facts are ordinarily recorded introduces a disquieting gap in the prosecution narrative. The subsequent preparation of documents at the Police Station rather than at the place of occurrence dilutes the evidentiary sanctity of the seizure.
16. The prosecution has failed to establish an unbroken chain linking the seized weapon to the alleged stolen property. While PW-5 claimed that his licenced gun bearing a specific number was stolen. The manner in which the recovered weapon was connected to that very gun remained tenuous. The alleged identification was based on subsequent information rather than contemporaneous verification.
17. Moreover PW-5 himself admitted that he neither furnished any written intimation to the police regarding the theft nor produced any documentary proof contemporaneously. His conduct viewed in totality, did not inspire the level of confidence required to conclusively establish that the recovered fire arm was indeed the stolen property.

18. Even assuming *arguendo* that the recovery was accepted, the prosecution had singularly failed to adduce any evidence to establish that the appellant had knowledge or reason to believe that the gun was stolen property. This indispensable ingredient of Section 411 of the Indian Penal Code cannot be presumed merely from possession.
19. There is no evidence of prior conduct, suspicious circumstances or incriminating behaviour attributable to the appellant that could rise to such an inference. The law is well-settled that *mens rea*, howsoever inferential, must rest on cogent material and not on conjecture.
20. The testimony of PW-4 and PW-5 the alleged victims of dacoity does not advance the prosecution case in any trustworthy manner. Both witnesses failed to identify any of the assailants either at the time of occurrence or in the Test Identification Parade. This failure assumes significance as it severs any possible linkage between the appellant and the original offence of theft or dacoity. The prosecution's attempt to criminalise solely on recovery in the absence of credible corroboration is precarious and prejudicious.
21. The investigation is marked by notable lapses namely non-examination of material witnesses, absence of requisition slips and failure to adhere to procedural safeguards. Such deficiencies are not to be likely brushed aside for they cumulatively cast a reasonable doubt on the prosecution case.
22. In the conspectus of the evidence, this Court is constrained to hold that the prosecution has failed to establish, beyond reasonable doubt, the essential ingredients of Section 411 of the Indian Penal Code. The recovery is

shrouded in doubt, the identity of the property is not conclusively proved and the element of knowledge remains wholly unsubstantiated.

23. Criminal law does not countenance conviction on suspicion, however grave.

The benefit of doubt which is not concession but as a right must enure to the appellant.

24. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 285 of 1992 is allowed.

25. Accordingly, the instant criminal appeal being CRA 285 of 1992 is disposed of.

26. There is no order as to costs.

27. I record my appreciation for the able assistance rendered by the Learned Advocate, Mr. Smartajit Sarkar as *Amicus Curiae* appearing for the appellants, in disposing of this appeal.

28. Trial court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

29. 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.)**