SUPREME COURT OF INDIA

Pramod Bhanudas Soundankar

Vs.

State of Maharashtra

Crl.A.No.1960 of 2012

(B.S.Chauhan and Jagdish Singh Khehar JJ.)

30.11.2012

ORDER

1. Leave granted.

2. Six persons wearing black clothes, entered the house of Rameshchandra Sawarmal Bagdiaya, situated at Akola Road, Hingoli, on the night intervening 17th and 18th July,.2009, at about 1 am, after breaking open the main gate. At the time of the break in, Rameshchandra Sawarmal Bagdiaya and his wife Kirandevi were at the residence. Having threatened Rameshchandra Sawarmal Bagdiaya and his wife, the assailants demanded keys to an "almirah" (storage cabinet) in the premises. Rameshchandra Sawarmal Bagdiaya informed them, that the keys were in the drawer of a table in their room. Having recovered the keys from the drawer, the intruders opened the "almirah". From the "almirah", they took away gold and silver ornaments besides cash. In addition, they took three gold finger-rings and a gold chain from the person of Rameshchandra Sawarmal Bagdiaya, and a gold "mangalsutra" (wedding chain) and gold bangles from the person of Kirandevi.

3. From the statement made by Rameshchandra Sawarmal Bagdiaya, it came out, that the assailants collectively took away three gold finger-rings, one "mangalsutra", one gold locket, two gold bangles, two ear-tops, one gold bar weighing three tolas (30 grams), one ladies finger-ring, two "patlyas" (thick bangles), a number of silver chips weighing 1 kilogram each, 150 silver coins and Rs.1,93,000/- cash.

4. In the process of solving the crime, Vishwanath Gavali was the first to be arrested by the investigating officer. Vishwanath Gavali, disclosed the names of

some others, involved in the incident. Thereafter, in November, 2009, three accused Hanuman Kale, Ganesh Kale and Kathalu alias Sigret were arrested. In January of the following year, Khetrya was also apprehended. On information furnished by him, Roshan alias Dhonya and Kiran, were arrested in February, 2010. These arrests led to the disclosure of the identity of the owner of the car used in the crime. Thereupon Shaikh Javed, the car owner was arrested. Shivaji Kale was the last to be arrested from amongst the intruders.

5. Even though Shivaji Kale (accused no. 8) had disclosed the name of Sanjay alias Kaliya as one of their associates in the crime, he could not be arrested, as he was absconding. He was, however, arrested after the submission of the chargesheet, whereupon a supplementary chargesheet was filed implicating Sanjay alias Kaliya.

6. The aforesaid ten accused were allegedly responsible for the dacoity. One of them, Shivaji Kale (accused no. 8) disclosed, during the course of investigation, that he had stolen four silver chips (weighing 1 kilogram each) from the residence of Rameshchandra Sawarmal Bagdiaya, and had sold the same to Pramod Bhanudas Soundankar, a jeweller. The four silver chips stolen by the accused Shivaji Kale were recovered from the shop of Pramod Bhanudas Soundankar-appellant. Pramod Bhanudas Soundankar-appellant was proceeded against (as accused no. 11) for dishonestly having received stolen property (under Sections 411 and 412 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC"), knowing (or having reason to believe) that it was stolen..

7. The instant appeal has been filed by the aforesaid Pramod Bhanudas Soundankar-appellant. During the course of hearing, the solitary contention advanced at the hands of the learned counsel for the appellant was, that the Trial Court, as also the High Court, had seriously erred in holding the appellant Pramod Bhanudas Soundankar guilty, under Section 412 IPC. It was the contention of the learned counsel for the appellant, that the evidence produced by the prosecution during the trial of the case, could at best, result in the conviction of the appellant under Section 411 IPC. In the aforesaid view of the matter, the sole question which arises for our consideration, in the present appeal is confined to the issue, whether the Courts below were justified in holding the appellant Pramod Bhanudas Soundankar guilty of having committed the offence punishable under Section 412 IPC and not Section 411 thereof.

8. The Trial Court, while dealing with the case of the appellant Pramod Bhanudas Soundankar, recorded the following observations:-

> "92. So far as evidence against accused no. 11 Pramod Soundankar is concerned, it is not the case of the prosecution that he was involved in the dacoity. However, muddemal articles are seized as per the memorandum statement of accused no. 8 Shivaji Kale from the shop of accused no. 11. On reaching to shop, he has handed over those articles to the police. Accordingly, Panchnama is made. There is nothing brought on record in the evidence of PW-20 P.I. Rauf, an Investigating Officer that he is having any interest as against this accused to falsely involved him in this crime. Therefore, merely because the panch witness on memorandum and seizure panchnamas are not supporting, the evidence of PW 20 P.I. Rauf, I.O. On memorandum and seizure panchanama and PW-4 Rameshchandra Bagdiaya, complainant as to identity of the muddemal property I hold that the evidence brought on record is sufficient to hold that the property, which is seized from accused no. 11 Pramod Bhanudas Soundankar, is the property transferred from dacoity and involvement of accused no. 8 Shivaji Kale in the offence of dacoity and the nature of property itself is such that the favour silver chips having weight of 1 kg each from which it can be inferred that this accused having knowledge about the same has purchased it and retained it. Therefore, he is also liable for punishment under Sections 412 and 411 of the Indian Penal Code."

9. During the course of the appellate proceedings before the High Court, the evidence with reference to the appellant Pramod Bhanudas Soundankar was discussed as under:-

> "29. As regards the accused no. 11, it is to be noted that he is jeweller by occupation. Accused no. 8 Shivaji Kale was arrested on 2.2.2010 from Wapi, Gujarat. According to the prosecution, the said accused made a statement that he has sold four silver chips to the present appellant/accused. Those silver chips, according to the PW-20 P.I. Shaikh Abdul Rauf, were recovered from the present appellant. Panch witness to the memorandum of statement as well as the recovery panchnama, namely, PW-2 Nagorao and PW-3 Gajanan, both of them have turned hostile, though employees of the complainant.
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> 30. The learned Sessions Judge has believed the straightforward testimony of the Investigating Officer i.e. Police Inspector, who has given the chronological account of the events.

31. It was alternatively submitted on behalf of the accused, that even if it is held that the present accused have received the property from accused no. 8 Shivaji, yet it cannot be said that he has knowledge that the property was a stolen property. It may, however, be noted that this appellant-accused is the jeweler by occupation and he has received four silver chips from an ordinary person. In the circumstances, this very fact shows that the present appellant had knowledge that the property must not have been a normal property. In the circumstances, the finding of the learned Sessions Judge in this regard also cannot be faulted with."

10. It was the vehement contention of the learned counsel for the appellant, that accused nos. 1 to 10 were all agricultural labourers. Keeping that in mind, when four silver chips were presented for sale by Shivaji Kale to the appellant Pramod Bhanudas Soundankar, it was inevitable for him to appreciate, that the said silver chips weighing 1 kilogram each could only have been stolen property. Such quantity of silver produced by an agricultural labour for sale was per se sufficient reason to believe, that the same did not belong to the presenter. This by itself according to the learned counsel for the appellant though sufficient for the offence under Section 411, is not enough for establishing guilt under Section 412 IPC. It was submitted that from the evidence produced by the prosecution, it was not possible to infer, that Pramod Bhanudas Soundarkar (the appellant herein), had known that Shivaji Kala had acquired the silver chips from a dacoity, or that he had knowledge that Shivaji Kale belonged to a gang of dacoits. In the absence of such proof, it was submitted, that the offence under Section 412 IPC could not be deemed to have been made out..

11. In order to appreciate the submission advanced at the hands of the learned counsel for the appellant, it is necessary to extract hereunder, Sections 411 and 412 IPC. The aforesaid provisions are accordingly set out 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.

412. Dishonestly receiving property stolen in the commission of a dacoity -

> Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

12. Having given our thoughtful consideration to the facts and circumstances in the present case, we are of the view, that the fundamental ingredient, that the appellant had received the goods knowing (or having reason to believe) them to be stolen, stood fully established. We say so because, it is not a matter of dispute that Shivaji Kale (accused no. 8) was an agricultural labourer. For an agricultural labourer, to present four silver chips, weighing 1 kilogram each, at the shop of a jeweller, would clearly result in a grave suspicion that the same did not belong to him. For a labourer, it would be unthinkable to own 4 kilograms of silver. In the background of the aforesaid factual position, that when the appellant, a jeweller, received 4 kilograms of silver from an agricultural labourer, it was obvious to him (the appellant), that the same did not belong to Shivaji Kale (accused no.8). We are satisfied, that the appellant had sufficient cause to entertain a reasonable belief, that the same was stolen property. There can therefore be no doubt, that the Trial Court, as also the High Court, were fully justified in holding that the appellant Pramod Bhanudas Soundankar had purchased four silver chips produced by Shivaji Kale (accused no. 8) believing, that the same were stolen articles. Having so concluded, it is clear, that the most fundamental and foundational ingredient of Sections 411 and 412 IPC stood established against the appellant.

13. According to the learned counsel for the appellant, for the satisfaction of the ingredients expressed in Section 412 IPC, the accused could be held to be guilty only, if it could be further established, that the stolen property received by the appellant, was known to him, as having been procured through, the commission of a dacoity. According to learned counsel, consideration at the hands of the Trial Court, as also, the High Court, with reference to the appellant herein (which have been extracted in paragraphs 7 and 8, respectively) does not establish, the aforesaid ingredient of Section 412 IPC. As such it was submitted, that the prosecution had remained unsuccessful in establishing all the ingredients of the crime under Section 412 IPC.

14. The ingredient of Section 412 IPC, referred to in the foregoing paragraph, has an alternative. Even if the alternative can be established, the accused would be guilty of having committed the crime expressed in Section 412 IPC. It is apparent from a plain reading of Section 412 IPC, that a person receiving stolen goods, would be guilty of the offence under Section 412 IPC, if it can further be shown, that the recipient of the goods knew (or had reason to believe), that the person offering the goods, belonged to a gang of dacoits. It was the vehement contention of the learned counsel for the appellant, that the instant involvement of the appellant Pramod Bhanudas Soundankar is his first involvement in such a case, inasmuch as, he has never faced a criminal trial earlier, and has never been convicted for any criminal involvement prior to his instant conviction. According to learned counsel, the prosecution having not shown his previous relationship with any of the other 10 accused, prior to the incident under reference, there was no question of any presumption, that the appellant herein had known (or had reason to believe), that the offerer of the silver chips belonged to a gang of dacoits.

15. Having perused the conclusions drawn by the Trial Court as also the High Court with reference to the appellant Pramod Bhanudas Soundankar, it is not possible for us to conclude, that either of the Courts below had recorded any finding in respect of the other essential ingredients of the offence under Section 412 IPC. The evidence produced by the prosecution, that the appellant Pramod Bhanudas Soundankar had known (or had reason to believe), that four silver chips (weighing 1 kiolgram each) was stolen property, would be sufficient only to establish his guilt under Section 411 IPC. A perusal of the impugned judgments, does not reveal a finding recorded by either the Trial Court or the High Court, that the appellant was aware, that the silver chips presented to him by Shivaji Kale (accused n o.8) were procured by the commission of a dacoity. Even the alternative conclusion, namely, that the appellant knew (or had reason to believe) that Shivaji Kale (accused no.8) belonged to a gang of dacoits, was not recorded by the courts below. Even during the course of hearing before us, learned counsel for the State of Maharashtra, could not draw our attention to any evidence on the basis whereof, either of the aforesaid alternative ingredients of Section 412 IPC could be demonstrated. It is therefore clear, that the guilt of the appellant under Section 412 IPC cannot be stated to have been substantiated in the facts and circumstances of the present case.

16. For the reasons recorded hereinabove, we are satisfied, that the Trial Court, as also the High Court, were not justified in convicting the appellant under Section 412 IPC. We therefore, set aside the conviction of the appellant under Section 412 IPC.

17. The sentence imposed on the appellant herein, was based on the fact that he had been found guilty of offence under Section 412 IPC. Our determination, however exculpates the appellant from having committed the offence under Section 412 IPC. We, however, maintain the conviction of the appellant, under Section 411 IPC. The sentence of imprisonment, contemplated for the offence under Section 411 IPC, can extend upto three years. In the facts and circumstances of the case, we are satisfied that the ends of justice would be met, if the sentence of punishment inflicted on the appellant is reduced to one year rigorous imprisonment and fine of Rs.1000/-. In case of default, in payment of fine he shall suffer simple imprisonment for one month. Ordered accordingly.

Partly allowed, as above.