

IN THE COURT OF THE SESSIONS JUDGE : KAMRUP(M)
AT GUWAHATI

Present: Md. M. Ahmed,
Sessions Judge,
Kamrup(M), Guwahati.

Criminal Appeal No. 77 of 2015

The appeal has been filed challenging the judgment and order dated 15.05.2015, passed by the learned Special Railway Magistrate 1st Class, Guwahati, in C.R. Case No. 43 of 2005, under Section 160(2) of the Railway Act.

Sri Jiten Gogoi

..... **Appellant**

- Vs -

The Union of India

..... **Respondent**

Date of Argument : 27.02.2017

Date of Judgment : 14.03.2017

Advocates who appeared in this case are:

Shri A. Choudhury : Learned Advocate for the appellant.

Shri G. Kalita : Learned Advocate for the Respondent

J U D G M E N T

1. By preferring this appeal u/s 374(2) of the Code of Criminal Procedure convicted the accused Jiten Gogoi, S/o Tulsi Gogoi, North West RPF Colony Dangtola, Q.No. 561(B) type-II Dist: New Bongaigaon has called into question the proprietor and legality of the Judgment and Order dated 15.05.15 passed by Learned Special Railway Magistrate First Class, Guwahati relating to C.R. Case No. 43/05 whereby and wherein the Learned Trial Court having found the accused/appellant guilty u/s 3(a) of R.P.(U.P) Act sentenced him to undergo SI for period he had already undergone and fine of Rs.2000/- in default S.I. for 15 days. Upon attentive perusal of the called for case record, it has emerged that one G. Deka SI/RPF/NBQ filed a complaint in written form to the effect that on 29.05.05 at about 17/30 hours while he along with other officers arrived at NBQ/RPF/Post on duty Constable of APCL beat reported that, after arrival of UP/LMG/FG train on line no. 8 (by pass) at about 14:00 hours, he noticed that one outsider namely Rajesh Das, Railway Sub-Contractor started dropping down of rice bags (about 10-15 bags) from Wagon No. NFB-72197 attached with the same train having Engine No. 13090 with the help on duty RPF seal checker constable/Jiten Gogoi (accused/appellant) and constable Rajesh Das. He accordingly raised objection; but in vain; then he started keeping sharp watch about the place and the train left at about 14-35 hours. Accordingly complainant/SI of Police/ G. Deka, SI/P. Biswakarma, SIB/CIB/RN at NBQ/BN Mardi, HC/D.N. Chetia, Constable A.C. Nath and Constable P.K. Das under the supervision of IPF/NBQ, Md. Ehasan immediately rushed to the spot and conducted search to recover the rice bags. Thereafter searched nearby area of L/No.8 (by pass) line they recovered 10 bags of rice which were concealed under bushes. They sealed those bags at the spot as per seizure list in presence of witnesses and seizure list were drawn up by SI/CIB/RNY B.N. Mardi as directed by IPF/NBQ. Further search and raid was conducted acting upon the source information and verbal statement of Constable A.C. Nath inside the camp of Railway Sub-Contractor namely Rajes Das at about 20/00 hours and they succeeded to recover other 4 bags of rice in his camp house surrounded by tarja (bamboo fencing) which were kept concealed one rice bag inside the camp room and another three bags were in stacking position outside the room. On being asked about camp owner, one person informed them that he is the camp owner he was further identified by constable A.C. Nath as Rajesh Das who also

admitted his guilt and disclosed his identity as Rajesh Das and he has further informed the authority that RPF/ Constable Rajesh Das and constable Jiten Gogoi (accused/appellant) called him for dropping down the rice bags from the by pass line from a stable Wagon. On further interrogation he has stated that 4 numbers of rice bags were seized shifted from the nearby the said by pass line which were dropped down by him from the said train. Accordingly SI /CIB/RNY, B.N. Mardi seized the recovered rice bags at the spot as per direction of IB/NBQ(P) by preparing second and subsequent seizure list in presence of witnesses. During search and raid period both the seal checker namely Rajesh Das and accused/appellant Jiten Gogoi were not found available in their respective beat and then further did not cooperate with the Railway Authority in this enquiry. Subsequently the accused persons were taken into custody and the recovered rice bags as per seizure list were brought to RPF Post along with the accused persons.

2. In this connection a case no. 6(5) u/s 3(a) of RP(UP) Act was registered at the said post and it was endorsed to SI/ P. Biswakarma for causing enquiry and submit report. After completion of enquiry, the enquiry officer submitted charge sheet/enquiry report u/s 3(a) RP(UP) Act. Subsequently the Learned Trial Court took cognizance of the offense upon perusal of materials on court. Therefore, the Learned Trial Court having heard the Learned Counsels of both the sides and basing upon the materials on record formed charge u/s 3(a) RP (UP) Act and read over and explained the particulars therein to the accused persons after furnishing copies to them to which they pleaded not guilty and claimed to be tried. During the trial stage, the prosecution examined as many as 14 PWs. Subsequently the statements of the accused persons was recorded in separate sheets. They pleaded to be innocents, but they further declined to lead evidence in their defence. Thereafter, the Learned Trial Court heard the arguments so advanced by Learned Counsel of both the sides, analysed the evidence on record, believed the prosecution story convicted the accused/appellant along with other accused persons and sentenced them to jail terms with imposing of fine. The aforementioned accused/petitioner was found to be in jail custody for 20 days. Accordingly the Learned Trial Court has sentenced him to undergo SI for period already undergone in jail hajot and with fine of Rs. 2000/- in default for SI for 15 days. This Judgment and Order of conviction and sentencing comes under challenge in this appeal. The accused/appellant feels

highly aggrieved and dissatisfied with the impugned Judgment and Order dated 15.05.2015 and he has challenged the same on various grounds. According to him, the impugned Judgment and Order is bad in law as well in facts and hence the same is liable to be set aside and quashed. It is further contended that the Learned Trial Court has failed to appreciate the evidence on record in its right perspective and has come to an erroneous findings which is not maintainable in the eye of law and therefore liable to be set aside and quashed. It is further contended that the Learned Trial Court has heavily relied upon evidence of eye witness i.e. PW. 4, Arun Ch. Nath who in his cross examination has clearly deposed that he noticed the incident from a distance and further deposed that he had not seen the train after it stopped at the platform. This witness, according to Learned Defence Counsel, has deposed that he had not seen the two accused persons where the alleged materials were kept. It is alleged by the defence that this independent witness was brought from his house for the purpose of fabricating the prosecution story to falsely implicate the accused/appellant. It is further contended that the seizure was made in total violation of law and hence it is not sustainable in the eye of law. It is further contended that the Learned Trial Court did not consider the fact that the PW.3, Pramananda Biswakarma has deposed in his cross examination that he deposed as per instruction of A.C Nath and he himself had not seen the incident. He further stated that there is no mention of shortage of rice bags. The other eye witness Md. Ehsaan also deposed in his cross examination that he had not seen the incident himself; he came there at later stage. He has further deposed that out of 10 bags of rice, 10 bags were recovered from line no. 8 and 4 bags were recovered from Rajesh Das; as such his evidence is not at all reliable; still then the Learned Trial Court has believed the testimony of this witness which is a perverse finding and is not sustainable in the eye of law. It is further contended that the prosecution witness deposed contradictory and conflicting views on major point of facts; as such it may be held that the prosecution case suffered from material contradiction. It is further contended that from the face of record, it is apparent that the case is entirely based on the evidence of PW.3 and PW.4, but their evidence stands uncorroborated. Therefore, the findings arrived at by the Learned Trial Court and the appreciation of the evidence made by the Learned Trial Court causes serious miscarriage of justice.

3. I have considered all such submissions so placed by learned counsel of the accused/appellants in the light of evidence on record. From the record it is

seen that the prosecution has heavily relied upon the evidence of PW.4 and he claims that he is the eye witness of the incident. Now let us straight way come to the evidence of this witness. He in his evidence has stated that on 29.05.05 while he was serving as constable of IPF/NBG Post and was on duty from 6 AM onwards in the peat line Weigh Bridge, F.C.I. Godown and guarding beat duty, Bongaigaon Yard at about 2:00 PM, he had seen UP/LMG/FG train entered at line no. 8 (by pass) line. He has also seen the accused/appellant Jiten Gogoi along with other accused Rajesh Das (both are RPF Constables), were unloading rice bags from that train. At about 2:35 PM he had seen them carrying rice bags on their heads, were wearing white genjee (vest) and uniform pant. The defence has assailed the evidence of this witness on the point that his evidence should not be believed as it is his version that he has seen the occurrence from about 20 ft distance. Now the point is should the court believe the testimony of this witness. The defence does not contradict of unloading of rice bags from that train; it simply challenged the identity of the person. According to the defence, it is not possible for a person to clearly identify a particular man from such a distance. This theory laid before this court is not acceptable as from the evidence of record it is clear that the accused was working as seal checker employee of Railway. PW was well acquainted with the said accused being a fellow employee of the same department and from the evidence on record it is every clear that he has sighted him on the move, so the distance cannot be treated to remain constant. This is an approximate distance the witness has sighted so on the basis of the same it is clear that the evidence of PWs cannot be disbelieved as regards the real identity of the accused.

4. There is no dispute to the fact that the convicted accused is an employee of Railways. From the evidence of PW.4 it has further surfaced that he has seen the accused concealing the rice bags behind the bushes. The total no. of rice bags removed from the train was 10 bags and those 10 bags were recovered from behind the bushes and it stands established from the evidence P.W.2 B.N Mardi who has very categorically stated that on 29.05.05 while he was at RPF Post/NBQ doing his official duty, at around 17:30 house constable A.C. Nath who was performing duty at peat line informing him personally that Rajesh Das Sub-Contractor Railway drop down some rice bags from the said train UP/LMG standing on line no. 8 with the help of Seal Checking staff constable present accused/ appellant Jiten Gogoi and Constable Rajesh Das. After getting this

information he along with SI/ G. Deka, SI P. Biswakarma and other staff under the supervision of IPF/NBQ rushed to the spot and conducted a search in that area and recovered 10 bags of rice concealing behind the bushes near line no. 8. Out of them 6 bags were intact and 4 bags were torn and loose and then he seized those bags. Thus from this evidence, it is established that those bags were found behind the bushes. The evidence of PW.2 fully corroborates the testimony of PW.4 on material aspect. Evidence of PW. 3 P. Biswakarma also comes on the same line, he corroborated the evidence of aforementioned witnesses on material aspects. In analysing the evidence of these witnesses along with all attention, I found no contradiction in their evidence to disbelieve their testimony on material aspect. As appeal is preferred by the accused/appellant whose role was confined to unload rice bags from the train and taking bags and concealing them behind the bushes, as such this court does not proceed to analyse the evidence of the rest of the witnesses who proves recovery of 4 bags from Sub Contractor campus as there is no allegation against the present appellant/accused that it was he who took those bags to contractor campus and stock them there. The Learned Trial Court has rightly assessed the evidence on record and has rightly convicted the accused/appellant. The impugned Judgment and Order of conviction and sentencing suffers from no illegality or irregularity and it warrants no interference from this court.

5. It is accordingly ordered; this appeal stands dismissed.
6. Return the LCR along with a copy of this judgment to the learned court below.
7. Signed, sealed and delivered in the open court on this 14th day of March, 2017 at Guwahati.

(M. Ahmed)

Sessions Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati