

IN THE COURT OF THE II METROPOLITAN MAGISTRATE (FOR RAILWAYS)
SECUNDERABAD

Present: Sri Ch. A.N. Murthy,
II Metropolitan Magistrate (for Railways)
Secunderabad

Thrusday the 7th Day of February, 2019

C.C. No.01 of 2019

BETWEEN:

The Assistant Sub-Inspector,
Railway Protection Force,
Moulali Out Post

... Complainant

AND

Bheema Naik, S/o.Jamali,
Age : 45 years, Occ : Labour,
R/o.Kurvi (Village & Mandal),
Mahabubabad,
Presently residing on foot paths
Near Alpha Hotel, Secunderabad.

.... Accused

This case is coming before me on 07-02-2019 before me for final hearing in the presence of Public Prosecutor for the railways and learned legal aid counsel Sri P.Srinivas for the accused and the matter having heard and stood over for consideration till this day, this Court delivered the following:

JUDGMENT

1. The Assistant Sub-Inspector, Railway Protection Force, Moulalai out post filed a complaint in Crime No.75 of 2018 for the offence under Section 3 (a) of Railway Property (Unlawful Possession) Act, 1966 (for short 3 (a) of RP (UP) Act. 1966) against the accused, the brief facts of the which are narrated hereunder:

On 02-10-2018 at about 11.00 AM the complainant along with his staff while conducting rounds at KM No.200/2-4, Moulalai rialway station yard and detained the accused while he was carrying one polythene bag and moving suspiciously. Then the complainant secured the presence of two mediators LWs 2 & 3 namely S.Shankar and M.Ramana and checked the bag

and found 04 ACB plates and on enquiry the accused voluntarily confessed about commission of theft of same from the railway track area. Then the complainant has conducted panchanama and recorded the statement of the accused and seized the railway property under the cover of said panchanama, effected the arrest of Accused and returned to the post along with seized property and Accused and registered a case in Cr. No.75/2018, u/s. 3(a) of RP(UP) Act 1966. On the same day, the accused was produced before the court for judicial remand.

Later the complainant received theft report from LW-4 Sri G.Srinivas, Senior Section Engineer, P-Way, Moulai and got certification from him. Later the complainant has examined the mediators and recorded their statements. After completion of enquiry, filed the complaint.

2. This case was taken on file for the offence under Section 3(a) of RP (UP) Act,1966.
3. After appearance of the accused copies of documents were furnished to him as required u/s.207 Cr.P.C.
4. The accused was examined under Section 246 (2) of Cr.PC. by explaining all the incriminating material against him to which the accused denied the allegations. A charge under Section 3(a) of RP (UP) Act, 1966, was framed and explained to the accused in vernacular language to which the accused pleaded not guilty and claimed to be tried.
5. On behalf of the complainant, Pw.1 was examined and got marked Exs.P1 to Ex.P6 and Mo.1. The learned Public Prosecutor has given up the evidence of remaining witnesses, as such the same was closed.
6. After the closure of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C. explaining the incriminating evidence appearing

in the evidence prosecution and when questioned accused denied the same and reported no defence evidence.

7. Heard learned Public Prosecutor appearing for railways and learned counsel for the accused.

8. Now the point for determination is

“Whether the prosecution proved the guilt of the accused for the offence under Section 3 (a) of RP (UP) Act, 1966 beyond reasonable doubt or not?”.

9. POINT:-

Section 3 of RP (UP) Amendment Act, 2012 deals with imposition of penalty for unlawful possession of Railway Property. Section 3 of the RP (UP) Act, 1966 reads as follows:

“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 mentioend in the judgement of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;”

10. A plain reading of the above section shows that whoever is found in possession of Railway property unless he proves the railway property fell into his possession lawfully he/she shall be punishable.

11. The prosecution has examined the Assistnt Sub-Inspector of Railway Protection Force. P.W1 in his evidence reiterated the complaint allegations. Pw.1 also deposed about the apprehension of the accused, seizure of railway property from his possession, effecting arrest, remanding him to judicial custody and conducting the further investigation and obtaining the necessary documents, as stated in the final complaint. A plain reading of Exs.P1 to P6 would show that the accused has committed theft of Mo.1 and the case property certificate Ex.P4 would show that Mo.1 property belongs to railways were seized from the possession of the accused.

12. Nothing has been elicited from the cross examination of Pw.1 to discredit his testimony. Moreover, the evidence of Pw.1 is cogent, consistent and corroborating with the documentary evidence let in by the prosecution. Admittedly, Pw.1 is the Assistant Sub-Inspector of Railways, who is a public servant and that no motive has been attributed to Pw.1 to speak false against the accused. Apart from that, Ex.P4 would prove that the case property belongs to the railways. Thus, this court is of the opinion that the complainant by examining Pw.1, proved the factum of recovery of Mo.1 which belongs to railways from the possession of the accused under the cover of panchanama (Ex.P2) and the evidence of Pw.1 is clinching on all material aspects. Therefore, this court is of the opinion that the complainant amply establishes its case against the accused by proving the factum of recovery of Mo.1 from the possession of the accused without there being any ray of doubt.

13. The Learned Counsel for the accused would contend that panch witnesses to seizure panchanama and Railway Officer who issued case property certificate were not examined and as such benefit of doubt should be given in favour of the accused. As stated by me in the earlier paragraphs of judgment, Pw.1 is public servant and he has no animosity against the accused to depose falsely and this court does not find any reason to implicate the accused by Pw.1 in a false case. Hence, it is held that as the evidence of Pw.1 is quite convincing and reliable in nature, non examination of panch witnesses Railway Officer, who issued Case Property certificate, is not fatal to the case of the complainant. The evidence of Pw.1 is quite convincing and reliable and his evidence is unshaken. No motives are attributed to Pw.1 to implicate the accused falsely in this case. Thus the complainant succeeded in proving the guilt of the accused for the offence under Section 3 (a) of RP (UP) Act, 1966 and accordingly he is found guilty.

14. Learned Counsel for the accused contends that the confessional statement of the accused has no evidentiary value as the same was obtained by force. On the other hand, Learned Public Prosecutor would submit that under Railways Act the Railway Protection Force personnel have authority to record the statement of the Accused under Section 180 (B) of the Railways Act and the same can be relied upon to prove the guilt of accused in view of the observation of the Hon'ble Supreme Court in the case of BALKISHAN Vs STATE OF MAHARASHTRA (1980 Criminal Law Journal 1424). In the said judgment it was held that the statement recorded by the officer of Railway Protection Force is admissible in evidence and he cannot be treated as a police officer. Even assuming for a moment that the alleged confession made by the accused is ignored, still the prosecution has proved the guilt of the accused through the consistent evidence of Pw.1 coupled with Exs.P1 to P6 beyond all reasonable doubt and the evidence of Pw1 is unshaken.

15. Thus, accused is found guilty for the charge under Section 3 (a) of RP (UP) Act, 1966 and he is convicted u/s 248(2) of Cr.P.C.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 7th Day of February, 2019.

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16. When the accused is questioned with regard to the quantum of sentence likely to be imposed on him, the accused submits that he was already in judicial custody for a period of about 129 days, from 02.10.2018 to till today i.e., 07.02.2019 and as such he pleaded mercy to take a lenient view in awarding the sentence.

17. Having regard to the facts and circumstances of the case, this court is not inclined to extend the benefit under the provisions of Probation of Offenders Act. Considering the submissions made by the accused, the

accused is sentenced to under go RI for 2 months for the charge under Section 3(a) RP UP Act 1966. Set-off is given to the accused u/s.428 Cr.P.C. for the period of remand already undergone by him from 02.10.2018 to till today i.e.07.02.2019. Since the accused was in judicial custody from 02.10.2018 to till today i.e.,07.02.2019 which is in excess of the period of sentence of 2 months now imposed by this court, the accused shall be set at liberty forthwith, if he is not required in any other case. The Mo.1 case property shall be returned to the railways after appeal time is over. The accused is informed that he has got the right of appeal against the Judgment of this court and he can take the services of District legal services authority, Hyderabad, in preferring such appeal, if he is so advised.

Typed on my dictation, corrected and pronounced by me in the open Court on this the 7th Day of February, 2019.

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APPENDIX OF EVIDENCE
WITNESSES EXAMINED FOR

PROSECUTION:

PW.1:D.Harji

DEFENCE:

None

EXHIBITS MARKED FOR

Ex.P1 : is the Statement of Accused

Nil

Ex.P2: is Panchanama

Ex.P3: is the theft report.

Ex.P4: is the Case Property Certificate

Exs.P5 & P6: Statements of Mediators

MO's. Marked for:

Mo.1 : 04 ACB Plates

Nil

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