

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.227 of 2008

State rep. by
Inspector of Police,
Railway Protection Force,
Thiruvarur.
(Crime No.4/2006) ... Appellant/Complainant

Vs.

1.Ambazhagan
2.R.Saravanan
3.Ramasamy ... Respondents/Accused

Prayer:

Appeal filed under Section 378 of Cr.P.C. seeking to set aside the judgment of acquittal of the respondents/ accused passed by the learned Judicial Magistrate No.I, Nagapattinam in C.C.No.263/2006 dated 20.09.2007, convict the respondents/ accused for the offences framed against them, pass sentence against them in accordance with law.

For Appellant : Mr.R.Ravichandran
Government Advocate (Crl. Side)

For Respondents : Mr.R.Ganesh Kumar
Amicus Curiae

J U D G M E N T

The appeal has been filed by the State against the judgment of acquittal passed by the learned Judicial Magistrate No.I, Nagapattinam, in C.C.No.263 of 2006, dated 20.09.2007.

2.The brief facts of the case are as follows: On 08.08.2006 and on 15.08.2006, the Section Engineer (Signal) had given theft report to the appellant. On 20.08.2006, when the Inspector of Police, Railway Protection Force/ P.W.1 along with two others was on Track Patrol from Thiruvarur Railway Station to Mangudi Railway Station, at about 5.30 hours, found each of the accused

1 and 2/ respondents 1 and 2 carrying white polythene bag. When they intercepted the accused, they found that the accused were in possession of twisted copper wire bundle without any relevant documents.

3. On suspicion that accused 1 and 2 might have stolen the copper wire from railways, they recovered the same from the accused in the presence of staff witness as no independent witness was available at that time. P.W.1 also recorded the confession statements of the accused 1 and 2 in the presence of staff witness and registered a case. Based on the confession statement of A1 and A2, after sending advance information to the jurisdictional Court, P.W.1 also searched the shop belonging to the third accused/ third respondent in the presence of independent witnesses and recovered some twisted copper wires and the sale proceed of Rs.2,400/- under search list. Thereafter, P.W.1 also recorded the confession statement of the third accused. After completing the investigation, P.W.1 filed the charge sheet as against the accused on 30.10.2006.

4. Based on the materials produced before the Trial Court, the Trial Court framed charges as against the accused under Section 3(A) of the Railway Property (Unlawful Possession) Act.

5. When the Trial Court examined the accused under Section 313(1)(b) of Cr.P.C., in respect of the incriminating evidences available against them, they denied their complicity in the crime and pleaded innocence. However, they neither choose to examine any witness nor marked any documents. Hence, trial was proceeded against the accused.

6. On the side of the prosecution, 1 witness was examined as P.W.1, 21 documents were marked as exhibits Ex.P.1 to Ex.P.21 and 4 material objects were marked as M.O.1 to M.O.4.

7. The Trial Court after considering the oral and documentary evidence, arrived at a conclusion that the prosecution has not proved the guilt on the accused beyond all reasonable doubt. Hence, by giving the benefit of doubt to the accused, the Trial Court acquitted the accused. Challenging the said acquittal, the appellant has filed this appeal before this Court.

8. Perusal of the records shows that this appeal was admitted as early as on 01.04.2008. The records further shows that notice has been served on the respondents 1 and 3 and this Court vide order dated 15.12.2018 has also directed the appellant to take steps to serve notice on the second respondent. While such being the position, though the appeal is of the year 2008, till date no one has entered appearance on behalf of the respondents. Hence considering the long pendency of the appeal, this Court

appoints Mr.R.Ganesh Kumar, Advocate, as Assisting Counsel, to contest the appeal on behalf of the respondents.

9.The learned Government Advocate (Crl. Side) appearing for the appellant would submit that the Trial Court acquitted the accused mainly on two grounds, firstly, the prosecution did not examine the witnesses who were present at the time of seizure from A1 to A3 and secondly, P.W.1 is the complainant and he also acted as the Investigating Officer which is non est in law.

10.The learned Government Advocate (Crl. Side) would further submit that as per Section 8 (1) of the Railway Property (Unlawful Possession) Act, any person arrested by the Officer of the Force for offence punishable under this Act and the said Officer shall proceed to enquire into the charge against the accused person. In the present case, P.W.1 is the Inspector of Police, Railway Protection Force and he found A1 and A2 were in illegal possession of the copper wire belonging to the Railway Department and some portion of the copper wire were sold in favour of A3. Hence, P.W.1 is the competent person to file complaint and enquire into the matter as per the Act. Hence, the judgment of the Trial Court is un-sustainable. Accordingly, he prayed for conviction of the accused.

11.Per contra, the learned Assisting Counsel for respondent would submit that though P.W.1 is the competent person to file complaint and enquire into the matter as per the Railway Property (Unlawful Possession) Act, the prosecution has to prove the guilt on the accused beyond all reasonable doubt. He would further submit that recovery from A1 and A2 were made in the presence of staff witness belonging to the same Department by P.W.1 and confession statements were also recorded by the same Officer in the presence of the same staff witness which is un-sustainable in law.

12.The learned Assisting Counsel would further submit that the said staff witness was also not examined as witness by the prosecution to prove the alleged recovery of Railway properties from A1 and A2. Further, the alleged theft articles were recovered from A3 in the presence of one Sudalaikani and one Ganesan, who were independent witnesses, however, the prosecution has not examined the said independent witnesses to prove the recovery made by P.W.1, which is fatal to the prosecution case. Hence, the Trial Court rightly acquitted the accused. Accordingly, he prayed for dismissal of the appeal.

13.Heard the arguments advanced on either side and perused the materials placed on record.

14.In the light of the above submissions, now it has to be

analyzed whether the prosecution has proved the guilt on the accused beyond all reasonable doubt.

15. Admittedly, P.W.1 is the Inspector of Police, Railway Protection Force. On 20.08.2006, P.W.1 along with two others was on Track Patrol from Thiruvavur Railway Station to Mangudi Railway Station. At about 5.30 hours, they found A1 and A2 carrying white polythene bag. When they intercepted the accused, they found that the accused were in possession of twisted copper wire bundle without any relevant documents. Immediately thereafter, since no independent witness was available at that time, they recovered the copper wire from the accused in the presence of staff witness. Thereafter P.W.1 arrested the accused and recorded the confession statement of A1 and A2 in the presence of the very same staff witness.

16. The recovery as well as the confession statement were recorded in the presence of the very same staff witness is raised doubt about the prosecution recovery sustainable in law. Further the said witness was also not examined by the prosecution in order to prove the recovery of the Railway property from A1 and A2. Further, the alleged theft articles were recovered from A3 in the presence of one Sudalaikani and one Ganesan, who were independent witnesses, however, the prosecution has not examined the said independent witnesses to prove the recovery made by P.W.1.

17. It is for the prosecution to prove that recovery was made in accordance with law by examining independent witnesses before the Court. In the absence of the prosecution examining any independent witness to prove that P.W.1 recovered the theft Railway property from the accused, in accordance with law, the Trial Court has rightly arrived at the conclusion that the prosecution has not proved the guilt on the accused beyond all reasonable doubt. The prosecution failed to establish that the accused were in illegal possession of the copper wire belonging to Railway Department, by examining independent witnesses.

18. Further, the judgment of acquittal cannot be interfered with in a mechanical manner by this Court unless it is shown that an judgment of acquittal was recorded by the Trial Court by considering irrelevant material or without application of mind to the relevant materials.

19. In fact, the Hon'ble Apex Court in the decision reported in 2012 SCW 5627 (Murugesan and others vs. State through Inspector of Police) has held that in the case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it

need not be slightly interfered with. In yet another decision of the Hon'ble Apex Court reported in (2004) 13 Supreme Court Cases 374 (Hydru vs. State of Kerala), it was held that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

20. In view of all the above, I do not find any legal infirmity in the judgment of the Trial Court warranting interference by this Court. The criminal appeal is accordingly dismissed. The judgment passed by the learned Judicial Magistrate No.I, Nagapattinam, in C.C.No.263 of 2006, dated 20.09.2007, is hereby confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Nagapattinam.

2. The Inspector of Police,
Railway Protection Force,
Thiruvavur.

+1 cc to Mr.R.Ganesh Kumar, Advocate Sr.No.4202

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VBA(CO)
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