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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1156 of 2019

Arun Kumar Swarnakar S/o Sadhu Ram Swarnakar Aged About 54 Years Proprietor Ruchi Jewellers Baramkela, Tahsil Baramkela, District Raigarh Chhattisgarh.

... Appellant

versus

1 - State of Chhattisgarh Through District Magistrate Raigarh, District Raigarh Chhattisgarh.

2 - Amit Das @ Gurudeva Munda S/o Rangnath Aged About 35 Years R/o Village Duduvasira, P. S. Balangir Orissa

---- Respondents

For Appellant	: Mr. Manoj Paranjpe, Sr. Advocate along with Mr. Amit Soni, Advocate
For State-Respondent	: Mr. Jitendra Shrivastava, GA
For Respondent No.2	: Mr. Rishi Rahul Soni, Advocate

Hon'ble Shri Justice Arvind Kumar Verma

Judgment on Board

19/03/2026

1. The instant criminal appeal has been preferred by the appellant



under Section 454 of CrPC arising out of order dated 12.03.2019 passed in MJC No.01/18 by the Additional Sessions Judge, Sarangarh, District Raigarh (C.G.).

2. Brief facts of this case is that the appellant is proprietor of Ruchi Jewelers and Shally having his shop at Baramkela, dealing in sale of Gold and Silver Ornaments from the aforesaid premises. On 18.02.2012, some miscreants committed dacoity in the shop of the appellant and took away the gold and silver ornaments along with cash available in the shop and house of the appellant which is just behind the shop. The appellant who is the proprietor of the aforesaid jewelry shop on 18.02.2012, lodged a written report to the effect that 4 to 5 dacoits covering their face committed dacoity in the shop and house took away gold and silver ornaments along with cash and fled away in a Tavera vehicle. The said dacoits also inflicted injuries to the complainant/appellant and one gun shot injury to one Jasal Das who was the watchman of the shop. On the aforesaid information an F.I.R. for the offence punishable U/S 395 of IPC and U/S 25, 27 of the Arms Act was registered against unknown persons. The police after conducting the investigation, on 04.03.2012 apprehended the accused persons and on the basis of their memorandum certain articles, cash, gold and silver ornaments were recovered. A Test Identification Parade



was conducted in which the appellant as well as Jasal Das, Simran Swarnakar, Rajkumari Swarnakar, Arjun Ram identified the accused persons.

3. After completion of investigation, charge sheet was filed against the accused persons and they were tried for the offence punishable U/S 395, 397, 120-B read with Section 34 of I.P.C. and U/S 25, 27 of the Arms Act and one of the accused person namely Ritesh Sahu was prosecuted for the offence punishable U/S 201 and 120-B read with Section 34 of I.P.C.
4. The trial Court after appreciating the evidence available on record vide judgment dated 30.09.2014 convicted all the accused persons. The aforesaid judgment of conviction and sentence was assailed by the accused persons before this Court by way of two different criminal appeal bearing CRA No. 1065/2014 & bearing appeals CRA No. 1228/2014. The appellant also preferred an appeal for enhancement of sentence which was registered as CRA No.428/2015. Vide judgment dated 02.02.2018, this Court concluded that the prosecution was successful to bring home the offence punishable U/S 395/34 IPC and 120-B IPC against all the accused person except Ritesh Sahu. After holding so the appeal of Ritesh Sahu was allowed, the other criminal appeal



No.1228/2014 was partly allowed where the sentence was reduced and fine was enhanced. The appeal preferred by the appellant for enhancement of sentence was consequently dismissed.

5. On perusal of judgment dated 30.09.2014 (Annexure A-1) would reveal that the trial Court had not passed any order regarding disposal of the property, and directed that the disposal of the property would be made after conclusion of trial against the absconding accused. Against the said order, the appellant preferred a criminal appeal bearing CRA No. 478/2017 in which this Court had directed to make an application U/s 452 of Cr.P.C. before the trial Court.
6. In compliance of order passed by this Court, the appellant moved an application U/s 452 of Cr.P.C. for release of the articles i.e. jewelry (gold and silver ornaments) and cash which was recovered from the accused persons. It was submitted by the appellant that the claim of Amit Das regarding the gold and silver ornaments was negatived by the trial Court and which was confirmed by this Court. It was submitted that the seized articles i.e. jewelry (gold and silver ornaments) and cash recovered in Crime No.14/12 (S.T. No.16/12) is the exclusive property of the appellant, therefore, the application U/S 452 of



Cr.P.C. may be allowed and the seized property be handed over to the appellant.

7. The trial Court vide order dated 12.03.2019 partly allowed the application filed by the appellant. Hence, this appeal.
8. Learned counsel for the appellant would submit that the learned trial court failed to consider that the defence witness produced by the accused Amit Das regarding gold and silver ornaments seized in the matter was disbelieved by the trial court itself, and Amit Das had not challenged the aforesaid findings recorded by the Trial Court. He would next submit that the challenge made by Amit Das was only against his conviction and sentence, which was affirmed by this Hon'ble Court thus it can be safely concluded that the property seized in Crime No.14/12 (S.T. No.16/12) belongs to the appellant. The trial court has further erred that the receipts produced regarding purchase of gold and silver ornaments is after the date of alleged dacoity. He would further submit that the learned trial Court swayed away with the dates put on the receipts and has not considered that same was the date of production of the receipts before the Court of Chief Judicial Magistrate and not the date of purchase, on this count alone the impugned order is bad in law and is liable to be set aside.



9. He would next submit that the learned trial Court has further erred in not considering the documentary evidence available on record as Article A1, A2 and Exhibit D-5 to D-14 which are the receipts of purchase and an erroneous order has been passed. He would next submit that the learned trial Court further failed to consider that during the course of investigation statement of the appellant was recorded in which the appellant had given the complete details of the articles taken away during the course of dacoity. The learned Trial Court further failed to consider that the appellant was duly cross examined by the accused persons in minute details however his testimony regarding the gold and silver ornaments (seized in the matter) could not be shaken. He would next submit that the conclusion of the trial Court regarding entitlement of the appellant is based on value of the property on the date of incident is wholly erroneous as the incident was occurred in the year 2012 on which day the price of gold and silver was on a lower side whereas on the date of order there is a absolute hike in the prices and as such the articles ought to have been given by weight and not the price. The conclusion of the Trial Court that the appellant is entitled for only a sum of Rs.42,20,592/- for the jewelry is wholly erroneous while holding so the learned Trial court failed to consider the evidence available on record.



10. He would next submit that the learned Trial Court ought to have seen and held that after conclusion of the trial, the property recovered in Crime No.14/12 has to be given to its actual owner. The charge sheet clearly demonstrates that the articles which have been seized in Crime No.14/12 belongs to appellant.
11. On instructions of the appellant, it is further argued by learned counsel for the appellant that the appellant has no objection if seized Cheque Book, Bank Account, FD, Bank Statement/documents etc. would be delivered to the accused Amit Kumar Dash from whom it was recovered. The appellant undertakes that, he will not raised any objection, if aforesaid articles (except the gold and silver articles) will be delivered to the accused and the appellant has no objection for the same. He only claims the silver and gold articles stolen from his house and shop as per Exhibit P/49 & P/51. It is therefore prayed that this Court may be pleased to allow the appeal and set aside the impugned order passed by the learned Court below and direct for custody of the articles seized in the instant crime belonging to the appellant to him.
12. Learned counsel for the State/respondent No.1 would submit that the impugned order dated 12.03.2019 is legal, valid, proper



and does not suffer from any illegality, perversity or jurisdictional error. The same has been passed after proper appreciation of facts, evidence and the provisions of Section 452 of The Code of Criminal Procedure, therefore, no interference is called for by this Court in the present appeal. During the course of argument, learned State counsel draw attention to this Court that one CRR No.05/2020 is pending before this Court.

13. Learned counsel for respondent No.2 has not made any objection with regard to the Supurdnama application filed pertains to the jewellery.
14. I have heard learned counsel for the parties and perused the record with utmost circumspection.
15. Upon hearing learned counsel for the appellant, perusing the record of the case, and examining the impugned order passed by the learned trial Court, this Court finds substantial merit in the present appeal.
16. Whether, when the accused from whom the articles were recovered has not claimed the same and has admitted that the said articles were stolen from the house and shop of the victim can be confiscated ?



17. Whether, the statement made by the accused recorded under Section 27 of the Evidence Act can be used for the purpose of and the disposed of the property under Section 452 of the CrPC ?
18. The incident was occurred at 09:30 to 10:30 PM on 18.02.2012 and the report was lodged within half an hour and being an ordinary man the value of the stolen was approximately assessed to the tune of Rs. 40-50 lakhs, but the said figure was not accurate.
19. The learned trial court has failed to appreciate that, ordinary man who was the victim of the offence of Dacoity and 8 persons who were armed with deadly weapons entered in the shop and house of the appellant and has committed an offence of dacoity. No prudent and ordinary man would expect that the victim should disclosed the value of the stolen property accurately.
20. The main accused Amit Kumar Dash was arrested on 14.07.2012 by Odissa police and certain articles (Gold & Silver) were seized from the rented house of the accused Amit Kumar Dash situated at Patel Colony, Katamanjhi, Odissa (Exhibit P/36 to 45 are the Copies of the list of the seizure memos). Exhibit P/49 is the Copy of the combined list of the articles



seized from Amit Kumar Dash.

21. The memorandum statement was Amit Kumar Dash was recorded on 02.09.2012 (Exhibit P/32 is the copy of the memorandum statement of Amiit Kumar Dash) and he has categorically submitted that,

"रूचि ज्वेलर्स से प्राप्त डकैती के सोना को रिफाइन करा लिया था कुछ आभूषण से बिकी रकम करीब 8 लाख रुपये मेरे स्वयं के करीब 8 लाख रुपये मेरे साथी महेश की पत्नि भाववाती के एवं करीब 9 लाख रुपये भाई आशीष के नमा से एचडीएफसी बैंक कांटाभांजी में जमाकिया हूं रिफाईन किया सोना एवं सोने चांदी के ज्वेलरी नगद रकम कांटा भांजी के अपने किराये के मकान में रखा था जिसे दिनांक 24-8-12 को थाना घटाउन बरगढ पुलिस द्वारा जप्त किया गया है हूं"

From bare perusal of the memorandum statement, it is abundantly clear that the seized articles were stolen from the house and shop of the appellant and the State agency on the basis of the said seizure has prosecuted Amit Kumar Dash for the offence of Dacoity.

22. In the supplementary statement of the victim which as follows:

"जिस समय मैं डकैती की रिपोर्ट दर्ज कराया उसे समय काफी भयभीत एवं बदहवास - स्थिति में था डकैतों द्वारा डकैती किए सोने चांदी एवं डायमंड का आभूषण का सही मूल्यांकन नहीं कर पाया था इसलिए जब मैं रिपोर्ट में अनुमानित 40-50 लाख रुपए के सोने चांदी की आभूषण की डकैती की रिपोर्ट दर्ज कराया था बाद में मैंने अपने दुकान से सोने एवं चांदी के आभूषण का मिलान कराया एवं घर में रखे आभूषणों का अपने पत्नी बच्चों के साथ मिलकर जांच पड़ताल किया तब यह स्पष्ट हुआ कि अज्ञात डकैतो के द्वारा करीब 2.25 करोड



रुपए के सोने चांदी एवं डायमंड के आभूषण नगद रकम डकैत लोग ले गए हैं"

23. In the Court statement, the victim PW-1 has deposed as under :

5..... मेरे बच्चे और बीबी के साथ वो लोग मारपीट किये थे। बच्चे दहशत में थे।

6. मैं दूकान का निरीक्षण किया आलमारी से पूरा सामान और दरवाजा का कुन्दा तोड़कर पूरा सामान ले गये और पूरा खाली कर दिये थे। मैं भी पूरे दहशत में था घर में गोली चली थी और बच्चों को मारपीट किये थे। दूकान का उपरी तौर पर मुआयना करके एफ.० आई०आर० कराया। 40 से 50 लाख के आसपास की सम्पत्ति ले गये जिसे मैं अन्दाज से लिखाया था।

7. उसके बाद हम लोग घर का निरीक्षण किये तो घर का भी पूरा सामान सोने चांदी का नहीं था बच्चों का और बीबी का जेवर पूजा जेवर सोने का सब ले गये थे। जिसमें नगद 70 हजार रुपये भी था। मेरे सोने चांदी के सामान में मार्का (पहचान चिन्ह) लगा है। जिसे देखकर मैं अपना सामान पहचान लूँगा.....

24. Amit Kumar Dash has only objected for the other seized articles like passbook, bank statement, FDs, seized bank account, etc. but he never objected for gold and silver articles and he never raised any claim for the same. Even in the accused statement recorded under Section 313 of Code of Criminal Procedure, he has not claimed that the seized articles belongs to him.

25. The person who is victim of Dacoity and the person who committed an offence of Dacoity and on whose instance the



property was seized are the necessary party in the dispute of disposal of the property under Section 452 of Code of Criminal Procedure, if the victim has claimed the property and the accused has not raised any objection than the property seized should have been delivered to the victim and State cannot raised any claim.

26. The State Government very fairly in para I of the reply has in very categorical terms has submitted that, state has no personal interest and claim over the subject properties.
27. The learned trial court has completely overlooked the well settled principles relating to Section 452 of Code of Criminal Procedure. The learned trial court has completely overlooked the seizure memo of Amit Dash wherein, the place of the seizure was mentioned and the memorandum statement of Amit Dash which was relied by the State Agency for prosecuting Amit Dash. The learned trial court has failed to appreciate that, memorandum statement of the accused recorded under Section 27 of Evidence Act leading to the discovery by the accused can be made use for the purpose of and the disposal of property under Section 452 of CrPC.
28. The Hon'ble Supreme Court in case of **Mahesh Kumar v. State of Rajasthan, 1990 Supp SCC 541 (2)** has held as:



2.It is now accepted principle that the confessional part of the statement made by the accused leading to discovery within the meaning of Section 27 of the Evidence Act, 1872 can be made use of for purpose of and the disposal of property under Section 452 of the Code..... Forfeiture of the amount to the State is wholly unwarranted.

29. The Bombay High Court in case of **Prakash Vernekar v. State of Goa, 2007 SCC OnLine Bom** has held as under:

*"12. Admittedly, a Criminal Court does not decide the title to the property claimed but is required to see as to who is entitled to the possession of the same. As observed by this Court in the case of [Prithviraj R. Sardessai](#) (supra), a perusal of the three sections show that under sections 451 and 457 the custody is interim whereas under section 452 it is subsequent to the conclusion of the trial. In other words as far as Criminal Court is concerned, a decision under section 452 of the Code is final subject to an appeal or revision that may be filed. This Court also observed that section 452 will have to be borne in mind while passing an order both under section 451 as well as under section 457. That it is also the view held by this Court in the case of [Julio @ Francis K. Bugde v. State and Anr.](#) 2007 (3) AIR Bom R 238. As observed by the Apex Court in the case of [N. Madhavan v. State of Kerala](#) , as a normal rule after an inquiry or trial when the accused is discharged or acquitted the Court ought to restore the property from the person from whose custody it was taken **and in a case of conviction, as observed in the case of Prithviraj R. Sardessai it is the***



person from whose possession it was stolen, who would be entitled to its possession when the property seized is referable to such stolen property.

30. The Allahabad High Court in case of **Vishnu Kumar Agarawal v. State of U.P, 2022 SCC OnLine All 1766** has held that **Once the accused from whom the silver was recovered had disclaimed stolen silver, then there should not have any reason to not return the said silver to the complainant from whom it belongs.**

12.It is not the case of the prosecution that silver was of the accused who were acquitted later on. This is also not the case of the prosecution that accused or anyone else has claimed the ownership of the seized silver. The question of ownership is not required to be considered when the facts are not in dispute that on the FIR being registered by revisionist/complainant, the silver the was recovered from the accused who had not claimed ownership after acquittal.

31. The Madhya Pradesh High Court in case of **Prakash Chandra Jain v. Jagdish, and another, 1957 SCC OnLine MP 118** has held as under :

8. In the instant case, even though the non-applicant has been acquitted, due to incomplete evidence, **it would not be proper exercise of discretion to hand over the property back to the accused because the confession recorded in the memo Ex. P. 16 though not**



admissible in the criminal trial would be admissible for the purpose of determining who would be the person best entitled to the possession of the seized property.

32. The Bombay High Court in case of **Satish Ramakant Naik v. State of Goa, 2019 SCC OnLine Bom 4887** has held as under:

25. It is a settled position of law that the statement made by the accused to the police as to the ownership of the property which was the subject matter of the proceedings against the accused although inadmissible as evidence against them at the trial for the offence with which they are charged, were admissible as evidence with regard to the ownership of a property inquiry held by the Criminal Procedure Code. This is the view taken by the Division Bench of the Bombay High Court in in case an in of Queen Empress v. Tribhovan Manekchand reported ILR 9 Bombay 131. The Supreme Court has reiterated the said view in case of Mahesh Kumar v. State of Rajasthan reported in 1990 Supp SCC 541 (2) and reiterated that **though there is a bar in Section 25 of the Evidence Act, or in Section 162 of Criminal Procedure Code for being made use of as evidence against the accused, this statement could be made use of in an inquiry under Section 517 of Cr. P.C. when determining the question of return of property. In case of Mahesh Kumar (supra), the same view has been confirmed in the sense that confessional part of the statement made by the accused leading to discovery within the meaning of Section 27**



of the Evidence Act or 162 of Cr. P.C. can be made use of for the purpose of and the under disposal of the Section 452 of Cr. P.C. property under Section 452 of CrPC.

33. Applying the aforesaid settled principle of law in the instant case it is quite vivid that discovery of subject stolen gold and silver articles (gold jewelry Total Weight 4 Kg 484 Gram 210 Miligram and silver jewelry Total Weight 6 Kg 993 Grams) was made on the basis of information given by the accused Amit Dash/Respondent No.2 in his memorandum statement (Exhibit P-32) recorded U/s. 27 of Evidence Act and such discovery serves as a guarantee of truthfulness of the information supplied. It is settled principle of law that whether the information U/s. 27 of the Evidence Act is confessional or non inculpatory in nature, if it results in discovery of fact it becomes reliable information and memorandum statement recorded U/s. 27 of the Evidence Act can be used for disposal of property U/s. 452 of Cr.P.C., therefore that appellant is entitled to get the delivery/possession of the entire gold and silver articles seized from the accused Amit Dash/Respondent no. 2 on the basis of information provided by him in his memorandum statement recorded U/s. 27 of the Evidence Act.
34. It is pertinent to mention here that at the time of final argument of the appeal, on the instructions of the appellant, it was



submitted before this Court that, the appellant has no objection if seized Cheque Book, Bank Account, FD, Bank Statement/documents etc. would be delivered to the accused Amit Kumar Dash from whom it was recovered. The appellant undertakes that, he will not raised any objection, if aforesaid articles (except the gold and silver articles) will be delivered to the accused and the appellant has no objection for the same. He only claims the silver and gold articles stolen from his house and shop as per Exhibit P/49 & P/51.

35. It is also pertinent to mention here that all the accused persons including the accused Amit Dash/respondent no. 2 has disclaimed the gold and silver articles which were subject to Dacoity before the learned trial court and even before this Hon'ble Court. The accused Amit Dash/respondent no. 2 has given an undertaking that he has no objection so far as granting possession/delivery of gold and silver article seized from respondent no. 2 to the appellant. Even in the statement recorded U/s. 313 of Cr.P.C. none of the accused person has claimed the subject stolen gold and silver articles before the trial Court. Therefore, in considered opinion of this Court that the FIR (Ex.P-1) was lodged against the unknown persons within half an hour from the incident. The victim and his family members shocked, therefore, he lodged FIR and the tentative



figure of the stolen article was reported in Ex.P-2.

36. It is pertinent to mention here that on 04.09.2012 supplement statement U/s. 161 of Cr.P.C. of the appellant was recorded in which the appellant has categorically stated that subsequent to the incident and registration of FIR the appellant has checked his shop as well as his house and he got to know that the accused person has stolen gold and silver article amounting to Rs. 2.25 Crores and same was deposed by the appellant in his deposition before the trial Court (PW-1). Therefore, this Court is of the considered view that the trial Court while deciding the application under Section 452 of CrPC applying the hyper-technical view.
37. It is pertinent to mention here that if all the accused persons including respondent No.2 disclaimed the stolen property and there is no reason why the same should not be returned to the complainant/appellant to whom it was belongs. Therefore, the trial Court has committed grave error while passing the impugned order that the gold and silver articles should be forfeited to the State and the same is wholly unwarranted.
38. In view of the foregoing analysis, this Court finds that the impugned order passed by the learned Trial Court suffers from serious legal infirmities, misappreciation of evidence, and



erroneous application of law, and therefore, is liable to be set aside and the appeal preferred by the appellant is allowed and application made by the appellant under Section 452 of CrPC is allowed and disposed of with a direction to the Additional Session Judge, Sarangarh, District - Raigarh (C.G.) to hand over/deliver the entire gold and silver article to the appellant, subject to proper identification and due verification, in accordance with law except Cheque Book, Bank Account, FD and Bank Statement/documents etc.

39. Accordingly, the instant appeal is **allowed** to the extent indicated above.
40. Records of the Court below be sent back along with a copy of this order/judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Kumar Verma)
Judge