

Umar Khan Vs. State

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Court : Allahabad

Decided On : Aug-16-1972

Reported in : 1973CriLJ1706

Judge : S.D. Khare, J.

Appellant : Umar Khan

Respondent : State

Judgement :

ORDER

S.D. Khare, J.

1. This is an application in revision directed against an order dated 12th June. 1970. passed by the learned Additional Sessions Judge, Jhansi. dismissing the appeal filed by Umar Khan (applicant) and one more person against their conviction under Section 3 of the Railway Property (Un lawful Possession) Act. 1966, (hereinafter referred to as the Act) and the sentence of one year's rigorous imprisonment to each.

2. The case tinder Section 3 of the Act was started against the present applicant and two other (persons, namely. Lala Ram and Guti. The Special Rail way Magistrate, by his order dated 5th March. 1970, convicted and sentenced all the three accused persons. It appears that no appeal was filed by Guti, but the

appeals preferred by Umar Khan and Lala Ram were heard by the learned Additional Sessions Judge. Jhansi, and dismissed by his order dated 12th June, 1970.

3. Both the courts below have arrived at the finding that the ghamelas (fish plates) recovered from the possession of the accused persons on 17th January, 1970. at 5-30 P.M. near the aerodrome while they were taking them away on a tonga towards Jhansi were railway property and the accused persons could give no reason for possessing those articles.

4. It has been contended by the learned Counsel for the applicant that the conviction of Umar. Khan for having committed an offence punishable under Section 3 of the Act cannot be sustained because 'the prosecution failed to prove that the property which is alleged to have been recovered from the possession of the applicant and others belongs ed to. or was in the charge or possession of. railway administration. It has also been contended by the learned Counsel for the applicant that no reliance should be placed on the statement of the prosecution witnesses because during the course of investigation the investigating officer had obtained their signatures on their statements.

5. Section 2(d) of the Act contains the definition of the 'railway property' and it reads as follows:-

'railway property' includes any goods, money or valuable security or animal, belonging to. or in the charge or possession of, a railway administration.

Section 3 of the Act provides:

whoever is found or is proved to have been found in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable-

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not

be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

It was necessary for the prosecution to have led evidence to show that the property recovered from the possession of the applicant either belonged to, or was in the charge or possession of a railway administration. I have been taken through the entire evidence led in the case. The prosecution did not care to examine any person who could establish that the fish plates recovered from the possession of the applicant and others either belonged to or were in the charge or possession of a railway administration. The prosecution examined two witnesses, namely, Babu Lai (P.W. 1), a Railway Rakshak, and Sri B. A. Tewari (P.W. 3), A.S.I., R.P.F., Jhansi, who made a statement in the court of the Magistrate that these fish plates were railway property. This they probably did on the basis of certain markings on those fish plates. Neither of the two witnesses cared to specify whether any railway administration was the owner of that property or whether it had been in the charge or possession of a railway administration. No evidence was led to show that such fish plates were manufactured by a railway administration and no one else, and in case they were manufactured by someone other than a railway administration that from the time of the manufacture they became railway property. The mere possession of articles manufactured by private firms for the use of railway administration cannot by any stretch of imagination be regarded to be railway property as defined in Section 2(d) of the Act.

6. In the case of *Kashmirilal v. The State of U. P.* : 1970 CriLJ1647 it was held that mere possession of railway property did not constitute an offence within the meaning of Railway Stores (Unlawful Possession) Act, 1955, and that the prosecution had to prove that the articles were in actual use or intended to be used by the railways, before the accused persons could be called upon to account satisfactorily for the possession thereof. Mr. Justice Mitter who spoke for the Court did not approve of the decision of the Orissa High Court in the case of *Udaya Dalai*

v. The State (1965) 2 Or LJ 831 (Orissa) wherein it was observed-.. Section 2 of the Act does not require the prosecution to prove that the incriminating articles belonged to a particular railway. From the evidence of P.W. 5 it can be reasonably inferred that as the seized articles were found to conform to the specifications of the Indian Railway standards they hold that they belonged to any of the railways in India. His further evidence that they were 'brand new' is also sufficient to show that they were intended to be used In the construction, operation or maintenance of the railway.

It was observed by the Supreme Court that it was true that the prosecution was not called upon to prove that the goods belonged to any particular railway administration, but it had to establish that the articles were the property of some railway administration. It further observed that evidence to the effect that the goods conformed to the railway standards falls short of such proof. In most cases the burden of proof in this respect may be discharged by leading evidence about the identifying marks on the goods or some peculiarity of the goods not to be found in case of non-railway goods. Again, the mere description of the goods as new would not fulfil the requirement of Section 2(d). Some evidence will have to be led to the effect that the goods of the kind were being actually used by a railway administration and that the goods were in serviceable condition. In the case of goods which had not been put to use, evidence will have to be led to establish that they had been manufactured for such use.

7. Both the courts below have held that the property recovered from the possession of the applicant was railway property. However. I find that there is no evidence on the record to establish that fact. As mentioned, already, two witnesses examined by the prosecution for that purpose did not care to state that the property had either belonged to a railway administration or was in the charge or possession of a railway administration.

8. The conviction of the applicant under Section 3 of the Act is. therefore, not justified and must be set aside.

9. The revision application is allowed. The conviction and sentence of the applicant under Section 3 of the Act are set aside. The applicant is on bail. He

need not surrender. His bail bonds are discharged.

10. Let notice be Issued to the State of Uttar Pradesh, to be served on the Government Advocate, to show cause why the conviction and sentence of Lala Ram and Gutti also should not be set aside for the reasons given in this judgment

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