



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.10.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.A(MD)No.171 of 2013

State rep. by
The Inspector of Police,
Railway Protection Force,
Thiruvarur Junction.
[Crime No.1/2005]

.. Appellant/Complainant

Vs.

1.T.Subramanian

2.V.Kuthaperumal

3.Chelliah

.. Respondents/A1 to A3

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code as against the judgment of acquittal passed by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi, in C.C.No.176 of 2005, dated 08.10.2012.

For Appellant : Ms.S.Bharathi,
Government Advocate (Cr1. Side)

For Respondents : Mr.K.Prabhu,
Legal Aid Counsel for R.1

Mr.D.Venkatesh
for R.2 & R.3

JUDGMENT

This Criminal Appeal is preferred by the State as against the order of acquittal passed by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi, in C.C.No.176 of 2005, dated 08.10.2012.

2. The facts of the case, in nutshell, are as follows:

2.1. On 19.05.2005, at about 02.10 a.m., the appellant / Police was on routine patrol duty in between Karaikudi and Kandanor Railway Station at km.184/11.12, they found the respondents / accused in a tricycle, with 37 nos. of Railway Tie Bars and one Rail Piece. On enquiry, it was found that the respondents / accused, without any authority, were in possession of the same and therefore, the railway properties, viz., Tie Bars and Rail Piece, along with the tricycle were seized [MOs 1 to 3], under a cover of mahazar [Ex.P1], in the presence of official witnesses [PW2 & PW3] and brought to RPF Post



at Thiruvavarur. A case was also registered in Crime No.1 of 2005, on the file of the Tiruvavarur RPF Post RP (UP), under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966.

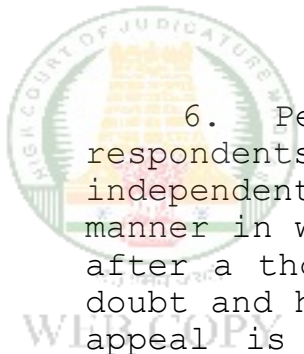
2.2. The Inspector of Police, at about 02.45 a.m., 03.15 a.m., and 03.45 a.m., has recorded the confession statements of the accused nos. 1 to 3, respectively and the admissible portion of the confession statement is marked as Ex.P2, P3 & P4, respectively. Thereafter, the Inspector of Police, at about 04.10 a.m., went to the place of occurrence and prepared the observation mahazar [Ex.P5] and rough sketch [Ex.P6]. The Inspector of Police has also obtained a report [Ex.P7] from the Junior Engineer [PW4] that the seized properties belong to Railway Department and its value is about Rs.6,150/-.

2.3. In conclusion of the investigation, the appellant / Police has filed a final report as against the respondents / accused. In support of the prosecution, as many as, four witnesses were examined and seven documents were marked and three material objects were produced. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C. and the respondents / accused denied the same. On the side of the respondents / accused, neither oral nor documentary evidence were produced. In conclusion of the trial, the learned trial Judge has acquitted the respondents / accused by extending the benefit of doubt and challenging the legality of the same, the prosecution has preferred the present appeal.

3. Heard Ms.S.Bharathi, learned Government Advocate (Cr1. Side) appearing for the appellant / complainant; Mr.K.Prabhu, learned Legal Aid Counsel appearing for the first respondent / first accused; and Mr.D.Venkatesh, learned Counsel appearing for respondents 2 & 3 / accused nos.2 & 3.

4. The learned Government Advocate (Cr1. Side) appearing for the appellant / complainant, reiterating the facts of the case, contended that during the odd hours, ie., 02.10 a.m., no independent witnesses were available and therefore, in the presence of the official witnesses, namely, Assistant Sub Inspector of Police [PW2] & Constable [PW3], the Inspector of Police [PW1] conducted enquiry and thereafter, effected seizure.

5. The respondents / accused were found in illegal possession of Railway properties and the evidence of PWs.1 to 3 are cogent and unassailable, in this regard. Relying upon the decision of the Hon'ble Supreme Court reported in **1968 Cr1.L.J.1484 [SJ]**, the learned Government Advocate contended that the presumption of guilt under Section 3 of the Railway Property [Unlawful Possession] Act cannot be rebutted, unless the accused proves that they obtained the property lawfully and therefore, prays for interference.



6. Per contra, the learned Counsel appearing for the respondents / accused, in unison, submitted that there is no independent witnesses corroborating the prosecution case as to the manner in which the case properties were seized and the trial Court, after a thorough consideration, has rightly extended the benefit of doubt and has acquitted the respondents / accused. Since the present appeal is preferred against an order of acquittal, the learned Counsel would contend that when two views are possible, the view which stands in favour of the accused has to be extended and therefore, pray for dismissal of this appeal.

7. Heard the learned Counsel appearing for the respective parties and perused the material placed on record.

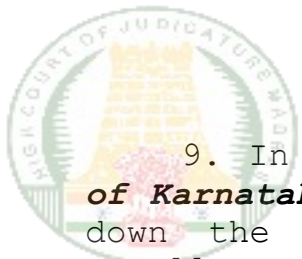
8. Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V.Sejappa v. State [(2016) 12 SCC 150]**, wherein, the Hon'ble Supreme Court has followed its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**. The guidelines issued in the said decision are extracted hereunder:

"23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."



9. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

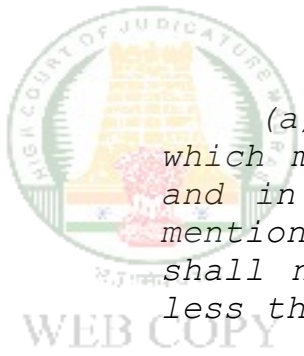
(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

10. The respondents / accused were charged for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 and for better appreciation, the same is extracted as under:

"3. Penalty for theft, dishonest misappropriation or unlawful possession of railway property. - Whoever commits theft, or dishonestly misappropriates or is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained, shall, unless he proves that the railway property came into his possession lawfully, be punishable -



(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees."

11. A bare reading of the above provision would make it clear that for attracting an offence under Section 3 of the Act, the prosecution has to prove that i) the accused has been in possession of Railway property; ii) the property seized from the accused is a Railway property; and iii) the said property is reasonably suspected of having been stolen or unlawfully obtained.

12. Perusal of record shows that the trial Court, holding that the prosecution has neither produced any missing report nor examined any officials from the Railway Department regarding missing properties and also the fact that no independent witnesses were produced, has extended the benefit of doubt and has acquitted the respondents / accused.

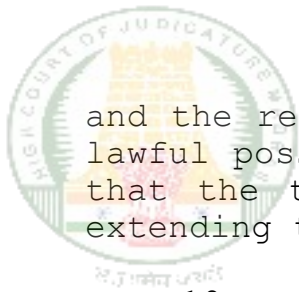
13. According to PW1, when they were on patrol duty, on 19.05.2005, at about 02.10 a.m., in between Karaikudi and Kandanor Railway Station at km.184/11.12, they found the respondents / accused in a tricycle, with 37 nos. of Railway Tie Bars and one Rail Piece. On enquiry, they found that the respondents / accused were in illegal possession of the same and therefore, registered the case.

14. The prosecution, in order to establish that the properties belong to Railway, has obtained a report [Ex.P7] from the Junior Engineer [PW4] that the case properties are Railway properties, worth about Rs.6,150/- and are in serviceable condition, not auctionable and not available in the open market.

15. Since the occurrence took place during the odd night hours, there is no independent witness and therefore, PW1 effected the arrest and recovery in the presence of official witnesses [PW2 & PW3]. Just because the witnesses belong to Railway Protection Force, that by itself is not a ground to discard their evidence. The defence has to establish that the official witnesses are not reliable. But, they have failed to do so.

16. The prosecution, through their evidence, has proved that the respondents / accused were in possession of properties, belonging to Railway Department. Therefore, the onus is on the respondents / accused that they are in lawful possession of the same, however, they have not established the same.

17. Though the prosecution has not produced any missing report, they, indeed, through their evidence, have proved that the respondents / accused were found in possession of Railway properties



and the respondents / accused have not established that they are in lawful possession of the same. Therefore, this Court is of the view that the trial Court ought not to have acquitted the accused, by extending the benefit of doubt.

18. In view of the foregoing discussions and in view of the guidelines laid down by the Hon'ble Supreme Court (supra), this Court is inclined to interfere with the impugned order passed by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi, in C.C.No.176 of 2005, dated 08.10.2012 and the same is accordingly, set aside. The respondents / accused are found guilty under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966.

19. Considering the nature of offence, this Court is inclined to impose the minimum punishment, being simple imprisonment for one year, with a fine of Rs.1000/-. Therefore, this Court is of the view that calling the accused for questioning on sentence will only be an empty formality. Accordingly, the respondents / accused are sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1000/-, each, in default, to undergo simple imprisonment for one month.

20. In fine,

- This Criminal Appeal is allowed.
- The judgment passed by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi, in C.C.No.176 of 2005, dated 08.10.2012, is set aside.
- The respondents / accused are found guilty under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 and are convicted and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1000/-, each, in default, to undergo simple imprisonment for one month.
- The trial Court is directed to take steps to secure the respondents / accused and commit them to prison to serve out the period of sentence.
- The period of sentence already undergone by the respondents / accused, if any, shall be set off under Section 428 of the Code of Criminal Procedure.

Sd/-

Assistant Registrar (crl side)

// True Copy //

Sub Assistant Registrar(CS)

gk

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Principal District Munsif
cum Judicial Magistrate,
Karaikudi.

2. The Inspector of Police,
Railway Protection Force,
Thiruvarur Junction.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer, Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.D.VENKATESH, Advocate (SR-94126[F] dated 24/10/2019)

+1 CC to Mr.V.KARUNA, Advocate (SR-94138[F] dated 24/10/2019)

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