

IN THE COURT OF SPECIAL RAILWAY MAGISTRATE, KHURDA ROAD

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

Special Railway Magistrate, Khurda Road.

U.I. 3634/2012

Trial No.3713/12

Date of argument: 03.01.2014

Date of judgment: 13.01.2014

Railway Administration **Complainant**

- Vrs -

Rakesh Kumar Bidhar aged about 24 years,

S/o- Hemanta Kumar Bidhar, R/o Nuapada,

P.S.-Bolagarh, Dist-Khurda

..... **Accused**

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

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

Counsel for the Defence : ----- Sri S.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 24-04-2012 at about 16:50 Hrs, the on duty gate keeper Sri Akbar Tarafdar was closing the Railway level crossing gate at KM No-441/1-3 for safe passing of Train No 58006 DN KUR-KGP Passenger. At that time the driver of TATA ACE bearing Registration No.-OR-25B 7513 was coming from the eastern side of the level crossing gate and dashed with the east side boom of the said

L/C gate resulting in breakage of same. The offending vehicle with its driver was detained by the on duty Gate man Akbar Tarafdar. On receipt of the information M.Chandray, SIPF/RPF/Post Khurda Road along with staffs 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 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. 24-04-2012 at about 16:50 HRS at Level crossing Gate No.- 190 situated at KM No.-441/1-3 in between the SRKT-BBS Rly station the accused was driving a Tata Ace bearing Registration No.- OR-25B 7513 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 L/C gate boom was damaged and became out of order.?

5. In order to prove its case, the Complainant had examined altogether five witnesses of whom P.W.-1 M.Chandaray is the Complainant in this case, P.W.-5 Akbar Tarafdar is the occurrence witnesses, P.W.-3 is a post occurrence witnesses and P.W.-2 and P.W.-4 are seizure witnesses in this case. On the contrary defence examined none.

6. P.W.-1 who is the complainant in this case has stated that on 24-04-2012 on receiving information regarding damage of the L/C gate at Km-441/1-3 he went to the spot along with staffs and found that the east side boom of the L/C gate was broken. P.W.-1 further stated that he had examined the Gateman P.W.-5 who is the sole occurrence witness in this case who stated before him that at about 4.45 hours while he was closing the gate for

passage of Train 58006 one Tata Ace vehicle bearing Regn. No.-OR-02-25B 7513 came from Sunderpada side and dashed against the said L/C gate boom and broke it. P.W.-1 admitted his signature on the Seizure List which is marked as Ext-1 and his signature on it marked as Ext-1/1.

7. P.W.-5 revealed in his evidence that while he was closing the L/C gate for the passage of train No-58006(KGP-KUR Passenger), one Tata Ace Vehicle bearing No. OR-25-B 7513 came in a high speed inspite of humps and Signal and dashed with the upside boom (east) of the L/C gate as a result of which the upside boom of the L/C gate was broken at the starting point. Further, P.W.-5 stated that he has not scribed the FIR marked as Ext-3 and the same had been scribed by the RPF Staff and that he had put his signature on it after verifying the same but could not revealed the name of the person who had scribed the FIR. This version of P.W.-5 who is an official witness as well as a educated person as transpired from the evidence claiming himself a graduate, creates doubt with regard to the credibility of the FIR marked as Ext-3 as there is no certificate to the effect on the FIR that he had gone through the contents of the FIR and had put his signature thereon after verifying the contents. P.W.-5 further stated in his evidence that he had verbally intimated the fact of the accident to his superior authority. P.W.-5 is the sole occurrence witness in this case and stated that he detained the offending vehicle and sent the message to the concerned officer. P.W.-5 further stated that he cannot say the name of the RPF person who had seized the offending vehicle. P.W.-5 had admitted his signature on the FIR marked as Ext-3 and his signature on it marked as Ext-3/1. P.W.-3 who is the only occurrence witness in this case had categorically stated in his evidence that the spot is a busy place and there were many independent witnesses present at the spot but no independent persons were made witness in this case. P.W.-5 who is a vital occurrence witness in this case and had detained the offending vehicle at the spot but he had not been made a seizure witness in this case. The version of P.W.-5

creates enough doubt as he is oblivious of the person who had scribed the First information report submitted by him with regard to the incident.

8. P.W.-1 had stated in his evidence that he had recorded the confessional statement of the accused. But the same has not been exhibited by the complainant. P.W.-1 stated in the examination in chief that he received information about the accident at 5:30 PM but revealed in the cross examination that he left the RPF post at 4:55 PM for proceeding to the spot which is a notable contradiction. Further, P.W.-1 had contradicted with the sole occurrence witness P.W.-5 on the score that there were no persons present at the spot when they reached there.

9. P.W.-2 is a post occurrence witness and had admitted his signature on the Seizure list marked as Ext-1 and his signature on it marked as Ext-1/2. P.W.-2 had stated that by the time he along with other RPF staffs reached the spot the Signals staffs were already present at the spot which contradicts with the version of P.W.-1 who stated in clear terms that when he along with other RPF staffs reached the spot only the accused and Gateman were present along with the offending vehicle and the signal staffs reached the spot after fifteen minutes. P.W.-1 stated in his evidence at Para 9 that he had recorded the confessional statement the accused at the RPF post but P.W.-2 stated that the same has been recorded at the spot. P.W.-3 admitted his signature on the Joint Finding Report Marked as Ext-2 and his signature on it marked as Ext-2/1. P.W.-3 admitted the fact that the Joint inspection report does not reveal the fact that the Signal and Buzzer were working properly at the time of accident which is the onerous responsibly of the railway administration manning the L/C gate to ensure that it is working properly at the time of closing the gate and is a essential requirement to attract the provision of Sec 160(2) of the Railway Act, 1989 especially when the gate is not completely closed to the road traffic and is in the process of closing. P.W.-4 is a seizure witness in this case and had admitted their signatures on the seizure list marked as Ext-1/3.

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 complainant claims that the impugned vehicle dashed with the L/C gate boom while the gate was in the process of closing for passage of the train. Thus it is a fact that from the story of the complainant and the evidence on record that the L/C gate was not completely closed to road Traffic at the time of the accident and was in the process of closing. 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 through hooters and signal light. But P.W.-3 had categorically stated in his evidence that the joint finding report marked as Ext-2 does not show that any signal or hooter/buzzer was in order at the time of accident. Though there are evidences with regard to the fact and manner of the accident but owing to the contradictions the involvement of the accused in this case is not proved beyond reasonable doubt by the complainant.

11. It is therefore my considered view that a case U/s 160(2) of the Indian 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 13th day of January, 2014 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 Sadananda Palei
C.W.3 Bikash Kumar Murmu
C.W.4 Satyanarayan Barik
C.W.-5 Sk. Akbar Tarafdar

List of witnesses examined for the Defence.

Nil

List of documents marked for the Prosecution.

Ext 1	Seizure List
Ext 1/1	Signature of P.W.-1 on Seizure List
Ext 1/2	Signature of P.W.-2 on Seizure List
Ext 1/3	Signature of P.W.-4 on it
Ext 2	Joint Inspection Report
Ext2/1	Signature of P.W.-3 on it
Ext 3	FIR
Ext 3/1	Signature of P.W.-5 on it

List of documents marked for the Defence.

Nil

**Special Railway Magistrate,
Khurda Road.**