



2025:GAU-AS:13375

THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRIMINAL REVISION (P) NO. 168/2012

Sri Deepak Gupta, S/o Sri Jawaharlal Gupta, R/o –
Village – Balighat under Naharkatia Police Station,
District – Dibrugarh.

.....*Petitioner*

-Versus-

The Union of India, represented by Divisional
Railway Manager, N.F. Railway, Tinsukia, Assam.

.....*Respondent*

Advocates :

Petitioner	: Mr. P. Borah, Senior Advocate; Ms. K. Bhattacharyya, Advocate
Respondent	: Mr. S.C. Biswas, Special Counsel, N.F. Railway; Ms. U. Nanda, Advocate
Dates of Hearing	: 22.07.2025, 19.08.2025 & 09.09.2025
Date of Judgment & Order	: 26.09.2025

BEFORE**HON'BLE MR. JUSTICE MANISH CHOUDHURY****JUDGMENT & ORDER**

The criminal revision petition under Section 397 read with Section 401 and
Section 482 of the Code of Criminal Procedure, 1973 [‘CrPC’ and/or ‘the

Code'] is directed against a Judgment and Order dated 07.01.2012 passed by the Court of learned Sessions Judge, Dibrugarh [hereinafter referred to as 'the Appellate Court', for short] in Criminal Appeal no. 1[1] of 2011. By the Judgment and Order dated 07.01.2012, the Appellate Court affirming a Judgment and Order dated 15.12.2010 passed by the Court of learned Special Railway Magistrate [Judicial], First Class, Tinsukia [hereinafter referred to as 'the Trial Court', for short] in C.R. Case no. 37 of 2007, has dismissed the criminal appeal, preferred by the revision petitioner herein as the appellant, finding no reason to interfere with the Judgment and Order of conviction and sentence passed by the Trial Court. The Judgment and Order dated 15.12.2010 of the Trial Court is also under challenge.

2. By the Judgment and Order dated 15.12.2010, the Trial Court had returned a finding of guilt against the accused, that is, the revision petitioner herein by holding him guilty of committing an offence under Section 3[a] of the Railway Property [Unlawful Possession] Act, 1966 ['the RP(UP) Act', for short]. The Trial Court has sentenced him to undergo simple imprisonment for six months. The Trial Court had further observed that the period already undergone by the accused shall be set-off under Section 428 of the Code.
3. The genesis of the criminal prosecution under Section 3[a] of the RP[UP] Act was a First Information Report [FIR] lodged on 04.02.2006 by an Assistant Security Officer for Head – Security for Group General Manager, M/s Oil India Limited before the Officer In-Charge, Naharkatia Police Station, Naharkatia, District – Dibrugarh. On receipt of the FIR, the Officer In-Charge registered the same as Naharkatia Police Station Case no. 09 of 2006 under Sections 379/411 of the Indian Penal Code [IPC] on 04.02.2006. After registration, the investigation of the case was entrusted to one Dwipen Kalita, a Sub-Inspector of Police attached to Naharkatia Police Station.
4. In the FIR, it was inter-alia alleged that when at about 01-00 a.m. on 04.02.2006 the security personnel of M/s Oil India Limited [OIL], led by a

Sub-Inspector and a Havildar, were carrying out patrolling in and around the Naharkatia OIL field area they noticed a Truck [Tata] bearing registration no. AS-01/R-8115 parked in front of a scrap damp at Gathupathar Tiniali, Naharkatia. At around 03-00 a.m. on 04.02.2006, they caught thirteen nos. of persons, named in the FIR, when they were loading some OIL materials [pipes] from the scrap damp. When the Truck was checked, recovery of pipes, belonging to the OIL, were made from inside the Truck along with some other stolen materials. The loaded Truck and the thirteen apprehended persons were brought to Naharkatia Police Station by the security personnel of the OIL and they were handed over. The FIR was lodged to take necessary measures and to bring the culprits within the purview of investigation.

5. After registration of Naharkatia Police Station Case no. 09 of 2006, one J. Mushahari, a member of Railway Protection Force [RPF], Mariani wrote to the Office In-Charge, Naharkatia Police Station on 05.02.2006 on the subject, 'Seizure of Railway materials'. In the Letter, it was mentioned that it came to the knowledge of the RPF that a Truck bearing registration no. AS-01/R-8115 was kept in the premises of Naharkatia Police Station after being handed over to the Officer In-Charge, Naharkatia Police Station by the security personnel of the OIL. It was mentioned that it came to the knowledge of the RPF from one Gopal Chandra Bora, a security officer of the OIL, that there were also Railway materials in the Truck. The Officer In-Charge, Naharkatia Police Station was, thereby, requested to hand over those Railway materials to the RPF for dealing the matter under the provisions of the RP[UP] Act.
6. On 05.02.2006, the accused persons arrested in connection with Naharkatia Police Station Case no. 09 of 2006 were forwarded to the Court and on being produced before the Court, they were remanded to judicial custody. On 05.02.2006, the arrested accused persons including the revision petitioner, were in the Dibrugarh Jail. On 07.02.2006, a Complaint was lodged before

the Inspector, RPF, Mariani of N.F. Railway by a Sub-Inspector, RPF, Mariani stating inter-alia that in respect of the Truck [Tata] bearing registration no. AS-01/R-8115 intercepted in connection with Naharkatia Police Station Case no. 09 of 2006, information was received that Railway properties were also found during search. Accordingly, permission was sought from the Officer In-Charge, Naharkatia Police Station to check the Truck in presence of Police Officials of Naharkatia Police Station. On being permitted to search, the Truck was searched and during search, 2247 nos. of rail screws [B.G.] were found along with other stolen materials. The rail screws were taken into custody from the I.O. of Naharkatia Police Station Case no. 09 of 2006 on 06.02.2006 by way of a Seizure List. In the Complaint, it was mentioned that in connection with Naharkatia Police Station Case no. 09 of 2006, thirteen nos. of accused persons were arrested. The complaint further stated that the seized Railway materials along with relevant papers were brought for legal action.

7. On receipt of the written complaint along with the seizure list and seized materials, the complaint was registered as Offence no. 1[2] of 2006 under Section 3[a] of the RP[UP] Act and one Sri D.D. Das, a Sub-Inspector of Police, RPF was entrusted to make enquiry and submit a Report. An enquiry in connection with Offence no. 1[2] of 2006 was carried out under the provisions of the RP[UP] Act and a Prosecution Report was submitted on 27.02.2007 finding a prima facie case established against the thirteen arrested accused persons and an absconding accused, one Sri Nagendra Roy for the charge under Section 3[a] of the RP[UP] Act. The revision petitioner was one of the accused against whom the Prosecution Report was submitted.
8. On submission of the Prosecution Report before the Trial Court, it was registered as C.R. Case no. 37 of 2007. In the subsequent stages of the trial, the trial of the accused persons, namely, [1] Md. Kalam Ali; [2] Md. Mainul Haque; [3] Md. Lokman Ali; [4] Md. Saib Ali; [5] Md. Saher Ali; [6] Md.

Sukur Ali; [7] Md. Nazim Uddin Ali; [8] Md. Bahadur Ali; [9] Md. Liason Ali; [10] Md. Major Ali; [11] Md. Sahidur Rahman; and [12] Sri Karun Doley was separated by an Order dated 21.08.2009 as their appearances could not be secured before the Trial Court despite issuance of processes against them. It was reported that the said accused persons were not found available at their given addresses.

9. It was the revision petitioner who was the sole accused who faced the trial of C.R. Case no. 37 of 2007. Six prosecution witnesses were examined and discharged on 29.09.2009 at the stage of evidence before charge. Thereafter on 23.11.2009, a charge for the offence under Section 3[a] of the RP[UP] Act was framed against the sole accused. After framing the charge, the charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. After framing of the charge, the trial proceeded to the stage of recording evidence of the remaining prosecution witnesses. During the trial, the prosecution side examined a total of thirteen nos. of witnesses and exhibited twenty nos. of documentary evidence, in total, to bring home the charge against the revision petitioner. After the closure of evidence from the prosecution side, the accused was examined under Section 313, CrPC by purportedly putting the adverse circumstances appearing against the accused from the evidence of the prosecution witnesses. The accused adduced the evidence of one witness, who was duly cross-examined by the prosecution side.
10. After hearing the learned counsel for the parties; and upon appreciation of the evidence/materials on record; the Trial Court proceeded to deliver the verdict of guilt by the Judgment and Order dated 15.12.2010 holding the accused, that is, the revision petitioner guilty of the offence under Section 3[a] of the RP[UP] Act and he has been sentenced in the manner, mentioned above. Subsequently, when the revision petitioner preferred the appeal against the Judgment and Order of conviction and sentence, the Appellate Court dismissed the appeal on 07.01.2012.

11. I have heard Mr. P. Borah, learned Senior Counsel assisted by Ms. K. Bhattacharjee, learned counsel for the revision petitioner; and Mr. S.C. Biswas, learned Special Counsel, N.F. Railway with Ms. U. Nanda, learned counsel for the respondents.
12. Mr. Borah, learned Senior Counsel appearing for the accused-revision petitioner has submitted that during the trial, the material objects, that is, rail screws in respect of which the charge was made against the accused, were not produced by the prosecution side before the Trial Court. The Trial Court as well as the Appellate Court had erred in law to base the conviction on the strength of a recorded statement of the accused, exhibited as Exhibit no. 18, without considering the aspect of its admissibility or inadmissibility. The finding recorded by the Trial Court and the Appellate Court was against the constitutional principle embedded in Article 20[3] of the Constitution of India. The Trial Court had perfunctorily examined the accused during the stage under Section 313, CrPC. In fact, the accused was not asked anything on Exhibit no. 18. He has further contended that the prosecution had failed to bring any documentary evidence on record to show that the allegedly stolen rail property was recovered from the possession of the accused. It is contended by Mr. Bora that in view of such illegalities, the Judgment and Order of conviction and sentence passed by the Trial Court and affirmed by the Appellate Court is not sustainable in law and the same need to be interfered with.
13. Mr. Biswas, learned Special Counsel, N.F. Railway appearing for the respondents has supported the concurrent findings recorded by the Trial Court and the Appellate Court. He has submitted that though the prosecution did not produce and exhibit the stolen rail property as material exhibits during the trial before the Trial Court, the same cannot be held to be fatal to the case of the prosecution as the prosecution has led sufficient evidence to bring home the charge. He has submitted that the issue raised

regarding inadmissibility of the recorded statement of the accused has no substantive basis. He has submitted that when the statement was made by the accused before the Officer causing inquiry under Section 8[1] of the RP[UP] Act, who is not a Police Officer, the inculpatory statement is clearly admissible in evidence and the Trial Court and the Appellate Court had rightly taken it into consideration to base the conviction. Submitting as above, Mr. Biswas has submitted that the verdict of guilt returned by the Trial Court and affirmed by the Appellate Court does not call for any interference.

14. I have given due consideration to the submissions of the learned counsel for the parties and have also gone through the materials available in the case records of C.R. Case no. 37 of 2007, in original. I have also gone through the provisions of the Railway Property [Unlawful Possession] Act, 1989 [‘the RP(UP) Act’].
15. Section 3 of the RP[UP] Act has provided for penalty for theft, dishonest misappropriation or unlawful possession of railway property. The definition of railway property has been provided in Section 2[d] of the RP[UP] Act. As per Section 2[d], ‘railway property’ includes any goods, money or valuable security or animal, belonging to, or in the charge or possession of, a Railway Administration. In the case of first offence, the penalty for theft, dishonest misappropriation or unlawful possession has been provided in Section 3[a]. As per Section 3[a], whoever commits theft, or dishonestly misappropriates or is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees. In Explanation to Section 3, it is mentioned that for the

purposes of Section 3, 'theft' and 'dishonest misappropriation' shall have the same meanings as assigned to them respectively in Section 378 and Section 403 of the Indian Penal Code [IPC].

16. The Trial Court on the basis of the evidence adduced before it proceeded to hold that the accused was in unlawful possession of the rail screws. The Trial Court mainly placed reliance in the statement of the accused recorded by the Enquiry Officer, exhibited as Exhibit no. 18, to arrive at such finding of guilt. The Trial Court had observed that the statements so recorded by the Enquiry Officer was not to be discarded for the reason that the bar under Section 25 of the Evidence Act, 1872 is not applicable for such statement. The Appellate Court also accepted the same reasoning. Both the Trial Court and the Appellate Court had observed that the Railway Officials by duly observing all procedural formalities, seized the rail screws, found in the Truck along with other stolen materials belonging to M/s Oil India Limited.
17. As mentioned above, twenty nos. of documents were exhibited during the course of the trial. But on examination of the Trial Courts Record [TCR], it is found that no exhibit was marked as Exhibit no. 19. Thus, nineteen nos. of documents were actually marked as exhibits. Out of them, thirteen nos. of exhibits viz. Exhibit nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18 were statements of the thirteen accused persons, who were arrested in connection with Naharkatia Police Station Case no. 09 of 2006 and against whom the Complaint and the Prosecution Report were filed in C.R. Case no. 37 of 2007. Exhibit no. 18 was the statement of the revision petitioner, who only faced the trial. The afore-mentioned exhibited statements of the accused persons were recorded by the Enquiry Officer during the course of the enquiry undertaken prior to the submission of the Prosecution Report. The initial complaint lodged on 07.02.2006 was Exhibit no. 1 and the Prosecution Report submitted on 27.02.2007 was Exhibit no. 20. Two Seizure Lists were exhibited as Exhibit no. 2 and Exhibit no. 3 respectively.

Exhibit no. 5 was an Expert Certificate given by P.W.8 whereas Exhibit no. 4 was a Certificate given by P.W.7 in his capacity as Gaonburah.

18. When the Seizure List, Exhibit no. 3 is looked at, it is found that the said Seizure List was prepared in connection with Naharkatia Police Station Case no. 09 of 2006. As per the Seizure List [Exhibit no. 3], the items/articles seized were [i] 100 nos. of cut pieces of size : 4" X 10'; [ii] 50 nos. of cut pieces of size : 2½" X 8'; and [iii] the Truck bearing registration no. AS-01/R-8115. It mentions that time, date and place of seizure were 02-30 p.m. on 04.02.2006 at Naharkatia Police Station premises. The Seizure List stated that the iron cut pieces with the Truck were handed over by Sri Gopal Chandra Bora [P.W.6], the Security Officer, OIL. On a close perusal, it is found that the Seizure List [Exhibit no. 3] did not make any mention of any other seized items/article, other than the above three. The Seizure List [Exhibit no. 2] was with regard to 2247 nos. of rail screws [B.G.]. The time, date and place of seizure were 21-00 hours on 06.02.2006 in Naharkatia Police Station premises. The rail screws were seized from the I.O. of Naharkatia Police Station Case no. 09 of 2006.

19. In the Certificate [Exhibit no. 4], a Government Gaonburah, Bhupen Dhekial [P.W.7] mentioned that one Dilip Sonowal [P.W.9] owned a plot of land, covered by Dag no. 144, measuring about two Kathas at Village – Khajowapathar near Gethupathar Ali and he knew that one Deepak Gupta from Balighat, Naharkatia was running a business of scraps therefrom since October, 2005. But, Dilip Sonowal [P.W.9] stated that he did not know Deepak Gupta and the plot of land, covered by Dag no. 144, was not in his name. He knew that Deepak Gupta took a godown on rent from one Harish Sonowal. In his examination-in-chief, P.W.9 stated that his signature was taken on a blank paper and the statement which was shown to him before the Trial Court was not his statement. P.W.9 clearly denied that Deepak Gupta was his tenant. Bhupen Dhekial [P.W.7], the Government Gaonburah, stated that he issued Exhibit no. 4 Certificate in the manner as asked by the

RPF officials who visited his house. Though he mentioned the boundaries of the plot of land in Exhibit no. 4 Certificate, P.W.7 when examined, testified that he was not aware of the boundaries of the plot of land. In cross-examination, P.W.7 stated that it was only when the RPF officials told him that Deepak Gupta had taken the plot of land on rent from Dilip Sonowal [P.W.9] he came to know about it. P.W.7 stated that he did not ask Dilip Sonowal [P.W.9] about the tenancy before issuing the Certificate [Exhibit no. 4]. P.W.7 admitted that he wrote Exhibit no. 4 Certificate as per the request of the RPF officials.

20. Exhibit no. 5 was an Expert Certificate dated 08.06.2006 given by one Uddhab Bora [P.W.8]. In the Certificate, it was mentioned that P.W.8 attended the RPF post on 08.06.2006 for physical inspection of the seized railway materials and to issue an Expert Certificate. After examination of the materials by opening the bags, total 2447 nos. of rail screws [B.G.] were counted from 23 nos. of bags. P.W.7 in Exhibit no. 5 mentioned that on examination, he found that the rail screws were new and used in railway trade. According to him, the materials were railway property. He stated to have put his identification marks on the bags. In his testimony-in-chief, he reiterated the contents recorded in Exhibit no. 5 about his examination of the rail screws, and giving of the Certificate [Exhibit no. 5]. In cross-examination, he stated that he had no official seal and he did not give any seal in his certificate. P.W.8 testified that he did not see the materials in the Trial Court in respect of which he gave the Certificate. He further stated that no FIR was lodged about missing of the rail screws from his Section.
21. P.W.1, Jibeswar Basumatary was the complainant who lodged the Complaint, Exhibit no. 1 and he identified his signatures therein. In his examination-in-chief, he stated about the sequence of events leading to the lodgment of the Complaint, which are already narrated in the preceding paragraphs hereinabove. During cross-examination, P.W.1 stated that he did not see the seized materials in the Trial Court. He further stated that one

Seizure List prepared by Naharkatia Police Station was handed over to him but he could not say if the screws were mentioned in the Seizure List.

22. P.W.2, Rebo Sonowal deposed that on 06.02.2006, he was posted at Nahakatia Police Station and on that day, RPF staff led by one Mushahari and Gogoi seized 2247 nos. of rail screws from Naharkatia Police Station complex, earlier seized in connection with Naharkatia Police Station Case no. 09 of 2006. He stated that the materials were found in a Truck bearing registration no. AS-01/R-8116. He stated that he gave his signature in the Seizure List, Exhibit no. 2 and identified his signature therein. In cross-examination, P.W.2 stated that he had forgotten if there was any IR markings on the rail screws.
23. P.W.3, Rupam Chandra Hazarika who was a RPF Constable, stated that on 05.02.2006 he along with one Anil Deka [not a witness], went to Naharkatia Police Station after he was shown a screw by Gopal Chandra Bora [P.W.6]. P.W.6 came to his house and showed the screw as a sample and informed that the screw was found in a seized Truck. As the screw was found to be used by the Railways in Broad Gauge, P.W.3 going to the Police Station, checked the Truck and saw some rail screws in the bottom portion of some oil pipes. Then he informed the matter to his higher officials and P.W.1 and one Girish Gogoi [not a witness] came to the Police Station and on 06.02.2006 the rail screws were seized and sealed in plastic bags. In cross-examination, P.W.3 stated that the rail screws were put in four bags and card labels were also prepared. P.W.4, Mantul Medhi was another RPF Constable, who went with P.W.1 on 05.02.2006 to Naharkatia Police Station to find out whether any railway materials were in the Truck bearing registration no. AS-01/R-8115, which was kept in the premises of Naharkatia Police Station. He further stated that on 06.02.2006, rail screws, 2247 in nos., were seized and sealed. In cross-examination, P.W.4 stated that there was no independent witness during the seizure of the screws and it was

P.W.1 who prepared the seizure list. He was not shown the bags where the seized materials were kept after sealing, during his testimony in the court.

24. P.W.5, Prasenjit Khataniar was another RPF Constable who was on duty on 05.02.2006 and 06.02.2006. P.W.5 stated that on 06.02.2006, he along with P.W.1, P.W.4 and other RPF personnel went to Naharkatia Police Station and seized 2247 nos. of rail screws from a seized Truck. In cross-examination, P.W.5 stated that the screws were put inside a bag, which was sealed thereafter. He was not aware whether there were IR markings in the screws.
25. P.W.6, Gopal Chandra Bora was a Security Officer from M/s Oil India Limited, Duliajan. In his evidence-in-chief, P.W.6 stated that on a day in February, 2006 when he along with his staff was conducting patrolling at Naharkatia, he intercepted a Truck coming out of the godown of the accused. He stated to have noticed that some pipes, loaded in the Truck, belonged to the OIL. Other railway materials were loaded in the Truck. The accused along with ten to twelve persons were found along side the Truck. He then lodged the FIR at Naharkatia Police Station and handed over the Truck and the accused persons. He exhibited Exhibit no. 3, Seizure List. The FIR lodged by him at Naharkatia Police Station was, however, not exhibited by P.W.6 or any other P.W. P.W.10, Dwipen Kalita, an SI of Police, stated in his testimony that on 02.04.2006, P.W.6 handed over a Truck along with scrap materials and there were 10/12/13 persons. P.W.10 who was the Second Officer at Naharkatia Police Station on 02.04.2006, was told that the Truck [AS-01/R-8115] was loaded with materials belonging to the OIL and the Railways. The Railway materials were thereafter, seized by RPF Officials on 06.04.2006.
26. P.W.11, Rabi Ram Ingti was serving as an Assistant Jailor at the District Jail, Dibrugarh on 13.09.2006. It was on that day, the Enquiry Officer, Girish Gogoi [P.W.13] recorded statements of six accused persons inside the jail premises. He exhibited those six statements as Exhibit nos. 6, 7, 8, 9, 10 &

11. In cross-examination, P.W.11 stated that he did not remember whether the accused persons gave their signatures in the statements. But, he was present during the recording of the statements. He did not remember the names of the six accused persons. P.W.12, Champa Kali Bordoloi was posted as Assistant Jailor at the District Jail, Dibrugarh on 14.02.2006. P.W.12 deposed that it was on 14.02.2006 the accused, Deepak Gupta was brought to Dibrugarh Jail. P.W.11 deposed that Girish Gogoi [P.W.13] from the RPF recorded the statements of the accused, Deepak Gupta and few other accused inside the jail on 16.02.2006 and she was present during the recording of the statements. P.W.12 exhibited the recorded statements of seven accused persons as Exhibit nos. 12, 13, 14, 15, 16, 17 & 18.
27. P.W.13, Girish Gogoi was the Enquiry Officer. In his examination-in-chief, P.W.13 narrated the events of 04.02.2006, 05.02.2006 and 06.02.2006. He stated that during enquiry, he recorded the statements of all the prosecution witnesses and obtained Exhibit no. 4 Certificate from the Gaonburah [P.W.7] and Exhibit no. 5 Expert Certificate from P.W.8. He stated that at first, the Enquiry Officer was one D.D. Das. P.W.13 stated that he recorded the statements of all the thirteen arrested accused persons inside the District Jail, Dibrugarh in presence of the Assistant Jailors where all the accused persons pleaded their guilt. On finding a prima facie case against all the thirteen accused persons and the absconding accused, he submitted the Prosecution Report. P.W.13 exhibited the Seizure List [Exhibit no. 2]; the Gaonburah Certificate [Exhibit no. 4] and the Prosecution Report [Exhibit no. 20]. He also exhibited the recorded statements of thirteen nos. of accused persons as Exhibit nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18. P.W.13 stated that Exhibit no. 18 was the recorded statement of the accused, Deepak Gupta. In cross-examination, P.W.13 stated that he did not mention in the Prosecution Report wherefrom Naharkatia Police personnel arrested the accused persons. He admitted that the contents of the Gaonburah Certificate [Exhibit no. 4] was written by him. He admitted that he did not enquire about the matter of possession of the seized materials

prior to its recovery. He further stated that the driver of the Truck, Nagendra Roy who had loaded the materials, could not be arrested. P.W.13 further stated that in the re-seizure list, it was not mentioned from whom the materials were seized. He further stated that in the statement of Gopal Chandra Bora [P.W.6], it was not mentioned from who's scrap dump the materials were found to be loading.

28. Section 30 of the Evidence Act has laid down the rule of evidence that where more persons than one are being tried jointly for the same offence and the confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. This rule of evidence can be made applicable only when more than one accused persons are tried together for the same offence in a joint trial. The confession must not only implicate the person who made it but also affect co-accused persons. The rule of evidence contained in Section 30 of the Evidence Act permits the Court to use a confession made by one person in a joint trial as a piece of evidence against the others involved, provided the confession is proved and it affects them. If the recorded statements of the remaining twelve accused persons, exhibited as Exhibit no. 6 to Exhibit no. 17, are taken as their confessional statements which had implicated them as well as the accused herein, then also, those statements cannot be considered as admissible evidence in view of the facts that the trial of C.R. no. 37 of 2007 was not a joint trial and the accused persons who made those statements, were not facing the said trial before the Trial Court. It needs to iterate that it was the revision petitioner who alone faced the trial in C.R. Case no. 37 of 2007 and the trial of the twelve other accused persons against whom the Prosecution Report was filed, was separated.

29. In view of the above position, it is only the recorded statement of the revision petitioner herein, that is, Exhibit no. 18, which is required to be examined from the standpoint of its admissibility or otherwise.
30. When the accused persons arrested in connection with Naharkatia Police Station Case no. 09 of 2006 were in custody, the Enquiry Officer was appointed under the RP[UP] Act to cause enquiry in connection with Offence no. 1[2] of 2006. The Enquiry Officer moved an application before the Trial Court on 08.02.2006 seeking issuance of production warrant for production of all the thirteen arrested accused persons including the accused, Deepak Gupta, before the Trial Court in connection with the complaint registered as Offence no. 1[2] of 2006 under Section 3[a] of the RP[UP] Act. On being so moved, the Trial Court by its Order dated 08.02.2006, directed the Superintendent, Central Jail, Dibrugarh to produce all the thirteen arrested accused persons on 14.02.2006. When on 14.02.2006, the accused persons were produced before the Trial Court, the Enquiry Officer made a prayer seeking remand of all the accused persons in order to carry forward his enquiry. A further prayer was made not to release the accused persons on bail. The Trial Court had, on 14.02.2006, allowed the prayer for remand. It is relevant to mention that a member of the RPF can, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under the RP[UP] Act or against whom a reasonable suspicion exists of his having being so concerned.
31. At this juncture, it is necessary to refer to few of the other relevant provisions from the RP[UP] Act. Section 2[a] has defined 'Force' as the Railway Protection Force ['the RPF', for short] constituted under Section 3 of the Railway Protection Force Act, 1957 ['the RPF Act', for short]. An 'Officer of the Force', as per Section 2[c], means an officer of and above the rank of Assistant Sub-Inspector appointed to the Force/RPF and includes a Superior Officer. Section 8 has laid down the procedure as to how an 'Inquiry' is to be made and Section 9 has provided power to Enquiry Officer to summon

persons to give evidence and to produce documents. The provisions of Section 8 and Section 9 are quoted hereinbelow :-

8. Inquiry how to be made.—

[1] When an officer of the Force receives information about the commission of an offence punishable under this Act, or when any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person.

[2] For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer In-Charge of a Police-Station may exercise and is subject to under the Code of Criminal Procedure, 1898 [5 of 1898], when investigating a cognizable case :

Provided that —

- [a] if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;
- [b] if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

9. Power to summon persons to give evidence and produce documents.—

[1] An officer of the Force shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document, or any other thing in any inquiry which such officer in making for any of the purposes of this Act.

[2] A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

[3] All persons, so summoned, shall be bound to attend either in person or by an authorised agent as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 [5 of 1908], shall be applicable to requisitions for attendance under this section.

[4] Every such inquiry as aforesaid, shall be deemed to be a “judicial proceeding” within the meaning of sections 193 and 228 of the Indian Penal Code [45 of 1860].

32. An Officer of the Force/RPF conducting an inquiry under Section 8[1] of the RP[UP] Act does not possess all the attributes of an Officer In-Charge of a Police Station investigating a case under the provisions of the CrPC. The Officer only possesses a part of those powers limited to the purpose of holding the inquiry. Unlike the power of an Officer In-Charge of a Police Station, the Officer conducting an inquiry under Section 8[1] of the RP[UP] Act cannot submit a Police Report of the nature submitted under the CrPC before a Magistrate empowered to take cognizance of the offence. If on

conclusion of an inquiry under Section 8[1] if the Officer of the Force/RPF is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, then the Officer is required to file a complaint [Prosecution Report] under Section 190[1][a] of the Code in order that the Magistrate concerned would take cognizance of the offence. Section 11 of the RP[UP] Act has provided that all searches and arrests made under it shall be carried out in accordance with the provisions of the Code relating respectively to searches and arrests made under the Code. Section 14 of the RP[UP] Act has provided that its provisions shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in Force. Section 14 has thereby provided that the provisions of the RP[UP] Act would override other laws.

33. It has already emerged from the discussions made above that the Officer causing inquiry under Section 8[1], RP[UP] Act, that is, P.W.13 recorded the statements of the accused herein on 16.02.2006 when he was in judicial custody after being remanded by the Trial Court on the strength of the production warrant on 14.02.2006. The Officer causing the inquiry had apprised the Trial Court that all the thirteen accused persons, arrested in connection with Naharkatia Police Station Case no. 09 of 2006, were also suspected to be involved for the offence under Section 3[a] of the RP[UP] Act and on that ground, he sought their production and remand.
34. As the character of the 'Inquiry' is different from an 'Investigation' under the Code and the powers of an Officer in the Force/RPF in the matter of inquiry under Section 8[1] of the RP[UP] Act are found to be different in material aspects from those of a Police Officer conducting an investigation under the Code, a question arose for determination whether an Officer of the Force/RPF, making an inquiry under the RP[UP] Act, in respect of an offence under Section 3 regarding unlawful possession of the railway property, is a Police Officer for the purposes of Section 25, Evidence Act, 1872 and Section 162 of the Code; and as such, any confession or incriminating statement

recorded by him in the course of an inquiry under Section 9 of the RP[UP] Act would be inadmissible in evidence or not. The Hon'ble Supreme Court of India in the case of **Balkishan A. Devidayal vs. State of Maharashtra, [1980] 4 SCC 600**, has answered the question by holding that an Officer of the Force/RPF cannot be deemed to be a 'Police Officer' within the meaning of Section 25 of the Evidence Act and, therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8[1] of the RP[UP] Act cannot be excluded from evidence under the said Section. Viewed from such legal standpoint, the recorded statement of the accused herein, that is, Exhibit no. 18 is treated to be an admissible piece of evidence.

35. Another question which arose for determination in **Balkishan A. Devidalaya** [supra] was whether a person arrested by an Officer of the Force/RPF under Section 6 for the alleged commission of an offence under Section 3 is a 'person accused of an offence' within the meaning of Article 20[3] of the Constitution of India. Article 20[3] of the Constitution has prescribed that 'no person accused of any offence shall be compelled to be a witness against himself'. The Hon'ble Supreme Court upon an analysis of Clause [3] of Article 20 has observed that the Clause shows three things : firstly, its protection is available only to a 'person accused of any offence'; secondly, the protection is against compulsion 'to be a witness'; and thirdly, this protection avails 'against himself'. After examining the first issue, the Hon'ble Court has held that only a person against whom a formal accusation of the commission of an offence has been made can be a person 'accused of an offence' within the meaning of Article 20[3]. Such formal accusation may be specifically made against him in an FIR or a formal complaint or any other formal document or notice served on that person, which ordinarily results in his prosecution in court.

36. A seven-Judge Bench of the Hon'ble Supreme Court in **M.P. Sharma vs. Satish Chandra, AIR 1954 SC 300**, has held that determination of the issue

whether a person is a 'person accused of any offence' is dependent on factors whether at the time when the person made the self-incriminatory statement, a formal accusation of the commission of an offence has been made against him or not. It has been explained that formal accusation is ordinarily brought into existence by lodging an FIR or a formal complaint to the appropriate authority or court against the specific individual, accusing him of the commission of a crime which, in the normal course, would result in his prosecution. It is only on making of such formal accusation that Clause [3] of Article 20 of the Constitution becomes operative covering that individual with its protective umbrella against testimonial compulsion.

37. In a thirteen-Judge Bench decision of the Hon'ble Supreme Court in **State of Bombay vs. Kathi Kalu Oghad**, reported in **AIR 1961 SC 1808**, it has been concluded to the effect that 'to be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise. Elucidating further, the Hon'ble Court has held that the expression has a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing. The Hon'ble Court has concluded that to bring the statement in question within the prohibition of Article 20[3] of the Constitution, the person accused must have stood in the character of an accused at the time he made the statement.
38. Reverting back to facts of the present case, it is already noticed that the Officer causing inquiry under Section 8[1], that is, P.W.13 had already apprised the Trial Court on 08.02.2006 that the accused herein was suspected of committing the offence under Section 3[a] of the RP[UP] Act and it necessitated production and remand of the accused so as to enable him to carry out the inquiry. The statement of the accused, that is, Exhibit no. 18 was recorded on 16.02.2006 inside the Central Jail, Dibrugarh by the Officer causing the inquiry under Section 8[1] of the RP[UP] Act after making a formal accusation against him on 08.02.2006 stating that the accused

herein was suspected of committing the offence under Section 3[1]. Issuance of a summon is a condition precedent for recording a statement under Section 9 of the RP[UP] Act. No summons regarding recording of the statement of the accused has been brought on record by the prosecution. As noted above, the Trial Court as well as the Appellate Court proceeded to hold the accused herein primarily guilty on the basis of Exhibit no. 18, which was the recorded statement of the accused herein and the same has demonstrated clearly that such statement was an inculpatory one. In the light of the settled proposition of law and the time of recording of the statement of the accused, that is, Exhibit no. 18, the accused herein at that point of time was already a person accused of the offence under Section 3[a] of the RP[UP] Act. Therefore, the recorded statement being an inculpatory one, it comes within the protective sweep of Article 20[3] of the Constitution making it inadmissible in evidence. As a result, the same could not have been brought within the set of evidence by the Trial Court and the Appellate Court to return the finding of guilt. Resultantly, by keeping Exhibit no. 18 out of consideration, the remaining evidence is to be appreciated to see whether the same are sufficient enough to bring home the charge on the standard of beyond reasonable doubt.

39. The evidence sought to be led by the prosecution through the testimony of P.W.7 and P.W.9 along with Exhibit no. 4 on the issue of running a business by the accused herein from a particular plot of land is found to be unsatisfactory and deficient. The prosecution sought to establish by the two seizure lists, Exhibit no. 2 and Exhibit no. 3 that the accused was in unlawful possession of railway property. Upon examination and analysis of the contents of the two seizure lists, it is noticed that nothing was recovered and seized from the possession of the accused herein by the said two seizure lists. Though the prosecution had led evidence that the allegedly recovered rail screws had IR markings but the prosecution did not lead any evidence to establish that the rail screws having IR markings were stolen from the railway administration. The prosecution did not place any evidence on record

that the rail screws were stolen from any of its offices, godowns, sheds, etc. Conspicuously, the allegedly stolen rail property, that is, the rail screws was not even produced by the prosecution before the Trial Court and no explanation was furnished by the prosecution as to why these materials objects were not produced before the Trial Court, thus, creating a situation for drawing an adverse inference against the prosecution.

40. Section 313 of the Code has provided for the power to examine the accused. Section 313[1][b], CrPC has provided that in every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the court shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case. The examination of the accused under Section 313[1][b], CrPC is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he decides to do so. The court is under a legal obligation to put the adverse circumstances before the accused and ask for his response. The provision is mandatory in nature and casts a duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminating material appearing against him. Non-indication of a vital piece of inculpatory material and the relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. It has been consistently held that the recording of the accused under Section 313 is not a useless exercise and it has a vital relevance in the trial.
41. When the nature and manner of examination of the accused by the Trial Court at the stage of Section 313[1][b], CrPC in the present case are examined, it is found that the accused was asked only five questions. The last of the questions was whether he would adduce evidence in his support. In the penultimate question the accused was asked whether he would like to say something. The first question was related to the detention of the

accused in Naharkatia Police Station on the allegation that he was apprehended with a Truck loaded with stolen items including rail screws. The second question pertained to the evidence given by P.W.6 to the effect that the accused and others were apprehended by P.W.6 along with a Truck. The answers given by the accused to both the questions were to the effect that he was not involved in any case of theft and he was wrongfully arrested after being called by Police to give evidence. The third question was in connection with the evidence given by P.W.7 to the effect that the accused dealt in iron business. In denial, the accused replied that he was a labour contractor and had no business dealing in irons.

42. What is noticeable from the examination of the accused under Section 313[1][b], CrPC by the Trial Court is that the Trial Court did not put any of the circumstances appearing from the testimony of the prosecution witnesses – P.W.1 to P.W.5 and P.W.8 to P.W.13. What is also noticeable is that no question was asked to the accused as regards his statement purportedly recorded by the Enquiry Officer [P.W.13], exhibited as Exhibit no. 18. By not putting any of the other inculpatory evidence emerging from the evidence of the afore-mentioned prosecution witnesses and the twenty nos. of exhibited documents including Exhibit no. 18 to the accused during his examination under Section 313[1][b], CrPC, the accused was clearly denied the opportunity to provide explanation as against any of the adverse circumstances appearing from the above evidence led by the prosecution during the trial.
43. The power of revision under Section 397 of the Code has vested jurisdiction in this Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of a trial court within the territorial jurisdiction. The object of the provision is to set right a patent defect or an error of jurisdiction or law. In view of the restriction imposed in the revisional jurisdiction, this Court has not embarked on appreciation or

reappreciation of the evidence at length. But in view of the grounds raised regarding finding of guilt on the basis of inadmissible evidence, this Court has examined the issue from such perspectives. It has been found that sheet-anchor for returning the verdict of guilt for the Trial Court was the inculpatory statement of the accused herein. On examination, the said inculpatory statement of the accused, that is, Exhibit no. 18 is found to be one which comes within the purview of Article 20[3] of the Constitution of India making it an inadmissible piece of evidence. When after excluding the said recorded statement the other evidence are looked at it is found that the remaining evidence are deficient ones palpably falling short of the standard beyond reasonable doubt to sustain a conviction for the offence under Section 3[a] of the RP[UP] Act.

44. In view of the discussion made above and the illegality and incorrectness crept in in the Trial Court and the Appellate Court verdicts, this Court finds that the Judgment and Order dated 15.12.2010 passed by the Trial Court in C.R. Case no. 37 of 2007 holding the accused therein, that is, the revision petitioner guilty; and the Judgment and Order dated 07.01.2012 passed by the Appellate Court upholding the Judgment and Order of the Trial Court, are unsustainable in law. Consequently, the same are liable to be set aside and quashed. They are accordingly set aside and quashed. The revision petition is, therefore, stands allowed. As a result, the revision petitioner is acquitted of the charge under Section 3[a] of the RP[UP] Act.
45. The case records of the Trial Court are to be sent back forthwith.

JUDGE

Comparing Assistant