
(2017) 03 KAR CK 0237
In the Karnataka High Court
Case No : 959 of 2012

Union of India and others

APPELLANT

Vs

Haridass and others

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

[Rajasthan Pre-Emption Act, 1966](#), Section 3(a)

Citation : (2017) 03 KAR CK 0237

Hon'ble Judges : John Michael Cunha

Bench : SINGLE BENCH

Advocate : B. Visweswariah, G. Desu Reddy, Eugene Prabhu

Judgement

1. This appeal is filed by the State challenging the judgment of acquittal recorded by the Special Court for Economic Offences, Bengaluru in C.C.No.458/2005 dated 7.3.2012 whereby the Special Court has acquitted the respondents/accused Nos. 1 to 5 and 7 of the offences punishable under Section 3(a) of RP(UP), 1966.

2. The main contention urged in the appeal by the State are that the court below has failed to appreciate the evidence in proper perspective and by blindly applying the doctrine of benefit of doubt has acquitted the respondents/accused Nos. 1 to 5 and 7, even though there is direct evidence of the fact that accused Nos. 1 and 2 were caught red-handed and the property belonging to the Railways was seized from their possession.

3. I have heard the learned HCGP on behalf of the State and the learned counsel for the respondents/accused and have carefully scrutinized the oral and documentary evidence produced by the prosecution.

4. The specific charges were framed against the accused alleging that on 18.5.2004 at about 4.30 a.m., the accused Nos. 1 and 2 were found committing theft of six numbers of Axle brass pieces and the further charge against the accused was that the stolen railway property was sold to accused No. 3. In support of these accusations, the prosecution examined 10 witnesses. PW-1 is

the complainant/Inspector of Railway Protection force, who has stated that he arrested accused Nos. 1 and 2 near Isolation Hospital, Old Madras Road at 4.30 a.m. and under the mahazar Ex-P1 seized two Axle brass pieces viz., M.Os. 1 and 2.

PW-2 is the Investigating Officer, who has spoken about the investigation conducted by him and about the charge-sheet laid against the accused. PW-3 is the Railway staff, who accompanied PW-1 during the confidential watch.

PW-4 is the mechanic working in the Railway Department, who is one of the witnesses to the mahazar Ex-P5, where under the properties M.Os 3 to 5 which were alleged to have been sold to accused No. 3 were recovered under mahazar Ex-P5.

PW-5 is the Engineer of the Railway department, who lodged a report on 22.4.2004 alleging missing of Railway properties.

PW-6 is another Engineer working in the Railway department, who certified that the material objects seized by the Railway police viz., M.Os. 1 to 5 belong to the Railways and issued the certificate as per Ex-P15.

PW-7 is the Assistant Executive Engineer of BESCO, who has been examined to speak to the fact that at the time of arrest of accused Nos. 1 and 2, there were street lights at the spot of arrest of accused Nos. 1 and 2.

PW-8 is the Senior Section Engineer of the Railways, through whom the prosecution has produced the attendance muster rolls extracts of accused Nos. 1 and 2 and 4 to 7 as per Ex-P14.

PW-9 is the owner of the premises, where accused No. 3 is said to have been running the gujari(scrap) shop.

PW-10 is the Inspector of Weights and Measurement Department, who has issued Ex-P19 certifying that accused No. 3 was issued necessary licence to run the scrap shop.

5. On appreciating this evidence, the trial court has held that the prosecution has failed to discharge the burden cast on it with standard of absolute proof. The trial court has observed that in addition to the minor contradictions in the evidence of the official witnesses, the prosecution has not examined any independent witnesses and further the trial court has recorded that the prosecution has failed to prove that M.Os which were produced in evidence were the properties of the Railways or that they were stolen by accused Nos. 1 and 2 from the Railway premises.

6. The learned HCGP has strongly assailed the findings of the learned Magistrate and has taken me through the evidence of the witnesses and would submit that the approach of the learned Magistrate is contrary to the settled canons of justice. The learned HCGP submits that there was absolutely no justification for the learned Magistrate to doubt the evidence of the officials solely on the ground

that they were official witnesses when the evidence on record clearly establish that accused Nos. 1 and 2 were caught red-handed along with the seized properties. Though to that extent, the arguments of the learned HCGP deserves to be accepted, as there is no presumption under law that the evidence of the official witnesses is notworthy of credence and therefore there is no reason to discard the evidence solely on the ground that the witnesses examined by the prosecution are official witnesses. But what is relevant to the noted in the instant case is that the prosecution has miserably failed to prove that the properties produced in evidence were the Railway properties. In this regard, it is relevant to refer to the evidence of PW-6- Senior Section Engineer, who is stated to have issued the certificate Ex-P15 certifying that the seized properties viz., M.Os 1 to 5 were Railway properties. Though in his chief examination he has asserted and stood by the certificate issued by him at Ex-P15, in the cross- examination, it is elicited as under:- "I don't have idea what B/595-305 denotes. BMV 1964 is the manufacturing year. All are old materials

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It cant be stated the marks found on the seized materials what it denotes

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Our department is having standard specification records. I have not verified standard specification records while giving certification

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The property is not condemned but unserviceable. It can be serviceable after reclamation."

7. Here itself, if the mahazar Ex-P15 is perused, the identity marks found on the Axle brass pieces which are said to have been seized from the possession of accused Nos. 1 and 2 were described as bearing marks B/595-305 and BMW 1964 IRS W593. PW-6 who claims to be an expert and on whose certification the prosecution has based its case has exhibited his ignorance about the specifications of the material objects examined by him. The answers elicited from PW-6 indicate that he has either not examined the said articles or that the articles examined by him do not belong to the Railways. This conclusion gets reinforced by the further fact that none of the other witnesses examined by the prosecution have spoken anything about the identity of the properties. In this context, it may be relevant to refer to the principles laid down in the decision rendered in Patna High Court in the case of Sahdeo Ram and another v. The State of Bihar, reported in 2002 Cri LJ 1090 wherein relying on the decision of the Apex Court in the case of Mohmood v. State of Uttar Pradesh, reported in AIR 1976 SC 69, it is held as under:- "Law does not permit any assumption without evidence on material points of competence of witness who offers opinion for consideration against an accused."

8. In the instant case, the prosecution having failed to establish that PW-6

possessed any specific skill, knowledge or expertise in the matter of identification of the material objects, it is unsafe to convict the accused solely on the basis of the other evidence which does not establish the identity of the seized articles. In the face of this evidence, I concur with the finding of the trial Court that when the recovery of the property alleged to be the Railway property is not in serviceable condition and the identity of the goods are not possible, the charges framed against the accused for the theft of Railway properties cannot be sustained. The evidence of PW-6 completely demolishes the case of the prosecution and entitles the accused for Hon''ble acquittal. Hence, though for different reasons concurring with the findings recorded by the trial court, the appeal is dismissed. The impugned judgment of acquittal is confirmed. Appeal dismissed.