

Jagdish Rai

Vs

State of Bihar

Criminal Appeal No. 223 of 1968

(J. M. Shelat, H. R. Khanna JJ)

11.01.1972

JUDGMENT

KHANNA, J. -

1. Jagdish Rai appellant was convicted under Section 3 of Railway Stores (Unlawful Possession) Act, 1955 by Magistrate 1st Class, Chapra and was sentenced to undergo rigorous imprisonment for a period of one year. On appeal Addition Sessions Judge, Chapra confirmed the conviction and sentence. Revision petition filed by Jagdish Rai was dismissed in limine by the High Court of Patna. The appellant thereafter filed appeal by special leave in this Court.

2. The prosecution case is that on August 9, 1964, at about 6.45 a.m. Ramji Pandey, Sainik in the Railway Protection Force, was on duty in the upyard Sonapur railway platform. When Ramji Pandey, in the course of checking, arrived near a coach, he saw the accused coming out from beneath the coach after tying something in his gamchha. Ramji Pandey asked the accused to stop, but the accused fled towards the East. Ramji Pandey chased the accused and raised alarm, whereupon Goga Singh (P.W. 1) and Ram Ekbal Singh (P.W. 3), Rakshaks in the Railway Protection Force, and one Sheo Singh joined Ramji Pandey. With their help the accused was secured. The accused was found to have tied in his gamchha a dynamo belt containing the letters "T.L.I. Seener" and a knife measuring 11 digits. The dynamo belt of the coach, from under which the accused had been seen coming out, was found to be missing. The accused was then taken to Ram Bilas Singh (P.W. 5), Officer In-charge of Railway Protection Force, Sonapur. The dynamo belt, knife and the gamchha were also produced before Ram Bilas Singh. Ram Bilas Singh forwarded the accused along with a report as well as the dynamo belt, knife and the gamchha to Bhagwat Narain Chaudhary (P.W. 6), Incharge of Sonapur Government railway police station. On the basis of the report sent by Ram Bilas Singh, Bhagwat Narain Chaudhary prepared first information report.

3. The dynamo belt recovered from the accused, according to the prosecution case, showed that it was railway property and was used in coaches for generating electricity.

4. At the trial the plea of the accused was denial simpliciter. In defence one witness J. Mukherji, Loco Foreman, was produced. According to the above witness, the accused on the day of occurrence, was working as a fireman and at about 7 or 8 a.m. he went to Mukherji D. W. for knowing his place of duty. The witness added that there had been a dispute between Sonapur Railway Protection Force staff and the staff of Permanent Way Inspector, and this had resulted in criminal case wherein the accused along with other members of the staff of Permanent Way Inspector had been put on a test identification parade.

5. The trial magistrate found that the case against the accused had been proved beyond all reasonable doubt. He accordingly convicted and sentenced the accused as above. Similar view was taken on appeal by the learned Additions Sessions Judge.

6. We have heard Mr. U. P. Singh on behalf of the appellant and are of the view that there is no merit in this appeal. Ramji Pandey (P.W. 2) has given evidence in support of the prosecution as given above. His evidence is supported by that of Goga Singh (P.W. 1). We have further the evidence of Ram Bilas Singh (P.W. 5) that the accused along with the dynamo belt in question as well as knife and gamchha was produced by Ramji Pandey, Goga Singh and Ram Ekbal Singh before the witness. The witness then forwarded the accused along with a report as well as the recovered articles to Bhagwat Narain Chaudhary (P.W. 6). The above evidence was accepted by the trial court and the appellate court and nothing has been shown to us for interfering with the appraisal of that evidence. In addition to the above, we have the evidence of R. N. Banerji, Railway Electrical Chageman, who has deposed that the letters on the dynamo belt indicated that it was railway property. Nothing was asked in cross examination to shake the evidence of Banerji.

7. The defence evidence of Mukherji was rejected by the courts below and we are not inclined to take a different view. According to Mukherji, the accused went to the witness at about 7 or 8 a.m., while the material on record shows that before that he had been secured and produced before the officers of the Railway Protection Force and the Government railway police with the recovered articles.

8. Mr. Singh has pointed out that, according to Ramji Pandey, the dynamo belt wrapped up in a gamchha was in the hand of the accused when the witness chased the accused. According, however, to Goga Singh P.W. the dynamo belt wrapped up in a gamchha was lying at a distance of 10-15 yards of the accused at the time he was apprehended. The above discrepancy, in our opinion, is not very material. It is quite possible that, immediately before his apprehension, the accused might have thrown the gamchha containing the belt and the knife. Another circumstances pointed out by Mr. Singh is that no seizure memo regarding the dynamo belt, knife and gamchha was prepared when the accused was produced along with those articles before Bhagwat Narain Chaudhary. This circumstance, in our opinion, is not of much significance because the evidence of Ram Bilas Singh tends to show that the recovery of the dynamo belt, knife and gamchha was mentioned in the report sent by Ram Bilas Singh and those articles too were sent along with the report forwarded by the witness to Government railway police station.

9. The appeal consequently fails and is dismissed.

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