

SPL CR case no. 197/16

**IN THE COURT OF SPECIAL RAILWAY MAGISTRATE, BONGAIGAON**

**PRESENT: DR. N.C. BHUYAN, AJS**

**SPL CR case No. 197/16**

**U/S- 3 (a) Railway Property (Unlawful Possession) Act.**



State

-Vs.-

1. Sri Mahananda Basumatary
2. Sri Satyam Dey
3. Smt. Srimani Brahma.....Accused persons.

**In appearance**

For prosecution : Mr. A. Singh, Ld. Rly.P.P.  
For defence : Mr. M. Rahman, Mr. S. Saha,  
Ld. Advocates.

Evidence recorded on : 24-03-15, 05-05-15, 22-07-15, 21-09-16,  
21-11-16

Arguments heard on : 27-12-17

Judgment delivered on : 27-12-17

  
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### JUDGMENT

1. The case of prosecution in brief is that on 13-09-08, Sri Hitesh Sharma SI/Local police/Kokrajhar P.S. and Sri Dhananjay Barman ASI/RPF/KOJ(OP) and Arms Police party conducted search in the scrap godown of (1) Miss Srimani Brahma, D/O-Lt. Umananda Brahma of Kokrajhar, Ward no. 6, (2) house compund of Satyen Dey, S/O- Badal Dey of Kokrajhar, Ward no. 8 and (3) House compound of Sri Mahananda Basumatary, S/O-Lt. Arun Basumatary of Kokrajhar, Ward no. 6 all of P.S + Dist-Kokrajhar, BTAD, Assam, observing all lawful formalities. In course of search different meaterials along with good nos. Of railway materials were recovered. During search Miss Srimani Brahma, Mahananda Basumatary were present but satyen Dey was absent. Srimani Brahma and Mahananda Basumatary could not able to produce any documents in support of legal possession of those recovered meterials including the railway materials. Then Sri Hitesh Sharma SI/Kokrajhar P.S seized the same as per seizure list on the spot in presence of witnesses. As the seizure was made from thre different location and from the possesstion of three differnet individual, hence, three seizure list were prepared. In this connction O/C, Kokrajhar P.S registered a case vide no. 312/08 dated 13-09-08 u/s 379/411 IPC, and forwarded arrested accused Srimani Brahma and Mahananda Basumatary in the Court of CJM/Kokrajhar, but later, the case had been transferred to RPF/POST/FKM through the Hon'ble SRM Court/Ghy to deal the Railway property. Accordingly, again case has been registered under RP(UP) Act and endorsed to SI/A.C. Paul Ex SI/RPF/FKM to conduct enquiry into the case. Accordingly, he recorded the evidence of all PWs. But he retired from the service before completion of the enquiry. On being re-endoresed, SI/RPF/FKM Phanidhar Patiri conducted enquiry.



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2. On receipt of the complaint, one case was registered, vide No. RPF/POST/FKM's case no. 2(09)/08, u/s 3(a) Railway Property (Unlawful Possession) Act and the matter was duly enquired into.
3. On completion of the enquiry, E/O submitted prosecution report u/s 3(a) Railway Property (Unlawful Possession) Act against accused Sri Mahananda Basumatary, Sri Satyam Dey and Smt. Srimani Brahma. In due course, the accused persons appeared before the Court and they were allowed to go on bail. Copies were furnished and the charge u/s 3(a) Railway Property (Unlawful Possession) Act was framed and read over and explained to the accused persons and to which they pleaded not guilty and claimed to be tried.
4. In support of the case of the prosecution, five PWs and one CW are examined. Accordingly, the evidence was closed. The accused persons namely, Sri Mahananda Basumatary, Sri Satyam Dey and Smt. Srimani Brahma were examined u/s 313 Cr.P.C. Heard the arguments of both sides.


#### POINTS FOR DETERMINATION

5. Whether the accused persons namely, Sri Mahananda Basumatary, Sri Satyam Dey and Smt. Srimani Brahma on 13-09-08 at Kokrajhar were found in possession of Railway property reasonably suspected of having been stolen or unlawfully obtained and thereby they have committed an offence punishable u/s 3(a) Railway Property (Unlawful Possession) Act.

#### DISCUSSION, DECISION AND REASONS THEREOF

6. PW1 Dhananjay Barman deposed that the incident took place on 13-09-08. Then he was working as ASI/RPF/Kokrajhar Outpost. Before that, he received memo as to the theft of railway articles. On that



  
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day, Sri Hitesh Sarma, SI, Local Police, Kokrajahr informed him that on the basis of source information, they came to know that some stolen railway articles were there and accordingly, they should go in order to do raid. After that they along with local police went to the house of Mahananda Basumatary, situated at Ward no. 6 of Kokrajhar town and conducted search in the scrap go-down of Mahananda Basumatary and recovered railway as well as non-railway articles. At the time of search, Mahananda Basumatary was present. After that local police seized the seizure articles by preparing seizure list and he put his signature. Wife of Mahananda Basumatary also put her signature. After that they went to the house of Satyam Dey and on search they recovered non-railway materials along with railway materials. After that the seized articles were seized by preparing seizure list and he put his signature in the seizure list. After that they conducted search in the scrap go-down of Srimani Brahma and they recovered railway as well as non-railway materials. At the time of the search, Srimani Brahma was present there. After that the recovered articles were seized by preparing seizure list. He put his signature in the seizure list. After that the seized articles as well as Mahananda Basumatary and Srimani Brahma were taken to the local police station at Kokrajahr and local police registered one case and forwarded the accused persons to the Court of CJM, Kokrajhar. After that the court of CJM handed over the accused persons and seized articles to them on the basis of a petition, submitted by them. After that he re-seized the railway articles from Hitesh Sarma at Kokrajhar police station. He seized 9 types of various railway materials. Thereafter, he collected the certified copy of the seizure list, prepared by local police. After that, one joint memorandum was prepared in connection with the seized railway articles with the help of local police. Thereafter, the seizure articles and the accused were produced before the IPF/FKM. After that one written complaint was given on 18-09-2008. On the basis of the written complaint, IPF/FKM registered one case and SIPF

  
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A.C. Paul was endorsed to make the enquiry into the case. PW1 also stated that if he seen the arrested accused persons, he will recognise them. P/Ext.1 is the seizure list 1(certified copy). P/Ext.1(1) is his signature. P/Ext.2 is the seizure list 2(certified copy). P/Ext.2(1) is his signature. P/Ext.3 is the seizure list 3(certified copy). P/Ext.3(1) is his signature. P/Ext.4 is the complaint. P/Ext.4(1) is his signature. P/Ext.4(2) is the receiving signature of IPF/FKM with endorsement. P/Ext.5 is the re-seizure list of railway property. P/Ext.5(1) is his signature. P/Ext.6 is the seized property label. P/Ext.6(1) is his signature. P/Ext.7 is the joint memorandum. P/Ext.7(1) is his signature.

7. During cross-examination, PW1 deposed that he was posted as ASI/R Kokrajhar at that time. He cannot say from where the information was received and the said fact was not disclosed to the E/O. On 13-09-08, he visited teh scrap dodown of Mahananda Basumatary. They raided the scrap dodown of all the three accused on the same date. The police seized both railway and non-railway materials. The police registered a case against the accused in Kokrajhar P.S. he does not know if the accused were acquitted in that police case. The police seized first and then asked him to sign. PW1 denied the suggestions given by the defence. The seizure list was prepared in Kokrajhar P.S. The police prepared seizure list for non-railway materials and they prepared the list for railway materials. He did not take any signature of independent witness while seizing the materials. The signature of the accused was not taken. The seizure list does not disclose which property was seized from whom. CIB team, IPF were present during the raid as while seizing the property, but there was no written authority from them to seize the materials.

8. PW2 Sri A.C. Paul deposed that on 18-09-2008, the incident took place. On that time, he was wroking as SIPF/FKM. On that day ASI/RPF/FKM lodged one complaint and on the basis of the complaint, IPF/FKM M.C.

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Swargiary registered a case bearing no. 2(9)/08 u/s 3(a) RP(UP) Act dated 08-09-2008 and he was given the direction to make an enquiry into the case and the document of that said case were handed over to him. After that, he went to the place of occurrence and drew the sketch map and recorded the statement of the witnesses ASI Sri D. Barman, complainant and local police, O/C, Fakiragram and Havildar Sri B.N. Choudhury. After that he recorded the statement of Mahananda Basumatary and he confessed his guilt. After that he got the railway articles and examined by the expert and collected the expert certificate. When he was making the enquiry, he was retired and accordingly, he handed over all the documents of the case to the IPF/FKM. P/Ext.8 is the sketch map. P/Ext.8(1) is the place of occurrence. P/Ext.8(2) is his signature. P/Ext.9 is the material certificate, collected by him. P/Ext.10 is the confessional statement of accused Mahananda Basumatary. P/Ext.10(1) is the signature of the accused, put in his presence. P/Ext.10(2) is his signature.

9. During cross-examination, PW2 deposed that on 13-09-08, Assam Police, Fakiragram seized the seized articles of the instant case. The case which has been registered by the Assam Police was 312/08 u/s 379/411 IPC dated 13-09-08. accused Mahananda Basumatary of the said case was remanded to jail on the basis of the order dated 13-09-08, passed by CJM, Kokrajhar. He re-arrested accused Mahananda Basumatary, but he has forgotten the exact date. He recorded the statement of accused Mahananda basumatary on 18-09-08 at RPF/POST/FKM. At the time of the recording the statement of the accused no independent witness was present. He does not know whether accused Mahananda Basumatary is literate or not. When he recorded the statement of accused, he did not inform him that the said statement may go against him in the Court. PW2 also denied the suggestions given by the defence. Two Constable went with him to the place of occurrence. But he has forgotten their name. 90% of the

  
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seized articles was cut pieces of railway of different size. He did not see the seized articles in the Court. He does not know if the accused was acquitted in the case registered by the Assam Police.

**10.** PW3 Sri Phanidhar Patiri deposed that on 16-08-09, he was working as SIRPF/FKM. On that day, IPF/FKM asked him to complete the enquiry of case no. 2(9)/08. After that he went through all the documents of the said case and found that almost the enquiry of the instant case was completed. Only one of the accused involved in the instant case was to be arrested and his name was Satyen Dey. Many times the said accused was looked for, but he could not be arrested. After that on the basis of the document of the instant case as well as the result of the enquiry, he submitted the prosecution report against accused persons Srimani Brahma, Mahananda Basumatary and Satyam Dey on 29-02-10. P/Ext.11 is the prosecution report. P/Ext.11(1) is his signature.

**11.** During cross-examination, PW3 stated that on 16-08-09, he conducted raid in the house of Satyam Dey, but he forgotten the other dates when he went to the house of Satyam Dey. He did not enquire anything physically in the instant case. He submitted prosecution report on the basis of the enquiry, which was already completed.

**12.** PW4 Satindra Singh deposed that on 03-08-08, he was posted as JE/Kokrajar. During that time, a lot of railway materials were seized and he was asked to examine the materials, near a pond. The materials were fished out of the pond by RPF. He inspected ERC, rail cut pieces, switch expansion joints, metal lines, fish plates, juggle fish plates, nut-bolts. He issued the material certificate and opened that the materials were exclusively railway property and not available in the open market. He put the mark "case no. 2(9)/08" on the inspected materials. Ext 9 is the material certificate issued by him. Ext 9(1) is his signature.



  
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**13.** During cross-examination PW4 stated that local police, RPF, local public were present during his inspection. He does not know who was the owner of the pond. Some materials were seized from a go-down, but he did not enter into the go-down. He was standing outside of the go-down. He does not know who was the owner of the go-down. The materials were seized by the police I/C with G.R. case. He inspected the materials near the pond and outside the go-down, but he issued the materials certificate at Kokrajhar RPF Post.

**14.** PW5 Madhab Chandra Swargiary deposed that on 13-09-08, he was posted at RPF/Fakiragram as Inspector. Prior to that day, they had received reports about missing railway materials in and around Kokrajhar Rly Stn. He had instructed ASI Dhananjay Barman, RPF to look into the matter and to conduct raid and search. Accordingly, on 13-09-08, ASI Dhananjay Barman along with his staff and local police conducted raid in the scrap go-down of Srimani Brahma and found huge quantities of railway materials there among others. The local police first seized all the materials. Accused Srimani Brahma, owner of the scrap go-down was present then and the local police took her into custody. On the same day, they conducted another raid in the house of Mahananda Basumatary and recovered railway as well as other materials. The local police seized the materials and Mahananda Basumatary was taken into custody. On the same day, another search was conducted in the house of Satyam Dey and recovered huge quantities of railway materials. But Satyam Dey was not at home. All the seized materials along with the two accused persons were brought to the Kokrajhar P.S. As per the order of the Ld. CJM, Kokrajhar, they re-seized the railway materials from the local police. ASI Dhananjay Barman re-seized the railway property from Inspector Hitesh Sarma, Kokrajhar P.S. The seized materials were namely, railway lines, guggle fish plate, nut-bolt, metal liner. Accused Mahandanda Basumatary was taken into their custody as per law on 18-09-08. The complaint



  
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was lodged by ASI Dhananjay Barman. He registered the case (C/No. 29/08) u/s 3(a) RU(UP) Act and endorsed the case to SI A.C. Paul for enquiry. He seized the re-seizure list, case property label and joint memorandum as witness. The accused and the articles were produced before the Court. The accused persons who were taken into their custody were not present that day in the court. Accused Srimani Brahma was produced before the Ld. SRM, Ghy from the jail. Srimani Brahma was not present that day. Mat/Ext2 is the fish plate(sample). Mat/Ext1 is the nut bolt(sample). Mat/Ext3 is the metal lines(sample). P/Ext.4 is the complaint. P/Ext.4(2) is his signature with endorsement. P/Ext.5 is the re-resized list. P/Ext.5(3) is his signature. P/Ext.6 is the seized property label. P/Ext.6(3) is his signature. P/Ext.7 is the joint memorandum. P/Ext.7(3) is his signature. He recorded the statement of accused Srimani Brahma as per the order of Ld. SRM, Ghy. She had admitted her guilt. P/Ext.11 is the statement of accused Srimani Brhma P/Ext.11(1) is the signature of the accused. P/Ext.11(2) is his signature with endorsement.

**15.**In cross-examination, PW5 stated that he did not take the signature of any independent witness. He recorded his statement in Ghy. He was in uniform then. He had told the accused that her statement if recorded would be used as evidence against her, but the same is not stated in P/Ext.11. She gave the statement in Assamese and he recorded it in English. He read over the statement to the accused but it is not reflected in P/Ext.11. No female RPF staff signed in P/Ext.11 though a female staff was present. No written instruction was given to ASI Dhananjay Barman to conduct the raid. He did not visit P.O. Re-seizure list is not signed by any independent witness. Mat/P/Ext.1,2,3 do not bear any serial no. A police case was also registered in respect of the matter. He does not know if the accused have been acquitted in the police case. PW5 denied the suggestions, given by the defence.

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**16.CW1** Hitesh Sarma deposed that on 13-09-08, he was posted as SI in Kokrajhar P.S. On that day, an information was received from reliable source that some scrap materials were kept in the go-down of Srimani Brahma. They searched the go-down at Kokrajhar town, Ward no. 6. He along with RPF staff searched the go-down in presence of local witnesses. They seized railway materials as well as other materials (total 27 in no.) from the go-down. P/Ext.1 is the seizure list no. 1(certified copy), pertaining to the articles seized in the go-down of Srimani Brahma. On the same day, they conducted a raid in the personal residence of Satyen Dey at ward no. 8, Kokrajhar Town. They recovered some materials from inside the house as well as one pond in the compound. They recovered 23 nos. of materials from there including railway materials. They seized the materials in presence of family members and local witnesses. P/Ext.2 is the certified copy of search and seizure list no. 2 bearing his signature. Next, they conducted raid in the residence of Mahandanda Basumatary and found 13 nos. of railway and other materials from his house and attached go-down. They seized the materials in presence of family members and local witnesses. P/Ext.3 is the certified copy of search and seizure list, bearing his signature. The RPF re-seized the materials as per order of the Court from them. P/Ext. 5 is the re-seizure list pertaining to all the material seized by them. P/Ext. 5(2) is his signature. The card label of the seized property was prepared by Dhananjay Barman, RPF on 18-09-08 in his presence and he signed it as a witness. P/Ext.6 is the card/seized property label. P/Ext.6(2) is his signature. Thereafter, the railway property was sorted out and a joint memorandum was prepared in presence of RPI. He signed it. P/Ext.7 is the joint memorandum. P/Ext.7(2) is his signature. He could see three kinds of railway property seized by them in the court that day. He could identify only one item i.e. nut-bolt, as he was not aware of their actual nomenclature used by the Railways. Mat/ext1 is the nut and bolt(sample piece). Ten nut and bolts were seized by them.



  
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**17.**In cross-examination, CW1 stated that they did not seize any ownership document, relating to the places, searched by them. He does not remember when and from where the railway materials were stolen. He investigated the police case in connection with the search and seizure of the materials. He was not aware of the fact if the accused have been acquitted in the police case. He had prepared the sketch map. The maps drawn by him are in the other record. They had seized the articles. He did not put any marking as seal on the seized materials. In P/Ext.1 and P/Ext.2 the signature of the accused was not taken. CW1 also stated that he cannot say when they had received the information. P/Ext.5 was prepared in Kokrajhar P.S. P/Ext.5 does not bear any signature of the accused as independent witness. P/Ext.5 does not bear any seal as he did not have any seal. CW1 denied the suggestions, given by the defence.

**18.**During argument, Ld. Counsel for the accused argued that the seizure of the alleged stolen railway property is not proved as per the procedure, because the signature of the accused persons were not taken in the respective seizure list. Ld. Defence Counsel also argued that the accused persons are falsely implicated in the instant case, because nothing was recovered from their possession and prosecution has been failed to adduce any document as to the ownership of the area from where the alleged articles were seized.

**19.**On perusal of the case record, it is found that 5 prosecution witnesses were examined by the prosecution. Moreover, for better understanding of the instant case, one Court Witness namely, Hitesh Sarma was examined, cross-examined and discharged. So, the allegation of the prosecution is that stolen railway articles were recovered from the possession of all the three accused persons. While stolen railway articles were recovered from the scrap go-down of Mahananda Basumatary and Shrimani Brahma respectively, the stolen railway articles were recovered from the house of Satyam Dey, as


  
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same fact was stated by PW1, during his examination-in-chief. On the other hand, from the statement of PW2, it is found that he did the enquiry into the instant case and drew the sketch map as well as recorded the statements of the accused persons. So, it is found that PW2 is not the witness as to the recovery of stolen railway articles from the possession of the three accused persons. From the statement of PW3, it is also found that he completed the enquiry by way of submitting their prosecution report against the three accused persons. PW3 also admitted that he did not have to do anything as to the enquiry of the instant case and on the basis of the document, recovered during enquiry, he submitted the prosecution report. From the statement of PW3, it is also found that he was not witness as to the recovery of the stolen railway articles from the possession of the three accused persons. From the statement of PW4, it is found that he examined the seized materials and after examination, he issued certificate and opined that the materials were exclusively railway property and not available in the open market. PW4 also stated that he examined the materials near a pond, but he does not know who was the owner of that pond, as he himself admitted the same during his cross-examination. Though, PW4 during his cross-examination stated that some railway articles were recovered from one go-down, he does not know who was the owner of the go-down.

**20.** PW5 has corroborated PW1 by stating that on 13-09-08, some stolen railway articles were recovered from the possession of three accused persons and all the seized materials along with accused Satyam Dey and Mahananda Basumatary were brought to the police station and as per the order of CJM, Kokrajhar, they re-seized the railway materials from the local police and also took the custody of the accused persons. However, from the cross-examination part of PW5, it is found that he himself stated that he did not visit the P.O. i.e. the place of occurrence. That if PW5 did not visit the place of occurrence, he was

  
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not the eye witness as to the recovery of the stolen articles from the possession of three accused persons. One of the vital witness of the prosecution side is CW1 who is Hitesh Sarma. The CW1 deposed that on 13-09-08, he searched the go-down of Srimani Brahma at Kokrajhar Town, Ward no. 6 along with the RPF staff in presence of the local witnesses and seized the railway materials. CW1 also stated that on the same day, they conducted a raid in the personal residence of Satyam Dey at Ward no. 8, Kokrajhar Town and in the residence of Mahananda Basumatary and recovered non-railway materials including railway materials. However, it is found that during cross-examination of CW1 specifically admitted that they did not seize any ownership document, relating to the place of search by them. It is already found that during argument the Ld. Defence Counsel disputed that ownership of the said go-down and the houses were not proved by the prosecution and it is found that CW1 has supported the argument, put forwarded by the defence because he himself admitted that they did not have any ownership document, relating to the place of search by them and same has lead to doubt as to the ownership of the alleged go-down and the house as alleged by the prosecution to be of the accused persons. Moreover, CW1 specifically stated during his examination-in-chief that they seized railway articles from the go-down and the houses of the accused persons and seizure list was prepared in presence of the family members and the local witnesses. But none of the local witnesses, claimed by the prosecution to be the witness in the seizure list, are examined by the prosecution and same has again created doubt as to the seizure of articles from the go-down and house of three accused persons.

#### ORDER

- 21.** In view of above, I am of the opinion that the prosecution side has failed to prove the case against accused persons Srimani Brahma, Mahananda Basumatary and Satyam Dey beyond reasonable doubt.

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In result, the accused persons Srimani Brahma, Mahananda Basumatary and Satyam Dey are acquitted from the charge u/s 3(a) Railway Property (Unlawful Possession) Act and set them at liberty. The bail bonds shall remain in force till next six months.


22. The case is disposed of on contest.

23. Judgment is pronounced in the open Court.

Given under my hand and seal of this Court on this **29<sup>th</sup> day of December, 2017.**



Delivered by

  
(Dr. N.C. Bhuyan)  
Special Railway Magistrate,  
Special Bongaigaon,  
Bongaigaon, Assam

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**APPENDIX**  
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Witnesses examined by Prosecution:

PW1 - Dhananjay Barman  
PW2 - Sri A.C. Paul  
PW3 - Sri Phanidhar Patiri  
PW4 - Satindra Singh  
PW5 - Madhab Chandra Swargiary

Witness examined by the Court:

CW1 - Hitesh Sarma

Documents exhibited by Prosecution:


P/EXT-1 - Seizure list 1(certified copy)  
P/EXT-2 - Seizure list 2(certified copy)  
P/EXT-3 - Seizure list 3(certified copy)  
P/EXT-4 - Complaint  
P/EXT-5 - Re-seizure list of railway property  
P/EXT-6 - Seized property label  
P/EXT-7 - Joint memorandum  
P/EXT-8 - Sketch map  
P/EXT-9 - Material certificate  
P/EXT-10 - Confessional statement of accused Mahananda  
Basumatary  
P/EXT-11 - Prosecution report

Witnesses examined by Defence:

None.

Documents exhibited by Denfence:

None.

  
(Dr. N.C. Bhuyan)  
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Bongaigaon,  
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