

(1983) 06 BOM CK 0017
In the Bombay High Court
Case No : Criminal Appeal No. 545 of 1979

State of Maharashtra

APPELLANT

Vs

Shanti Shankar (Smt.) and Others

RESPONDENT

Date of Decision : 29-06-1983

Acts Referred:

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

Citation : (1983) 2 BomCR 298

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : H.M. Kachare, P.P, for the Appellant; A.G. Deshmukh, for the Respondent

Judgement

Sharad Manohar, J.—One of the most anomalous contentions has been raised by the Public Prosecutor in this criminal appeal against the accused. A mere statement of facts is enough to disclose the anomalous character of the contention.

2. The three respondents before me were the three accused in the trial Court. They were prosecuted for the offence of being in possession of railway property namely, bearing plates. The allegation, therefore, was that they had committed offence u/s 3 of the Railway Property (Unlawful Possession) Act. The case of the prosecution in short was that accused Nos. 1 and 2 who are respondents Nos. 1 and 2 before me had stolen the railway property and had sold the same to accused No. 3, who is respondent No. 3 before me. A charge-sheet was filed by the police against the three accused, charge was framed against them by the learned Magistrate and evidence was led by the prosecution. No independent evidence could be adduced by the prosecution to prove that accused Nos. 1 and 2 had at any particular time committed theft of the railway property in question. All that the prosecution tried to prove was that accused Nos. 1 and 2 admitted and confessed before the police that they have stolen the railway property namely, the bearing plates, and had sold the same to accused No. 3. Certain

property of the nature of bearing plates was recovered from the possession of accused No. 3. The property did not bear any sign to show that it belonged to the railway. Accused No. 3 denied that the property recovered from his possession was the railway property. He did not admit that the property was purchased by him from accused Nos. 1 and 2. Accused Nos. 1 and 2 denied having sold the property to accused No. 3. In these circumstances, it was necessary for the prosecution to prove :

- (a) that the property which was recovered from accused No. 3 was the railway property;
- (b) that accused Nos. 1 and 2 had stolen the same from the railway premises;
- (c) that they had sold the same to accused No. 3 or had given the same in the custody of accused No. 3; and
- (d) accused No. 3 had received the property from accused Nos. 1 and 2 knowing that it was the railway property.

The prosecution led practically no evidence as regards the last three points. So far as the first point was concerned, namely that the property alleged to have been stolen was the railway property, evidence of P.W. 2, the permanent Weigh Inspector and employee of the railway, was led as the evidence of an expert witness. The said witness stated in his evidence that this property recovered from accused No. 3 was the property belonging to the railway. There was no identification mark on the property. But the prosecution wanted the Court to hold that the property recovered from accused No. 3 was none other than the railway property and for this purpose the prosecution wanted to rely exclusively on the opinion of the so-called expert witness-P.W. 2.

3. Having regard to this conduct of the prosecution, the learned Magistrate held that commission of no offence whatsoever was established by the prosecution either by accused Nos. 1 and 2 or by accused No. 3. Hence, he passed an order of acquittal in favour of all the three accused. The present appeal is filed against the said order of acquittal. The appeal was filed and was admitted. Notices were ordered to be issued to all the three accused. However, accused Nos. 1 and 2, that is to say, respondents Nos. 1 and 2 were not served with the notice of the appeal by the Government at all and ultimately an order had to be passed by this Court dismissing the appeal against original accused Nos. 1 and 2 for non prosecution. When the appeal reached for hearing before me, it was an appeal against respondent No. 3 (original accused No. 3) only.

4. Mr. Kachare, the learned Public Prosecutor was unable to point out a single circumstance which would justify an inference of theft by accused No. 3 of any railway property. He was unable to point out as to how the property seized from the custody of accused No. 3 could be said to be the railway property when admittedly it had no identification mark whatsoever. The question whether the property belonged to railway or not is a matter for expert evidence. No amount

of expert skill can enable any person to say, without any likelihood of error, that the property belongs to railway only and cannot have been manufactured by anybody else. This is the view taken by the learned Magistrate and, to my mind, he was perfectly justified in taking that view.

5. It would be a dangerous precedent to hold that even if the property which bears no identification mark whatsoever all the same is proved to be belonging to the Railway merely because one of the Railway employees comes to the Court and says on oath that the property is the railway property. Life of the citizens will not be safe if this much of evidence is held sufficient to bring home conviction of offence against any citizen. To my mind the learned Magistrate has taken a very correct view of the matter, viz. that the evidence led by the prosecution to prove that the property allegedly recovered from the custody of accused No. 3 was the railway property, is hopelessly inadequate evidence or, as a matter of fact, no evidence at all in the eyes of law. The appeal against respondent No. 3 also must, therefore, fail.

6. The appeal, therefore, fails and the same is hereby dismissed.