

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR

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

Date of Argument : 17.09.2014

Date of Judgment : 29.09.2014

Case No.2(C)CC 02/2014

T.R. No. 485/2014

State Prosecution

-Versus-

Nikunja Bihari Das, @ Babula aged about 52 years,

S/o Late Baishnav Charan Das

R/o Harasinghapur Po: Kanakpur,

P.S.: Tritol, Dist: Jagatsinghpur

.... Accused

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

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

For the Defence. : 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 21.03.2014 ASI L.Ramana along with G.K.Das, Inspector R.P.F, Balugaon, S.I. S.C. Biswal, H.C. P.K. Khuntia and constable Santosh Kumar Nanda conducted a secret and ambush watch in between Balugaon - Gangadharpur Section. During the course of checking at about 21 hrs on railway crossing gate at KM No.518/29-31 they found a person coming from Balugaon side towards Gangadharpur gate in a suspicious manner. So they immediately detained him near the gate and on being asked he failed to give any satisfactory answer. They saw a white colour plastic bag on his shoulder and asked him to show the bag. On checking they found one colour plastic bag containing 19 nos. of pendrol clips of railway trak. On demand he failed to show any legal receipt or authority to support his lawful possession and admitted his guilty. Further on interrogation he disclosed his name Nikunja Bihari Das. As the property belongs to Indian Railways which reasonable suspected to have been stolen or unlawfully obtained from railway. So

the complainant seized the railway property from the possession of the accused and prepared the seizure list, brought the accused to RPF Post Balugaon along with the seized article and submitted FIR before OC/RPF/Balugaon, registered a case against the accused U/s.3(a) RP UP Act.

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 21.03.2014 in between Balugaon- Gangadhar pur station at KM No.518/29-31 at 21 hours the above named accused was found in possession of 19 nos. of pendrol clips which was 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.2 is the complainant, P.W.1 is the constable of R.P.F. Balugaon, P.W.3 is J.E P.way of Balugaon and P.W.4 DICIV Khurda. On the other hand the defence has examined none.

06. On perusal of the evidence available on record it is found that P.W.2 who is the complainant in this case in his evidence stated that on 21.03.2014 he along with G.K.Das, Inspector R.P.F, Balugaon, S.I. S.C. Biswal, H.C. P.K. Khuntia and constable Santosh Kumar Nanda conducted a secret and ambush watch in between Balugaon - Gangadharpur Section. During the course of checking at about 21 hrs on railway crossing gate at KM No.518/29-31 they found a person coming from Balugaon side towards Gangadharpur gate in a suspicious manner. So they immediately detained him near the gate and on being asked he failed to give any satisfactory answer. They saw a white colour plastic bag on his shoulder and asked him to show the bag. On checking they found 19 nos. of pendrol clips of railway track. On demand he failed to show any legal receipt or authority to support his lawful possession and admitted his guilt. Further on interrogation he disclosed his name Nikunja Bihari Das. 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

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and prepared the seizure list. He also recorded the confessional statement of the accused at the spot. Then he lodged plain paper FIR and O.C registered a case U/s 3(a) of R.P & U.P Act and he conducted inquiry. On 22.03.2014 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 19 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 06.04.2014 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.1 the constable RPF post Balugaon deposed that on the alleged date he along with Inspector G.K.Da,S.I. S.C. Biswal, A.S.I. L.Raman and constable P.K.Khuntia had gone for night patrolling duty towards Gangadharpur under the supervision of OCRPF, Balugaon. They conducted ambush watch at 9 pm they saw one person as coming from Balugaon side on the east side of KM No.518/29-31 towards Gangadharpur by carrying heavy articles on his left shoulder. On suspicious they obstructed the accused as per the direction of IIC G.K. Das search the bag. On search they found 19 nos of pendrol clips in a white plastic bag. On being asked he failed to produce any authority for such possession. Then A.S.I. L. Raman seized the bag as per the direction of O.I.C. No independent witness was found due to night. Then the bag was sealed along with the signatures of witnesses and accused and SI L Ramana recorded the statement of accused took the accused along with seized articles to RPF post. P.W.4 Gagan Kumar Dash DICIV Khurda deposed that on the alleged date he along with S.I. S.C., Biswal, A.S.I. L.Raman, H.C., P.K.Khuntia, constable S.K. Nanda had gone for night checking at Balugaon Gangadharpur in three motor cycle. At 9 pm

at Km No.518/29 at the gate they saw that one person was coming in the railway track and saw that he was carrying a polythene bag . They checked it and found 19 nos of pendrol clips and on being asked he disclosed that the he took it from railway track. On being asked he failed to produce any license or authority for such possession. P.W.3 the J.E. P.Way of Balugaon deposed that on the alleged date during push trolley inspection between Balugaon & Gangadharpur he found 19 numbers of pendrol clips were missing. Therefore he has given theft message to R.P.F post Baluaon. At 16 hours he along with .RP.F Balugaon, A.S.I. L. Ramana visited the spot and jointly prepared the report. He has given the report S.S.E Rambha On 6.4.2014 at 17 hours as per direction of SCC Rambha he atended RPF post Balugaon for examination and verification of seized articles. A.S.I. L.Ramana produced the seized articles in sealed condition on a white plastic bag, he opened the seal and found 19 nos pendrol clip and examined the materials. 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 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.2 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.2 and the same was marked as Ext.2 and the accused voluntarily put his signature on his confessional statement this also marked as Ext. 2/2. The confessional statement recorded by ASI L.Raman 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.3 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 Crl. 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 the prosecution case. The discrepancy which does not affect the prosecution case materially does not create infirmity.

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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) R.P.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. S.D.C 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.

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 29th day of September, 2014.

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List of witnesses examined for Prosecution.

P.W.1 Santosh Kumar Nanda
P.W.2 L.Raman
P.W.3 Sandeep Patra
P.W.4 Gagan Kumar Dash

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 accused.
Ext.1/4 Signature of P.W.4 on Ext.1.
Ext.2 Confessional statement.
Ext.2/1 Signature of P.W.2 on Ext.2
Ext. 2/2 Signature of accused on Ext.2.
Ext. 2/3 Signature of P.W.4 on Ext.2.
Ext.3 F.I.R.
Ext.3/1 Signature of P.W.2 on Ext.3.
Ext.4 Theft report
Ext.4/1 Signature of P.W.2 on Ext.4
Ext.5 Joint observation report.
Ext.5/1 Signature of P.W.2 on Ext.5
Ext. 5/2 Signature of P.W.3 on Ext.5.
Ext.6 Sketch map
Ext.6/1 Signature of P.W.2 on Ext.6
Ext.7 Lost receipt memo.
Ext. 7/1 Signature of P.W.2 on Ext.7.
Ext.8 Seized property requisition
Ext. 8/1 Signature of P.W.2 on Ext.8.
Ext.8/2 Signature of P.W.3 on Ext.8

Ext.9 Opinion certificate.
Ext.9/1 Signature of P.W.2 on Ext.9
Ext. 9/2 Signature of P.W.3 on Ext.9.
Ext.10 Resealed
Ext. 10/1 Signature of P.W.1 on Ext.10.
Ext.10/2 Signature of P.W.3 on Ext.10.
Ext.11 Cut seal
Ext.11/1 Signature of P.W.2 on Ext.10.

List of Exhibits marked for defence.

Nil

List of MOs marked for Prosecution.

M.O.I 19 Nos of pendrol clips.
M.O.II White Jerry bag

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