

IN THE COURT OF SPECIAL RAILWAY MAGISTRATE, KAMRUP

C.R. CASE 44/13

State

-Vs-

Md. Dadul Ali & Anr.

PRESENT- Sri Devoiyoti Bhuyan, Special Railway Magistrate 1st class, Guwahati

For the Prosecution Dr. Anand Singh Learned P.P/N.F.Rly/RNY

For the accused persons Sri Rinti Deka Learned Counsel

Date of prosecution evidence- 07-05-2015, 11-09-2015, 30-10-2015, 18-08-2016, 18-09-2016, 29-09-2016 and 06-10-2016.

Date of Defence evidence- 15-12-2016

Date of Argument 13-02-2017

Date of Judgment 20-03-2017

U/S 3(a) Railway Property (Unlawful Possession),1966**Judgment**

1. The case of the prosecution in brief is that on 22/23-10-2013 night HC/Ziaruddin Ahmed and HC/K.K.Kachari of CGS (OP) were detailed for drop load and railway materials guarding duty at CGS station yard from 18:00 hours to 06:00 hours. During their duty period at about 03:30 hours they noticed that two persons were carrying one onion bag from one stabled wagon of UP CGS onion placed on line No-8 of the yard for unloading. On seeing the RPF staff, the persons tried to flee away leaving the onion bag. One of them managed to flee away, while the other person fell down in a drain in between line No.4 & 5 of the yard and received injury on his body. The RPF staff apprehended the said injured accused person and he disclosed his name and addresses Md. Dadul Ali, aged about 28 yrs, S/O Md Abdul Mazid Ali of Vill-Changsari (Phukuripar) under PS- Changsari, Dist- Kamrup Assam. On interrogation he confessed his involvement in the theft of the recovered onion bag from stable wagon (No- WRBCNA-993128) along with his associate namely Rajib Ali @ Raja Ali, aged about 20 yrs, S/O Salim Ali @ Sana of Changsari (Dakshin Chuburi) under PS- Changsari, Dist- Kamrup Assam, who fled away from the spot. The RPF staff informed the matter to SI/R.K.Sharma of CGS (OP) who immediately attended the spot and seized the recovered onion bag and accused person was taken into custody. Later on, accused person was brought to RPF/Post/RNY alongwith relevant papers and produced before IPF/RNY(P) at about 08:40 hours of 23-10-2013 with a written complaint lodged by HC/Ziaruddin Ahmed of CGS(OP). On the basis of complaint

IPF/RNY registered a case vide no. (10)13 U/S 3(a) R.P.(UP) Act dated 23-10-2013 and endorsed to SI/R.K.Sharma of CGS(OP) to conduct enquiry and submit report.

2. After the completion of the enquiry of this case the enquiry officer (E.O.) submitted the prosecution report against the accused persons U/S 3(a) of R.P.(UP) Act. Finding a prima facie material this court took cognizance of the offence. After hearing both sides this court framed charge U/S 3(a) of R.P.(UP) and the particulars of the offence were read over and explained to the accused persons after furnishing the copies to which they pleaded not guilty and claimed to be tried.

3. During trial to prove its case the prosecution examined 10 (ten) numbers of witnesses namely PW-1 Md. Ziaruddin Ahmed; PW-2 Sri R.K. Sharma; PW-3 Sri Manash Pratim Mahanta; PW-4 Md. Saifuddin Ahmed; PW-5 Sri Bipul Ch. Das; PW-6 Sri Sankar Debnath; PW-7 Sri Dharmeswar Hira; PW-8 Sri Pawan Kumar; PW-9 Sri Ram Balak Mahato and PW-10 Sri Ratul Choudhury as prosecution witness. Statement of the accused person U/S 313 Cr.P.C is recorded in a separate form, wherein he pleaded himself to be innocent. On the contrary the defence adduce DW-1 Md. Rajib Ali and DW-2 Md. Salim Ali as defence witness.

4. Heard the arguments of learned counsels on both sides. Gone through the evidence on record.

5. Points for determination:

Whether the accused persons in the intervening night of 22/23-10-2013 at Changsari Yard was found in unlawful possession of onion bag which was Railway property suspected to be stolen and committed an offence u/s 3(a) R.P.(UP) Act or not?

6. Discussion, Decision and Reason Thereof:

Now let me at the outset, consider the evidence on record before *deciding the points for determination.*

PW1 in his evidence deposed that in the intervening night of 22/23-10-2013 he along with HC/ Sri K.K. Kachari was doing duty at station yard, goods, ramp and dropping unloading site at about 03:30 of night hours they noticed two persons were unloading onion bag from one Wagon Bearing No. WRBCNA-993128 at line No. 8 loaded with onion. Thereafter on seeing them, the two persons while trying to fled away to the west side, one of them slipped in the drain in between line no. 4 & 5 and got head injury while thrashing in the concrete sleepers. Then they detained him but the other co-accused person fled away from there. Accordingly they informed the matter to I/C CGS(OP) SI/Sri R.K. Sharma and after attending there he seized the said onion bag and also prepared card label. He along with the accused person put his signature in the seizure list as well as the card label. The seized onion bag along with accused person was brought to RPF/Post/RNY and on interrogation he disclosed his name to be Dadul Ali and the fled away person to be Rajib Ali @ Raja Ali. Thereafter he lodged a written complaint to IPF/RNY in this regard for necessary

action. He has seen the accused Dadul Ali in the court and also seen the seized empty gunny bag of the onion. During cross examination he stated that the distance of the station yard from the unloading site was about 100 meters and the distance between the goods to drop unloading site was about 100-150 meters. Further he stated that there was no any fixed no. of staff for the duty in the area as sometimes it may be entrusted to two persons and sometimes to be four persons. He has not brought the on duty register with him. The victimize wagon was about 150 meters away from the station yard. They had witnessed the two persons in the yard at about night 03:30 hrs and there were facility of tower light for lighting in the yard. The seizure list was not prepared at the spot and there was no any local witness during the preparing of the seizure list. He had not seen any marking in both the seized gunny bags. He has seen the case no. in the gunny bag exhibited in the court which was written at the post. He denied the suggestion that both the gunny bags exhibited in the court were not the one which was recovered from the wagon and they had fabricated it. He did not know the weight of the seized gunny bag. The apprehended accused person disclosed the name of the co-accused verbally. He denied the suggestion that the apprehended accused person did not disclose the name of Raja Ali in front of them. He denied the suggestion that he was not present during the seizure and the two gunny bags have been produced before the court as because were two accused persons.

PW2 in his evidence deposed that on 23-03-2013 while he was discharging as I/C CGS (OP), at about morning 03:40 hrs on duty CT/ Z. Ahmed informed him about theft of onion bag from the stable wagon with one person was apprehended with the onion bag. Thereafter he immediately attended the BG Yard where one accused person was detained who was in the condition of injury on the head. Thereafter on interrogation he disclosed his name as Dadul Ali and other co-accused to be Rajib Ali and further stated of taking out onion bag from the wagon by breaking of bamboo fence and on seeing the RPF they fled away from there but he received injury his head while trying to fled away from there and thereafter apprehended by RPF but his associate could able to flee away from there. Thereafter he seized the onion bag and after providing medical aid to accused produced him before IPF/RNY. Then in this regard, HC/ Z. Ahmed lodged a complaint to IPF and on the basis of which a case was registered and endorsed to him for enquiry. During enquiry he recorded the confessional statement of the accused person Dadul Ali in presence of independent witness. He visited the place of occurrence and prepared sketch map. Thereafter he also seized one gunny bag of onion from the victimised stable wagon. He also seized the unloading tally of the victimised wagon from CGS/Changsari along with the RR copy and again given back to his zimma. After verifying the tally and RR copy he learnt about shortage of materials there. He also collected the DDM. Thereafter during enquiry he examined the seized onion bag from the accused person with the seized sample onion bag by Agricultural Officer, Changsari and obtained certificate where it was mentioned that both the materials were of same nature. He also recorded the statements of all the relevant witnesses relating to the case. On 22-02-2013 co-accused Rajib Ali appeared before him alongwith bail order of Hon'ble Session court and he recorded his confessional statement in presence of independent

witness. After completion of the enquiry he submitted the last Case Diary and on being transferred from the incumbent he handed over the case dockets to IPF/RNY. He has seen the seized empty gunny bag in the court. During cross examination he stated that he went for search in the house of co-accused Rajib Ali but without any warrant of the court. He went for search in the house of co-accused Rajib Ali on the next day of the incident but could not find him there. There was no one found in the house of accused Rajib Ali except his father. He denied the suggestion that the seizure list was prepared at the RPF/Post.

PW3 in his evidence deposed that on 29-10-2013 he was called by one RPF Officer by one letter to conduct expert verification regarding some onion. Thereafter he attended RPF/Post/CGS and there were two gunny bags of onion produced before him to ascertain whether the onions of both the bags were of same nature. Thereafter he examined visually and found that both the onion bags were of same nature along with packet. Both the gunny bags were seen to be about 50 kg each and after examination he put marking "AE" in one gunny bag and on the basis of his examination he issued certificate. During cross examination he stated that he has not issued any such kind of expert certificate before it. He did not know the RPF who has served him the letter. He has seen both the onion bag at the RPF Post and also issued certificate in the RPF/Post. He did not know who was involved in the case and from whose possession onion bag was recovered. There was no any marking in both the onion bags produced before him and also did not weight the gunny bags. He did not use his seal in Exhibit.10 executed by him or did not mention about the date in which he conducted the examination. He did not conduct laboratory test of the onion and also did not see the onion bag in the court.

PW4 in his evidence deposed that on 23-10-2013 while serving as SS/CGS he was informed by Head Goods Clerk Sankar Deb Nath that open delivery of one wagon of BCN wagon will be received due to broken of one fencing. Thereafter in presence of RPF, Commercial Staff, party along with him the materials were unloaded and found shortage of one bag. During cross examination he stated that he could not remember the number of victimized wagon. The fencing of the victimized wagon was of bamboo and it was loaded from SGWF station. The train may stop many times in between SGWF-CGS Station and he could not say where the SGWF station was located. During the unloading tally was prepared but he has not brought it to the court. He has seen the unloading tally in the case record but in it he had not seen his signature. He denied the suggestion that as there is no any signature at Ext. 8 he was not present during the unloading. There was no any mention about the shortage in the unloading tally and he could not say if the said unloading tally is related to this case.

PW5 in his evidence deposed that on 22-10-2013 one onion train reached from SGWF to CGS. Then 23-10-2013 concerned party informed him that they will take delivery of one onion rack. A bamboo protection net of the said wagon was broken but the three other fencing was in right condition. Then as consented by party for taking delivery they informed RPF and on the same day in presence of RPF, SS and

party materials were unloaded in the ground and after counting 549 were found out of which one bag was found short. During cross examination he stated that the agent of the concerned party Javed Ali had come on 23-10-2013. The train reached on 22-10-2013 at about 07:35 hours which was checked by his staff and found in right condition. The SGWF station is located in Bangalore. The Exhibit 8 is tally book but has not brought the original copy of it to the court along with RR. He denied the suggestion that Exhibit 8 was not prepared on 22-10-2013 as original was not brought to the court and he certified the Exhibit 9 without having the original copy. He did not know if RPF had prepared the seizure list at the place of occurrence or RPF has seized one onion bag.

PW6 in his evidence deposed that on 23-10-2013 Wagon No. 993128 of UP/CGS/Onion from SGWF-CGS was unloaded during which SS/CGS, CS/CGS, IC/RPF/CGS and party were present there. After unloading 549 bags of onion was found and one bag was found to be short to which unloading tally was prepared. During cross examination he stated that he has not seen the original copy of unloading tally prepared on 23-10-2013 or brought with him. He has not also seen the original RR copy or brought along with him. He denied the suggestion that the tally book and the RR copy was not genuine as he could not brought the original copy along with him.

PW7 in his evidence deposed that on 23-10-2013 SI/R.K.Sharma seized one onion bag at Changsari Yard from Wagon No. 9933128 in connection with the case No.1(10)13 where he put his signature in the seizure list. During that time the businessman Javed Ali also present there. During cross examination he stated that Exhibit 5 was not the seizure list of the case property. He did not know the accused person of the case.

PW8 in his evidence deposed that on 23-08-2014 while serving as SI/RPF/RNY he was endorsed a case vide no. 1(10)13 U/S 3(a) RP (UP) Act dated 23-10-2013 as the previous enquiry officer of the case Sri R. K. Sharma was transferred from the incumbent. The previous E.O. of the case has already submitted the last Case Diary to the competent authority to allow submitting the Prosecution Report. Accordingly DSC/RNY allowed to submit the prosecution report vide letter no. RN/PRO-9/CB/14 dated 18-08-2014. After the endorsement, he was handed over the case dockets and going through the enquiry as already made by the previous E.O. he found sufficient materials against accused Dadul Ali and Rajib Ali and submitted prosecution report U/S 3(a)RP(UP) Act against them. During cross examination he stated that the independent witness present during the recording of the confessional statement of the accused Dadul was Ram Balak mahato and resident of Rangiya Railway station. During enquiry raid and search was conducted several time but nothing was recovered from his house. He did not visit the house of Rajib Ali. He did not conduct any material enquiry of the case and submitted the prosecution report on the basis of the documents submitted by the previous E.O. He denied the suggestion that he has submitted wrongly the prosecution report against the accused persons.

PW9 in his evidence deposed that on one day in the year of 2013 he was called by RPF officer Sri R. K. Sharma to RNY/RPF/Post and in his presence statement of one accused person was recorded where he stated of committing theft of one bag of onion and his signature and the signature of the accused was taken in the statement. He did not know the name of the accused or could re-collect his appearance. During cross examination he stated that he use to sell tea in his stall at Rangiya Railway Station from his younger days but has not brought any documents of his shop to the court. He denied the suggestion that his shop was unauthorised. He further stated that his shop and the RPF post were at Platform no. 1. He could not remember the time when the RPF re-called him at RPF Post. He could not identify in the court of whose statement was recorded. He could not say what was written in the document where he put his signature as it was written in English. The paper was already written before he put his signature and in his presence none put signature there. He has not seen the sized onion bag and did not know from whose possession the onion bag was recovered. He denied the suggestion that as he has a good relation to RPF so he put his signature without knowing anything.

PW10 in his evidence deposed that on 22-11-2013 at about evening hours while he was going to home after closing his shop he was called by Sri R. K. Sharma of RPF while reaching Changsari Station. Thereafter he was informed that Raja Ali present in the court was apprehended by him for which he has to appear as a witness. Thereafter he put his signature in one paper. During cross examination he stated that his signature in the paper (Exhibit 12) was taken for bail of the accused. He could not read what was written in Exhibit 12 as he was not well conversant to English.

7. Now appreciating the evidence of PWs, it appears from the version of PW1, the complainant of the case and the occurrence witness that both the accused persons were seen unloading onion bag from the stable wagon and after the chasing of both the accused persons one accused person namely Dadul Ali could be apprehended and other co-accused able to flee away. Further as stated by the co-accused person the fled away person could be identified as Rajib Ali @ Raja Ali. Thus an offence U/S 3(a) R.P.(UP) Act seems to be committed.

8. Here the question arises whether the offence committed attract the provisions of the charge U/S 3(a) of R.P.(UP) Act. From the plain reading of the section it transpires that the main ingredients are (i) the property in question is Railway property (ii) the accused were in possession, and (iii) it is reasonably suspected of having stolen or unlawfully obtained.

(i) Now from the definition of the act "railway property" includes *any goods, money or valuable security or animal, belonging to, or in the charge or possession of, a railway administration*. Coming to the issue of the seized materials to be railway property it appears from the version of occurrence witness PW1, it appears that the accused persons unloaded the onion bag from the stable wagon without authority. Further on verification of the wagon by PW4, PW5 the commercial officials it appears that there was shortage of one bag and the fans of the wagon was in broken

condition. Also while examining the seized onion bag found from the possession of the accused person with seized onion bag contained in the wagon by PW3, the Agricultural Officer it transpires that both the onion bag are same nature. Considering no other divergent claim as otherwise, it comes from the evidence on record, the seized property can be reasonably held to be railway property.

(ii) & (iii) Again following the issue of possession by the accused person it appears from the evidence of PW3, including the occurrence witness PW1 along with incidental witness PW2 who reached the place of occurrence after receiving information brings forth the fact that the apprehended accused person was found to be in the possession of the stolen railway property. Finally the confessional statements of the accused persons recorded by the E.O. in presence of independent witness substantiate the fact of unlawful possession of stolen onion bag by both the accused persons. The statement of the accused person is admissible as evidence as such statement made under Sec. 9 of R.P.(UP) Act is a judicial proceeding and it has also corroborated the evidences of the PWs categorically.

9. Section 3(a) R.P.(UP) Act punishes the unlawful possession of Railway properties. The moment it is proved that the property is Railway Property and the possessor could not justify such possession, he comes under the ambit of this section and the burden shifts to the accused to rebut the case.

10. During the defence the accused person submitted that they had not committed theft of any railway materials and has been falsely implicated into the case and one co-accused Rajib Ali stated that he was not present in the place of occurrence and wrongly implicated into the case only on the basis of the information given by the other co-accused person. Accused Rajib Ali @ Raja Ali has adduced himself and one other as witness to sub-serve the claim of his absence at the place during the time of occurrence.

DW1 in his evidence deposed that during the time of occurrence he was a student and the incident was of 22-10-2013. On 21-10-2013 he went to Adabari Katiadalong along with his family for the death of his grandmother and stayed there till 25-10-2013 for some rituals. He further stated that the acquisition made by the RPF of his presence at the Changsari yard during the time of occurrence was false as he was at that time present in his grandmother's home. He exhibited the death certificate of his grandmother in the court. During cross examination he stated that on 21-10-2013 he came to his grandmother home at about morning 05:00-06:00 hours. He could not say the exact time of death of his grandmother. The death of his grandmother was informed by his maternal uncle but he could not say his mobile no. during that time. The death certificate was collected by his maternal uncle. He could not say the no. of the mobile during that time of incident. He denied the suggestion that as he could not say the no. of his mobile he was present at Changsari yard.

DW2 in his evidence deposed that he knows the accused Rajib Ali and the incident of the case was on 22-10-2013 which was related theft of onion. On 21-10-2013 his mother-in-law was expired for which his son along with family went to the house of his mother-in-law at Katiadalong and stayed there for 5 days as per their

rituals. He further stated that as accused Rajib Ali was in his mother-in-law's house from 21-10-2013 to 25-10-2013 the acquisition made by the RPF of presence of accused Rajib Ali at Changsari station was false. The other co-accused Dadul Ali was not known to him and did not reside near his residence. During cross examination he stated that the accused Rajib Ali is his son. His mother-in-law was suffering from disease prior to it who was admitted to Nursing Home before the death but he was not informed about admission except the information of her demise. The information was given to him at about 05:30 morning hours and during that time he was at Changsari. He could not tell his Mobile No. in which the information was given to him. He could not furnish the call record of the Mobile used by him during the incident. The death certificate was collected by his brother-in-law and he knew that the death certificate was exhibited in the court for the purpose of showing the date of death was relevant with that of the time of occurrence.

11. During argument the defence counsel appearing for the accused persons submitted that there was no any local witness while seizing the onion stolen bag from the possession of the apprehended accused person and the version of the independent witnesses present during the recording of the confessional statement of the accused persons brings divergent view as place by the prosecution which raise substantial doubts as to the case of prosecution and renders it to be a manufactured case against both the accused persons.

12. Coming the claim of the defence in respect of evidence of prosecution it appears that the incident occurred during the night hours and in a place which is restricted to general public. Hence absence of the local independent witness during the seizure can not be considered to be intentional or renders the whole process of seizure in doubtful as during such a time and at such place it is difficult to secure the presence of any public witness. Further from the evidence of the independent witness present during the recording the confession statement, there appears some contradictions in their version as they were not fully aware of the cause for which they were made witness. Hence under such situation, the confessional statement of the accused persons could not be considered as evidence to prove the case. On the contrary accused person Rajib Ali has adduced the defence witness in support of his claim but both the witnesses are interested witness as there are related to the accused person and there is great probability of their evidence inclining towards the accused person. Appreciating the evidence of DWs there is nothing convincing, plausible and cogent proof either from the defence, derived from the circumstances of the facts explained by DWs or could relate with the evidences of the prosecution except simple narration of facts only which is not sufficient to create reasonable doubts as to the presence of the accused at the place of occurrence during the relevant time. If the evidence of the prosecution and the defence is pitted against each other for the plea of alibi it appears that the evidence of prosecution has a definite edge over the evidence of defence barring the same.

13. Conclusively considering of the evidence on record and even keeping apart the confessional statement of both the accused persons it appears from the evidence on

record that both the accused person could not absolves themselves from the burden for unlawful possession or theft of railway property shifted upon them.

Order

14. From the above appraisal, appreciation of evidence on record and the application of law I find that the prosecution has been successful to prove the offence U/S 3(a) of R.P.(UP) Act against the accused persons beyond all reasonable doubts and hence they are convicted accordingly U/S 3(a) R.P.(UP) Act.

15. The accused persons are not granted the benefit of probation as the stolen materials are public property.

16. Heard the accused person on the point of sentence. The accused submitted that they are starting a new lease of life and this was their first offence. So they prayed for leniency.

17. Considering the plea of the accused mainly taking into consideration their young age with small quantity and value of the seized materials, I opt to take a lenient approach in sentencing the accused and sentence the accused Md. Dadul Ali to pay fine of Rs.3000/- in default simple imprisonment (S.I.) for 30 days and Md. Rajib Ali to pay fine of Rs.3500/- in default S.I. for 35 days.

18. Seized materials are sold in auction and the sale proceeds to be returned to the actual recipient as per rule.

19. Bail bond stands cancelled and the bailor discharged from liabilities.

20. Furnish free copy of judgement to the accused persons.

21. Given under my hand and seal of this court on this 20th of March 2017 at Guwahati.

Sri Devojjyoti Bhuyan, AJS
Special Railway Magistrate, Guwahati

Appendix of the CR case no. 44/13

Prosecution Evidence (10 Nos.)

1. PW-1 Md. Ziaruddin Ahmed.
2. PW-2 Sri R.K. Sharma.
3. PW-3 Sri Manash Pratim Mahanta.
4. PW-4 Md. Saifuddin Ahmed.
5. PW-5 Sri Bipul Ch Das.
6. PW-6 Sri Sankar Debnath.
7. PW-7 Sri Dharmeswar Hira.
8. PW-8 Sri Pawan Kumar.
9. PW-9 Sri Ram Balak Mahato.
10. PW-10 Sri Ratul Choudhury.

Defence Evidence (2 Nos.)

1. DW-1 Md. Rajib Ali.
2. DW-2 Md. Salim Ali.

Court Evidence

Nil

Documents Exhibited by Prosecution.

Exhibit 1 Seizure List.

Exhibit 2 Complaint.

Exhibit 3 Label of the case property.

Exhibit 4 Confessional Statement of the accused Dadul Ali.

Exhibit 5 Seizure List.

Exhibit 6 DDM.

Exhibit 7 Sketch Map.

Exhibit 8 Certified copy of Unloading Tally.

Exhibit 9 Certified copy of RR.

Exhibit 10 Expert Certificate.

Exhibit 11 Seizure List-cum-Zimmanama of Unloading Tally.

Exhibit 12 Confessional Statement of the accused Rajib Ali.

Exhibit 13 Carbon copy of Railway money receipt.

Exhibit 14 Prosecution Report.

Documents Exhibited by Defence

Exhibit A Death Certificate.

Material Exhibit

M.Ext.1 & 2 Gunny Bag containing scales of onion.

-----x-----