

IN THE COURT OF SPECIAL RAILWAY MAGISTRATE, KHURDA ROAD

Present: AMARESH NAYAK, M.A., LL.M

Special Railway Magistrate, Khurda Road.

U.I. 10125/2012

Trial No.10324/12

Date of argument: 27.11.2013

Date of judgment: 07.12.2013

Railway Administration **Complainant**

- Vrs -

Nimai Charan Dalai aged about 39 years,

S/o- Bhramer Dalai, R/o Ruishimuli,

P.O.-Khajuria, P.S-Brahamagiri,Dist-Puri

..... **Accused**

Offence U/s-160(2) of The Railways Act,1989.

Counsel for the Complainant: ----- Ld. A.P.P. Sri Sunil Kumar

Counsel for the Defence : ----- Sri M.K. Patanaik and others

J U D G M E N T

1. The accused stands charged U/Sec 160(2) of the Railway Act, 1989.
2. The case of the complainant in short is that on 19-10-2012 at about 17:05Hrs, the Railway level crossing gate at KM No-441/1-3 was closing with sound by on duty Gateman Sudhakar Pradhan, for passing of Train No-18304 Puri-Sambalpur Intercity as per order of SS/SRKT. At that time, suddenly one Truck bearing Regn. No- OSP-6074 of TATA make came from the eastern side and dashed with the east side boom of the L/C gate as

a result of which the east side boom of L/C gate became bend inside the Railway Track and 1st piece of the boom was broken and also stay rod was broken and the said gate became out of order. The offending vehicle with its driver was detained by the on duty Gate man Sudhakar Pradhan. On receipt of the information Dillip kumar, SIPF/RPF/Post Khurda Road with staff went to the spot and examined the gate keeper. The I.O. investigated the case, visited the spot of occurrence, and examined the witnesses. Thereafter a written report was filed by the complainant. and on finding a prima facie case being made out against the accused U/Sec 160(2) of Railway Act,1989, submitted the complaint petition and hence this case.

3. The plea of the defence is one of complete denial and false implication.

4. Now the points of determination are as follows:

Whether on dt. 19-10-2012 at about 5:05 PM at Level crossing Gate No.-190 situated at KM No.-441/1-3 in between the BBS –SRKT Rly station the accused was driving a Tata make Truck bearing Registration No.- OSP-6074 and came from the east side of the said level crossing gate and dashed with the east side boom of the Leveling crossing gate which was closed to road traffic as a result of which the first piece of the L/C gate boom was broken and the gate became out of order.?

5. In order to prove its case, the Complainant had examined altogether four witnesses of whom P.W.-1 Dillip Kumar is the Complainant in this case, P.W.-3 Sudhakar Pradhan is the occurrence witnesses as well as seizure witness in this case, P.W.-2 is a post occurrence witness and P.W.-4 is also a seizure witness in this case. On the contrary defence examined none.

6. P.W.-1 who is the complainant in this case has stated that on 19-10-2012 on receiving information regarding damage of the L/C gate at Km-441/1-3 he went to the spot and found that the east side boom of the L/C gate was broken and the offending vehicle was standing near the L/C gate. P.W.-1 further stated that he examined P.W.-3 who revealed that while he was

closing the L/C gate for the passage of train No-8304(Intercity Exp), one Truck bearing No. OSP- 6074 came from the eastern side and dashed against the eastern side boom of the L/C gate thereby damaging it. But P.W.-3 in the cross examination had categorically denied having been examined by any RPF authorities P.W.-1 further stated that P.W-3 revealed to him that the vehicle was detained at the spot and intimated about the incident to SS SRKT. P.W-1 stated in his evidence that on reaching the spot he found the first peace boom broken. P.W.-1 admitted his signature on the joint finding report which is marked as Ext-1 and his signature on it marked as Ext-1/1. P.W.-1 had admitted his signature on the FIR filed by P.W.-3 which is marked as Ext-2 and his signature on it marked as Ext-2/1. P.W.-1 further admitted his signature on the statement of the accused marked as Ext-3 and his signature on it marked as Ext-3/1 and the signature of the accused made on the statement marked as Ext-3/2. P.W.-1 further admitted his signature on the seizure list which is marked as Ext-4 and his signature on it marked as Ext-4/1. P.W.-1 also admitted his signature on the occurrence report marked as Ext-5 and his signature on it marked as Ext-5/1.

7. P.W.-3 is the sole occurrence witness in this case and had stated that on 19-10-2012 while the L/C gate was being closed for passing of Train No-18304, a Truck bearing Regn. No.-OSP-6074 suddenly came and dashed with the L/C gate as a result of which the L/C gate boom was broken. P.W.-3 further stated that he detained the offending vehicle and sent the message to the concerned officer. P.W.-3 had admitted his signature on the Seizure List marked as Ext-4 and his signature on it marked as Ext-4/2. P.W.-3 who is the only occurrence witness in this case had categorically stated in his evidence that the FIR filed by him addressed to IIC, RPF post has been scribed by P.W-1 who is the S.I. of the RPF post and he does not know the contents of the FIR. P.W.-3 also stated that his statement has not been recorded by the RPF authorities. P.W.-3 also stated that just before the

L/C gate there was a Humps and the offending vehicle got imbalanced due to the humps. P.W.-3 who is also a vital seizure witness in this case expressed his ignorance about the contents to the seizure list. P.W.-3 is a vital witness in this case who is the sole occurrence witness as well as a seizure witness. But the version of P.W.-3 creates enough doubt as he is oblivious of the contents of the First information report submitted by him with regard to the accident and the same has been scribed by the P.W-1. Also P.W.-3 is a vital seizure witness in this case as he himself had detained the offending vehicle at the spot. But P.W.-3 had categorically stated in his evidence that he is completely ignorant about the contents of the seizure list which creates doubt with regard to the factum of seizure. The testimony of the sole occurrence witness does not prove the involvement of the accused in this case. Though there is ample corroboration with regard to the fact and manner of the accident but the involvement of the accused in this case is not proved beyond reasonable doubt by the complainant.

8. P.W.-2 is a post occurrence witness and had admitted his signature on the joint finding report marked as Ext-1 and his signature on it marked as Ext-1/2. P.W.-4 is a seizure witness in this case and had admitted his signature on the seizure list marked as Ext-4 and his signature on it marked as Ext-4/3.

9. As per the provision of Sec U/Sec 160(2) of the Railway Act, 1989, if any person breaks any gate or chain or barrier set up on either side of a level crossing which is closed to road Traffic, he shall be liable for the offence. In the case in hand the impugned vehicle dashed with the L/C gate boom while the gate was in the process of closing for passage of the train. The complaint petition as well as the evidence of P.W-3 reveals that the accident took place while the gate was in the process of closing. Thus it is a fact that the L/C gate was not completely closed to road Traffic at the time of the accident. P.W.-3 had no where stated in his evidence that while

the gate was being closed for passage of Train, any hooter sound and Red light signal was made at that time for awaking the vehicles passing by. The import of Section 160(2) of Railway Act provides liability for the offenders who break any barrier set on either side of the level crossing closed to road traffic taking into consideration the magnitude of damage that may take place in the event of accident. But while the gate was in the process of closing the onus also lies on the railway authorities to provide enough caution to the vehicles passing by. But there is no evidence on record to show that any precaution or hooter was in order at the time of accident.

10. It is therefore my considered view that a case U/s 160(2) of the Railways Act, 1989 is not made out against the accused.

11. Considering the facts and circumstances of the case and the evidence in its proper perspective, this Court came to a conclusion that the complainant has failed to prove its case beyond all reasonable doubts against the accused and accordingly I hold that the accused is not found guilty of offence punishable U/s 160(2) of the Railways Act, 1989 and he is acquitted there from under section 248(1) of Cr.P.C. He be discharged from the bail bond and be set at liberty forthwith.

Enter this case as “insufficient evidence.”

**Special Railway Magistrate
Khurda Road.**

Typed by me in my own official laptop and pronounced the judgment in the open court on this the 7th day of December, 2013 under my hand and seal of this court.

**Special Railway Magistrate
Khurda Road.**

List of witnesses examined for the Prosecution.

C.W.1 Dillip Kumar

C.W.2 P.S.Ravi

C.W.3 Sudhakar Pradhan

C.W.4 Tarakanta Mohapatra

List of witnesses examined for the Defence.

Nil

List of documents marked for the Prosecution.

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| Ext 1 | Joint Finding Report |
| Ext 1/1 | Signature of P.W.-1 on Joint Finding Report |
| Ext 1/2 | Signature of P.W.-2 on Joint Finding Report |
| Ext 2 | FIR |
| Ext 2/1 | Signature of P.W.-1 on it |
| Ext3 | Statement of the accused |
| Ext 3/1 | Signature of P.W.-1 on it |
| Ext3/2 | Signature of the accused on it |
| Ext 4 | Seizure List |
| Ext 4/1 | Signature of P.W.-1 on Seizure List |
| Ext 4/2 | Signature of P.W.-3 on Seizure List |
| Ext 4/3 | Signature of P.W.-4 on Seizure List |
| Ext 5 | Occurrence Report |
| Ext 5/1 | Signature of P.W.-1 on it |

List of documents marked for the Defence.

Nil

**Special Railway Magistrate
Khurda Road**