

**State Vs. Lajarus Bahal**

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**SooperKanoon Citation :** [sooperkanoon.com/533554](http://sooperkanoon.com/533554)

**Court :** Orissa

**Decided On :** Jun-26-1990

**Reported in :** 1992CriLJ152

**Judge :** S.C. Mohapatra, J.

**Acts :** Railway Property (Unlawful Possession) Act, 1966 - Sections 2 and 3; Code of Criminal Procedure (CrPC) - Sections 313 and 378

**Appeal No. :** Government Appeal No. 56 of 1983

**Appellant :** State

**Respondent :** Lajarus Bahal

**Advocate for Def. :** U.N. Mishra and ;B.N. Tripathy, Advs.

**Advocate for Pet/Ap. :** H. Kanungo, Addl. Govt. Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**S.C. Mohapatra, J.**

1. This is an appeal under Section 378, Cr. P.C., against the order of acquittal from an offence Under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred to as 'the Act').

2. On 4-4-1981 a goods train coming towards Rourkela Railway Station from Rayagada Railway Station stopped at about 9 p.m. for about 5 minutes to the west of the Railway Station for want of signal to enter into the Platform. Suddenly, three to four persons broke open the doors of two wagons containing cement bags on the northern side by breaking the seals. They unloaded some cement bags. Two Rakshyaks of Railway Protection Force marked it and chased to catch accused carrying one bag of cement. Accused failed to produce any authority for such possession and accordingly prosecution was reported for an offence Under Section 3(a) of the Act.

3. Accused pleaded not guilty and explained in his statement Under Section 313, Cr. P.C. that he is an employee of one Murty who is the building contractor of Basanti Colony buildings hardly 300 yards away from the spot and he was carrying cement of Murty.

4. Prosecution examined five witnesses and exhibited seizure list, report and two messengers with regard to shop and breaking open. Trial court on appreciation of evidence found that one bag of cement was seized from accused. It held that prosecution has not produced the seal card which is best evidence to know the accurate account of articles in the wagon. Trial court acquitted accused on the finding that prosecution has failed to prove that seized cement bag is railway property.

5. Mr. H.N. Kanungo, learned Additional Government Advocate submitted that trial court having accepted evidence of prosecution witnesses that cement bag was seized, ought to have also considered the circumstances of such seizure to come to conclusion that cement bag was Railway property to convict accused Under Section 3(a) of the Act where accused is to prove the prosecution to be lawful.

6. 'Railway Property' has been defined Under Section 2(d) which reads as follows:

'2.(a) to (c) xx xx xx xx xx xx xx xx(d) 'railway property' includes any goods, money or valuable security or animal, belonging to, or in the charge or possession of, a railway administration'.

This definition being inclusive decision is wide. If any property belongs or in charge or possession of railway administration, it is railway property.

7. Where prosecution proves that such railway property is found in possession of accused, he shall be convicted Under Section 3 if it is reasonably suspected of having been stolen or otherwise unlawfully obtained unless accused proves that his possession of railway property is lawful. Section 3 reads as follows :

3. 'Penalty for unlawful possession-of railway property:-- Whoever is found, or is proved to have been, 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 a 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'.

In (1973) 39 CLT 1280 P. Venkat Rao v. Union of India through Officer-in-Charge, Railway Protection Force, Jatni it has been held (at page 1281):

The essential element to be established is that the property recovered is railway property and the same was found in possession of the accused. If these two elements are established, the onus shifts to the accused to prove that the railway property came into his possession lawfully'.

8. Trial court on appreciation of evidence has held that cement bag was found in possession of accused. If the cement bag is proved to be Railway property, there would be no difficulty to convict the respondent since he has not proved that he lawfully possessed the cement bag. Statement under Section 313, Cr. P.C. is not

evidence.

9. It is not the prosecution case that cement bag belonged to railway administration. It is stated to be in charge of railway administration for being transported. If the cement bag in possession of respondent is proved to have been in possession of railway administration before it was in possession of respondent, respondent would be held to be in possession of railway property and would have to prove his lawful possession.

10. Cement is a common goods. By itself it cannot be said to be railway property. However, it can be proved to be railway property by proving other similar goods of similar make in possession and proving that there was shortage of one. With that proof if it is found that accused was found in possession of such similar bag near about the place where other bags were in possession of railway administration, Court can legitimately make a reasonable suspicion that the cement bag was stolen or unlawfully possessed. In this case, prosecution has made no endeavour to prove similarity of the bags in the wagon, those found on the ground and are in possession of accused. In such circumstance, explanation of accused Under Section 313, Cr. P.C. that the cement bag belonged to Murty Contractor of building of Basanti Colony and he being an employee of Murty was taking his cement bag to site which is near the place where he was found cannot be thrown out.

11. In the result, on the materials available on record, I agree with the conclusion of the trial court that the accused is not liable to be convicted for the offence and appeal is dismissed.