

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.796 of 2009

The State rep. by
The Deputy Sub Inspector of Police,
Railway Protection Force,
Nagapattinam
(Crime No.04 of 2001) Appellant/ Complainant

vs.

Jagadeesan Respondent/ Accused

Criminal Appeal preferred under Section 378(2)
Cr.P.C., against the judgement dated 26.05.2009 passed by the
learned Judicial Magistrate No.I, Nagapattinam, in C.C.No.71
of 2002.

For Appellant : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

For Respondent : Ms.M.Haseena Begam
Legal Aid Counsel

JUDGMENT

This appeal has been filed against the order of acquittal. The accused, in C.C.No.71 of 2002, on the file of the learned Judicial Magistrate No.I, Nagapattinam, is the respondent herein. He stood charged for the offence under Section 3 (a) of Railway Property (Unlawful Possession), Act,1964. The Trial Court, after trial, by Judgment dated 26.05.2009, acquitted the accused. Challenging the above said order of acquittal, the complainant is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:

(i) On 30.11.2001 at about 8.00 pm, P.W.1/the Deputy Superintendent of Police, Railway Protection Force along with P.Ws.2 and 3 were on patrol, at that time, he found the accused carrying 17-1/2 feet Iron rail, when he questioned the accused, the accused is not able to give proper answer. Then, P.W.1 seized the materials since the same was belongs to the Railway and he arrested the accused and file a complaint before the Railway Police Station, based on the complaint a case has been registered in Crime No.04 of 2001 for the

offence under Section 3 (a) of Railway Property (Unlawful Possession), Act, 1966.

3. Based on the materials available, the Trial Court framed charges as detailed above, and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 4 witnesses, exhibited 8 documents and one material object was marked.

4. Out of the witnesses examined, P.W.1 is the Deputy Superintendent of Police working in Railway Protection Force. P.W.2 is the Head Constable working in Railway Protection Force. P.W.3 is Head Constable working in Railway Protection Force. P.W.4 is the Section Engineer, Southern Railway. According to P.W.1, on 30.11.2001 at about 8.00 pm, he along with P.Ws.2 and 3 were on patrol, at that time, he found the accused carrying 17-1/2 feet Iron rail, on suspicion, he questioned the accused, he is not able to give proper answer, then P.W.1 seized the Iron rail since the same belongs to the Railway and he arrested the accused and on such arrest the accused voluntarily given confession and subsequently brought the accused to the Railway Police Station and registered a case. P.Ws.2 and 3 are Head Constables attached to the Railway Protection Force. They are witness to the arrest of the accused and recovery of Iron rail and confession of the accused. P.W.4 is the Section Engineer, Southern Railway. According to him, the material seized from the accused is only belongs to Southern Railway and it is not available in the open market.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witnesses and not marked any document on his side.

6. Considering the above materials, the Trial Court acquitted the accused. Challenging the above said order of acquittal, the state preferred this appeal.

7. I have heard Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and Ms.Haseena Begam, learned Legal Aid Counsel appearing for the respondent/accused and I have perused the materials available on record.

8. The trial Court after considering all the materials acquitted the accused on the ground that the prosecution has not proved that the property seized from the accused was belongs to the Railway. In his evidence, P.W.1 has admitted that there is no specific mark in the property seized from the accused, and there is no evidence that the seized property belongs to the Southern Railway. P.W.4, the Section Engineer, Southern Railway, had admitted in his evidence that there is no specific mark in the above Iron rail seized from the accused. Apart from that P.W.1 also admitted that from where the material was found missing. Considering all the evidence,

the trial Court coming to the conclusion that the prosecution has failed to establish that the property seized from the accused belongs to the Southern Railway and acquitted the accused. Hence, I find no illegality or irregularity in the order passed by the Court below and I find no reason to interfere with the findings of the trial Court.

9. In an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court and I find no perversity in the judgment of the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

10. In the result, the Criminal Appeal is dismissed. The order of acquittal passed by the learned Judicial Magistrate No.I, Nagapattinam, dated 26.05.2009, in C.C.No.71 of 2002 stands confirmed. The Tamil Nadu State Legal Services Authority is directed to pay necessary fee to the learned counsel appearing for the respondent as per rule.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

- 1.The Judicial Magistrate No.I,
Nagapattinam.
- 2.-Do- Thro'The Chief Judicial Magistrate, Nagapattinam.
- 3.The Secretary,
Tamil Nadu State Legal Services Authority, High Court
Chennai.
- 4.The Deputy Sub Inspector of Police,
Railway Protection Force,
Nagapattinam
- 5.The Public Prosecutor,
High Court, Madras.
6. The Section Officer, Criminal Section, High Court, Madras.

CrI.A.No.796 of 2009

SKV (CO)

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