
(1943) 09 MAD CK 0031
In the Madras High Court
In Re: K.C. Subbanna

Date of Decision : 08-09-1943

Acts Referred:

Citation : AIR 1944 Mad 388 : (1944) 57 LW 323

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—This is an appeal against the conviction and sentence of rigorous imprisonment for five years by the learned Sessions Judge of Anantapur. The learned Sessions Judge, at the time of the trial, was sitting in his capacity as Special Judge trying an offence under the Defence of India Rules. The accused was charged with an offence under Rule 35(A) (2), Defence of India Rules which reads : "If any person dishonestly receives or retains, or voluntarily assists in concealing or disposing of or making away with, any sabotaged property, knowing, or having reason to believe, the same to be sabotaged property, he shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both." "Sabotaged property" is defined in Rule 35(A) (1) as meaning, "property the possession of which has been transferred by, or in consequence of, any such act as is referred to in Sub-rule (1) of rule 35," and Sub-rule (1) of Rule 35 deals with acts of sabotage. The facts are very simple. On 15th August 1942 there is no doubt that a goods train No. 405 was derailed as a result of some person or persons having removed the rails, and there can be no doubt that this was an act of sabotage, especially having regard to the conditions then prevailing. Before the learned Special Judge 15 persons were charged with various offences, the gist of which was that they were responsible for the wrecking of the train. They were all acquitted. Against the present appellant there was a charge which reads as follows : "That you accused 16 between the 15th and the 24th days of August 1942 at Kottala near Guntakal dishonestly received or retained sabotaged property, i.e., the property lost in the goods train derailed on the night of 15th August 1942, knowing or having reason to believe the same to be sabotaged property and thereby committed an offence punishable under Rule 35 (A) (2), Defence of India Rules and within my

cognizance." It will be observed that it was not conveyed to the appellant what property he is said to have had in his possession. The conduct of this case was throughout characteristic of the method in which the charge was framed. It appears however that it was at some stage conveyed to the appellant that he was in guilty possession of M. Os. 5, 10, 4, 3a, 7, 3 and 6. He was acquitted with regard to M. Os. 5, 10, 4, 3a, and 7. But he was found guilty by the learned Judge with regard to M. Os. 3 and 6. M.O. 3 consisted of four empty gunny bags and M.O. 6 was a bale of 250 empty gunny bags.

2. Possession being admitted, the prosecution had to prove in the first place that these were sabotaged goods. In other words the gunny bags had to be identified. With regard to M.O. 3, the four empty bags, two witnesses P. Ws. 7 and 8 were called. In the course of the evidence of P.W. 7, it was made clear that his firm of Ralli Brothers supplied to sellers fresh gunnies and that these were not fresh gunnies. There was evidence by the same witness that such gunnies were sold to the public and therefore might have been available to the appellant. He stated as follows : "I cannot say if M.O. 3 was issued to him (a Reddy dealer) . . M.O. 3 bears no marks of any station from and to which the contents are booked. Nor do they bear the owner's name." P.W. 8's evidence was to the effect that he could not identify M.O. 3 as among the lost bags because they had become black. The result of the evidence of these witnesses was that they were not in a position to say that the four empty gunny bags marked M.O. 3 were ever in the sabotaged train at all. Nevertheless the learned Special Judge, in para. 16 of his judgment, stated as follows : "P. W. 7 the Sub-Agent of Ralli Brothers at Guntakkal gives evidence that M.O. 3 (four empty gunny bags which bear the letters R F A N T U) are the bags of the company." In fact it has never been proved that M.O. 3 were sabotaged goods.

3. The position with regard to M.O. 6 is as follows: The witness called to identify them, P.W. 14, frankly admitted in the witness-box that he was unable to do so and so informed the police. The police, instead of summoning from Calcutta persons who might have been in a position to identify these gunny bags the subject of M.O. 16. directed P.W. 14 to enter into correspondence with Calcutta and as a result of that correspondence letters were put before the learned Judge which satisfied him that M.O. 6 were goods that were on the train that day and therefore sabotaged goods. Apart from the question of admissibility , the documents themselves do not identify the goods. The Mills who are said to have made them expressed the view that they in all probability might be of their manufacture, because bundles of their goods were marked in the same manner in blue ink as M.O. 6. It cannot be put higher than that. But it is obvious that this Ex. G series correspondence is not admissible at all. It is hearsay. An examination of the correspondence shows that the most important letter Ex. G4 is not even from or to P.W. 14. It is a copy of a letter said to have been written by the Megna Jute Mills to Louis Dreyfus and Co., Calcutta. The only way in which the identity of M.O. 6 could be proved was calling a witness to identify them. The procedure adopted in this case with regard to the identification of these goods

must be strongly condemned. There is a very special reason. This accused was a dealer in groundnuts and as such was in the habit of having in his possession very large quantities of gunnies. The evidence generally was that gunny bags circulated, and accordingly it was not an unusual thing for him to have in this possession large quantities of gunny bags. He actually let in evidence to prove that he purchased these very bags, but although he did call witnesses for that purpose who identified the bags as being those sold, the learned Judge preferred to reject their evidence and to accept the inadmissible documentary evidence to which we have referred. We cannot help feeling that there was an impression in the Court below, that the rules of procedure and evidence did not apply in these cases. Rule 23 of Ordinance 2 of 1942 by implication makes it clear that the rules of evidence apply because it expressly provides for an exception to the rules of evidence in cases coming u/s 164, Civil P. C. Apart from that it is obvious that the rules of evidence would ordinarily apply unless expressly abrogated.

4. The result of this case is that the appellant who protested his innocence and was able to show that he was a subscriber to war funds has suffered a long term of imprisonment. The appeal must be allowed. The Public Prosecutor has most properly made no attempt whatever to justify the conviction. We cannot part with the case without expressing regret that the Public Prosecutor of Anantapur placed the case before the Court in the manner in which he did. A prosecution case should never be supported by evidence which is patently inadmissible. Scrupulous fairness should have been shown in a case in which for a sentence of five years no appeal was then provided. The accused is on bail. His bail bond is cancelled. The fine which we understand has been paid will be refunded.