

State of Maharashtra Vs Narayan Shrinivas Chepe

Court: Bombay High Court

Date of Decision: Aug. 17, 1978

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

Hon'ble Judges: V.S. Kotwal, J

Bench: Single Bench

Advocate: P.P. Hudlikar, P.P, for the Appellant; A.C. Agarwal and Anita A. Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Kotwal, J.

The State has taken an exception to an order of acquittal recorded by the learned Judicial Magistrate, (Railways), Pune,

in Criminal Case No. 7210 of 1975 in a trial where the respondent-accused was tried for an offence u/s 3(a) of the Railway Property (Unlawful

Possession) Act, 1966.

2. On 24th September, 1975, at about 11-30 a.m. the respondent accused was apprehended by (P.W. 1) Ramsingh, a R.P.F. Head Rakshak on

the Railway Platform at Khadaki Railway Station and at that time the accused was carrying two bags in two hands. On suspicion when he was

apprehended and on query by the said Head Rakshak the accused told him that both the bags contained raw coal. As the said Rakshak had no

authority to record any panchanama or attach the property, he brought the accused before the Assistant Sub-Inspector Shri Kashid, who is

examined as P.W. 4, at his office at Pune. The Assistant Sub-Inspector Kashid interrogate the accused before whom the accused is alleged to

have admitted that he had taken this coal from the loco shed at Pune and was carrying in all 20 kilograms of coal in two bundles to his house for

domestic purpose. Shri Kashid then called two panch witnesses and attached the property under the panchanama Exhibit 6. The witness also

recorded the statement of the accused which is claimed to have been signed by both the panch-witnesses and the accused and the same is at

Exhibit 16 on record. The property was then got examined from the Railway Expert one Shri Shantaram Parathe, Fuel Inspector (P.W. 3), who

opined that it was the railway property and issued a certificate at Exhibit 14.

3. On the basis of these allegations the accused was put up for trial before the Railway Magistrate at Pune. The evidence of the Rakshak Ramsingh

was recorded before the charge and other witnesses were examined after the charge to which the accused pleaded not guilty.

4. The respondent-accused denied that allegations and contended that he has been falsely implicated and that he did not carry any article as such

and in particular the coal in question and a false panchanama was drawn. As regards statement Exhibit 16 he contended that it was not of his own

volition but he was forced to sign the statement and that the recitals therein are not his authorship.

5. The learned Magistrate who conducted the trial discarded the prosecution evidence as being unacceptable and recorded the finding that it was

not established that the accused was found in possession of the railway property. He also found that the statement Exhibit 16, was not voluntary

one. He, therefore, recorded an order of acquittal in favour of the respondent accused. It is this that is being challenged before me in this appeal by

the State.

6. In support of its case, the prosecution have examined in all four witnesses. (P.W. 1), Ramsingh is the Head Rakshak, who is alleged to have

apprehended the accused at Khadaki Railway Platform when he was carrying bags containing coal. (P.W. 2), Francis Paradhe is a panch witness

who was called at the instance of Shri Kashid when the panchanama of the attachment of the property and the statement of the accused were

recorded (P.W. 3) is Shri Shantaram Parathe, Fuel Inspector who tendered his evidence in the capacity as an Expert and opined that the property

in question was the railway property. The last witness is Shankar Anant Kashid, (P.W. 4), Assistant Sub-Inspector R.P.F., Pune, who has carried

investigation in this matter. The documents as stated above, consist of panchanama Exhibit 6, statement of the accused Exhibit 16 and the

complaint at Exhibit 7.

7. Shri Hudlikar, the learned Additional Public Prosecutor, appearing for the State, had argued that there is no proper discussion or appreciation of

evidence as such by the learned Magistrate and therefore, the judgment is liable to be vitiated. He further contended that on merits the prosecution

have led sufficient evidence which is not seriously disturbed in the cross examination to warrant an order of conviction. He, therefore, argued that

this is a fit case for interfering with the order of acquittal. With these submissions the Counsel has taken me through the entire evidence as well as

the documents. As against this Mr. Agarwal, the learned Counsel for the respondent, has submitted that the evidence led by the prosecution does

not conclusively establish the guilt of the accused and at any rate, there still remains reasonable doubt the benefit of which should go to his client.

He has criticised the evidence on several counts, such as the same being interested and contradictory.

8. As regards the question of possession of the Article in question, the prosecution mainly relied on the evidence of Head Rakshak, Ramsingh

(P.W. 1), panch-witness Fransis Paradhe (P.W. 2), and to some extent on the evidence of Investigating Officer Shri Kashid (P.W. 4). However,

on going through the entire evidence I am not satisfied that this is a proper case where this Court should interfere especially when sitting in an

appeal against acquittal. It is true that the entire appreciation of the evidence is open in such an appeal but however, the consideration that one

Court has appreciated the evidence who had an additional advantage of seeing the demeanour of the witness and that the view taken by the

learned trial Magistrate cannot be said to be unreasonable or perverse, is quite relevant. I find from the evidence that the view adopted by the

learned trial Magistrate cannot be said to be so unreasonable that no prudent person could accept that. On the contrary I am satisfied that the

findings of the Court are justified on merits of the case. It may be that the judgment is not quite so elaborate as was expected and some aspects

may not have been so expressly discussed. However, the general tenor of the judgment does indicate that the learned Magistrate has applied his

mind to all the aspects of the case and arrived at the conclusion. That apart, I am holding that the order of acquittal is a justified on one merit and

there is no reason to interfere with the same.

9. To start with the prosecution are faced with the first infirmity. According to P.W. 1. Ramsingh while he was on the railway platform at Khadaki,

Railway Station he happened to notice the respondent-accused carrying two bags in both of his hands and as suspicion was aroused the witness

approached the accused and apprehended him. The witness further says that on query it was the accused, who told him that the bags contained

raw coal. It is thereafter that the witness took the accused as well as the bags to the office at Pune and produced both before the Assistant Sub-

Inspector. Now it is interesting to note that the witness merely relied on the statement made by the accused in response to the query made by him

about the contents of the bags and significantly the witness himself did not bother to verify the correctness of the same nor did he bother to see

whether as a matter of fact the bags did contain raw coal or not. It is in my opinion, improbable and the learned Magistrate was justified in

commenting on the said. Further it is not properly explained as to why no steps were taken on the platform or somewhere in the office at Khadaki

Railway station itself and as to why the accused and the bags were produce at the Pune office. The lapse is not explained. The witness claims that

the accused was actually apprehended at about 11.30 a.m. and the record shows that he was actually produced before the Assistant Sub-

Inspector Kashid after 1.30 p.m. This time lapse is not properly explained. But what is more interesting to note is that it was sought to be claimed

by the witness that the accused carried the bags right upto the office at Pune and produced them before the Assistant Sub-Inspector Kashid. This

in my opinion, is also improbable. The panchanama of the attachment of the articles at the Pune office was commenced at 2.30 p.m. and the

recording of the statement of the accused containing so-called admission of guilt by the accused commenced after about 3.00 p.m. It will thus be

obvious that when the accused was produced as claimed by the witness, in the Pune Office, it is too much to except that the accused will be

holding two bags right upto the stage when the panchanama was drawn. Inspite of that we find from the evidence that an impression was sought to

be created by the witnesses, including the panch-witness, that the bags were actually in possession of the accused. It is also worthwhile to note that

one of the panch-witnesses, namely Fransis Paradhe (P.W. 2) who has been examined in this case was not an independent witness as such but

was an employee of the railway administration itself in as much as he has admitted that he was working at the relevant time as Coal Checker at

Loco shed at Pune and that he was called by some persons from his office and taken to the R.P.F. office at Pune at about 2.30 p.m. It is really not

understood as to why the services of any other independent persons were not acquired by the Investigating Officer, but on the contrary he decided

to call a person from the department itself. This atleast to some extent reduces the character of witness calling himself as an independent persons.

As indicated of the coal cannot be accepted because even assuming that he was so called by the officers in R.P.F. office, the property must not

have been in the physical possession of the accused at that time. The other panch is not examined in the present case.

10. Then the other piece of evidence consists of the alleged confessional statement of the accused recorded in the office itself. It is not made clear

in the evidence as to at what point of time the said statement was recorded, namely, whether it was before or after the panchanama. However, the

evidence of Assistant Sub-Inspector Shri Kashid indicates that the panchanama was drawn first and thereafter the statement was recorded. The

statement no doubt bears the signature of the accused and both P.W. 1 Ramsingh and Kashid P.W. 4 referred to same. However, there are

certain features which detract the value of the said statement. In the first instance the panch Fransis in his evidence has not stated in clear terms that

the so called statement of the accused was reduced to writing nor does he say that it was read over to the accused who had admitted it to be

correct or that the accused signed the same in his presence,. Further more, the witness has also not stated in his examination-in-chief that he himself

signed the said statement. The matter does not rest there, because in the cross-examination he has clearly admitted that the signature of the

accused was taken in his presence on the panchanama only, meaning thereby in his presence the signature of the accused was not taken on the

statement. Thus, the question about the accused as well as the witness himself signing the said statement becomes highly doubtful. No attempt was

made to get any clarification in the re-examination of the said witness. The statement also contains some parts which do not appear to have been of

the volition of the respondent- accused himself and does indicate some degree of artificiality in the same. Thus, for instance it has been mentioned

in the statement that the accused had picked up raw coal from the Loco shed at Pune and had kept 15 kilograms in one bag and 5 kilograms in the

other. It is significant to note that a person like the accused who is alleged to have committed theft of the article would not have known the exact

weight of the article that was being stolen and in any event he could not have weighed the same prior to lifting the same. In spite of that we find that

the exact weightage has been mentioned in the said statement. This, in my opinion, is a clear indication that this could not have been the product of

his said volition and must have been adjusted after the Investigating Officer must have actually weighed the article. It is not as if the statement

mentions that now the accused has come to know about the weight of the article, but it indicates that he was knowing it right from the inception of

the transaction. As discussed above, the panch himself does not say that he had signed the said statement or that the accused has signed in his

presence. It is interesting to note that the panchanama is scribed by two panch witnesses, Fransis and one Kodinath Gopinath Pawar. This

panchanama does bear two signatures. If these two persons were called in the office and when the panchanama of the attachment of the article as

well as the statement of the accused were recorded in quick succession, normally we except that the same two panchas would have signed the

statement also, especially when the Investigating Officer felt necessity of getting the signatures. But, however, on perusal of the panchanama I do

not find the signature of K.G. Pawar, who was party to the panchanama. Instead there appears to be a signature of some other person which is not

properly explained. It was sought to be urged on behalf of the State that it may be that three persons were called to Act as panchas and out of

them Fransis and Pawar were taken for the panchanama of attachment of the property and Fransis and some other person were taken for the

statement of the accused. No doubt very attractive submission, however, there is no evidence nor has this been explained by the Assistant Sub-

Inspector Kashid who was the proper person to do so. In the absence of any evidence, it would not be proper on my part to uphold that

contention. It is also worthwhile to note that before arrival of the panch-witnesses, the accused was orally interrogated by the Assistant Sub-

Inspector Kashid at which time also he alleged to have admitted the guilt. But there is no corroboration to that part nor any written record to

support the evidence of Kashid. This is all the evidence led by the prosecution and in view of the infirmities which I have pointed out above, I feel it

not safe to accept the same especially while dealing with the appeal against acquittal. Had I an occasion to consider this matter in an appeal or

revision against the order of conviction then perhaps different consideration might have arisen. However, on the merits and evidence as it stands, I

fully endorse the findings of the lower Court, namely that it is not established by the prosecution beyond a reasonable doubt that the respondent

accused was found in possession of raw coal. The article in question is hardly worth Rs. 20/-. In view of the evidence being not satisfactory as also

not conclusive coupled with the fact that the article concerned is worth hardly Rs. 20/- and further coupled with the fact that this is an appeal

against the order of acquittal, I am of the view that it does not call for any interference. In view of this finding it is really not necessary for me to

consider another plank of argument adopted by Mr. Agarwal for the defence, namely, that the property in question is not proved to be that of

Railway Administration. He has also relied in support of his submission on a decision in *Kashmirilal v. The State of Uttar Pradesh* AIR 1970 SC

1968 in which different provisions of the Act vis-a-vis the proof that is necessary for establishing that the property belongs to Railway

Administration has been enunciated. However, as I am recording an order of acquittal on the very first point, it is not necessary for me to decide

the other points.

11. In the result, the appeal is dismissed. The order of acquittal recorded by the learned trial Magistrate in favour of the Respondent-accused is

confirmed.

12. Bail bond stands cancelled.