

GAHC010256762013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./98/2013

UNION OF INDIA
REPRESENTED BY N.F. RAILWAY.

VERSUS

RAJU ALI and 2 ORS
S/O MD. PHUL BABA ALI, VILL. and P.O. RADOI TINIALI, P.S.BIHUBAR,
DIST. SIVSAGAR, ASSAM.

2:NAHAM CHERANG
S/O- ABHIRAM CHARANG
VILL-RADOI PUKHURI
PO-DHUPABAR
PS-SIMALAGURI
DIST-SIVSAGAR
ASSAM

3:ABHIRAM CHERANG
S/O- LATE CHAHAI CHERANG
VILL- PATARGAON RADOI PUKHURI
PO-DHUPABAR
PS-SIMALAGURI
DIST-SIVSAGAR
ASSA

Advocate for the Petitioner : , MR.D K DEY

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 03-09-2024

Heard Mr. D.K. Dey, learned counsel for the appellant Union of India represented by the N.F. Railway.

2. This matter has been fixed for hearing. Notices were issued to the respondents Raju Ali, Naham Cherang and Sri Abhiram Cherang but after issuance of several notices, this Court vide order dated 19.08.2019 held that notices were deemed to be served to the respondents. The appellant has preferred this appeal challenging the judgment and order dated 18.03.2011 in Criminal (Appeal) No. 2(1)/2011 passed by the learned Additional Sessions Judge (FTC) No. 1, Tinsukia acquitting the respondents of offences under Section 3(a) of the *Railway Property (unlawful possession) Act, 1966* (the Act of 1966 in short).

3. The genesis of the case was that on 26.06.2009 at about 2.00 hours, on receiving an information through reliable sources, the Railway Police intercepted one truck bearing registration No. AS-04-AC-0327 containing railway materials. Three persons were found inside the truck but one managed to escape. The two miscreants who were apprehended admitted that they were complicit and they have committed theft of railway materials. During investigation, the aforementioned truck was seized. The miscreants who were found inside the truck are Raju Ali and Naham Cherang (hereinafter will be referred to as R-1 and R-2 respectively). They have disclosed the name of the other miscreant as Abhiram Cherang (hereinafter will be referred to as R-3). On being confronted, they have confessed that they have loaded the materials from Naginimora and

Bihubor area but they could not produce any valid documents. The miscreants along with the truck were brought to Simaluguri Railway Station and materials were unloaded and seized in presence of the witnesses. The materials included –

- (i) Rail 60 lbs (cut pieces) in 91.725 RM numbers of various sizes of length (MG);*
- (ii) CST-9 pots 60R with tie bar cut pieces in 26 numbers each (MG) and;*
- (iii) Split cutter in 52 numbers (MG).*

4. The vehicle along with the materials were seized in connection with this case. A complaint regarding the same was lodged and registered as RPF/POST/MXN Case No. 1(6)/09 under Section 3(a) of the Act of 1966. Investigation commenced and on completion of investigation, prosecution report was submitted against the respondents. Thereafter, trial commenced. SR/CR No. 143/09 under Section 3(a) of the Act of 1966 was registered against the R-1, R-2 and R-3 in the learned Court of Special Railway Magistrate (Judicial), Tinsukia. The prosecution adduced evidence of nine witnesses and the defence cross examined the witnesses to refute the charges. On the incriminating materials projected by the prosecution witnesses, statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973 (CrPC for short) and the respondents took the plea of complete denial.

5. The following are the witnesses who were cross examined in connection with the aforementioned RPF/POST/MXN Case No. 1(6)/09:

- (i) PW-1 Sri Bharat Chandra Medhi, Head Constable/PRF/Simaluguri.*
- (ii) PW-2 Sri Satish Chandra Pathak, ASI/RPF/POST/Simaluguri.*

- (iii) PW-3 Sri Khagen Phukan, a businessman.
- (iv) PW-4 Sri Dulal Bora, a businessman.
- (v) PW-5 Sri Ajit Pachi, Constable/RPF Post/Simaluguri.
- (vi) PW-6 Jyoti Kumar Nath, Constable/RPF Post/Simaluguri.
- (vii) PW-7 Sri Ritu Raj Borah, ASI/RPF Post/ Mariani.
- (viii) PW-8 Sri Bedanta Bikash Borah, SSE/P-Way/Simaluguri.
- (ix) PW-9 Sri Narendra Mandal, Inspector/SIB/TSK.

6. It was observed by the learned trial Court that PW-1, PW-2, PW-5 and PW-6, all employees of the RPF, had deposed in unison that they had nabbed R-1 and R-2 along with the stolen articles. The aforementioned witnesses had plotted and ambushed the group, and then they noticed one person escaping from the truck and thereafter, immediately the other two respondents R-1 and R-2 were nabbed in the ambush. It has been observed by the learned trial Court that PW-2 who is a responsible sincere Officer of the RPF, arrested R-1 and R-2 and they were provided the opportunity to show their lawful possession of the railway materials found in their possession which clearly reveals that the investigating team i.e. raid party of the RPF have accorded a fair opportunity to the respondents and the RPF team has thus not acted in bias to the detriment of the respondents.

7. The cross examination and the plea taken by the defence was brushed aside by the learned trial Court. The learned trial Court has not accepted the submissions on behalf of the respondents that the articles were not seized at the place of occurrence but the articles and the truck were taken to the Simaluguri Police Station where the same were seized. It was further observed

by the learned trial Court that ambush was laid at Bihubar Santak Pachali at around 3.30 hours and the seized articles could not be unloaded at the place of interception and it is the reason why the truck was brought to the Simaluguri Police Station. It was further observed by the learned trial Court that PW-3 and PW-4 are the independent witnesses and the articles were seized in their presence and thus, the respondents were not prejudiced as the articles were seized fairly under the provisions of law.

8. PW-8 has issued a certificate/Exhibit-6 affirming that the materials which were seized in connection with this case, were materials belonging to the Railways.

9. It was observed that PW-9 has conducted the enquiry and recorded the statements of the witnesses and completed all the formalities needed for enquiry and thereafter, prosecution report was submitted. It was held by the learned trial Court that the seized materials without any dispute belonged to the Railway authorities and the learned trial Court vide judgment and order dated 06.01.2011 in SR/CR No. 143/2009 held the respondents guilty of offence under Section 3(a) of the Act of 1966 and R-1 and R-2 were sentenced to undergo simple imprisonment for 6 (Six) months but R-3 was sentenced to pay a fine of Rs.5000/- (Rupees Five Thousand) with default stipulation after age of R-3 was considered.

10. Against this order of conviction, the respondents preferred an appeal which was registered as Criminal (Appeal) No. 2(1)/2011. Vide judgment dated 18.03.2011, the learned appellate Court observed that the evidence of the prosecution witnesses in respect of seizure of alleged railway materials are full of contradictions. According to some of the witnesses, seizure list was prepared at Simaluguri Outpost and according to others, the seizure list was prepared at

the circulating area of Simaluguri Railway Station and one of the witnesses has mentioned that the place of preparation of seizure list was at RPF Police Station, Simaluguri.

11. PW-5 stated that he was not aware where the seizure list was made whereas PW-3 deposed that seizure was made at the circulating area of Simaluguri. On the contrary PW-4 Dulal Bora deposed that seizure was prepared at the RPF Police Station, Simaluguri. The evidence of PW-1 was not found to be reliable by the learned appellate Court as he deposed in his evidence-in-chief that the seized materials were loaded at Simaluguri Outpost whereas in his cross examination he stated that the materials were seized at the circulating area of Simaluguri Railway Station.

12. Evidence of PW-6 depicts that on 26.06.2009, a Tata Magic was found and three persons were inside the vehicle and this vehicle was searched and railway materials were found in the vehicle. This vehicle was halted at Bihubor Santak and thereafter, the search was conducted.

13. In the wake of the foregoing discussions, it is held that the appellate Court has not erred while holding that the evidences of the prosecution witnesses are contradictory.

14. A close scrutiny of evidence of PW-3 and PW-4 also reveals that they have not supported the prosecution case. Their evidence depicts that the seized articles were not shown to them before their signatures were obtained on the seizure list. Although PW-6 has described the vehicle to be a Tata Magic vehicle, the other witnesses have described the vehicle to be a mini truck. The seized articles were also not produced in the trial Court for identification. Due to the myriad of contradictions, the respondents were extended the benefit of doubt.

It is needless to say that a criminal case has to be proved beyond reasonable doubt. The differences in the evidence of the prosecution witnesses extend a benefit of doubt to the respondents. It is held that the prosecution has failed to prove this case beyond a reasonable doubt. I, therefore, record my *concurrence* to the decision of the learned appellate Court.

15. Hence, appeal is dismissed as it is devoid of merits and as this appeal does not lie against the judgment and order of the Appellate Court.

16. Send back the Trial Court Records.

JUDGE

Comparing Assistant