

Panchu Kurmi Vs. the State

Panchu Kurmi Vs. the State

SooperKanoon Citation : sooperkanoon.com/862099

Court : Kolkata

Decided On : Feb-03-1956

Reported in : AIR1956Cal268,1956CriLJ743,60CWN799

Judge : Debabrata Mookerjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 256 and 367; ;
[Evidence Act, 1872](#) - Sections 101 to 103

Appeal No. : Criminal Revn. No. 871 of 1955

Appellant : Panchu Kurmi

Respondent : The State

Advocate for Def. : Purnendu Sekhar Bose, Adv.

Advocate for Pet/Ap. : Gurudas Bhattacharjee, Adv.

Judgement :

ORDER

Debabrata Mookerjee, J.

1. This Rule was issued to show cause why the conviction of the petitioner under Section 3 of Ordinance 19 of 1944 and the sentence passed thereunder should not be set aside. The petitioner was tried by a Magistrate of the First class, at

Howrah.

The prosecution case was that the petitioner and another were found in possession of some ball bearings which were said to be the properties of the railway and that the petitioner and his co-accused failed to offer satisfactory explanation of their possession of those goods. In these circumstances they were charged with having committed an offence under Section 3 of Ordinance 19 of 1944 (Railway Stores Unlawful Possession Ordinance 1944). Section 3 of the Ordinance is in these words:

'Whoever is found or is proved to have been in possession of any article of railway stores shall, if the Court sees reasonable grounds for believing such article to be or to have been the property of the administration of any federal railway, unless he proves that the article came into his possession lawfully, be punishable with imprisonment for a term which may extend to five years or with fine or with both'.

Section 2 defines railway stores as including any article used or intended to be used in the construction, operation or maintenance of a railway.

2. The prosecution called evidence to prove the petitioner's possession of the ball-bearings which were exhibited in Court.

3. The petitioner and his co-accused denied the charge and claimed that the goods which were the subject matter of the charge had been purchased in good faith by them; in other words, an explanation was offered of the possession of these goods by the petitioner.

4. The learned Magistrate held that the evidence was not sufficient to convict the petitioner's co-accused but found the petitioner guilty of the charge of possessing the ball bearings in contravention of the provisions of Section 3 of Ordinance 19 of 1944 and sentenced him to pay a fine of Rs. 50/- in default to suffer rigorous imprisonment for one month.

An application was made to the Sessions Judge of Howrah with the request to make a recommendation to this Court that the conviction and the sentence passed on the petitioner be set aside. The learned Judge however declined to interfere

whereafter the present Rule was obtained.

5. Although this Rule was limited to the ground that the conviction was bad by reason of the Ordinance having lapsed, the matter was argued with the permission of the Court at length by learned Advocates on behalf of the petitioner and on behalf of the State.

6. On behalf of the petitioner, the ground of challenge to the conviction by reason of the Ordinance having lapsed was not persisted in; but it was strenuously argued that in view of the evidence in the case the learned Magistrate misdirected himself in holding that the petitioner failed to prove that the article in question had come into his possession lawfully.

In support of this argument, attention was drawn to the evidence of two defence witnesses who were called to explain petitioner's possession of the goods. D. W. 1 is a dealer in iron scrap who stated that he used to acquire goods at sales held by Mackenzie Lyall and he had sold identical goods, the subject matter of the charge, under a receipt which was proved in the case and marked as Ex. A.

The witness further stated that he did sell brass bearings but was not in a position to state how many nor could he say, presumably at that distance of time, whether those had any railway marks. This evidence was supported by the testimony of D.W.2, an employee of Mackenzie Lyall and Co., who deposed that the Company auctions railway goods.

The witness further stated that D.W.1 was a regular customer of theirs. It is of course true that in cross-examination the witness added that he could not, without consulting records, say whether these brass bearings were sold to D.W.1 since the records were not before him at the time he gave evidence.

7. The question then arises whether the evidence to which I have just referred which was called by the defence should be held as constituting sufficient explanation of the petitioner's possession of these brass bearings, the subject matter of the charge. The learned Magistrate referred to the evidence of prosecution witnesses and held that the petitioner's possession of these articles

had been proved.

While discussing the evidence of the defence witnesses the learned Magistrate seems to have thought that the evidence of the two witnesses did not reach the standard of proof which was necessary to establish his innocence. It must be observed that in this regard the learned Magistrate allowed his judgment to be warped by entirely wrong considerations.

8. The standard of proof to be applied in judging of the sufficiency or credibility of prosecution evidence is entirely different from that which is to be insisted in the case of the defence. Before the petitioner could be convicted of a charge of offence under Section 3 of the Ordinance, the prosecution had to establish clearly the Possession of the goods by the petitioner.

The requirement of Section 3 which I have read above, is that if the Court sees reason to believe that the articles in question are property of the Railway, then the person found in such possession would be liable to be convicted unless he could prove that the articles came into his possession lawfully.

That means and implies that a duty is cast upon the person charged to prove the circumstances under which he came into possession of these articles. Once he discharges that duty he cannot possibly be convicted in view of the terms of Section 3 of the Ordinance. It is in this context that the question of standard of proof arises.

There can be no question that the standard to be applied for the purpose of holding proved a person's guilt is certainly not the same standard which the Court is required to insist upon while judging of the worth of an explanation offered by the accused as respects the circumstances under which the goods came into his possession.

In the present case a voucher was produced which was said to relate to the goods in question. The learned Magistrate does not disbelieve the voucher or the transaction which that voucher evidenced. The finding of the Magistrate in this regard merely amounts to a finding that the explanation offered by the accused is

insufficient.

I do not think that the Magistrate was right in law in insisting upon the same standard of strict proof in judging of the explanation which the petitioner offered of his possession as he applied to the case for the prosecution. These two standards must necessarily be different. If of course the Magistrate had found that Ex. A which was a receipt showing purchase of the articles by the petitioner from D. W. 1 was a spurious document, the position might have been different.

As I have already observed the findings as respects the sufficiency or plausibility of the explanation offered by the petitioner indicates that the Magistrate was insisting upon clear incontestable proof of his innocence. In this regard the Magistrate must be held to have completely misdirected himself.

9. This principle has, I think, been clearly enunciated in the case of -- 'Rex v. Carr-Briant' (1943) KB 607 (A), where it was held that when some matter is presumed against an accused person, unless the contrary is proved, the burden of proof on the accused must be held to be less than that required at the hands of the prosecution in proving the case beyond reasonable doubt; such burden on the accused might be discharged by evidence which makes the version of the accused probable.

This view of the law has received further support from decisions of this Court also to which I need not make elaborate reference (vide the case of -- 'Chang Chung Ching v. Emperor' : AIR1945 Cal363 and the case of -- 'Maharathi Prasad v. The State' : AIR1952 Cal122). These two Indian decisions refer to similar onus on the person charged raised by statutes and I think the observations made in them are clearly applicable to the present case.

10. I think therefore in the circumstances of this case the conviction has been wrongly made and must accordingly be set aside.

11. The Rule is made absolute, and the petitioner is acquitted. The fine, if paid, will be refunded.

