

(1974) 10 AP CK 0007
In the Andhra Pradesh High Court

The Public Prosecutor

APPELLANT

Vs

Shaik Galib and Others

RESPONDENT

Date of Decision : 11-10-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342
Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : (1975) 1 AnWR 287 : (1975) CriLJ 952

Hon'ble Judges : S. Obul Reddi, C.J

Bench : Single Bench

Judgement

S. Obul Reddi, C.J.—The State appeal is directed against the acquittal of A-1 and A-2 of the offence u/s 3 of the Railway Property (Unlawful Possession) Act, 1966. Section 3 in these terms:

3. Penalty for unlawful possession of railway property. Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully be punishable.

(a) for the first offence with imprisonment for a term which may extend to > five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence with imprisonment for a term which may extend to five years and also, with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

What has to be established by the prosecution u/s 3 is that the property seized from the accused is the railway property and that the property is reasonably

suspected of having been stolen or unlawfully obtained. Unless it is established that the property seized from, the accused is the railway property and is reasonably suspected to be stolen property, the question of punishing the accused person u/s 3 does not arise.

2. What is contended in this " case by Mr. Rama Rao appearing for respondents 1 and 2 (A-1 and A-2) is that there is no evidence to show that the railway property has been stolen or reasonably suspected to have been stolen. A-1 was the driver of the lorry. A-2 had hired the lorry from its owner. The Sub-Inspector was informed about the railway property being removed unlawfully in a lorry. He, therefore, stopped the lorry which was carrying the railway property. That what was seized from the lorry was the railway property is established by the evidence of P. Ws. 1, 3, 4 and 5. The . case of A-1 and A-2, as revealed by them in their statements u/s 342, Criminal Procedure Code is that it is all false. There is no doubt from the evidence of the Sub-Inspector and the panch witnesses that the railway property was seized from the lorry which was being driven by A-1 and which was hired by A-2 having reasonably suspected that it was stolen. A-2 did not say for what purpose he hired the lorry and how the railway property came to be transported in the lorry he hired. May be that the driver of the lorry may not know whether the property belonged to the railways or even if it belonged to the railways, whether A-2 came into lawful or unlawful possession of the same. But A-2, who had hired the lorry has not explained as to how the railway property came to be transported in the lorry hired by him. It is not his case that he had purchased the property from somebody who had lawfully obtained it. It is not necessary that there should be a report of the theft of the railway property. It is sufficient if the facts and circumstances disclose that the property is reasonably suspected of having been stolen. In this case, there is sufficient evidence for inferring that the railway property was reasonably suspected of having been stolen. If it is not the stolen property, the 2nd accused could have easily explained the source from which he got the railway property. Once it is established that it is the railway property and it is reasonably suspected to have been stolen, the burden shifts upon the accused to show how he came into lawful possession of the same. There is absolutely no explanation, from A-2 who hired the lorry. So far as A-1 is concerned, he has to be given the benefit of doubt, and it is not shown that he too was a party to the transportation of the railway property which is suspected to have been stolen. So far as A-2 is concerned, the evidence on record established that the property, which was recovered from the lorry hired by him, is the railway property and. in the absence of his explanation as to how he came into possession, it must be held that he came into possession of the property by unlawful means. The fact that no report of theft was made from the railway yard is not a ground for holding that A-2 came into possession of the property by lawful means.

3. A-2, is, therefore, convicted u/s 3 of the Railway Property (Unlawful Possession) Act and sentenced to rigorous imprisonment for a period of one year. The State appeal in so far as A-1 is concerned is dismissed giving him the benefit

of doubt. The appeal preferred against A-3 has already been dismissed by this Court for failure to effect service of notice on him. The State appeal: in so far as it relates to A-2 is allowed. Appeal partly allowed