
(2003) 07 PAT CK 0134

In the Patna High Court

Case No : Criminal Revision No. 443 of 1999

Kishori Prasad, Chhedi Sah, Parikshan Mahto and Etwaria
Mosmat @ Most. Etwari Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : (2003) 3 PLJR 794

Hon'ble Judges : Anil Kr. Sinha, J

Bench : Single Bench

Advocate : Bikramdeo Singh and Bhola Prasad, for the Appellant; Prabhat Ranjan, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sinha, J.—This revision application has been filed against the order dated 3rd June, 1999 passed by the 2nd Additional Sessions Judge, Katihar, in Criminal Appeal No. 20 of 1995, whereby he dismissed the appeal preferred by the Petitioners and others. The Petitioners were convicted for the offence u/s 3 (a) of the R.P. (U.P.) Act and were sentenced to undergo rigorous imprisonment for one year each, whereas, the other accused who were the members of the crew were sentenced to undergo rigorous imprisonment for two years.

2. The facts relevant to the present revision application are that on 24.10.85 at about 6.15 A.M. the S.I. S.N. Ojha, posted at R.P.F. Post, Katihar, got an information that shunter and fireman of Engine No. 4363-YG was selling coal from the engine towards Mansahi Railway Crossing Gate of Gosala, so, he rushed towards engine alongwith S.I. Amar Deo Singh and constable Bashishtha Narain Jha and noticed that engine crew was keeping one basket on the head of a lady from Engine No. 4363-YG. So, the lady was chased by them but she managed to escape throwing the basket, containing raw coal, by the side of the railway track. The Complainant identified that lady who was Atwaria of Gosala. Meanwhile, the

constable Ramayan Choubey also arrived there to assist the raiding party. The complainant noticed that huge quantity of raw coal was kept by the side of the railway crossing gate and three persons were sitting there who fled away seeing the R.P.F. men. They could not be apprehended even after chase. Those persons were identified by S.I. Amar Deo Singh and Constable Ramayan Choubey and they were Kishori Lal, Parikshan Mahto and Chhedi Sah who are Petitioner Nos. 1 to 3 here. The complainant with the help of other R.P.F. personnel extinguished the fire and seized 167 Kg. of raw coal. The complainant also seized raw coal left by the lady weighing about 36 Kg. The seizure lists were prepared and brought to R.P.F. Post Katihar where the complainant submitted written complaint to the Officer Incharge R.P.F. Post, Katihar (West). After completing the enquiry, the Officer Incharge R.P.F. Post, Katihar, submitted prosecution report against the Petitioners as well as Sahdeo Ram and Prayag Das. The Petitioners alongwith Sahdeo Ram and Prayag Das were charged u/s 3(a) of the R.P. (U.P.) Act to which they pleaded not guilty.

3. It is evident from the prosecution report itself that the Petitioners were not apprehended nor any recovery of coal was made from their possession and they have been made accused because the prosecution witnesses claimed to identify these Petitioners while running away.

4. Accused Sahdeo Ram and Prayag Das, who were the members of the crew, had preferred Criminal Revision No. 364/99 against the order of conviction and sentence recorded against them and this Court by its judgment dated 10.7.2001 allowed the revision application and set aside the judgment and order of conviction and sentence recorded by the trial Court. It was found that the prosecution could not prove that the seized coal was the railway property as P.W. 6 was not an expert to say that the seized coal was the railway property.

5. It was next submitted that P.W. 1 Ramayan Chaubey did not disclose the names of the Petitioners. P.W. 2 has not named the Petitioner Nos. 1 to 3 and stated that the name of Petitioner No. 4 was disclosed to him by Sri Ojha. Similar statement has been made by P.W. 3 Amardeo Singh. But, P.W. 5 Shivrath Ojha has stated that he learnt the name of Petitioner Nos. 1 to 3 from Amardeo Singh (P.W. 3) and Ramayan Choubey (P.W. 1) and the name of the Petitioner No. 4 was disclosed by the members of the crew. It was, therefore, argued that the witnesses have made contradictory statement and no body had actually identified these Petitioners. Learned Counsel, therefore, submits that neither on the point of identification of the Petitioner nor on the point of recovery there is any evidence against the Petitioner to show that they have committed the alleged offence. That apart, it was reiterated that P.W. 6 was not an expert and the prosecution failed to prove the essential fact that whether the seized coal was the railway property.

6. Having heard the learned Counsel for the Petitioners and considering the materials on record, I am of the view that the prosecution had failed to establish the charge against these Petitioners. In such view of the matter as also the fact

that the order of conviction and sentence recorded by the trial Court has already been set aside by this Court in Cr. Revision No. 364 of 1999, this revision application is allowed and the Petitioners are held not guilty to the charge levelled against them. The order of conviction and sentenced as recorded by the trial Court and confirmed by the appellate Court are hereby set aside.

7. In the result, therefore, this revision application is allowed and the Petitioners are discharged from the liabilities of their bail bonds.