

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A No.552-MA of 2017 (O&M)

Date of decision: 22.07.2019

State of Haryana

....Applicant/Appellant

Versus

Arjun @ Rumal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Pankaj Kundra, Advocate
for Mr. Deepak Sabherwal, Advocate
for the applicant/appellant.

Mr. Raman Chawla, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN J. (Oral)

CRM No.8523 of 2017

Prayer in this application is for condoning delay of 17 days
in filing the appeal.

Heard.

In view of averments made in the application supported by
an affidavit of Naveen Singh, Clerk of Sh. Deepak Sabherwal,
Advocate, the application is allowed and delay of 17 days in filing the
appeal stands condoned.

CRM-A No.552-MA of 2017 (O&M)

Prayer in this appeal is for setting-aside the judgment dated
10.08.2016 vide which the trial Court has acquitted the appellant along
with 02 other co-accused namely Rajbir @ Manav and Tangu @ Somi.

During the pendency of the present appeal, respondent
No.2 namely Tangu @ Somi has died.

Brief facts of the case are that on 12.02.2013, PW2 Sanjay Kumar stated that two running rods, which was property of the Railway, were stolen and the same were found in possession of the accused persons namely Rajbir @ Manav, Arjun @ Rimal and Tangu @ Somi. The appellant lead the prosecution evidence and thereafter, the proceedings against one co-accused Rajbir @ Manav was dropped.

In pre-charge evidence, the prosecution has examined Raj Kumar as PW1, Sanjay Kumar as PW2, Satpal Singh as PW3, SI Ratti Ram as PW4, Sita Ram as PW5, ASI Ravi Kumar as PW6, SI Renubai as PW7, ASI Sugun Chand as PW8 and ASI Ramesh Kumar as PW9. Thereafter, the pre-charge evidence was closed.

Thereafter, the charge was framed against respondents No.2 and 3 under Section 3 of the Railway Property (Unlawful Possession) Act, to which they did not plead guilty and claimed trial.

The trial Court, thereafter, acquitted the respondents/accused by passing the following judgment:-

“12. To establish a charge under Section 3 of Railway Property (Unlawful Possession) Act, it was incumbent upon the complainant/prosecution to establish that:

- (i) Dishonest intention to retain stolen property.*
- (ii) Knowledge or reasons to believe that the property belongs to Railway Department which is the stolen property in the hand of accused.*

13. In the present case, prosecution has come up with a plea that the accused was found in possession of unauthorized two running rods. It is alleged that recovery of stolen properties was effected from the possession of the accused persons which are two running rods as is evident

from recovery memo Ex.PW1/A. But to establish this fact that articles allegedly recovered from the possession of accused were the stolen one and were belonging to the railway, the prosecution has not been able to bring on record cogent and convincing evidence. All the witnesses examined by prosecution are Railway officials. There is no independent witness examined on record to corroborate prosecution version. it was imperative upon Investigating Officer to get independent corroboration to reinforce the case of the prosecution against the accused. Non-joining of independent witnesses despite of their availability casts serious doubt in the mind of the Court. Reliance has been placed on Jagtar Singh vs State of Punjab, 1992(2) CCC 447, wherein it was held that "no implicit reliance on the testimony of official witnesses is to be placed unless corroborated by independent witnesses, therefore, a reasonable shadow is cast over the version of the prosecution.

14. *Further, there are several contradiction in the statements of prosecution witnesses. The contradiction in the statements of prosecution witnesses also creates doubt on the prosecution story and benefit of doubt always given to the accused. If the Investigating Officer had joined any independent witness, these discrepancies would not have affected the prosecution case much but these contradictions statement of the official witnesses assum significance keeping in view the fact that there is no independent corroboration of the statements of the officials witnesses who are naturally interested in the success of the case. Though, testimony of official witnesses is at par with a private witness but this fact cannot be brushed aside that the official witnesses always remained interested inthe succession of their case, sometimes in their over-anxiety, they act over-jealously. So, in the facts*

of present case wherein recovery is alleged to have been taken place at a public place, non-examination of public witness is again a circumstances to creat a doubt in the prosecution case.

15. As a result of above discussed lacunae, wherein, the prosecution has failed to establish charge against the accused beyond all reasonable doubts, consequently, prosecution has failed to bring home guilty against the accused beyond all reasonable doubts, accused Arjun and Tanku are hereby ordered to be acquitted of the charge framed against them. Their bonds stands discharged. File be consigned to records after due compliance.

Counsel for the appellant has argued that the appellant along with his co-accused was found in possession of 02 rods i.e. one 18 ft. long and the other 10 ft. long which the accused persons were carrying on their shoulder. Later on, the confession was recorded that they have stolen the rods. It is further submitted that from the statement of the complainant PW1 Raj Kumar and PW2 Sanjay Kumar, it is proved that the accused were found in possession of 02 rods and this incident was witnessed by PW4 – Ratti Ram. It is, thus, argued that the trial Court has wrongly acquitted the respondents.

As noticed above, one of the respondent/accused namely Tangu @ Somi has died.

Counsel for respondent No.1 has argued that he is a very poor person and is not maintaining good health. It is also submitted that the trial Court while acquitting the respondents has recorded that no independent witness has been joined and there are several contradictions in the statement of prosecution witnesses. It is further

argued that neither it came on record that 02 rods which were allegedly recovered from the accused persons had any mark to show that it is the railway property nor the prosecution has proved the value of the rods and therefore, there is no cogent evidence to hold that if the rods were either stolen or belonged to the Railway.

After hearing the counsel for the parties, I find no ground to interfere in the well-reasoned findings recorded by the trial Court. Admittedly, the prosecution has failed to lead any evidence to prove that 02 rods recovered from the accused persons belong to the Railway as there is no mark on the same and no connecting evidence was produced by the prosecution to show that it was railway property. Even otherwise, no independent witness was joined and one of the accused namely Rajbir @ Manav was discharged by the trial Court at the initial stage.

In view of the above, finding no ground, the appeal fails and is accordingly dismissed.

22.07.2019

yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No