

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 260 of 2009

Mangal Chouhan son of Roopkishore, aged about 25 years,
resident of Korbapara, Police Station Champa, District Janjgir
Champa, CG

--- Applicant

Versus

State of Chhattisgarh through Railway Police Force, Champa,
District Janjgir Champa, CG

--- Respondent

For Applicant	-	Smt. Usha Chandrakar, Advocate.
For Respondent	-	Shri R.K. Gupta, advocate.

Order on Board by Hon'ble Smt. Vimla Singh Kapoor, J.

19.06.2019:

According to the case of the prosecution, on 25.05.2008 at about 2 AM the Station House Officer namely Birendra Pandey (PW-1) acting upon a secret information apprehended the accused/applicant from the Hasdeo Railway Bridge carrying railway cable on his bicycle. On being asked, he disclosed his name as Mangal Singh Chouhan and confessed that in the night of Holi festival he had cut the cable from near the Railway Bridge and hid the same in the bushes. As he could not produce any document to show his ownership over the cable, his statement (Ex. P-7) was recorded on the spot itself and seizure of bicycle and the railway cable was made from him vide Ex. P-8. After registration of the offence under Section 3 (A) of the Railway Property (Unlawful

Possession) Act the accused/applicant was arrested and the prosecution moved ahead culminating in his conviction by the Railway Magistrate under the said Section vide judgment dated 24.10.2008 and imposition of sentence of two year rigorous imprisonment with fine of Rs. 2000/-. In appeal also, the accused/applicant did not get any concession and vide judgment impugned dated 23.04.2009 the conclusion drawn by the Railway Magistrate received approval. Hence this revision.

2. Counsel for the accused/applicant referring to certain procedural irregularities on the part of prosecution as also the trial magistrate in framing the charge, submits that the conviction of the accused/applicant under Section 3 (A) of the Railway Property (Unlawful Possession) Act, is bad in law and being so the judgment impugned is liable to be set aside. State counsel however supports the judgment impugned.

3. Having heard counsel for the parties and perused the material on record including the evidence of the witnesses, it is unequivocally clear that the accused/applicant was found in an unauthorized possession of railway cable seized under Ex. P-8 and in his statement recorded by PW-1 on the spot he has confessed that after cutting the same in the night of Holi festival he had hidden the same in the bushes. This finds due corroboration from the statement of PW-5. PW-4 has also denied that the wire seized under Ex. P-8 is used elsewhere. He has stated that though no specific mark of Railways was there on the railway property so seized yet on the basis of its design he had identified the same to

be of the Railways which are not available in the open market. Act of the accused/applicant of carrying the railway cable on his bicycle and then making a disclosure that he had committed theft of the railway property and non production of any material authorizing him to possess the same, has been corroborated by PW-6 also. What is more important to mention here is that previously also the accused/applicant was held guilty for the offence of like nature vide judgment dated 28.07.2006 passed in Criminal Case No. 774/2006 which attained finality on account of non-challenge in appeal.

4. Overall evidence is thus more than enough to convict the accused/applicant under Section 3 (A) of the Railway Property (Unlawful Possession) Act and being so both the Courts below have been fully within the legal parameters to that effect and then imposing the sentence of two year RI with fine of Rs. 2000/-. No shortcoming worth interference in the judgment impugned is noticeable to this Court. Revision thus fails and is dismissed. The bailed out accused/applicant be put in prison forthwith to serve the remainder of the sentence.

Sd/-

(Vimla Singh Kapoor)
Judge