[2023] 11 S.C.R. 246 : 2023 INSC 705

CASE DETAILS

MANOJ KUMAR SONI

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No.1030 of 2023)

AUGUST 11, 2023

[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]

HEADNOTES

Issue for consideration : Conviction of both the appellants-accused respectively u/s.411 and s.120-B, IPC was based largely upon disclosure statements made by them and the co-accused, unaccompanied by supporting evidence, if justified

Evidence – Disclosure statements relied upon, without any supporting evidence, to convict u/s.411 and s.120-B, IPC – If adequate:

Held : No – Although disclosure statements hold significance as a contributing factor in unriddling a case, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt – Sole connecting evidence against both the appellants-accused ('M' and 'K') was the recovery based on their disclosure statements, along with those of the other co-accused but this evidence is not sufficient to qualify as "fact … discovered" within the meaning of s.27, Evidence Act, 1872 and thus, untrustworthy – Appellants' conviction respectively for offence punishable u/s.411 and s.120-B, IPC set aside, acquitted. [Paras 21, 30 and 44]

Evidence Act, 1872 – s.27 – Disclosure statements u/s.27 made by the accused – Evidentiary value:

Held : The provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects – Further, as regards the disclosure statements of co-accused, Courts have hesitated to place reliance solely on them and used them merely to support the conviction. [Paras 22 and 23]

Evidence – Property seizure memos – Reliability:

Held : Could have been a reliable piece of evidence but the seizure witnesses turned hostile – No scope to rely on a part of their depositions – Thus, the seizure lost credibility.[Para 26]

Code of Criminal Procedure, 1973 – Examination u/s.313 – Duty of Trial Courts:

Held : Trial courts have been cautioned against recording statements in a casual and cursory manner – Mere quantity of questions posed to the accused is not important but rather the content and manner in which they are framed – In the present case, irrelevant and abstract questions about the main incident of robbery were asked to the appellant-accused 'M', even though his alleged involvement occurred much later when the robbed items were allegedly sold to him by the co-accused – Prosecution's entire case is premised on the disclosure statements made by the co-accused, but 'M' was never given the opportunity to explain the circumstances. [Paras 31 and 32]

Evidence Act, 1872 – s.114(a) – Presumption – Appellants were not present at the complainant's house during the incident and were apprehended later when it was discovered that 'M' had purchased the stolen articles and 'K' was involved in hatching the conspiracy:

Held : A presumption of fact u/s.114(a) must be drawn considering other evidence on record and without corroboration from other cogent evidence, it must not be drawn in isolation – Trial Court convicted one of the appellant-accused ('M') based on a presumption u/s.114(a) asserting that his possession of stolen articles shortly after the theft, with knowledge of its stolen nature, was adequate enough to hold him guilty u/s.411, IPC – It erred in drawing such a presumption of fact without considering other factors. [Paras 34-36]

Penal Code, 1860 – s.120-B – Among all five accused persons, only one of the accused-appellant ('K') was convicted for criminal conspiracy u/s.120-B – Legality:

Held : One person alone can never be held guilty of criminal conspiracy because one cannot conspire with oneself – Conviction of 'K' u/s.120-B vitiated. [Paras 38 and 41]

Words and phrases – "Conspiracy" – Meaning – Discussed – Penal Code, 1860 – s.120-A. [Para 38]

LIST OF CITATIONS AND OTHER REFERENCES

Haricharan Kurmi vs. State of Bihar AIR 1964 SC 1184 : [1964] SCR 623 – followed.

Topandas vs. State of Bombay (1955) 2 SCR 881; *Shiv Kumar vs. State of Madhya Pradesh* (2022) 9 SCC 676; *Sanjeet Kumar Singh vs. State of Chhattisgarh* 2022 SCC OnLine SC 1117; *A Devendran vs. State of Tamil Nadu* (1997) 11 SCC 720 : [1997] 4 Suppl. SCR 591 – relied on.

Suresh Chandra Bahri vs. State of Bihar (1995) Supp (1) SCC 80 : [1994] 1 Suppl. SCR 483; *Ram Sharan Chaturvedi vs. State of Madhya Pradesh* (2022) SCC OnLine SC 1080 – referred to.

Pulukuri Kotayya and others vs. King-Emperor 1946 SCC OnLine PC 47; AIR 1947 PC 67; *Emperor vs. Lalit Mohan Chuckerburty* (1911) ILR 38 Cal 559; *The King vs. Plummer* (1902) 2 KB 339; *I.G. Singleton v. King-Emperor* (1924-25) 29 CWN 260 : AIR 1925 Cal 501 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1030 of 2023.

From the Judgment and Order dated 12.10.2022 of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in CRLA No.10549 of 2019.

With

Criminal Appeal No.1458 of 2023.

Appearances:

Harmeet Singh Ruprah, Amankant Mishra, Advs. for the Appellant.

Sunny Choudhary, Adv. for the Respondent.

JUDGMENT/ORDER OF THE SUPREME COURT

JUDGMENT

DIPANKAR DATTA, J.

1. These criminal appeals, by special leave, assail the common judgment and order dated 12th October, 2022 of the High Court of Madhya Pradesh, Bench at Jabalpur ("High Court", hereafter) whereby Criminal Appeal No. 10474 of 2019 and Criminal Appeal No. 10549 of 2019 [appeals under Section 374(2) of the Criminal Procedure Code ("Cr. PC", hereafter)] carried by Manoj Kumar Soni ("Manoj", hereafter) and Kallu @ Habib ("Kallu", hereafter), respectively, were dismissed. While Manoj assailed his conviction for the offence punishable under Section 411 of the Indian Penal Code, 1860 ("IPC", hereafter) and sentence of rigorous imprisonment of three years with a fine of Rs. 5,000.00 and a default sentence of three months, Kallu assailed his conviction for the offence punishable under Section 120-B, IPC and sentence of rigorous imprisonment of ten years with a fine of Rs. 5,000.00 and a default sentence of three months.

2. In all, five accused persons were convicted and sentenced for different offences punishable under the IPC *vide* the common judgment of the Additional Sessions Judge ("Trial Court", hereafter) dated 28th November, 2019. The aforesaid judgment having been confirmed by the High Court, all the accused persons preferred Special Leave Petitions ("SLPs", hereafter) before this Court challenging the common judgment dated 12th October, 2022. The SLPs of the three accused, namely, Suleman, Arif and Jaihind, were dismissed and the judgment and order of the High Court affirming their conviction and sentence left undisturbed. However, notice was issued on the SLPs preferred by the remaining two accused, Manoj and Kallu, on 06th April, 2023 and 11th April, 2023, respectively.

3. These two appeals were heard on different dates. However, a common judgment being under assail, this Court proposes to dispose of both these appeals *vide* this common judgment.

4. The case of the prosecution, in a nutshell, is that a complaint was registered by PW-18 ("complainant", hereafter) to the effect that on 14th April, 2010, at around 1:30 pm, while the complainant was in her house, four persons rang the doorbell. When her servant, PW-8, answered the door, all four persons armed with a pistol forcefully entered the house. They tied up

the hands and legs of the complainant and her servant, threatened to kill them, and proceeded to rob the complainant of silver and gold jewellery, cash, and other valuables by taking the keys to the locker. The accused persons remained at the complainant's residence till 2:30 pm before fleeing. Based on the complaint, an F.I.R. was registered at around 4:30 pm against four unknown persons under Section 394, IPC and all of them were subsequently arrested.

5. Investigation of the F.I.R. was carried out by the Investigating Officer ("I.O.", hereafter). The specific allegations against Manoj are that the stolen jewellery ("articles", hereafter) had allegedly been sold to him and, despite being aware that the co-accused had sold him stolen goods, he still chose to receive and possess the same dishonestly. Consequently, he was arrested on 9th May, 2010. Thereafter, these articles were recovered by the I.O. on two different days — 9th May, 2010 and 21st May, 2010. While the Seizure Memo dated 9th May, 2010 bears the signature of seizure witnesses PW-16 and PW-5, the Seizure Memo dated 21st May, 2010 bears the signature of seizure witnesses PW-11 and PW-6. The process of identification was conducted by PW-19, the Tehsildar, on 15th July, 2010. The specific allegations against Kallu, former driver of the complainant, pertain to his involvement in a conspiracy with other co-accused persons.The allegation against him is that he shared information with them, disclosing that the complainant had a substantial amount of money and valuable jewellery in her residence, coupled with the knowledge that she lived alone; this, allegedly led to the subsequent planning and execution of the robbery at the complainant's house.

6. Upon completion of investigation, a chargesheet was filed before the concerned court against the accused persons including Manoj and Kallu. The offences with which all the accused were charged are shown as under:

Jaihind	Sections 450, 394, 397, IPC and Section 25(1-B), Arms Act, 1959 ("Arms Act", hereafter)
Arif	Sections 450, 394, 397, IPC and Section 25(1-B), Arms Act
Suleman	Sections 450, 394, 397, IPC
Kallu	Section 120-B, IPC
Manoj	Section 411, IPC

Upon committal, charges were framed and the accused including Manoj and Kallu pleaded not guilty and claimed to be tried.

7. Based on the complainant's testimony, it is established that among the four accused present at the scene during the incident, Suleman, Arif, and Jaihind were duly identified by the complainant, but the fourth accused remained unidentified. During the investigation, it was revealed that the fourth accused was a minor and the case was subsequently referred to the juvenile court for further proceedings. Insofar as Kallu and Manoj are concerned, they were not present at the complainant's house during the incident and were apprehended at a later stage of the investigation when it was discovered that Manoj had purchased the stolen articles, and Kallu was involved in hatching the conspiracy.

8. After appreciating the oral and documentary evidence on record, the Trial Court convicted and sentenced all the five accused persons as follows:

Jaihind and Arif	Sections 450, 397, IPC and Section 25(1-B), Arms Act	R.I. for 5 years with a fine of Rs 1,000 R.I. for 10 years with a fine of Rs 5,000 R.I. for 1 year with a fine of Rs 1,000 Default: 1 month, 3 months, and 1 month respectively
Suleman	Sections 450, 397, IPC.	R.I. for 5 years with a fine of Rs 1,000 R.I. for 10 years with a fine of Rs 5,000 Default: 1 month and 3 months, respectively
Kallu	Section 120-B, IPC	R.I. for 10 years with a fine of Rs 5,000 Default: 3 months
Manoj	Section 411, IPC	R.I. for 3 years with a fine of Rs 5,000 Default: 3 months

9. In convicting Manoj, the Trial Court primarily relied on two pieces of evidence: the Seizure Memos, which were prepared upon recovery of the stolen articles from Manoj's possession, and the Identification Memo, in which the complainant identified the articles stolen. The Trial Court drew presumption under Section 114 of the Indian Evidence Act, 1872 ("Evidence Act", hereafter), to the extent it provides 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". According to the Trial Court, the crucial corroborative evidence in Manoj's case was the fact that the articles found in his possession belonged to the complainant and were accurately identified by her. Additionally, Manoj failed to provide any explanation regarding how

the stolen articles came into his possession. These collective factors resulted in his conviction under Section 411, IPC.

10. Insofar as Kallu is concerned, the Trial Court primarily based his conviction for criminal conspiracy on two key factors: first, the information provided by co-accused Jaihind during interrogation in his memorandum statement dated 12th May, 2010, stating that he had given Rs.3,000.00 to Kallu from the stolen money and had kept one country-made pistol along with three cartridges at his (Kallu) house/tapra; and secondly, during interrogation, Kallu himself in his memorandum statement admitted to keeping Rs.3,000.00 in his room's cupboard, which was subsequently seized upon his disclosure. Having held that Kallu had conspired with the other co-accused, the Trial Court convicted him of criminal conspiracy punishable under Section 120-B, IPC.

11. The aforesaid judgment having been challenged by Manoj and Kallu, a learned Single Judge of the High Court was of the view that the findings of the Trial Court did not warrant any interference and that the appeals were devoid of any merit; hence, the same were dismissed. In confirming Manoj's conviction and sentence, the High Court relied on the finding that most of the stolen articles were recovered from his possession and some of them were melted by him. Considering that the articles were duly identified by the complainant, the High Court was of the view that Manoj, knowing that the articles were stolen property, dishonestly retained them. While affirming the conviction and sentence of Kallu, the learned Judge referred to the fact that the complainant was known to Kallu and he was working as her driver and that Rs.3,000.00 was recovered from his house based on the disclosure statement.

SUBMISSIONS OF THE PARTIES

12. Learned counsel appearing on behalf of Manoj submitted that the courts below erred in recording the conviction under Section 411, IPC. The main submissions advanced by him to have the conviction reversed are as follows:

a) All four independent witnesses (PW-5, PW-6, PW-11, and PW-16) who were shown to be present during the seizure/ recovery of the articles from Manoj's house turned hostile and failed to support the prosecution's case of seizure.

Surprisingly, the courts below completely ignored this aspect of the matter.

b) There were serious procedural lapses in conducting the identification process in respect of the articles. The prescribed procedure in respect of seizure of a property was not followed, and a procedural flaw is established from the testimonies of the complainant and PW 19. The recovery of the ornaments from the possession of Manoj does not establish them to be that of the complainant. Therefore, the presumption under Section 114, Evidence Act was erroneously drawn as the very identification process suffers from serious lapses.

c) The Trial Court recorded the statement of Manoj under Section 313, Cr. PC in a very casual manner, as if it were completing a formality in law. It miserably failed to put any adverse circumstance appearing in the evidence against Manoj for eliciting his explanation. This is one other procedural lapse, and a grave one, which has rendered the trial vitiated qua Manoj.

d) Manoj has been framed in the case due to the animosity between him and the police as the police used to "often harass [Manoj] for going here and there and getting the jewellery weighed, identification etc.". This statement of Manoj, given at the end of his examination under Section 313, Cr. PC was brushed aside by the courts below without assigning any reason, far less cogent reason.

e) Significant contradictions exist between the testimonies of police witnesses and seizure witnesses. The Trial Court predominantly relied on the statements of the police witnesses, overlooking the presence of additional testimonies of independent seizure witnesses available in the records, who subsequently turned hostile.

13. Finally, it was submitted that there was absolutely no material to convict Manoj under Section 411, IPC. Hence, the conviction and sentence of Manoj ought to be set aside and consequently, the appeal be allowed.

14. Learned counsel appearing for the respondent/State submitted that both the courts below delved deep into the materials on record and, upon meticulous consideration of evidence, did not find any material contradiction in the testimonies of the prosecution witnesses. The procedural flaws pointed out by his adversary did not result in any failure of justice and, therefore, there is no reason to interfere with the judgment and order passed by the Trial Court, which has since been affirmed by the High Court. Supporting the conviction and sentence of Manoj, the learned counsel urged this Court to dismiss the appeal.

15. Learned counsel appearing on behalf of Kallu challenged the correctness of the impugned judgment and advanced the following submissions:

a) No evidence was presented to substantiate the alleged conspiracy on the part of Kallu to commit any crime as alleged by the complainant. In other words, the necessary elements of the offence under Section 120-A, IPC, punishable under Section 120-B, IPC were not established.

b) The Trial Court convicted the other accused persons primarily relying on the statements and information provided by the complainant. However, the complainant did not make any statement or allegation against Kallu. His conviction was based solely on two factual aspects: first, that Rs.3,000.00 was recovered from him during the investigation based on information provided by the accused Jaihind and, secondly, that Kallu used to be the complainant's driver one year ago. Apart from these circumstances, the prosecution failed to present any additional evidence to substantiate the charge under Section 120-B, IPC; the conviction and sentence, therefore, cannot sustain merely on these grounds.

c) ***Suresh Chandra Bahri vs. State of Bihar***[1] was placed to support the contention that the essential elements of an agreement between Kallu and the other co-accused persons to commit the offence are lacking, which is a necessary component to bring home the charge of criminal conspiracy. Additionally, ***Ram Sharan Chaturvedi vs. State of Madhya Pradesh***[2] was relied upon to emphasize the requirement for some kind of physical manifestation of agreement

1 (1995) Supp (1) SCC 80
2 (2022) SCC OnLine SC 1080

in order to establish the offence of criminal conspiracy. ***Topandas vs. State of Bombay***[3] was placed for supporting the contention that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. It was pointed out that in the present case, Kallu is the only person convicted under Section 120-B, IPC, while no other accused has been convicted under the same provision, inviting thereby serious doubts about the validity of Kallu's conviction.

d) The courts below have overlooked significant material contradictions, improvements, and omissions in the statements of prosecution witnesses.

16. It was, accordingly, prayed by the learned counsel that the appeal be allowed, and the conviction recorded and sentence imposed on Kallu be set aside.

17. Learned counsel appearing on behalf of the respondent/State supported the impugned judgment and order of the High Court. It was submitted by him that the Trial Court has carefully considered all the materials placed on record and arrived at a just conclusion. No case for interference having been set up by appellant Kallu, learned counsel prayed for dismissal of the appeal.

ANALYSIS AND FINDINGS

18. We have considered the submissions advanced by learned counsel for the parties and have also perused the materials on record.

19. There can be no two opinions that the quality of evidence led by the prosecution in the present case to nail Manoj and Kallu was wholly untrustworthy for convicting them and the Trial Court as well as the High Court erred in not acquitting them.

Disclosure Statements

20. The facts of the case reveal that all the accused persons made disclosure statements to the I.O. whereupon recovery of money, jewellery, etc. was effected. Although it is quite unusual that all five accused, after being arrested, would lead the I.O. to the places for effecting recovery of

3 (1955) 2 SCR 881

the stolen articles, we do not propose to disbelieve the prosecution plea only on this score. Manoj's involvement was primarily based on the disclosure statements made by co-accused Suleman and Jaihind where they admitted to selling the stolen articles to him and a similar statement made by Manoj himself which led to recovery under Section 27, Evidence Act. Similarly, both the courts below, in convicting Kallu, largely relied upon the disclosure statement made by Kallu himself as well as co-accused Jaihind, who confessed to giving Rs.3,000.00 to Kallu from the stolen money and storing a country-made pistol along with three cartridges at his house/tapra.

21. A doubt looms: can disclosure statements *per se*, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt.

22. The law on the evidentiary value of disclosure statements under Section 27, Evidence Act made by the accused himself seems to be well-established. The decision of the Privy Council in ***Pulukuri Kotayya and others vs. King-Emperor***[4] holds the field even today wherein it was held that the provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects. The Privy Council observed:

> The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into s. 27 something which is not there, and admitting in evidence a confession barred by s. 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

23. The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on

4 1946 SCC OnLine PC 47; AIR 1947 PC 67

disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in ***Emperor vs. Lalit Mohan Chuckerburty***[5], to "lend assurance to other evidence against a co-accused". In ***Haricharan Kurmi vs. State of Bihar***[6],this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:

> 13. …In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

24. In yet another case of discrediting a flawed conviction under Section 411, IPC, this Court, in ***Shiv Kumar vs. State of Madhya Pradesh***[7] overturned the conviction under Section 411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:

> 24. …, 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 411 IPC. 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.]

25. Coming to the case at hand, there is not a single iota of evidence except the disclosure statements of Manoj and the co-accused, which

5 (1911) ILR 38 Cal 559, page 588
6 AIR 1964 SC 1184
7 (2022) 9 SCC 676

supposedly led the I.O. to the recovery of the stolen articles from Manoj and Rs.3,000.00 from Kallu. At this stage, we must hold that admissibility and credibility are two distinct aspects and the latter is really a matter of evaluation of other available evidence. The statements of police witnesses would have been acceptable, had they supported the prosecution case, and if any other credible evidence were brought on record. While the recoveries made by the I.O. under Section 27, Evidence Act upon the disclosure statements by Manoj, Kallu and the other co-accused could be held to have led to discovery of facts and may be admissible, the same cannot be held to be credible in view of the other evidence available on record.

26. While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned hostile right from the word 'go'. The common version of all the seizure witnesses, i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.

27. This Court in ***Sanjeet Kumar Singh vs. State of Chhattisgarh***[8] held:

> 18. But if the Court has — (i) to completely disregard the lack of corroboration of the testimony of police witnesses by independent witnesses; and (ii) to turn a Nelson's eye to the independent witnesses turning hostile, then the story of the prosecution should be very convincing and the testimony of the official witnesses notably trustworthy. If independent witnesses come up with a story which creates a gaping hole in the prosecution theory, about the very search and seizure, then the case of the prosecution should collapse like a pack of cards. It is no doubt true that corroboration by independent witnesses is not always necessary. But once the prosecution comes up with a story that the search and seizure was conducted in the presence of independent witnesses and they also choose to examine them before Court, then the Court has to see whether the version of the independent witnesses who turned hostile is unbelievable and whether there is a possibility that they have become turncoats.

8 2022 SCC OnLine SC 1117

28. The testimony of the seizure witnesses, we are inclined to the view, is the only thread in the present case that could tie together the loose garland, and without it, the very seizure of stolen property stands falsified. We cannot overlook the significance of the circumstance that all four independent seizure witnesses (PWs 5, 6, 11, and 16), who were allegedly present during the seizure/recovery of the stolen articles from Manoj's house, having turned hostile and not support the prosecution case, the standalone evidence of the I.O. on seizure cannot be deemed either conclusive or convincing; the recoveries made by him under Section 27, Evidence Act must, therefore, be rejected.

29. The material inconsistency in Kallu's case is the contradiction in the depositions of the I.O. and the complainant. The I.O. deposed that he, upon the disclosure by co-accused Jaihind, successfully recovered a sum of Rs. 3,000.00 (comprised of three one-thousand-rupee notes), seized the same in the presence of witnesses, and prepared a seizure panchnama; however, when one looks at the complainant's version, it is wholly inconsistent. She stated in her deposition that the accused persons did not take away any one-thousand-rupee note from her house. It does not escape our attention that the conviction of Kallu entirely hinges on the alleged recovery of Rs. 3,000.00 and both the courts below heavily relied on this aspect to convict him of criminal conspiracy. However, it does not appear from a perusal of the Trial Court's judgment as to who exactly the seizure witnesses were in whose presence Rs. 3,000.00 was recovered although it does seem that none of the several prosecution witnesses, who were witnesses of arrest and seizure, had supported the prosecution case. Although there could be evidence aliunde to establish the guilt of the co-accused Jaihind, Arif and Suleman, there was absolutely no evidence worthy of consideration which could have been relied on to convict Manoj and Kallu.

30. It is clear as crystal that the sole connecting evidence against Manoj and Kallu was the recovery based on their disclosure statements, along with those of the other co-accused but this evidence, in our opinion, is not sufficient to qualify as "fact … discovered" within the meaning of Section 27. Having regard to such nature of evidence, we view the same as wholly untrustworthy.

Statements under Section 313, Cr.PC

31. Another glaring flaw in Manoj's case revolves around his examination under Section 313, Cr.PC. The manner in which the Trial Court

framed questions for answer by Manoj left a lot to be desired. We need not reiterate the exposition of law by this Court in multiple decisions on Section 313, Cr.PC, wherein trial courts have been cautioned against recording statements in a casual and cursory manner. What holds importance is not the mere quantity of questions posed to the accused but rather the content and manner in which they are framed.

32. Upon reading the questions put to Manoj under Section 313, Cr.PC, it becomes evident that the Trial Court treated this process as an empty formality. None of the material circumstances forming the basis of his conviction were put to him. Astonishingly, not even a single question regarding the stolen articles was posed to him. Instead, irrelevant and abstract questions about the main incident of robbery that took place on 14th April, 2010 were asked, even though his alleged involvement occurred much later when the robbed items were allegedly sold to him by the co-accused. The prosecution's entire case is premised on the disclosure statements made by the co-accused, but Manoj was never given the opportunity to explain the circumstances.

Conviction of Manoj under Section 411, IPC

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

> 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), 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 411, IPC. As a result, he was held liable for the offence under the said provision. Illustration (a) of Section 114, 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. The Court may presume— (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.
>
> ***"

35. The Trial Court erred in drawing such a presumption of fact without considering other factors. What could be those factors has been explained by this Court in A ***Devendran vs. State of Tamil Nadu***[9] in the following words:

> 20. … Whether a presumption under Section 114, Illustration (a) of the Evidence Act should be drawn in a given situation is a matter which depends on the evidence and the circumstances of the cases. The nature of the stolen articles, the nature of its identification by the owner, the place and the circumstances of its recovery, the intervening period between the date of occurrence and the date of recovery, the explanation of the persons concerned from whom the recovery is made are all factors which are to be taken into consideration in arriving at a decision.

36. A presumption of fact under Section 114(a), Evidence Act must be drawn considering other evidence on record and without corroboration from other cogent evidence, it must not be drawn in 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 411, IPC. 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 411, IPC; 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

9 (1997) 11 SCC 720

either with dishonest intent and with knowledge or belief of the same being stolen property.

Conviction of Kallu under Section 120-B, IPC

38. It is intriguing that among all five accused persons, only Kallu has been convicted for criminal conspiracy under Section 120-B, IPC. At this stage, we cannot help but wonder: can a single individual conspire with oneself? We cannot but disagree. It logically follows that one person alone can never be held guilty of criminal conspiracy because one cannot conspire with oneself. As per *Black's Law Dictionary (8th Edn), 'conspiracy' is an "agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and action or conduct that furthers the agreement".* The wordings of Section 120-A, IPC make it abundantly clear—the offence of criminal conspiracy is committed only when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. The position in English law too is well-settled. In ***The King vs. Plummer***[10], the King's Bench, speaking through Lord Justice Bruce, held:

> It logically follows from the nature of the offence of conspiracy that, where two or more persons are charged in the same indictment with conspiracy with one another, and the indictment contains no charge of their conspiring with other persons not named in the indictment, then, if all but one of the persons named in the indictment are acquitted, no valid judgment can be passed upon the one remaining person. (page 343)

39. In ***I.G. Singleton v. King-Emperor***[11], the Calcutta High Court further clarified the law related to criminal conspiracy:

> The rule of English law that is now well settled is that where two persons are indicted for conspiring together and they are tried together, both must be acquitted, or both convicted. (page 265)

40. The decision of this Court in ***Topandas*** (supra) affirmed the aforesaid position and held:

> 14. … on the charge as it was framed against the Accused 1, 2, 3 and 4 in this case, the Accused 1 could not be convicted of the offence

10 (1902) 2 KB 339

11 (1924-25) 29 CWN 260: AIR 1925 Cal 501

under Section 120-B of the Indian Penal Code when his alleged co-conspirators Accused 2, 3 and 4 were acquitted of that offence.

41. Having regard to the position of law as aforesaid, the conviction of Kallu under Section 120-B, IPC stands completely vitiated because of the simple reason that one cannot alone conspire. There is no evidence to even remotely suggest that there existed any agreement between Kallu and the co-accused while none of the others, except Kallu, has been convicted for criminal conspiracy.

CONCLUSION

42. What could have more aptly summarise the entire prosecution case, especially the flawed investigation in the matter at hand, than the words of Daniel J. Boorstin, the American historian: *"The greatest obstacle to true discovery is not ignorance, but rather the illusion of knowledge"*.

43. Against this background, to say that the convictions of Manoj and Kallu can still sustain, appears far-fetched; their convictions cannot be justified solely on the basis of illusory knowledge regarding their involvement in the crime.

44. 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 are still behind bars. They shall be immediately released from custody, if not wanted in any other case.

45. The appeals are, accordingly, allowed. No costs.

Headnotes prepared by:
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Appeals allowed.