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Court : Allahabad

Decided On : Jan-23-1973

Reported in : 1973CriLJ1098

Judge : Prem Prakash, J.

Appellant : Tara Chand

Respondent : State

Judgement :
ORDER

Prem Prakash, J.

1. Tara Chand, a machanic in the Central Loco Workshop, Lucknow lias directed this revision against his conviction for an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966, upon the rinding that on 2nd May, 1970, he was found to have been in possession of five washed out plugs which were railway property and were reasonably suspected of having been stolen. The recovery of the property was made from the search of his person carried on by S.P. Sharma (P. W. 1), Assistant Sub-Inspector, Railway Protection Force, and Ram Singh (P. W. 4), a Constable of the Railway Protection Force, in the presence of Buddhoo (P. W. 5) when the accused after completing his day's duty was coming out of the main gate of the Loco Workshop. As found by the two courts below, the plugs were found underneath the langot which the :iccused was

wearing; he was also wearing an underwear and a pant. With the recovered articles, of which the recovery memo. Ext. Ka-1 was prepared on the spot, he was taken to the Loco-Out-post where the sealed articles were deposited by P. W. 1 and an entry thereof was made in the General Diary at 7.55 P. M. (Vide Ext. Ka-3). The recovered articles were tested by the Railway Expert Iqbal Singh (P. W. 2) on 3rd July and, as runs the opinion of the witness, these articles were railway property and tallied with specification Nos. FX-451 and FX-482. The plug;, it was observed by the witness, could not be made as a marketable commodity. They were in serviceable condition and could rot be taken out of the Loco Gate without a Gate Pass.

2. The learned Magistrate, placing reliance upon the evidence of the above-mentioned witnesses, returned a finding that the revisionist was in possession of the stolen railway property and that since he had not shown that the property came into his possession lawfully, he was guilty of the offence under Section 3. The plea of the accused that he had been falsely implicated was repelled by both the Courts and the evidence, which he adduced through D. W. 1 Ram Kheliiwan that he had been falsely implicated at the instance of P. W. 1, was disbelieved. Having regard to the fact that the value of the stolen articles did not exceed Rs. 50/-. the learned Magistrate took a lenient view of the matter and sentenced him to a fine of Rx 200/- only. The learned Sessions Judge'ias confirmed the order passed tiy the learned Magistrate.

3. Feeling aggrieved from that order, the accused has come up in revision before me.

4. The learned Counsel for the revisionist has, in the main, contended that the evidence adduced on behalf of the prosecution was insufficient to prove that the recovered articles were 'railway property' as defined by Section 2(d) of the Act. By Section 2 'railway property' is defined to include any goods, money or valuable security or animal belonging to or in the charge or possession of a railway administration. Section 3 defines the offence as also the measure of punishment. Before any person can be charged with the offence under Section 3, it must be shown that he was in possession of railway property reasonably suspected of

having been stolen or unlawfully obtained and, unless the person in possession proves that the railway property came into his possession lawfully, he is to be held guilty of the offence. The learned Counsel for the revisionist maintains that in the absence of direct and positive evidence of theft from the Loco Workshop, and for want of satisfactory evidence to show that the articles were the railway property, the prosecution was unable to lay foundation for a presumption being drawn that the accused was in possession of railway property reasonably suspected of having been stolen or unlawfully obtained. In support of this contention, he invited my attention to two salient features: first, that the recovered articles did not bear any specific railway mark; and secondly, that there was complete lack of evidence to show that the railway stores were short of five washed out plugs, on the date the accused was apprehended. It may well be that the prosecution did not adduce direct evidence of theft, it is also true that these articles did not bear such specific marks as could lead one to say that they were 'railway property.' But the corpus delicti of the crime can also be proved by circumstantial evidence. In a number of crimes, as they occur in practice, no direct proof that the party-accused actually committed the crirne is or can be given; the man who is charged with theft is rarely seen to break the house or take the goods; and in cases of murder it rarely happens that the eye of any witness sees the fatal blow struck or the poisonous ingredient poured into the cup. But even in such cases circumstantial evidence is the only evidence which can lead to the authorship of the crime or to the discovery of the fruit of the crirne. The real test in all such cases is whether the evidence believed by the Court is inconsistent with any other reasonable hypothesis than that of the guilt of the person accused. It is 'not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism' (Vide Himachal Pradesh Administration v. Om Prakash : 1972 CriLJ606 .

5. The following passage from Wills on Circumstantial Evidence. Seventh Edition, P. 343, has apposite application here:

The same general principle prevails with regard to the proof of crimes of every description, and of every element of the corpus delicti. Thus, on the trial of a man for stealing pepper, it appeared that on the first floor of a warehouse a large

quantity of pepper was kept in bulk, and that the prisoner was met coming out of the lower room of the warehouse, where he had no business to be, having on him a quantity of pepper of the same description as that in the room above. On being stopped he threw down the pepper, and said, 'I hope you will not be hard with me.' From the large quantity in the warehouse it could not be proved that any pepper had been taken from the bulk. It was urged on behalf of the prisoner that there must be direct and positive evidence of a corpus delicti, and that presumptive evidence was insufficient for that purpose; but the Court for Crown Cases Reserved held that the prisoner had been rightly convicted.... If the circumstances satisfy the jury, what rule is there which renders some more positive and direct proof necessary? And he (Mr. Justice Maule) mentioned the case of a father and two sons, who were convicted of stealing from their employers a quantity of shoes and materials for making shoes, though the prosecutors said their stock was so large that they could not say they had missed any one of the articles alleged to have been stolen. (Reg. v. Burton, (1854) 6 Cox CC 293).

6. In the light of the above principles and upon their application to the present case, it would appear that the accused was arrested at the gate of the Workshop when he was coming out after the day's duty; he was stealthily carrying the articles. In spite of an endeavour made to impeach the credit of S.P. Sharma (P. W. 1), a Sub-Inspector of the Railway Protection Force his testimony remains unshaken; there was no oblique motive for P. W. 1 or the two recovery witnesses, namely, Ram Singh (P. W. 4) and Budhoo (P. W. 5) to implicate the accused falsely. Instead of accounting for the possession of the articles, the accused offered a false denial of the recovery. He having been found in possession of washed out plugs, which are and could be used in a steam locomotive, just when he was coming out from the Workshop and he having offered a false explanation in respect of the said recovery, an incriminating net work of facts was cast around him and on the mere ground that the prosecution could not produce direct evidence of theft, he cannot successfully resist an inference of guilt.

7. learned Counsel has referred me to the decision of the Supreme Court in Kashmirilal v. The State of Uttar Pradesh : 1970 CriLJ1647 , but that case has distinguishing features. The stolen railway property had been recovered from a

Transport Company; it was not pos-lible to spell out from the prosecution evidence that the recovered items were used or intended to be used in the construction, operation or maintenance of railway; the report of the Railway Expert was vague inasmuch as the Expert was unable to state if the recovered articles were auctioned in the market or not. On these facts and having regard to the definition of 'railway stores' contained in Section 2 of the Railway Stores (Unlawful Possession), Act, 1955, their Lordships held that the evidence fell short of proving that the goods were used or intended to be used in the construction, operation or maintenance of railway. Section 3 of that Act was attracted only when it was shown that the accused was in posession of railway stores which are used or intended to be used in the construction, operation or maintenance of railway. In the instant case the accused was tried and convicted of an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966, which carries within its sweep the unlawful possession of railway property or of such property reasonably suspected of having been stolen, irrespective of the fact whether or not the property was used or intended to be used for the railway administration. The definition of 'railway property' being not in pari materia with that given to 'railway stores', the law laid down by the Supreme Court in the aforesaid decision cannot be made applicable to the present case. Further, the accused, as has been proved by the prosecution, was found with these articles when lie was coming out of the Loco Workshop, it being not a case in which the goods were found with a person who had' nothing to do with the Loco Workshop. That being so, when there was cause for reasonable suspicion of the stores being stolen or having been obtained unlawfully, they having been found on the person of the accused who failed to give any satisfactory explanation for the same and instead offered a false explanation, there was hardly any room to entertain doubt about his guilt.

8. Finally, the learned Counsel for the revisionist urged that the evidence relating to search and recovery could not have been reasonably believed. I am unable to agree with this contention. The accused was soon after taken to the Loco Police Outpost where he was lodged with the recovered articles; the General Diary of the Loco Police Outpost lends corroboration to this aspect of the prosecution evidence. There was no reason for the Sub-Inspector posted at the main gate to foist a false recovery upon the accused. In these circumstances, the trial Court

was justified in holding that the articles were recovered from the person of the accused.

9. For the above discussion, I see no force in this revision which is here by dismissed. The order staying realisation of fine is withdrawn.