

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR**

Present.: Miss. Sarmistha Dash., LL.B.,  
Judicial Magistrate First Class,  
Banpur

Date of Argument : 05.09.2014

Date of Judgment : 17.09.2014

Case No.2(C)CC 01/2014

T.R. No.

State

.... Prosecution

-Versus-

Santosh Sahoo, aged about 25 years, S/o Kispur Sahoo.

R/o Kalua Sahi ( Berhampur), P.S: Gosaninuagaon,

Dist; Ganjam.

.... Accused

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Offence : U/s 3(a) RP & U.P. Act.

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For the Prosecution : Sri O.P.Chakrabarthy, APP

For the Defence. : Sri S.Mahapatra, Advocate, S.D.C.

**J U D G M E N T**

01. The above named accused stands charged for the offence punishable Under Section 3(a) RP & U.P. Act.

02. The brief facts of the prosecution case is that:-

On 16.03.2014 the complainant Subash Chandra Biswal as per the direction of R.P.F O.P , Balugaon G.K.Das, along with H.C, P.K. Khuntia, Con. S.K. Nanda and S.I. CIV, Khurda with staff under supervision of inspector Balugaon left Balugaon at 1.30 am for surprise night checking from 1.35. to 2.30 hours. They checked Balugaon Railway station then as per direction of inspector R.P.F they left for up section i.e. south direction by track and about 2 km distance from station they remained in an ambush watch near Dhoba sahi Sankha Railway under bridge near UM No. 527/01 by the last side of Railway track. During course of ambush watch at about 4.10 pm they noticed the accused coming from Chilika side on U.P line in a suspicious manner. When he came near to them, the ambush party surrounded and detained him and found one plastic white bag was in his left hand. On search they found 18 nos of pendrol clips in the plastic bag.. On being asked the accused failed to produce any legal authority for such possession. As the

properties belongs to Indian Railways which reasonable suspected to have been stolen or unlawfully obtained from the railway so the complainant seized the railway properties from the possession of the accused and prepared the seizure list, then he lodged plain paper FIR and O.C registered a case U/s 3(a) of R.P. and U.P Act and he conducted inquiry. On 16.03.2014 he forwarded the accused to the court sent a memo to S.E (P.Way) Rambha to attend R.P.F Out post, Balugaon to examine properties. As per the memo J.E (P.Way) attended the R.P.F Out Post and examined the property, issued opinion certificate. After completion of inquiry S.I., Subash Chandra Biswal submitted P.R against the accused.

03. The plea of accused is one of complete denial and false implication.

04. The point for determination in this case emerges as follows:

(a) Whether on 16.03.2014 at Dhobasahi Sankha in between Balugaon Chilika section the above named accused was found in possession of railway properties reasonably suspected to have stolen or unlawfully obtained?

05. In order to prove its case, prosecution has examined as many as 04 witnesses. Out of them P.W.3 is the complainant, P.W.1 is the constable of R.P.F. Balugaon P.W.2 is H.C of R.P.F., Balugaon, and P.W.4 is J.E P.way of Balugaon. On the other hand the defence has examined none.

06. On perusal of the evidence available on record it is found that P.W.3 who is the complainant in this case in his evidence stated that on the alleged date as per the direction of R.P.F O.P , Balugaon G.K.Das, he along with H.C, P.K. Khuntia, Con. S.K. Nanda and S.I. CIV, Khurda with staff under supervision of inspector Balugaon left Balugaon at 1.30 am for surprise night checking from 1.35. to 2.30 hours. They checked Balugaon Railway station then as per direction of inspector R.P.F they left for up section i.e. south direction by track and about 2 km distance from station they remained in an ambush watch near Dhoba sahi Sankha Railway under bridge near UM No. 527/01 by the last side of Railway track. During course of ambush watch at about 4.10 pm they noticed the accused coming from Chilika side on U.P line in a suspicious manner. When he

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came near to them, the ambush party surrounded and detained him and found one plastic white bag was in his left hand. On search they found 18 nos of pendrol clips in the plastic bag.. On being asked the accused failed to produce any legal authority for such possession. As the properties belongs to Indian Railways which reasonable suspected to have been stolen or unlawfully obtained from the railway so the complainant seized the railway properties from the possession of the accused and prepared the seizure list, then he lodged plain paper FIR and O.C registered a case U/s 3(a) of R.P. and U.P Act and he conducted inquiry. On 16.03.2014 he forwarded the accused to the court sent a memo to S.E (P.Way) Rambha to attend R.P.F Out post, Balugaon to examine properties. As per the memo J.E (P.Way) attended the R.P.F Out Post and examined the property, issued opinion certificate. He received a theft report from J.E P.Way a theft of 18 nos pendrol clips. On the next day he has visited the spot along with J.E P way and prepare a joint observation report . He has recorded the statement of witnesses, prepared the spot map and then submitted requisition to SSE P.Way Rambha for examination of seized material. The J.E. P.Way Balugaon on 22.3.2014 attended their office and he produced the seized materials before him , he examined the pendrol clips and issued expert opinion certificate. He also received loss report from SSE P.Way Rambha. During his cross examination he said that the articles seized are designed under railway and not available in open market. P.W.2 the constable No.292 RPF post Balugaon deposed that on the alleged date he along with the complainant S.I. S.C, Biswal, I.I.C. G.K.Das ,S.I. P.C. Panda , C.I.B, Khurda head constable P.K. Khuntia as per the direction of I.I.C they have conducted plot form drive . At 2.30 am as per their direction they conducted raid and ambush watch in between Balugaon to Chilika. Near Dhobasahi breeze at 4.10 am they say one person was coming from the side of Chilika to Balugaon on a suspicious manner. When he came near to them IIC detained him and found one plastic cement bag in white colour so they searched the bag and found 18 nos of pendrol clips inside it. On being asked he failed to produce any authority for such possession. Then S.I. Biswal seized the bag as per the direction of O.I.C. No independent witness was

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found due to night. Then the bag was sealed along with the signatures of witness and accused. Similarly P.W.2 deposed that on the alleged date as per the direction of IIC and constable S.K. Nanda, S.I. S.C., Biswal, C.I.B Khurda , P.C. Panda and conducted station cheking and gone Chilika of Km No.527/1fro ambush watch between Balugaon & Chilika at 3.30 Am. At. 4.15 am they saw a person was coming towards Balugaon in a suspicious manner. We detained him then I.I.C asked him and checked his bag and found 18 pendrol clips and on being asked the accused failed to produce any license for such possession. Then as per the direction of the S.I seized it. Then S.I recorded the confessional statement at the spot . P.W.4 the J.E. P.Way of Balugaon deposed that on the alleged date during push trolley inspection between Balugaon & Chilika there were 18 numbers of pendrol clips were missing at Km 527/03-15. Therefore he has given theft message to R.P.F post Baluaon. On the next day at 9.30 hours he along with .RP.F Balugaon, I.I.C Biswal visited the spot and jointly prepared the report. He has given the report S.S.E Rambha. Mr. S.C. Biswal S.I. RPF , Balugaon produced before him one white colour plastic cement bag in sealed condition. He broke open the seal and found 18 numbers of pendrol clips inside the plastic bag. He carefully examined the those articles and opined that these are railway properties and used as track component and they are in serviceable condition and not available in open market.

07. In order to make the accused liable U/s.3(a) RPUP Act the prosecution has to prove all the ingredients of the offence. The Supreme Court in State of Maharashtra Vrs. Vishvanath Tukaram in 1979 CrI. J. 1193 SC held the following ingredients of offence U/s.3(a) RPUP Act:-

- (i) The property in question should be railway property.
- (ii) It should be reasonable suspected of having been stolen or unlawfully obtained and
- (iii) It should be found or proved that the accused was or had been possession of that property.

On perusal of the evidence of P.Ws 1,2,3 & 4 it is found that the accused was caught raid handed by them while the accused in possession of the Railway

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materials. As the Railway properties were found from the possession of the accused and he was very much present there at the time of seizure and he also failed to produce any license or authority for such possession. P.W.3 seized the same and prepared the seizure list. As per the section 3(a) R.P.U.P Act if the railway property is found in the unlawful possession then it is an offence. Further the accused has admitted his guilt which was recorded by P.W.3 and the same was marked as Ext.2 and the accused voluntarily put his signature on his confessional statement this also marked as Ext. 2/4. The confessional statement recorded by Inspector of R.P.F is very much admissible under the law, as it does not attract U/s 25 of Indian Evidence Act. In **State of UP Vrs. Durga Prasad AIR 1977 SC 2136** followed by **AIR 1987 SC 635** it is clearly laid down that any admission or confession of the accused made before the official of RPF during U/s.8(i) of RPUP Act is admissible on evidence. The P.W.4 in his evidence stated that the seized articles were exclusively of the railway properties and not available in the open market and these articles are only used on the railway track, so it is treated as railway property and the same are not available in the open market and he gave his opinion in that respect. In **1994(7) OCR 392 Chintamani Gupta Vrs. State of Orissa** it was held that conviction can be based as the testimony of official witnesses who have not been proved to be acting with malafide intention and found to be trust worthy.

8Heard both the parties. Though the learned defence counsel put forwarded in his argument that the witnesses are official in nature. The Apex court laid down in **State of Gujurat- Vrs- Raghunath 1985 CrI. J.1357 AIR 1985 Supreme Court 1092** the evidence of official witnesses is not to be discarded merely because the happens to be official witnesses. Law is well settled in a cetena of decisions that evidence of such disinterested independent official witnesses does not require any corroboration. The learned defence counsel brought a large number of discrepancies to the notice of the court but on perusal of evidence on record it is found that such discrepancies are minor in nature. In **Surender Singh- Vrs-State of Hariyana J.T,2006 (1) Supreme Court-645** it is well established principle of law that every discrepancies in the witness statement can not be treated as fatal to

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the prosecution case. The discrepancy which does not affect the prosecution case materially does not create infirmity.

In the above consideration, I am of the opinion that the prosecution has proved all the ingredients of Sec.3(a)RPUP Act i.e. the property-in-question as Railway properties and it is found from the possession of the accused which was unlawful. On the other hand the defence failed to discharge his burden i.e. how the property-in-question came to the possession of the accused lawfully.

Considering the above aspect, I am of the view that prosecution has prove this case successfully against the accused beyond all reasonable doubt. Hence the accused is found guilty U/s.3(a) RP U.P. Act and convicted there under U/s.248(II) of Cr.P.C.

Considering the nature and gravity of offence and the manner in which it is committed and it's effect on the society, I am not inclined to extend the beneficial provision of Probation of Offenders Act to the convict.

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### **HEARING THE QUESTION OF SENTENCE**

Heard both the convict, Ld. Defence counsel for the convict and Ld. APP on the question of sentence, the Ld. Counsel for the accused submitted that the accused had no previous conviction against him. He also stated that the accused has belonged to a poor family and due to poverty he committed such type of offence and prays to release the accused on Probation of Offenders Act. On the other hand the Learned APP submits for a deterrent punishment.

So considering the nature of offence the manner in which it is committed its impact on society I sentence the convict to undergo rigorous imprisonment for 1 year. The UTP period if any be set off against the sentence of imprisonment as per the provision of section 428 Cr.P.C.

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The seized articles shall be given to its true owner after expiry of four months of the appeal period is over if no appeal is preferred and in case of appeal as per the direction of the Appellate Court.

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This judgment is typed out as per my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, on this the 17<sup>th</sup> day of July, 2014.

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Banpur

List of witnesses examined for Prosecution.

P.W.1 Santosh Kumar Nanda  
P.W.2 Pravat Kumar Khuntia  
P.W.3 Subash Chandra Biswal  
P.W.4 Sandeep Patra

List of witnesses examined for defence.

None

List of Exhibits marked for Prosecution.

Ext-1 Seizure list.  
Ext.1/1 Signature of P.W.1 on Ext.1  
Ext.1/2 Signature of P.W.2 on Ext.1  
Ext. 1/3 Signature of P.W.3 on Ext.1.  
Ext.1/4 Signature of accused on Ext.1.  
Ext.2 Confessional statement.  
Ext.2/1 Signature of P.W.1 on Ext.2  
Ext. 2/2 Signature of P.W.2 on Ext.2.  
Ext. 2/3 Signature of P.W.3 on Ext.2.  
Ext.2/4 Signature of accused on Ext.2.  
Ext.3 F.I.R.  
Ext.3/1 Signature of P.W.3 on Ext.3.  
Ext.3/2 Signature of OIC RPF  
Ext.4 Theft report  
Ext.4/1 Signature of P.W.3 on Ext.4  
Ext.5 Sealed report.  
Ext.5/1 Signature of P.W.5 on Ext.5  
Ext.6 Spot map.  
Ext.6/1 Signature of P.W.3 on Ext.6  
Ext.7 Opinion certificate.  
Ext. 7/1 Signature of P.W.3 on Ext.7.  
Ext. 7/2 Signature of P.W.4 on Ext.7  
Ext.8 Lost report.

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Ext. 8/1      Signature of P.W.3 on Ext.8.  
Ext.9          Requisition.  
Ext.9/1       Signature of P.W.3 on Ext.9  
Ext.9/2       Signature of P.W.4 on Ext.9  
Ext.10        Resealed  
Ext. 10/1     Signature of P.W.3 on Ext.10  
Ext 10/2      Signature of P.W.4 on Ext.10  
Ext.11        Cut seal  
Ext.11/1      Signature of P.W.3 on Ext.10.  
Ext.11/2      Signature of accused on Ext.11

List of Exhibits marked for defence.

Nil

List of MOs marked for Prosecution.

M.O.I        18 Nos of pendrol clips.  
M.O.II       Cement Jerry Bag.

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