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Date : 24/08/2025

Enas Elish Sutari Vs The State of Maharashtra and Another

Court: Bombay High Court

Date of Decision: April 10, 1975

Acts Referred: Railway Property (Unlawful Possession) Act, 1966 â€" Section 3, 3(a)

Citation: (1976) CriLJ 1859 : (1975) MhLj 772

Hon'ble Judges: Chandurkar, J

Bench: Single Bench

Judgement

Chandurkar, J.
The accused has filed this appeal challenging his conviction for the offence punishable u/s 3 of the Railway Property

(Unlawful Possession) Act, 1966. The prosecution case in brief is that at about 6.45 a. m. on 22-4-1972 the accused, who was a fitter in the

Railway Workshop at Parel, was found throwing some brass bars across the compound wall of the workshop, which was 12 or 15 feet high and

on being stopped by Rakshak Audh Bihari Singh (P.W. 1), he was found in possession of some other brass parts concealed in his pant pocket.

The actual search taken by P.W. 5 Shivkumar Pathak in the presence of two panchas P.W. Jagdishkurnar and P.W. 3 Pundlik yielded three brass

parts from his pocket. One brass choke was found lying near his feet, Since the articles found were Railway property, the accused was prosecuted

for the offence u/s 3 (a) of the Act. The accused merely denied the offence. Before the trying Magistrate the witnesses examined were Rakshak

P.W. 1 Audh Biharilal, two panchas Jagdishkumar, P.W. 2, Pundalik Ramchandra P.W. 3 and O. Dixon P.W. 4, a Foreman, to prove that the

property belonged to the Railways and P.W. 5 Sub-Inspector Shivkumar Pathak, who had actually searched the person of the accused. The

accused also examined one defence witness W. M. Arez. His evidence, however, is of no assistance to the accused because he had stated that

when he inquired from the Rakshak as to what the matter was, the Rakshak had asked him to go to his job and he had accordingly gone away. He

was, therefore, not present at the time of the search. The evidence of the prosecution witnesses was accepted by the trying Magistrate, who found

him guilty and sentenced him to suffer rigorous imprisonment for three months and to pay a fine of Rs. 100/- in default to undergo rigorous

imprisonment for three weeks. This appeal is filed by the accused challenging his conviction.

2. It is contended by Mr. Gole appearing on behalf of the accused that the two panchas had already acted as panchas earlier On one occasion;

both were the employees and therefore their evidence should have been rejected. It is also argued that the evidence of Rakshak Audh Biharilal

was not reliable inasmuch as it was unlikely that the three parts said to have been found in the pocket of the accused, were kept there since 6.45 a.

m., which was the beginning of the day of work and at that time the work had not even started. Thus, according to the learned Counsel the

evidence of the Rakshak should also be rejected. I have gone through the entire evidence in the case and it is not possible to accept the

contentions raised, The evidence of Audh Biharilal disclosed that when he found that the accused was throwing some brass parts across the wall,

he went there and found one brass choke near his feet and when he found some more parts concealed in his pant pocket, the accused admitted

that they were the brass parts and he sent for the Sub-Inspector of R. P. F. who searched the person of the accused in the presence of the two

panchas and three other pails were found. There is nothing in the cross-examination of this witness, which throws any doubt on his statement made

in the examination-in-chief. It is, no doubt, true that he says that the parts, which were thrown beyond the wall were not seen when be had gone

there. It cannot be known as to what happened to those articles. The wall itself was 12 to 13 feet high. What was happening on the other side of

the wall could not, therefore, be seen and therefore what happened to those articles could not have been ascertained. Now, the evidence of these

witnesses is corroborated by the evidence of the two panchas. P.W. 2 Jagdishkumar also stated that when the person of the accused was

searched, the three parts were found in the pant pockets and there was one part lying on the ground. He has signed the panchanama Exh. C. The

accused was questioned about the possession and he had admitted the possession of the three parts in his statement Exh. D which is also signed by

both the panchas. Jagdishkumar has admitted that he has signed Exh. D. Even in the cross-examination he denied the suggestion that all the four

parts were lying on the ground. He reiterated that the Sainik had searched the person of the accused. To the same effect is the evidence of P.W. 3

Pundalik, who had stated that the two parts were wrapped in a paper and the third part was also wrapped in a paper. He has also signed Exh. D,

which was recorded and he identified his signature. Now, though these two panchas were the employees of the Railways and they had acted on a

previous occasion in the capacity of panchas, nothing has been brought out in heir cross-examination to show as to why the witnesses should

depose against the accused. No enmity of any kind has even been suggested. The incident in question has taken place within the premises of the

workshop. Normally the persons who would be easily available in such a case would be the employees of the Railways and merely on the ground

that they are the employees, it cannot be said that they are disqualified for acting as panchas. They cannot also be said to be disqualified merely

because on a previous occasion they had acted as panchas. In the absence of any suggestion as to why these people should give false evidence

against the accused, it will not be possible to reject their evidence.

3. Actually the person who searched the person of the accused was P.W. 5 Shivkumar Pathak. What is put to Shivkumar Pathak is that the gate

of the Workshop was opened at 6.30 a. m. But he reiterated that he had searched the person of the accused and three parts were found in his

pocket. He went to the spot at 7.10 a. m. Now, the fact that the accused had not got his ticket punched would indicate that he had not gone to the

punching office. But it is difficult to see how that was relevant. He was already within the premises and on the consistent statement of the witnesses

it appears that the accused after having entered the premises had thrown out some articles but was apprehended by the Rakshak. There could be

many reasons as to why he would keep the articles in his pocket right from the beginning of the day. It may be that he must have got hold of them

then and did not think it worthwhile to keep them at some other place. Or it may be that if they were put at some other place, it would have been

difficult for him to take them on his way back home. He must have felt it safe to keep the articles in his pocket because once an employee was

inside, no search of his person was taken till the time of his going out. Thus, only because the articles were found in his pocket in the early hours of

the morning it cannot be a ground for rejecting the prosecution case, which is not rendered in any way improbable On account of that fact.

4. The defence witness is of no assistance to the accused because he was not present when the person of the accused was searched. It is really

difficult to appreciate as to what was the purpose of examining such a witness.

5. Another important circumstance in the instant case is that the accused, when he was questioned, made a statement Exh. D admitting the

possession of these articles. His statement was recorded by A. S. I. G. M. Babulkar. He has not been examined. But this statement has been

proved by both the panchas and 1n their statements it is positively stated ""1 admit my guilt that I picked up the railway material and took it outside

the workshop with the intent of theft"". The admissibility of this statement is not disputed. What was contended was that this statement has not been

proved because the scribe of the statement has not been examined. Now both the panchas having deposed that the statement in Exh. D was made

before them by the accused, it was really not necessary for the prosecution to "examine the scribe. There is thus abundant material on record to

support the conviction of the accused for the offence punishable u/s 3 (a) of the Railway Property (Unlawful Possession) Act

6. On 11th of February 1975 the learned Judge, who had earlier heard the appeal, had issued a notice to the accused to show cause against the

enhancement of the sentence because according to the learned Judge the sentence awarded is not in accordance with the provisions of Clause (a)

of Section 3 of the Act Certain objections to the issue of the notice were taken. Those objections were overruled. In answer to the notice of

enhancement of the sentence, it is urged by Mr. Gole that the accused is a man of 37 years. His conviction is hound to result in his dismissal from

the Government employment and further consequence will b6 that he will not be entitled to retirement benefits. The learned Magistrate has not

given any reasons for awarding the sentence which is less than the minimum prescribed u/s 3 of the Act. However, having regard to the

circumstances of the case and the consequences involved as a result of this conviction in my view the ends of justice will be met by maintaining the

sentence, which is already awarded by the trying Magistrate. I am not, therefore, inclined to enhance the sentence.

7. The appeal fails and is rejected. Rule in review application stands discharged. Accused to surrender to his bail.