

IN THE COURT OF SPECIAL RAILWAY MAGISTRATE, KHURDA ROAD

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

Special Railway Magistrate, Khurda Road.

U.I. 2859/2012

Trial No.2926/12

Date of argument: 27.11.2013

Date of judgment: 07.12.2013

Railway Administration **Complainant**

- Vrs -

P. Kalia Dora aged about 28 years,

S/o- Late P.Budhia Dora, At-Samantarapur,

P.S.-Old Town, Bhubaneswar Dist-Khurda

..... **Accused**

Offence U/s-160(2) of Railway 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 06-03-2012, Sudhakar Pradhan, Head Trackman was performing his duty at Manned Level Crossing gate No-190 situated at KM No 441/1-3 in between BBS-SRKT Rly station from 16.00 hours to 24.00 hours. During his duty period at about 16.25 hours while he as opening the L/C gate after passing of down goods train, one Tata Ace bearing Regn. No- OR-07V-7942 came from the

west side of the said level crossing gate and forcibly tried to enter the level crossing gate and dashed with the down side boom of the L/C gate as a result of which the first piece became bend and the said gate became out of order. The above mentioned gate keeper tried to stop the driver of the vehicle but he did not listen and went away speedily from the spot. The gate keeper noted down the Regn. No. of the said vehicle and informed the matter to all concerned. On receipt of the information M.Chandray, SIPF/RPF/Post Khurda Road with staff rushed to the spot and examined the gate keeper and failed to search the driver of the offending vehicle. M. Chandray submitted occurrence report to the inspector in Charge of RPF post khurda Road who registered a case against the absconder driver and his vehicle. M. chandray conducted further inquiry and obtained ownership particular of the fleeing vehicle and summoned the owner of the vehicle along with relevant documents. The I.O. investigated the case, visited the spot of occurrence, and examined the witnesses. The absconded driver of the vehicle attended the RPF post along with the vehicle and its relevant documents who was arrested .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. 06-03-2012 at about 4.25 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 the Vehicle bearing Registration No.- OR-07V-7942 and came from the west side of the said level crossing gate and dashed with the 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 became bend and the gate became out of order.?

5. In order to prove its case, the Complainant had examined altogether five witnesses of whom P.W.-1 M.Chandray is the Complainant in this case, P.W.-3 Sudhakar Pradhan is the occurrence witnesses in this case, P.W.-2 and P.W.-5 are the seizure witness in this case. P.W.-4 is a post occurrence 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 06-03-2012 on receiving information regarding damage of the L/C gate at Km-441/1-3 he went to the spot and found that the west side boom of the L/C gate was in a damaged condition. P.W.-1 further stated that he examined P.W.-3 who revealed that at about 4.15 PM while he was opening the L/C gate after the passage of a goods train from Khurda Road to Bhubaneswar, one Tata Ace Vehicle bearing No. OR-07V- 7942 came from the west side and dashed against the west side boom of the L/C gate thereby damaging it. P.W.-1 further stated that P.W.-3 further revealed to him that the vehicle fled away from the spot. 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 stated in his evidence that he had ascertained the where about of the offending vehicle from the RTO, Bhubaneswar and admitted his signature on the requisition made to RTO 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 seizure list which is marked as Ext-3 and his signature on it marked as Ext-3/1. But the document furnished by the RTO indicating therein the name of owner, his address and driver of the vehicle had not been exhibited by the Complainant.

7. P.W.-3 is the sole occurrence witness in this case and had stated that on 06-03-2012 after passing of the goods train, he lifted the L/C gate and while the L/C gate was being lifted the Tata Ace vehicle bearing Regn. No.-OR-07V-7942 dashed with the L/C gate as a result of which the L/C gate boom was broken. P.W.-3 further stated that the driver of the offending vehicle fled way from the spot with his vehicle. P.W.-3 had

admitted his signature on the FIR marked as Ext-4 and his signature on it marked as Ext-4/1. P.W.-3 who is the only occurrence witness in this case had categorically stated in his evidence that the accused standing inside the dock is not the driver of the Tata Ace vehicle who had caused accident with the L/C gate boom. P.W.-3 further stated that P.W.-1 scribed the FIR and he had put his signature on it on finding it correct. P.W.-3 had further stated in his cross examination that there were two persons inside the Tata Ace vehicle that caused the accident including the driver but the accused was not inside the vehicle at the time of accident. P.W.-3 further stated that the driver of the vehicle had a broken hand (Twisted hand due to disability). This version of P.W.-3 creates doubt with regard to the involvement of the accused in this case. 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.

8. P.W.-2 and P.W.-5 are seizure witness in this case. P.W.-2 admitted his signature on the seizure list marked as Ext-3 and his signature on it marked as Ext-3/2. P.W.-2 stated that on 29-03-2012 the owner of the vehicle and driver came to the RPF post on summon and P.W.-1 seized the vehicle, driving license, RC book, Xerox copy of the insurance paper and fitness certificate. P.W.-5 who is another seizure witness in this case had admitted his signature on the seizure list which is marked as Ext-3 and his signature on it marked as Ext-3/3. P.W.-4 has admitted his signature on the FIR marked as Ext-5 and his signature on it marked as Ext-5/1. P.W.-4 had admitted his signature on the joint finding Report marked as Ext-1 and his signature on it marked as Ext-4/1.

9. On perusal of the FIR marked as Ext-4, it is found that P.W.-3 had not said anything regarding whether he had seen the accused causing accident. But in his evidence P.W.-3 had stated that he had seen the accused along

with another person and that he had noticed that the accused had a twisted hand due to disability. But the FIR nowhere reveals that P.W.-3 had seen the accused at the time of accident. On the contrary he had only managed to note down the Registration Number of the offending Vehicle from the behind while the vehicle was moving away from the spot at a faster speed. The version of P.W.-3 in the FIR and in his evidence does not fully corroborate with each other. Further, the alleged occurrence as stated in the FIR is not corroborated by any independent witnesses. P.W.-3 had not stated anything in his evidence to show that while the L/C gate was being opened , all the caution signals and buzzer sound were functional to aware the passing by vehicles of closing /opening of the L/C gate to avoid any accident.

10. 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 opening after 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 opening. 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 opened after 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 opening 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.

11. 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.

12. 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 M. Chandaray
C.W.2 Tarakanta Mohapatra
C.W.3 Sudhakar Pradhan
C.W.4 P.S.Ravi
C.W.5 Ashok Kumar Saho

List of witnesses examined for the Defence.

Nil

List of documents marked for the Prosecution.

Ext 1 Joint Finding Report
Ext 1/1 Signature of P.W.-1 on Joint Finding Report
Ext 1/2 Signature of P.W.-4 on Joint Finding Report

Ext 2 Requisition letter to RTO, BBSR
Ext 2/1 Signature of P.W.-1 on it
Ext 3 Seizure List
Ext 3/1 Signature of P.W.-1 on Seizure List
Ext 3/2 Signature of P.W.-2 on Seizure List
Ext 3/3 Signature of P.W.-5 on Seizure List
Ext 4 FIR
Ext 4/1 Signature of P.W.-3 on FIR
Ext 4/2 Signature of P.W.-2 on Seizure List
Ext 5 Report filed by P.W.-4
Ext 5/1 Signature of P.W.4 on the report

List of documents marked for the Defence.

Nil

**Special Railway Magistrate,
Khurda Road.**