

CALCUTTA HIGH COURT

Moyalal Rostagir

Vs.

State (Calcutta)

Criminal Revision No. 1139 of 1958

(Debabrata Mookherjee and D.N. Das Gupta, JJ.)

15.01.1960

JUDGMENT

Debabrata Mookherjee, J.

1. The Petitioner Moyalal Rostagir alias Maya Lall Rustogi has been convicted by a Magistrate of the first class at Howrah under Section 3 of the Railway Stores (Unlawful Possession) Act, 1955, and sentenced to suffer rigorous imprisonment for six months. The seized goods were directed to be returned to the Eastern Railways. The Petitioner took an appeal to the Sessions Judge who dismissed the same.

2. The case for the prosecution briefly was that on June 25, 1957 a Sub-Inspector of Police attached to the Criminal Investigation Department conducted a search of the godown of the Petitioner on the strength of a search warrant. Certain properties said to belong to the Railway Administration were recovered at the search. An information was lodged with the Bally police which resulted in an investigation and eventual charge-sheet. The case for the prosecution was that the Petitioner had been found in possession of articles of Railway Stores suspected of being stolen or unlawfully obtained and he had not been able to account satisfactorily for their possession.

3. The Petitioner pleaded not guilty and his defense was that he had purchased in open market the articles in question. He produced a receipt, ext. A, and examined the seller from whom he had purchased the goods as a defense witness.

4. The courts below held that the elements of the offence charged had been established against the Petitioner.

5. Railway Stores have been defined in the Act as an article which is the property of any Railway

Administration and which is used or intended to be used in the construction, operation or maintenance of a Railway. It was thus necessary to establish that articles in question were not only property belonging to the Railway Administration but that they were used or intended to be used in the construction or operation of a railway. This definition, therefore, implies that a railway property unlawful possession of which is punishable under the Act must be proved to be in serviceable condition. An article cannot be said to be intended to be used if it is mere scrap.

6. Possession of such property which is reasonably suspected of being stolen or unlawfully obtained is punishable under Section 3 of the Act. That section says If any person is found, or is proved to have been, in possession of any article of Railway Stores reasonably suspected of being stolen or unlawfully obtained, and cannot account satisfactorily how he came by the same, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

7. The ingredients of an offence under Section 3 which we have just read are that the articles of Railway Stores found in possession of the person charged must be reasonably suspected of being stolen property or unlawfully obtained and there must be failure on the part of the person charged to offer a satisfactory explanation of his possession.

8. Thus the prosecution is required to prove that the property in question is Railway property in serviceable condition, that it is reasonably suspected of being stolen or unlawfully obtained and the person charged failed to account satisfactorily for his possession of such property. Evidence has to be adduced by the prosecution to satisfy these elements of the charge before a conviction can be had.

9. It is the prosecution case itself that the articles of Railway Stores in this case were all old and rusty materials; but it was attempted to be maintained that they were in a serviceable condition. This was sought to be proved by the evidence of Biswanath Mukherjee (P.W. 5) who described himself as an Assistant Permanent Way Inspector of Eastern Railways. He stated that the articles though old and rusty were in serviceable condition. He put himself forward as an expert although the designation of his office does not seem to imply that he is an expert. He was, however, constrained to admit in cross-examination that it was only after examination by an Assistant Engineer, Railways, that the decision is finally taken as to whether any railway material is serviceable or not. It seems to us on a consideration of his evidence that before it could be decided whether a particular railway material was in serviceable condition or not the opinion of an Engineer was required to be obtained. No such opinion appears to have been taken in this case and the prosecution depended only upon the evidence of this witness who was only an Assistant Permanent Way Inspector, for the purpose of proving a rather technical point as to whether the materials in question were in serviceable condition or not. It was indeed essential for the prosecution to prove that the materials were in serviceable condition inasmuch as the definition of Railway Stores shows that the article in question must actually be used, or at any rate, intended to be used for the construction, operation or maintenance of a railway. Surely no article

could be so used or intended to be used if it was unserviceable. In our opinion the prosecution failed to establish in this case an essential element of the offence charged.

10. There is another aspect of the matter. Section 3 provides that the person charged can be convicted only if he fails to account satisfactorily as to how he came to possess Railway Stores. That would imply that even if the articles are proved to be Railway Stores within the meaning of the Act, the person charged cannot be convicted if he accounts for their possession to the satisfaction of the court. The question then arises what would amount to a satisfactory explanation of possession. That does raise a question of fact; but then it also raises at the same time the question as to what the accused is required to do to induce the court's satisfaction. In other words, the quantum of proof which the accused is called upon to offer in a case of this kind becomes a pertinent question.

11. In this case the Petitioner produced a receipt, ext. A which was proved by the defense witness Narayan Das Agarwala. The witness stated that he had purchased old railway materials and sold some of them on June 4, 1957. He sold some articles to the Petitioner for a sum of Rs. 60 and granted the chalan (ext. A). The document was in the witness's own handwriting and bore his signature. He identified the articles which were the subject-matter of the charge as having been sold by him to the Petitioner. Besides this evidence there is also the evidence of prosecution witnesses to the effect that the Petitioner is a dealer in scrap iron and he has been running the business for a long time. Railway materials such as those produced in the present case were available in the market. In fact Lakshimi Narayan (P.W. 3) stated that such railway materials used to be sold to scheduled manufactures and these manufacturers were entitled to sell them in open market. The search witnesses could not deny that at the time the articles were seized from the Petitioner's shop, the Petitioner produced a receipt.

12. It seems, therefore, clear that the Petitioner is a dealer in scrap iron and there is evidence to indicate that he acquired the articles in question from another dealer. This is how the Petitioner attempted to explain his possession of the articles. The question then arises as to whether such explanation of a person charged with an offence under Section 3 of the Act should be accepted and acted upon. Is it necessary that he should conclusively establish the fact that he came to possess the articles by purchasing them in open market? Or, is it sufficient for him to offer a reasonable explanation of his possession? It is to be recalled that the onus of proving the case always remains on the prosecution and if the accused is required to prove anything, the standard of proof cannot surely be the same as that required of the prosecution. The burden on the accused in a case of this kind might be discharged by evidence which makes his version probable. That is the view which has always been accepted and acted upon. See *Rex v. Carr Briant*¹, *Chang Chung Chin v. King Emperor*², and *Maharathi Prosad v. The State*³. There cannot be any doubt that Section 3 does lay a burden upon the accused; but the proof required of him is certainly less rigorous than that required at the hands of the prosecution. Indeed the observations of the Court of Criminal Appeal in the case of *Issac Schama and Jacob Abramovitch, Criminal Appeal*

Reports Vol XI, p. 45, are instructive. That was a case where a person was charged for receiving stolen property with guilty knowledge. There the question of offering an explanation arose. It was said "If an explanation is given which may be true, it is for the jury to say on the whole evidence whether the accused is guilty or not; that is to say, if the jury think that the explanation may reasonably be true, though they are not convinced that it is true, the prisoner is entitled to an acquittal, because the Crown has not discharged the onus of proof imposed upon it of satisfying the jury beyond reasonable doubt of the prisoner's guilt."

13. It is thus well settled that if an explanation is offered by the accused it has to be considered by the Court and if it appears to be reasonably true then the Court has to treat it as satisfactory explanation. In this case an explanation was offered which, on the face of it, was acceptable and the courts below were not right in insisting upon the same strict

¹(1943) 1 KB 607

³(1951) 6 DLR (Cal.) 97

²(1944) 49 CWN 229

proof in the case of the accused as was required at the hands of the prosecution.

14. We accordingly hold that the elements of the offence charged have not been established by the evidence in the case. The conviction and sentence are accordingly set aside and the Petitioner is acquitted. The articles in question will be returned to the Petitioner.

15. The Rule is made absolute.

D.N. Das Gupta, J.

16. I agree.

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