
(1975) 08 AHC CK 0038
In the Allahabad High Court
Case No : Criminal Appeal No. 1669 of 1972

Hari	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 25-08-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 379
Railways Act, 1989 — Section 126, 126(1), 126(2)
Uttar Pradesh First Offenders Probation Act, 1938 — Section 4
Criminal Procedure Code, 1973 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 379
Railways Act, 1989 — Section 126, 126(1), 126(2)
Uttar Pradesh First Offenders Probation Act, 1938 — Section 4
Criminal Procedure Code, 1973 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 379
Railways Act, 1989 — Section 126, 126(1), 126(2)
Uttar Pradesh First Offenders Probation Act, 1938 — Section 4

Citation : (1976) AWC 65

Hon'ble Judges : S. Malik, J

Bench : Single Bench

Advocate : S.J. Jafri, for the Appellant;

Final Decision : Allowed

Judgement

S. Malik, J.—This appeal arises out of the Judgment dated 6-5-1972 of the 2nd Temporary Civil and Sessions Judge, Saharanpur convicting Hari u/s 379 of the Indian Penal Code, and u/s 126 of the Indian Railways Act (hereinafter referred to as the Act) and sentencing him concurrently to one year's rigorous imprisonment and four years' rigorous imprisonment respectively.

2. The evidence on the record was considered and the learned Counsel for the parties were heard.

3. The relevant facts proved by the prosecution are that a number of incidents of tampering with the railway track in the yard of Saharanpur Railway Station were

reported due to which patrolling of the railway track in the yard was intensified by the Circle Inspector of Railway Protection Force (hereinafter referred to as R.P.F.) at Saharanpur, H.L. Rosario. On the 25th of September, 1966 H.L. Rosario himself along with PW 3 Sub-Inspector Amar Singh, PW 4 Assistant Sub-Inspector Narain Prasad PW 6 Ram Gopal and one Malik Ram, all of R.P.F. Out post Khanalampura, left the out post at about 4.45 PM for patrolling the track towards the west of the outpost. They presently heard the sound of hammering from towards west on the main Moradabad Saharanpur railway track. They stealthily proceeded in that direction and then saw from a distance of about 50 steps Ram Lal alias Billa and Faqir Chand with the help of hammers and other implements pulling out keys and jaws from the track. Appellant Hari and Gian Singh were carrying bags and were with Ram Lal and Faqir Chand. The keys and jaws removed by Ram Lal and Faqir Chand were being handed over to Hari and Gian Singh who were keeping them in the bags they were carrying. This was happening near telegraph Pole No. 1588/2. On seeing this, Rosario and the others chased the Appellant and his companions and challenged them. The Appellant and Gian Singh thereupon threw away their bags and took to their heels along with Ram Lal and Faqir Chand who carried away the hammers. Faqir Chand was ultimately caught but the rest escaped. The R.P.F. party collected the bags the Appellant and his companion were carrying and the bag which the Appellant had thrown down, contained seven keys and three jaws. As the Appellant absconded and could not be traced, his case was separated while the other were prosecuted and tried.

4. The Appellant pleaded not guilty and denied the prosecution allegations. According to him, he was falsely implicated earlier in another theft case by the G.R.P., Saharanpur, and as he was acquitted in that case, out of spite he has been falsely implicated in this case. The Appellant did not examine any witness in his defence.

5. The prosecution proved the facts narrated through PW 3 Amar Singh PW 4 Narain Prasad and PW 6 Ram Gopal, the eye witnesses of the incident. The rest of the witnesses were of a formal nature and include the Investigating Officer.

6. No material contradiction could be brought to the notice of the Court in the statements made by the three eye witnesses examined by the prosecution and there is nothing on the record to show that they had any motive to falsely implicate the Appellant. Besides oral evidence, the prosecution also adduced in evidence the recovery memo prepared at the time of the incident and other relevant documents.

7. The learned Counsel for the Appellant argued that even if it be held that the prosecution has proved its case against the Appellant in respect of an offence punishable u/s 379 of the Indian Penal Code, it could not be said, in view of the evidence of the prosecution itself that the Appellant committed an offence punishable u/s 126 of the Act. The contention is not without force.

8. The relevant portion of Section 126(1) of the Act lays down--

Subject to the provisions of Sub-section (2), if a person unlawfully--

(a) puts or throws upon or across any railway any wood, stone or other matter or thing, or

(b) takes up, removes, loosens or displaces any rail, sleeper or other matter or thing belonging to any railway, or

(c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway, or

(d) makes or shows, or hides or removes, any signal of light upon or near to any railway, or

(e) does or causes to be done or attempts to do any other act or thing in relation to any railway, with intent, or with knowledge that he is likely to endanger the safety of any person travelling or being upon the railway, he shall be punished....

As has been narrated the prosecution has proved that the keys and jaws were taken out from the railway track within the meaning of clause (b) of Sub-section (1) of Section 126 of the Act. As the keys and jaws held the railway track in tact, it has also been proved that the keys and jaws were removed either with the intention to endanger the safety of persons travelling by the trains which were to pass over that track or with the knowledge that the removal of the said things was likely to endanger the safety of such persons. But according to the prosecution itself, the jaws and keys were not removed by the Appellant but were removed by the two others. So the question which arises is whether the Appellant could be said to have committed an offence punishable u/s 126 of the Act as he has been proved to have accompanied the other two, namely, Ram Lal alias Billa and Faqir Chand, and was found receiving in a bag the keys and jaws after they had been removed from the track. There would have been no difficulty if it had been proved that the Appellant was seen in any way assisting the culprits in removing the keys and jaws. The prosecution has proved that the Appellant did not in any way assist them in removing the keys or jaws but he merely received them after they had been actually removed. A perusal of clause (b) of Sub-section (1) of Section 126 of the Act will show that as soon as the keys or the jaws were loosened or removed, the offence punishable u/s 126 of the Act was complete.

9. The learned Counsel for the State argued that the facts proved by the prosecution against the Appellant are covered by clause (e) of Sub-section (1) of Section 126 of the Act. The contention does not appear to be correct. Clause (e) of Sub-section (1) of Section 126 of the Act lays down:

does or causes to be done or attempts to do any other act or thing in relation to any railway, with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway....

10. There is no evidence on the record to show that the Appellant in any way caused the removal of the keys or jaws or attempted to do so. It may be repeated that there is no evidence on the record to show that it was the Appellant who persuaded the other culprits to remove the keys and jaws or in any way assisted them in actually removing the keys and the jaws. The prosecution has proved that the Appellant was receiving the stolen articles or in other words, the keys and jaws after they had been actually removed and the offence u/s 126 of the Act was complete. The act of removing the keys and jaws had already endangered the safety of persons travelling or being upon the railway trains which were to have passed over that track and it cannot be said that by receiving the keys and jaws after they had been removed, the Appellant could in any way have endangered the safety of such persons. There is nothing in Section 126 of the Act which can be said to create vicarious liability or make a person who receives any railway property after an offence u/s 126 of the Act has been committed by the removal of such property by another person, guilty of an offence punishable u/s 126 of the Act by his having been found in the company of another at the time that another person was found committing an offence punishable u/s 126 of the Act.

11. In view of the reasons discussed, after considering the entire evidence on the record, in my view, the Appellant cannot be said to have committed an offence punishable u/s 126 of the Act though he did commit an offence punishable u/s 379 of the Indian Penal Code by committing theft of railway property along with the other culprits.

12. It was also urged on behalf of the Appellant that as the Appellant was aged about 20 years at the time his statement was recorded u/s 342 of the Code of Criminal Procedure, 1898, his age must have been about 14 years on the date of the incident. The Appellant, therefore, was a young boy at the time of the incident and as there is nothing to prove that he is a previous convict, he should be given the benefit of Section 4 of the U.P. First Offender's Probation Act.

13. Keeping in view the facts and the circumstances of the case and also the fact that the Appellant absconded for a number of years I see no reason to interfere with the sentence passed against the Appellant u/s 379 of the Indian Penal Code.

14. The order passed by the lower court convicting and sentencing the Appellant u/s 126 of the Act is set aside and the Appellant is acquitted under that section. The order passed by the lower court convicting and sentencing the Appellant u/s 379 of the Indian Penal Code is upheld. The Appellant is on bail. He shall surrender forthwith and failing that he shall be taken into custody to serve out the sentence passed by the court below u/s 379 of the Indian Penal Code.

15. The appeal is decided accordingly.