



CRL.R.C.No.892, 894 to 898, 1203 & 1281 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.Nos.892, 894 to 898, 1203 & 1281 of 2019

Crl.R.C.No.892 of 2019:-

C.Sigamani

... Petitioner

Vs.

Union of India,
Represented by the Inspector,
Railway Police Force,
Villupuram Junction.
(Cr. No.02 of 2004)

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the judgment dated 28.06.2019 made in C.A.No.99 of 2018 on the file of the learned I Additional District and Sessions Judge at Cuddalore, modifying the conviction imposed in judgment dated 25.10.2018 made in C.C.No.116 of 2005 on the file of the learned Judicial Magistrate No.I, (Railway), Cuddalore, by allowing this Criminal Revision Petition.



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For Petitioner in
Crl.R.C.No.892 of 2019 : Mr.V.Ramamurthy

For Petitioners in
Crl.R.C.Nos.894 to 896
& 898 of 2019 : Mr.M.Guruprasad

For Petitioners in
Crl.R.C.No.897 of 2019
For P1 : Ms.R.Aparna
For P2 : Ms.R.Shase

For Petitioners in
Crl.R.C.Nos.1203
& 1281 of 2019 : Mr.V.Gopinath,
Senior Counsel.
For Mr.P.Pugalenth

For Respondent in all
Crl.R.Cs : Mr.Arun Anbumani
For Mr.P.T.Ramkumar
Standing Counsel for
Railways

COMMON ORDER

These Criminal Revisions are directed as against the judgment passed in C.A.No.116 of 2018 dated 28.06.2019 on the file of the learned I Additional District and Sessions Judge, Cuddalore, confirming the judgment passed in C.C.No.116 of 2005 dated 25.10.2018 on the file of the learned Special Judicial Magistrate No.1, (Railway) Cuddalore District, thereby convicting the petitioners for the offence



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punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 (herein after referred to as “the RPUP Act”).

2. The case of the prosecution is that on 24.02.2004, on receipt of the report, the respondent and his team members had conducted secret inspection with regard to stealing of railway properties on 19.03.2004 at about 1.00 a.m. When they reached the place of occurrence, a lorry bearing registration No.TN-28-W-9765 was proceeded forward from east to west at cross road, in between Meppuliyur and Poovanur. They stopped the vehicle and on enquiry, they found that the accused 1 to 4 were in the lorry and they were found in possession of railway iron rail – 20 numbers, indane gas cylinder – 1, oxygen cylinder -1, hose pipe – 1, gas cutter-1. But they had no receipt or authorization for the possession of those properties which belongs to railway. All the four persons were arrested and on mahazar, all the railway properties were seized. Thereafter, they were remanded to judicial custody and registered the FIR in Crime No.2 of 2004 for the offence under Section 3(a) of RPUP Act. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial Court in C.CNo.116 of 2005.



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3. On the side of the prosecution, they had examined P.W.1 to P.W.24 and marked documents as Ex.P.1 to Ex.P.30. The prosecution also produced material objects in M.O.1 to M.O.7. On the side of the accused, they examined D.W.1 to D.W.7 and no documents were marked. On a perusal of oral and documentary evidences, the trial Court found them guilty for the offence punishable under Section 3(a) of RPUP Act and sentenced them to undergo three years rigorous imprisonment and also to pay a fine of Rs.10,000/- in default to undergo six months simple imprisonment. Aggrieved by the same, all the accused persons preferred appeals and the first appellate Court partly allowed the appeals and modified the sentence imposed by the trial Court from three years to two years. Hence, the present revision petitions.

4. Mr.V.Gopinath, learned Senior Counsel appearing for the petitioners/A15 & A14 in Crl.R.C.Nos.1203 & 1281 of 2022 respectively and other respective counsel appearing for the other accused submitted that even according to the prosecution, except A1 to A4, no other accused



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person were found in possession of any railway properties. They denied their involvement in the alleged occurrence. Except A1 to A4, other accused persons were convicted only on the strength of extra-judicial confession statement, which is the sole basis for the conviction.

4.1. He further submitted that in fact, the entire conviction based on the confession statement of the co-accused and no material produced by the prosecution to connect the other accused persons along with A1 to A4 to prove the charge. On the basis of the confession statement of A6 that too when he was under police custody, other accused persons were implicated as accused. No material recovered from other accused persons. The Courts below mechanically convicted the other accused persons only on the strength of the confession statement made by the co-accused persons and extra-judicial confession statement.

4.2. The learned Senior Counsel further submitted that the mahazar witnesses were not examined and in fact, one of the witnesses, who already member of the respondent team was examined and another independent witness was not examined by the prosecution. It is fatal to the case of the prosecution. Further, the offence under Section 3(a) of the



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RPUP Act, would not at all attract as against the accused persons except A1 to A4, since they were not in possession of any material, even according to the prosecution. In support of his contention, the learned Senior Counsel relied upon the following reported judgments :-

(i) 1979) Crl.L.J.1193 – State of maharashtra Vs. Vishwanath

(ii) (2012) 3 SCC (Crl) 146 – Sahadevan and anr Vs. State of Tamil Nadu

(iii) (2012) 1 SCC (Crl) 223 – Pancho Vs. State of Haryana

5. The learned counsel appearing for the petitioners/accused 2 to 4 submitted that though A1 to A4 were in possession of material viz., railway iron rail – 20 numbers, indane gas cylinder – 1, oxygen cylinder -1, hose pipe – 1, gas cutter-1, prosecution failed to prove the case beyond any doubt. Therefore, they prayed for reduction of sentence imposed by both the Courts below.

6. Per contra, the learned counsel appearing for the respondent submitted that the confession statement of the other accused persons are cogent and clenching to the case of the prosecution. Therefore, the Courts below rightly convicted the petitioners. The confession statement of the sixth accused was marked as Ex.P.17 and it is corroborated with the



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confession statement of A13 to A15. In fact, the sixth accused was examined as D.W.3. As per their own confession statement, they categorically admitted the occurrence and therefore they were convicted for the offence under Section 3(a) of RPUP Act and it doesn't require any interference by this Court.

6.1. He further submitted that though they were not physically present in the place of occurrence, only on their conspiracy and involvement the occurrence had happened, since all are belonged to railway department in fact, they are railway police. Without their knowledge and involvement, it would not happened and they categorically admitted in their confession statement to that effect. In support of his contention, he relied upon the following judgments :-

(i) (1975) 3 SCC 210 – State of UP Vs. Durga Prasad.

(ii) (1980) 4 SCC 600 – Balkishan A devidayal Vs. State of Maharashtra

7. Heard Mr.V.Gopinath, learned Senior Counsel,
Mr.V.Ramamurthy, Mr.M.Guruprasad, Ms.R.Shase, Ms.R.Aparna,



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learned counsel appearing for the petitioners and Mr.Arun Anbumani,
learned counsel appearing for the respondent in all revision petitions.

8. The petitioner in Crl.R.C.No.892 of 2019 is arrayed as A11; the petitioner in Crl.R.C.No.894 of 2018 is arrayed as A4; the petitioners in Crl.R.C.No.895 of 2019 are arrayed as A12 & A13; the petitioner in Crl. R.C.No.896 of 2019 is arrayed as A10; the petitioners in Crl.R.C.No.897 of 2019 are arrayed as A3 & A6; the petitioner in Crl.R.C.No.898 of 2019 is arrayed as A2; the petitioner in Crl.R.C.No.1203 of 2019 is arrayed as A15; the petitioner in Crl.R.C.No.1281 of 2019 is arrayed as A14; Accordingly, the accused - A2, A3, A4, A6, A10 to A15 are before this Court.

9. Admittedly, A1 to A4 were found in possession of railway properties viz., iron rail – 20 numbers, indane gas cylinder – 1, oxygen cylinder -1, hose pipe – 1, gas cutter-1, in a lorry bearing registration No. TN-28-W-9765 and the other accused were not in possession of any material. On the confession statement of A1 to A4, the other accused persons were implicated as accused. Totally there are 16 accused in



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which, A1 to A5 were arrested and remanded to judicial custody on 19.03.2004. A6 was surrendered on 12.04.2004. A7 was arrested and remanded to judicial custody on 09.04.2004. A8, A9, A11 to 13 were surrendered on 12.04.2004, in pursuant to the registration of FIR. A14 & A15 were arrested and remanded to judicial custody on 22.04.2004. A16 was arrested and remanded to judicial custody on 23.05.2004.

10. While pending the trial A1, A5 and A9 were died and the entire charge abated as against them. The accused 7 & 8 were absconded as such the case has been split up in respect of them. Therefore, A2, A3, A4, A6 and A10 to 16 were convicted and sentenced to undergo three years rigorous imprisonment and also to pay a fine of Rs.10,000/- in default to undergo six months simple imprisonment. They preferred appeals and the same were partly allowed by the first appellate Court by reducing the sentence from three years to two years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo three months simple imprisonment. As against which, they filed the present revision petitions.



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11. The points for consideration in these revisions are :-

(i) Whether the charge under Section 3(a) of RPUP Act attracted as against the accused A6, A10 to A15?

(ii) Whether the extra-judicial confession statement alone can be the basis for the conviction?

12. Admittedly, A1 to A4 were found in possession of railway properties and other accused persons were implicated on the confession statements of A1 to A4. Therefore, the other accused persons were not in possession of railway properties and no recovery from the accused 6 & 10 to 15. The charge as against the accused is for the offence under Section 3(a) of PRUP Act. It is relevant to extract the provision under Section 3 of the RPUP Act, as follows:-

“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



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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;”

13. Thus it is clear that who were found, or proved to have been in possession of any railway properties can be punishable under Section 3(a) of the RPUP Act. The essential requirements of this provision are that the property in question should be railway property and it should be reasonably be suspected of having been stolen or unlawfully obtained and it should be found or proved that the accused had been in possession of that property.

14. In the case on hand, it is not in dispute that the properties in question were railway properties. It is also not in dispute that it was reasonably suspected of having been stolen or unlawfully obtained. The



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only point is that whether accused 6 & 10 to 15 were found or proved that they had been in possession of the said properties. On a perusal of records, even according to the prosecution, the accused 6 & 10 to 15 were not in possession of railway properties. Only A1 to A4 were alone found in possession of the railway properties. Therefore, the charge itself is not made out as against 6 & 10 to 15.

15. The next point is that whether the extra-judicial confession is a weak piece of evidence and if the Court must ensure that it should be corroborated by other prosecution evidence. In the case on hand, the material objects M.O.1 to M.O.7 were seized from A1 to A4 by the mahazar which was marked as Ex.P.1. The confession statement of A1 to A5 were marked as Ex.P.2 to 5 and 8. The observation mahazar which was identified the place of crime was marked as Ex.P.6. While the accused 6 and 13 were under custody, their confession statements were recorded and the same were marked as Ex.P.17 & 18. On their confession, the accused 14 & 15 were arrested and their confession statements were recorded and marked as Ex.P.19 & 20. Under Ex.P.9, a sum of Rs.6,00,000/- was seized from the fifth accused in the presence of



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P.W.16 & P.W.22.

16. The confession statement of the other accused persons, except A1 to A4, were recorded in the presence of P.W.3 and one Rathinam. The prosecution failed to examine the said Rathinam who is the independent witness. Whereas P.W.3 is part of the respondent team and he was one of the witnesses on the confession statement. Therefore, the Courts below convicted the accused A6, 10 to 15 only on the extra-judicial confession statement given by the co-accused. Except the confession statement, no other recovery made from them. The prosecution failed to produce any material to connect the accused A1 to A4 with the other accused persons.

17. In this regard, the learned Senior Counsel appearing for the petitioners relied upon the judgment reported in *(2012) 3 SCC (CrI) 146* in the case of *Sahadevan and anr Vs. State of Tamilnadu*, in which the Hon'ble Supreme Court of India held that extra-judicial confession is a weak piece of evidence. Wherever the Court upon due appreciation of the entire prosecution evidence, intends to base a conviction on a extra-judicial confession, it must ensure that the same inspires confidence and



is corroborated by other prosecution evidence. If however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, it may be difficult for the Court to base a conviction on such a confession. It is also held as follows :-

“16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relied upon an extra-judicial confession alleged to have been made by the accused :

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the Court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater



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credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

18. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2012) 1 SCC (Crl) 223** in the case of ***Pancho Vs. State of Haryana***, which held as follows :-

“24. The law on this point is well settled by a catena of judgments of this court. We may, however, refer to only two judgments to which our attention is drawn by Mr. Lalit, learned senior counsel. In Kashmira Singh v. The State of Madhya Pradesh, referring to the judgment of the Privy Council in Bhuboni Sahu v. R and observations of Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chukerbutty, this court observed that proper way to approach a case involving confession of a co-accused is, first, to marshal the evidence against the



accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid.

25. *This court further noted that: (Kashmira Singh Case, AIR p.160, para10)*

“10..... cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept.

.....

27. *This court in Haricharan case further observed that Section 30 merely enables the court to take the confession into account. It is, not obligatory on the court to take the confession into account. This court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to*



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consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right.”

Thus, it is clear that the Court cannot start with the confession of the co-accused and it must begin with other evidence and after forming its opinion with regard to the quality and effect of the said evidence, it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

19. In the case on hand, except the confession statements of the co-accused, no other material to link the accused 6, 10 to 15, in the crime committed by A2 to A4. Insofar as the sixth accused is concerned, he is one of the employee of A5. Except the said relationship no other recovery was made from A6. He was working as labour under A5 in the shop owned by him. The entire prosecution case mainly relied upon the



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confession statements of A1 to A4 which were marked as Ex.P.2 to Ex.P.5 respectively, the confession statement of A5, which was marked as Ex.P.8 and the confession statements of A6, A7, A13 to A15 which were marked as Ex.P.17, 16, 18 to 20 respectively, and the confession statement of A16 was marked as Ex.P.22 and based on these statements, Courts below convicted them.

20. Therefore, the prosecution failed to prove the charge for the offence under Section 3(a) of the RPUP Act, as against the accused A6 & A10 to 15. Insofar as the accused A2 to A4, the prosecution proved its case beyond any doubt. Hence, the conviction and sentence imposed on the accused A2 to A4, for the offence under Section 3(a) of RPUP Act, are hereby confirmed. However considering the submission made by the learned counsel appearing for the petitioner/A2 to 4, this Court is inclined to reduce the sentence alone.

21. Accordingly, the conviction imposed on the accused A2 to A4 in C.A.No.116 of 2018 dated 28.06.2019 on the file of the learned I Additional District and Sessions Judge, Cuddalore, confirming the



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judgment passed in C.C.No.116 of 2005 dated 25.10.2018 on the file of the learned Special Judicial Magistrate No.1, (Railway) Cuddalore District, is hereby confirmed. However, the sentence also reduced from two years to one year. The other conditions imposed by the first appellant Court shall remain unaltered. The trial Court is directed to take steps to secure the petitioner for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C.

22. Insofar as the accused A6 & A10 to 15 are concerned, the conviction and sentence imposed on them in C.A.No.116 of 2018 dated 28.06.2019 on the file of the learned I Additional District and Sessions Judge, Cuddalore, confirming the judgment passed in C.C.No.116 of 2005 dated 25.10.2018 on the file of the learned Special Judicial Magistrate No.1, (Railway) Cuddalore District, are hereby set aside and the petitioners/accused A6 & A10 to 15 are acquitted of all charges. Fine amount, if any, paid shall be refunded to the petitioner forthwith. Bail



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bonds, if any, executed shall stand cancelled.

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23. In the result, the Criminal Revision Petitions in Crl.R.C.Nos.894 & 898 of 2019 are partly allowed. The Criminal Revision Petitions in Crl.R.C.Nos.892, 895, 896, 1203 & 1281 of 2019 are allowed. The Criminal Revision Petition in Crl.R.C.No.897 of 2019 is partly allowed insofar as the first petitioner and allowed insofar as the second petitioner.

22.11.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The I Additional District and Sessions Judge
Cuddalore.
2. The Special Judicial Magistrate No.1,
(Railway)
Cuddalore District.
3. The Inspector,
Railway Police Force,
Villupuram Junction.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J

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