

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 171 OF 1999

The State of Maharashtra	... Appellant.
Versus	
Kewal Dadaji Bacchav & Ors.	... Respondents.

None for the Appellant.

Mrs.Vrishali Raje i/b. Mr.P.N.Joshi for the Respondents.

CORAM : S.B. SHUKRE, J.

DATED : 13TH JUNE, 2016.

P.C. :

1] This is an appeal preferred against the judgment and order dated 19th December, 1998 passed in Regular Criminal Case No.107 of 1991 by the Judicial Magistrate First Class (Railway), Manmad.

2] By the said impugned judgment and order the learned Magistrate has found that the prosecution could not prove beyond reasonable doubt its case that in the early morning of 28th July 1991, the accused Nos.1 and 2 were found in illegal possession of the Railway Property with the active aid and support of the remaining

accused persons. Therefore, by the said impugned judgment and order the learned Magistrate acquitted all the five accused persons of the offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

3] I have heard learned Counsel for the Respondents/the original accused persons. Nobody is present on behalf of the Appellant. The appeal is very old and therefore, taking recourse to the provisions of Section 386 of the Code of Criminal Procedure (CrPC), I am disposing of this appeal finally on its own merits. Accordingly, I have also gone through the record of the case including the impugned judgment and order.

4] It is seen from the impugned judgment and order that the learned Magistrate disbelieved the prosecution case mainly on two grounds. i.e. (i) the seizure of the Railway Property from the possession of the accused Nos.1 and 2, the driver and cleaner of the Truck in question, by which the Railway Property was being transported with the active aid and support of the remaining accused being doubtful and (ii) the retracted confessional statements being not

corroborated by any other evidence brought on record by the prosecution so as to convince the Court that the statements were made voluntarily and on own free will of the Respondents.

5] On perusal of the evidence available on record, I find that the view so taken by the learned Magistrate is possible and it is borne out from the facts established on record. PW-3 and PW-5 are the Panch Witnesses who, according to the prosecution, were witnesses to the seizure of the Railway Property made from the possession of accused Nos.1 and 2. According to the prosecution, they were present during the course of seizure action taken on 28th July, 1991 from 8.40 hours to 17.15 hours. These panch witnesses however, state that they were not so present. PW-3 Rajeshkumar says that he affixed his signature on Seizure Panchanama vide Exh.45 at 8.00 pm and except for signing the seizure panchanama nothing in his presence happened. PW-5 Baban says the same thing. Both the witnesses were declared hostile to the prosecution and allowed to be cross examined. Yet, nothing fruitful from the view point of the prosecution emerged on record. The learned Magistrate, found that these two panch witnesses

were material and as they did not support the prosecution case, there was something really doubtful about the prosecution case. Although, the learned Magistrate has not given any specific reason for holding such a view, I find that those reasons could be seen in the relationship that these two witnesses were in *vis-a-vis* the Railway Department. These two witnesses, without any doubt, were Railway employees and there was no reason for them to not support the case of their own Department and differ on what was stated by the other prosecution witnesses namely PW-1 Shantaram Yadav and PW-2 Dineshkumar Yadav both SRPF personnel. The cross examinations of both these panch witnesses taken by the learned APP does not show that any suggestions were given to them providing for the possible reasons behind their such or alleged hostile attitude to the prosecution. In these circumstances even though, these panch witnesses were declared as hostile by the learned Magistrate, though it ought not to have been done so easily, the hostility cannot be taken to a point as to disbelieve the entire evidence of both these witnesses or to be precise those portions for which no reason has been suggested by the prosecution for them to tell falsehood. Some portions of their evidence can still be

relied upon. By doing so, I find that what they have stated in their respective examinations in chief regarding their doing nothing, so far as concerned the seizure of the property in question, except for affixing their signatures to the Seizure Panchanama vide Exh.45, can be accepted and I do accept. Once this is done, one would find that their evidence virtually contradicts the evidence of other prosecution witnesses and therefore, the seizure of the property in question becomes doubtful and it has been rightly held to be so.

6] It is also seen from the seizure panchanama vide Exh.45 that there are inherent contradictions therein. In the main body of panchanama, it is clearly stated that it was prepared in between 16.00 hours and 17.15 hours of 28/7/1991. Below this endorsement, there are signatures of both the pancha's i.e. PW-3 and PW-5 and the other prosecution witnesses namely PW-1 and PW-2. Then, there is also a note made below the signatures of the said two prosecution witnesses and two panch witnesses. This note shows that the panchanama was prepared not in between 16.00 hours and 17.15 hours but between 8.40 hours and 17.15 hours. No explanation has been given about

these discrepancies in the timings of the preparation of the seizure panchanama and they being material, only deepen the doubt already existing about genuineness of the seizure panchanama. This would further weaken the prosecution case regarding seizure of the Railway Property from the possession of the accused persons and make it even more doubtful.

7] If the seizure of Railway property becomes doubtful, the whole prosecution case against the accused crumbles to the ground requiring no further discussion on other aspects of the case. This is what has happened in this case.

8] In these circumstances, I find that the view taken by the learned Magistrate holding that the charge made against all the accused persons has not been proved beyond reasonable doubt appears to be possible as well as logical warranting no interference with it. The appeal deserves to be dismissed. The appeal stands dismissed.

(S.B. SHUKRE, J.)