



2026:AHC:61554

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 7097 of 2023

Shiv Prakash

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Ajay Pratap Singh, Vijay Tripathi
Counsel for Respondent(s)	:	G.A., Rajeev Kumar

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Ajay Kumar Pandey, learned counsel for the appellant; Sri Rajeev Kumar, learned counsel for the opposite party and Sri Rahul Asthana, learned A.G.A. for the State and perused the material available on record.

2. This is an appeal under Section 454 of the Code of Criminal Procedure by the appellant, Shiv Prakash, who was an accused in Sessions Trial No.192 of 2012.

3. The facts of the case in brief are that the appellant claims to be a bonafide purchaser of the gold ornaments, that is, four bangles, one necklace. It is stated that the first information report has been lodged against the appellant as Case Crime No.109 of 2013. According to prosecution case, the first information report was lodged by Hari Om in which it is alleged that on 3.4.2012 at about 12:30 P.M. co-accused persons namely Hema, Babbu @ Pradeep and Tara @ Tariya came and intercepted the motorcycle of the complainant and on the point of gun snatched the ornaments from the sister of the complainant and ran away. It is further stated that the appellant was not named in the first information and his name has come into light during the course of investigation. The learned trial after considering the evidence has passed the judgement and order dated 2.2.2018 in Session Trial No.192 of 2012, whereby the appellant has been acquitted by the learned trial and his involvement in the offence was not found by the learned trial Court. It is further stated that soon after the incident the ornaments in question of the appellant was taken into custody by the learned trial Court and it was treated as case property by the learned trial Court. Now after passing the judgement and order by the learned trial Court the appellant has been acquitted. Thereafter, after conclusion of the trial, the appellant applied for release of his gold ornaments by way of an application filed under Section 452 Cr.P.C.

The said application has been rejected by the learned trial court only on the ground that the ornaments in question are belonging to one Shalini (sister of the complainant) and appellant has not produced any stock register, bill or cash memo in support of his claim. Therefore, in view of this, it was not open to it to release the ornaments in question. In these circumstances, the appellant had file this appeal under Section 454 Cr.P.C. before this Court.

4. Sri Rajeev Kumar, learned counsel appearing on behalf of the Hari Om Singh (complainant of the case) has fairly submitted that P.W.-2/victim who is the sister of the informant was examined before the learned trial Court and during trial she has stated that the ornaments in question were not related to her, reference in this regard is made to paragraph nos.6, 11 and 13 of the counter affidavit. Thus, he has no objection in case ornaments in question is released in favour of the appellant.

5. The contention of the appellant's counsel is that the ornaments in question were purchased by the appellant and are material exhibit in respect to Sessions Trial No.192 of 2012, against which, no criminal appeal has been filed and the appellant though was an accused, but was acquitted by learned trial Court.

6. His further submission is that there is no impediment in releasing the ornaments in question in favour of the appellant as the same belongs to the appellant and he is ready to give an undertaking or the Court may impose a condition that he would not make any changes to the ornaments in question.

7. Learned counsel for the appellant has placed before us a judgment of Hon'ble the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in **2002 (10) SCC 283**. Relevant extracts of which are being quoted herein below:-

"12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the

complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition."

8. Learned counsel for the appellant says that the aforesaid decision pertained to release of property under Section 451 Cr.P.C.

9. Sri Rahul Asthana, learned A.G.A. has opposed the appeal, but could not dispute the submissions made by the learned appellant and learned counsel for the opposite party.

10. Having considered the matter from all respective angles and having heard learned counsel for the parties after taking into consideration the judgment referred hereinabove, I am of the view that the appellant though an accused in the trial, but was acquitted and no appeal challenging his acquittal has been filed, secondly, on being asked, learned A.G.A., Sri Rahul Asthana fairly submitted that there is no such order under any provision of law requiring the ornaments to be confiscated for any reason and as the trial court has rejected the application of the appellant under Section 452 Cr.P.C. only for the reason that the ornaments in question are belonging to Shalini (sister of the complainant) and appellant has not produced any stock register, bill or cash memo in support of his claim, therefore, it was handicapped and did not have jurisdiction to consider the application, I am of the view that there is no impediment in releasing the ornaments in favour of the appellant in view of the fact that the appellant was acquitted by the learned trial Court and no appeal has been filed against the order of acquittal. Moreover, the opposite party has not claimed the ornaments in question and raised no objection in release of the ornaments in question. There is no order on record for confiscation of the ornaments-in-question under any law/ statute. No other reason has been put forth by learned A.G.A. for not releasing the ornaments in question. Trial has already concluded, and no appeal against the said order has been filed, therefore, I see no reason to decline release of the ornaments to the appellant subject to certain conditions.

11. The ornaments in question shall be released in favour of the appellant subject to the following conditions:-

(i) Proper panchnama of the ornaments in question shall be prepared before its release.

(ii) Coloured photographs of the ornaments in question shall be taken from all possible angles.

(iii) The appellant shall not make any changes to the ornaments in

question including any part/component of the ornaments in question nor sell or alienate it in any manner without the permission of this Court.

(v) The appellant shall furnish proper security in the form of two sureties of the like amount to the satisfaction of the court concerned, to secure the aforesaid release and production, if required.

(vi) The coloured photographs of the ornaments in question would be attested and countersigned by the appellant herein.

(vii) Photocopy of the documents prepared in this regard shall be sent to this Court by the learned trial court for being kept on the records of this appeal.

12. In view of the above, the present criminal appeal is allowed. Consequently, the order dated 31.10.2022 passed by the learned Additional Sessions Judge/Special Judge (Dacoity Affected Area), Court No.3, Agra rejecting the application is hereby set aside.

March 25, 2026

Dev

(Mrs. Vani Ranjan Agrawal,J.)