

L/C gate while it was being closed, resulting the first piece of the boom of the L/C gate became bend and damaged. 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 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. 11-08-2012 at about 10:45 AM 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-02 BP-1182 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 became bend and the gate 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.-3 Akbar Tarafdar is the occurrence witnesses, P.W.-2 is a post occurrence witness and P.W.-4 and P.W.-5 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 11-08-2012 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 first boom of the L/C gate was bent and in a damaged condition. P.W.-1 further stated that he had not examined P.W.-3 who is the sole occurrence witness in this case on the ground that P.W.-3 had filed a written report regarding the incident. P.W.-1 had stated in his evidence that P.W.-2 had given a FIR marked as Ext-2

with regard to the accident. P.W.-2 himself is a post occurrence witness. 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 exhibited FIR filed by P.W.-2 which is marked as Ext-2. P.W.-1 had also exhibited the FIR filed by P.W.-3 which is marked as Ext-3 .P.W.-1 further admitted his signature on the seizure list marked as Ext-4 and his signature on it marked as Ext-4/1. P.W.-1 further 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 revealed in his evidence that while the L/C gate was closed for the passage of train No-58434(BAM-JJKR Passenger), one Tata Ace Vehicle bearing No. OR-02-PB 1182 dashed with the upside boom of the L/C gate as a result of which the upside boom of the L/C gate got damaged. But P.W.-3 in the cross examination had categorically stated at Para 11 that he has been examined by RPF officials at the spot though P.W.-1 denies having examined P.W.-3. P.W.-3 further stated in the cross examination that he has not scribed the FIR marked as Ext-3 and that he cannot say who had scribed the FIR though he had put his signature on it after reading the same. This version of P.W.-3 who is an official witness creates doubt with regard to the credibility of the FIR marked as Ext-3 as there is no certificate to the effect that P.W.-3 had put his signature on it after reading the contents of it. P.W.-3 further stated in his evidence that he had only verbally intimated the fact of the accident to his superior authority. P.W.-3 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.-3 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 FIR filed by him addressed to IIC, RPF post has not been scribed by him and pleaded ignorant with regard to who had scribed the FIR. P.W.-3 also stated that his statement has been recorded by the RPF authorities though P.W.-1 denied having

examined P.W.-1 in this case. P.W.-3 who is a vital occurrence witness in this case and had detained the offending vehicle at the spot but had not been made a seizure witness in this case. The version of P.W.-3 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. 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.

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.-2 had also stated that he had not been examined by RPF authorities. P.W.-4 and P.W.-5 are seizure witness in this case and had admitted their signatures on the seizure list marked as Ext-4/2 and 4/3 respectively.

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 evidence shows that the impugned vehicle dashed with the L/C gate boom while the gate was closed but the prosecution story in the complaint petition states that the accident occurred while the L/C gate was in the process of closing for passage of the train. The complaint petition does not fall in tune with the evidence of P.W.-3 regarding the accident whether it took place while the gate was in the process of closing or closed. Thus it is a fact that from the contradiction of the story of the complainant and the evidence it is not certain whether the L/C gate was completely closed to road Traffic at the time of the accident or 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 who is the gateman and the sole occurrence witness in this case had not stated in his evidence to show that any precaution or hooter was in order at the time of accident.

10. The testimony of the sole occurrence witness does not prove the involvement of the accused in this case. Though there are evidences 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. 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.

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 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 P.S.Ravi
C.W.3 Akbar Tarafdar
C.W.4 Pritikant Rout
C.W.-5 Sankarsan Moharana

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.-2 on Joint Finding Report
Ext 2 FIR filed by P.W.-2
Ext3 FIR file by P.W.-3
Ext 3/1 Signature of P.W.-3 on it
Ext 4 Seizure List
Ext 4/1 Signature of P.W.-1 on Seizure List
Ext 4/2 Signature of P.W.-4 on Seizure List
Ext 4/3 Signature of P.W.-5 on Seizure List
Ext 5 Occurrence Report
Ext 5/1 Signature of P.W.-1 on it
Ext 5/2 Direction of IIC, RPF Post on it
Ext 6 Zimanama
Ext 6/1 Signature of P.W.-5 on Zimanama

List of documents marked for the Defence.

Nil

**Special Railway Magistrate,
Khurda Road.**