

Anwar UddIn Vs. State

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Court : Allahabad

Decided On : Nov-14-1975

Reported in : 1976CriLJ1786

Judge : Mohd Hamid Hussain and ;H.N. Kapoor, JJ.

Appellant : Anwar Uddin

Respondent : State

Judgement :

H.N. Kapoor, J.

1. This revision has been listed before us as notice for enhancement of sentence was issued by Parekh, J. The applicant Anwaruddin has been convicted under Section 3 of the Railway Property (Unlawful Possession) Act XXIX of 1966 and sentenced to one year's R. I. and a fine of Rs. 1,000/- by the trial court. In Criminal Appeal No. 78 of 1971, the Addl. Civil and Sessions Judge, Agra by his judgment dated 1-2-1972 maintained the conviction of the applicant but reduced the substantive sentence to six months' R. I, and to pay a fine of Rs. 500/- instead of Rs. 1,000/- and in default of payment of fine, the applicant was to undergo further R. I. for three months. The learned single Judge, who heard the revision at the earlier stage, took the view that the minimum sentence was prescribed under Section 3 of the said Act and any reduction in the minimum sentence was not permissible as special and adequate reasons had not been given by the Addl. Civil

and Sessions Judge. The revision was argued on merits also before us.

2. The prosecution case is that S. I. Imam of Railway Protection Force received information that Anwaruddin the applicant was in possession of railway property, viz, Dynamo belts at his Ara machine. He, there-fore, obtained the warrant for search from the City Magistrate and proceeded to the shop of the applicant situated in Nalband Ka Chauraha Pachquiyan, P. S. Lohamandi, Agra. He reached there on 1-8-1969 at about 6.45 p. m. He had taken along with him S. I. Brijendra Singh of police Chauki Gokulpura and constable Mahraj Singh. He had also taken with him two other persons Bahadur Singh and Gopal from the railway station to witness the search. He conducted search in the presence of these persons and recovered ten Dynamo belts which appeared to belong to the railway. Some of them were in use while others stored in a wooden box. He prepared the recovery memo which was signed by the witnesses and sealed them in a bundle. These belts were then examined by Gopal Das (P.W. 2) Assistant Electrical Foreman, who gave his report which is Ext. Ka-2A According to his report eight out of ten belts bore railway markings IR and as such belonged to the railway being the railway property.

3. The applicant was duly prosecuted. He denied the prosecution allegations and stated that he was falsely implicated in this case on account of enmity with one Asharfi Lal constable of the R. P. F. He examined Shyam Sunder (D. W. 2) and Bhika Ram (D. W. 3) to show that the constable Asharfi Lal had gone to the applicants's Ara machine and demanded two Payas (cot legs) which he refused to give and as such there was an altercation.

4. In support of its case the prosecution has examined S. I. Rama Shanker (P.W. 1) Bahadur Singh (P.W. 3), S. I. B. S. Sharma (P.W. 4), Gopal (P.W. 5) and S. I. S. H. Iman (P.W. 6) as witnesses of recovery. S. I. S. H. Imam had conducted the investigation in this case. Gopal Das (P.W. 2) was examined as an expert witness who found eight of the bells to be the railway property. Gopal (P.W. 5) was declared to be hostile on inadequate grounds. It was simply because he stated that about five or six belts were re-covered and did not state that ten belts were recovered. This could have been simply due to lapse of memory. These witnesses

of recovery have corroborated each other on all material particulars. Both the lower courts after considering the evidence of these witnesses as well as of the defence witnesses arrived at the conclusion that the prosecution case had been proved. In the revision notice of enhancement has been issued and, therefore, the entire evidence has been scrutinised, In our opinion, the lower courts have not committed any illegality in considering the evidence.

5. Learned Counsel for the applicant argued that it has not been proved by the evidence that it was railway property. He has placed reliance on the case of Umar Khan v. State 1972 All LJ 1029 : 1973 Cri LJ 1706. In that case, it was held by a learned single Judge that merely on the basis of certain markings, it is not possible to hold that the property belonged to a particular railway administration or was in charge or possession of the railway administration He considered the possibility that the property right have been manufactured by a private firm for supply to the railway with certain markings but it might have been lost before it was actually supplied to any railway administration. In the present case, there was no such suggestion in the cross-examination that the Dynamo belts were manufactured by any private concern and were not in possession or in the charge of the railway administration from the very beginning. Moreover, in that case the learned Judge placed reliance on the case of Kashmiri Lal v. State of U.P. : 1970 CriLJ1647 which, in fact, was under the Raliway Stores (Unlawful Possession) Act of 1955. That Act had been repealed by Act No. XXIX of 1966. Under the earlier Act, the requirement was that it had also to be proved that the property was in the use of the railway administration. No such proof is necessary under Section 3 of Act No. XXIX of 1966. In our opinion, under the circumstances of the present case, it has been sufficiently proved by the evidence of Copal Das (P.W. 2) that eight Dynamo belts belonged to the Indian Railways.

6. Learned Counsel for the applicant next argued that the sentence awarded is severe. According to him, there is nothing to show that the applicant himself was responsible for committing the theft or encouraging the theft. He might have come in possession of the same having purchased them from some other person. The case has also become old. The occurrence is of 1969. Under Section 3 of Act No. XXIX of 1966 it is possible to award the sentence of fine only which should not be

less than Rs. 1,000/-. There is nothing on the record to show that the applicant is a previous convict. In our opinion, ends of justice would be adequately met if the sentence of imprisonment is set aside and the fine is enhanced to Rs. 1,000/- from Rs. 500/-.

In the result the revision is partly allowed to this extent that the conviction of the applicant is maintained but the substantive sentence of imprisonment is set aside and the fine of Rs, 500/- as modified by the lower appellate court is enhanced to Rs. 1,000/-. In default of payment of fine, the applicant shall undergo R. I for one year. The applicant is allowed two months' time from the date of the receipt of the record by the lower court for depositing the fine. The record of the case shall be sent back to the lower court along with a copy of this order within one month. The applicant is on bail. His bail bonds shall stand discharged after the fine has been deposited.

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