

Ganesh Chaudhary Vs. State

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Court : Allahabad

Decided On : Mar-02-1981

Reported in : 1981CriLJ812

Judge : Murlidhar, J.

Appellant : Ganesh Chaudhary

Respondent : State

Judgement :
ORDER

Murlidhar, J.

1. The applicant Ganesh Chaudhary has been convicted under Section 3 of the Railway Property (Unlawful Possession) Act (hereinafter called the Act) and sentenced to a fine of Rs. 500/-, in default rigorous imprisonment for six months.

2. The prosecution case was that on 3-6-1977 on prior information S. I. Gangotar Prasad, Head Rakshak Shital Prasad Pande along with Rakshak Qazimullah of the Railway Protection Force were keeping a watch at the main gate. They noticed the applicant a pointsman in the N. E. Railway workshop at Gorakhpur, coming towards the main-gate. They intercepted him and on being suspicious searched him and from under the phent (sic) of his Dhoti recovered wrapped in a blue cloth four pieces of brass weighing about 5 Kg for possession of which the applicant

was not able to give any explanation. The applicant's defence was of denial. He asserted false implication due to enmity with Gangotar Prasad S. I. The prosecution examined about the recovery S. I. Gangotar Prasad, Head Rakshak Shital Prasad Pande, Jagannath Banerji, a clerk in the Workshop, and Fakhre Alam from the Electric repairs branch both of whom figure amongst the recovery witnesses. They all supported the prosecution case except for Jagannath Banerji who was evasive and stated that he merely saw some stuff lying on the table which was stated to be stolen property and elaborated that he could not say what was recovered as there was quite a crowd present. He was treated to be an hostile witness by the prosecution, The applicant in defence examined Sukhlal a Khalasi who spoke of a quarrel between S. I. Gangotar Prasad and the applicant in the workshop apparently to show enmity with the S. I. The Court below have believed the evidence of recovery and convicted the applicant. The factum of recovery is concluded by the concurrent finding of fact recorded by the courts below in which no infirmity that can be considered in revision could be pointed out or noticed.

3. Learned counsel for the applicant attacked the finding that the property in question was the railway property. The evidence in this respect is of V.K. Srivastava who deposed that the chemical analysis revealed that the brass pieces were of the same specification as are used in the Railway workshop and that such brass pieces were available in the railway workshop. He conceded that the brass having the same composition is used outside the railway workshop also. The lower appellate court, however, dittoed the finding of the trial court that the brass pieces were railway property observing that the circumstances that the applicant was arrested inside the workshop with the brass pieces concealed round his waist and without any innocent explanation proved that these pieces were stolen from the workshop. The learned Counsel attacked this finding and contended that the circumstances of recovery cannot go to show that the property was railway property. He relied upon *Ram Narain Tewari v. State of U.P.* 1978 All Cri C 297 : 1978 Cri LJ NOC 218 in which a learned single Judge of this Court observed that the presumption under illustration (a) to Section 114. Evidence Act operates if a person is found in possession of stolen property and not otherwise and similarly, presumption under Section 3 of the Act also comes into play only if the goods are

proved to be railway property. The learned Judge in the case before him found that the appellate court had committed an error in presuming ownership of the railway of the brass axil from its possession with great respect the legal proposition laid down in the case is indisputable. The question, however, is not of raising a presumption of stolen character under illustration (a) to Section 114, Evidence Act or of railway property character under Section 3 of the Act, but as to the nature and quantum of evidence that can suffice to prove that the recovered property is railway property. The Expert examined only goes to the extent of proving that it can be railway property but he allows the possibility of such property being available outside the railway establishments also. Can this possibility not be excluded by circumstantial evidence? With great respect, circumstantial evidence is as good as direct evidence if not better. The facts that the applicant is an employee in the workshop, that the workshop has a lot of brass pieces of this kind that he was carrying the brass pieces concealed round his waist while going out of the workshop and that he had no explanation for possession thereof and at the trial falsely denied recovery are legitimate basis for finding that the brass pieces were railway property from the workshop, This inference is not drawn from the possession of the brass but from the circumstances of possession. In a sense such an inference of fact, from the probabilities of (sic) can be regarded as a presumption under Section 114, Evidence Act which only incorporates the principle of reasoning on the basis of probabilities to wit common cause of natural events human conduct probable and private business is likely to have occurred or been followed in the case in hand also unless the facts show otherwise. But his presumption under Section 114 is not a presumption or inference of guilty-knowledge of stolen character under illustration (a) of the section on the basis of the fact of possession shortly after theft. In Ram Narain's case (supra) the learned Judge observed.

The only circumstantial evidence pointed out by the courts below is recovery of the axil from the possession of the applicant.

It was in this context that the observations were made. The present case can be distinguished because the inference of the railway workshop ownership of the goods recovered is made not merely from the possession thereof but the

circumstances attending the possession discussed earlier. The finding that the property was railway property is, therefore, unassailable.

4. The revision, therefore, fails and is hereby dismissed. The stay order dated 26-9-1980 is vacated.

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