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Crl.A.(MD)No224 of 2015 and 275 of 2017



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A(MD)No.224 of 2015 and 275 of 2017

The State Represented by
The Inspector of Police,
Railway Protection Force,\
RPF, Thanjavur,
Crime No.3 of 2009

... Appellant/Respondent/Complainant
in both appeals

vs.

1.R.Muruganantham

2.M.Saravanan @ Saravanakumar

... Respondents/Appellants/A1 & A3
in Crl.A.(MD)No.224 of 2015

3.M.Krishnamumar

... Respondent/Appellant/A2
in Crl.A.(MD)No.275 of 2017

COMMON PRAYER : These Criminal Appeals have been filed under Section 378(4) of Cr.P.C., to set aside the Judgments of acquittal of the respondents/Accused Nos.1 to 3 passed in C.A.Nos.66 and 67 of 2011, dated 18.04.2013 on the file of the learned Additional District and Sessions Court/Special Court for Essential Commodities Act, Thanjavur and convict the respondents/Accused Nos.1 to 3 for charges framed against them.



In both appeals:

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For Appellant : Mr.T.Senthil Kumar
Additional Public Prosecutor

For Respondents : Mr.S.Venkatesan

COMMON JUDGMENT

These Criminal Appeals are directed against the judgments of acquittal passed in C.A.Nos.66 and 67 of 2011, by the learned Additional District and Sessions Court/Special Court for Essential Commodities Act, Thanjavur, dated 18.04.2013, respectively, by confirming the order passed in C.C.No.80 of 2000 by the learned Judicial Magistrate No.1, Thanjavur, dated 08.11.2022.

2.The case of the prosecution is that on 27.09.1999, at about 02.00 hours, the appellant and his team were on confidential watch over the theft of railway materials over gauge area, noticed A1 and A2 coming from East to West direction towards Indira Nagar on foot path near Electric Light Post No.YF/2. A1 was walking with one bicycle having gunny hand bag in the carrier and A2 carrying a white colour polythene bag in his right hand in a suspicious manner. Therefore, the appellant detained both A1 and A2 and enquired with the help of torch light in the



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presence of other police personnels, since there was no independent witnesses available at that place and in the presence of other police persons made a search and found that A1 was in possession of railway dynamo belt measuring 12 $\frac{3}{4}$ feet in length, 3 inch in breadth bearing railway marks and rail engine emblem 1998 in two places and one hacksaw blade knife and A2 was in possession of 12 $\frac{1}{2}$ feet in length, 3 inch in breadth bearing railway marks and rail engine emblem 1996 in one place. The accused were not having any bill or voucher for lawful possession of the railway property. Therefore, they would have either stolen or unlawfully obtained from railway property. After seizure of the properties under the mahazar, they were arrested and remanded into judicial custody. The accused persons categorically admitted that they had stolen the said dynamo belt from the stable coaches at Thanjavur Junction on 27.09.1999 during night time and brought to the same for disposal at a flour mill of Saliyamangalam. As per the confession, the appellant went to the third accused to whom, he had sold the railway dynamo belts previously. Therefore, they conducted search in the flour and oil mill, Kambarnathan Road, Saliyamangalam and in the presence of two independent witnesses, they recovered four dynamo belts from A3. A3 has also failed to produce any bill or voucher for the lawful possession of railway dynamo belt. Hence, he was also arrested and



remanded to judicial custody and railway properties, were seized from all the accused and produced before the concerned Court.

3.After taking cognizance by the trial Court, the prosecution had examined P.W.1 to P.W.10 and exhibited 25 documents as Ex.P.1 to Ex.P.25. They also produced 6 materials objects as M.O.1 to M.O.6. On the side of the accused, no one was examined and no documents were marked.

4.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offences under Section 3(a) of RP(UP) Act and convicted them and sentenced to undergo 6 month Rigorous Imprisonment each and to pay a fine of Rs.500/- in default to undergo 1 month Simple Imprisonment each. Aggrieved by the same, the accused 1 to 3 have preferred appeals in C.A.Nos.66 and 67 of 2011 before the learned Additional District and Sessions Court/Special Court for Essential Commodities Act, Thanjavur and the First Appellate Court allowed the appeals on 18.04.2013 and set aside the conviction and sentence imposed by the trial Court. Hence, the present appeals have been filed as against the Judgment of acquittal of the respondents.



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5.The learned Additional Public Prosecutor for the appellant would submit that the Village Administrative Officer and another, who were examined as P.W.9 and P.W.10, categorically deposed that the third accused is running a mill. The third accused also admitted that he had purchased the dynamo belt 15 days before from A1. Though P.W.3 and P.W.8 were turned hostile, it would not affect the case of the prosecution. At the same time, the appellant's side witnesses had categorically and cogently deposed in order to prove the case of the prosecution. Even then, the Appellate Court, without considering the same, had mechanically allowed the appeals and acquitted the respondents.

6.Heard and perused the materials available on record.

7.On 27.09.1999, in the early morning, when the appellant along with three other staff were on confidential watch over the theft of railway materials over gauge area, noticed A1 and A2 coming from East to West direction towards Indira Nagar on foot path near Electric Light Post No.YF/2. A1 was walking with one bicycle having gunny hand bag in the carrier and A2 carrying a white colour polythene bag in his right hand in a suspicious manner. Therefore, the appellant had enquired them and found that A1 was in possession of railway dynamo belt measuring 12 $\frac{3}{4}$



feet in length, 3 inch in breadth bearing railway marks and rail engine emblem 1998 in two places and one hacksaw blade knife and A2 was in possession of 12 ½ feet in length, 3 inch in breadth bearing railway marks and rail engine emblem 1996 in one place. On the basis of their confession, A3 was arrested and remanded to judicial custody. A3 was in possession of 4 numbers of railway dynamo belts. Admittedly, the appellant has failed to examine any independent witnesses for the arrest, recovery and seizure. The appellant had examined P.W.8, who is also claiming ownership of the mill. However, the case of the prosecution is that A3 is the owner of the mill and when search was made, recovered four dynamo belts. If at all P.W.8, is the owner of the mill, the prosecution ought to have implicated him as an accused. Therefore, it is fatal to the case of the prosecution. That apart, Ex.P.14, certificate issued by P.W.7, lease agreement which was marked as Ex.P.18, Ex.P.20 the petition given by P.W.7 and Ex.P.21 missing case property report submitted by the appellant, are not supporting the case of the prosecution. That apart, all the material objects as M.O.1 to M.O.6 are not available in the railway engine and it was in possession of section owning. Those also categorically admitted by P.W.1. It is contrary to the ledger produced by them, namely, the Message Register. According to the prosecution, P.W.1 found after verification of Message Register that the



above material objects as M.O.1 to M.O.6 were missing. Likewise, in Ex.P.20, it is not revealed that M.O.1 to 6 were found missing. Therefore, the prosecution has failed to prove that M.O.1 to M.O.6 allegedly recovered from A1 to A3 were missing from the railways. That apart P.W.3 and P.W.8 were turned hostile and as such, the prosecution has also failed to prove the recovery of M.O.1 to M.O.3 from the accused. Hence, the First Appellate Court had given the benefit of doubt in favour of the respondents and acquitted them. Therefore, this Court finds no infirmity or illegality in the order of the First Appellate Court and the appeals are liable to be dismissed. Accordingly, both the Criminal Appeals are dismissed.

30.03.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

- 1.The Additional District and Sessions Court/
Special Court for Essential Commodities Act, Thanjavur.
- 2.The Judicial Magistrate Court No.1, Thanjavur.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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

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