

IN THE COURT OF SPECIAL RAILWAY MAGISTRATE, KHURDA ROAD

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

Special Railway Magistrate, Khurda Road.

U.I. 9531/2011

Trial No.9582/11

Date of argument: 30.06.2014

Date of judgment: 08.07.2014

Railway Administration **Complainant**

- Vrs -

Jitendra Barik aged about 33 years,

S/o- Pahali Barik, Vill-Janla,

P.S.-Jatni, Dist-Khurda

..... **Accused**

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

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

Counsel for the Defence : ----- Mr. Nasiruddin Khan 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 22-12-2011 at about 14:35Hrs, the on duty gate keeper Sri Akbar Tarafdar was closing the Railway level crossing gate No.- 190 at KM No-441/1-3 with siren sound for safe passing of Train No 12703 Falaknuma Exp. At that time the driver of a passenger carrier four wheeler Van bearing Registration No- OR-02 AZ 2558 came from the western side of the level crossing gate and dashed

with the boom of the said L/C gate while it was being closed, as a result of which the boom barrier turned bent towards the Railway Line. The first and Second pipe of the boom was damaged. The offending vehicle with its driver was detained by the on duty Gateman Akbar Tarafdar. 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. 22-12-2011 at about 14:35 hrs 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 passenger carrier four wheeler bearing Registration No.- OR-02 AZ-2558 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 L/C gate boom became bend towards the Railway line 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 Dillip Kumar is the Complainant in this case, P.W.-5 Sk. Akbar Tarafdar is the sole occurrence witnesses, P.W.-2 and P.W.-3 are post occurrence witness and also seizure witnesses in this case and 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 had stated that on 22-11-2011 on receiving information at around 3.10 PM regarding accident and damage of the L/C gate at Km-441/1-3 he went to the spot along with staffs and found that the west side boom of the L/C gate was in a damaged condition and the first two pipes of the boom had been damaged. P.W.-1 further stated that he examined P.W.-5 the Gateman and the sole

occurrence witness in this case who revealed that at 2.35 PM while he was closing the L/C gate for the passage of train No-12703 (Falaknuma Exp), one Tata Magic Vehicle bearing No. OR-02-AZ 2558 came from the western side and forcibly entered into L/C gate before the gate could be fully closed as a result of which it dashed against the L/C gate thereby damaging it. The joint finding report marked as Ext-3 also corroborates with this version of P.W.-1. But P.W.-5 who is the sole and vital occurrence witness of the case in the examination in chief had nowhere stated that the accused tried to forcibly enter inside the L/C gate while the gate was being closed. P.W.-5 had only revealed in his evidence that while he was closing the L/C gate, the accused came driving a white colour Tata Magic Vehicle bearing Regn. No OR-02-AZ 2558 and dashed with the west side L/C gate as a result of which the boom got bent and came in front of the Track. This is a vital contradiction in the evidence of P.W.-5 with that of P.W.-1 and Joint finding Report marked as Ext-3. But P.W.-5 in the cross examination had stated that after the accident the L/C gate boom was broken to two pieces. P.W.-1 stated in his evidence that he had recorded the confessional statement of the accused but the same has not been exhibited by the prosecution. 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. P.W.-1 had admitted his signature on the Message 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 Joint Finding Report Marked as Exhibit 3 and his signature on it marked as Exhibit 3/1. P.W.-4 admitted his signature on the Joint Finding Report marked as Ext 3 and his signature on it which is marked as Ext-3/2

7. P.W.-5 is the sole occurrence witness in this case and had stated that on 22-12-2011 while he was closing the L/C gate for passing of Train No-12703, a Tata Ace bearing Regn. No.-OR-02-AZ 2558 came and dashed with the L/C gate as a result of which the L/C gate boom was bent and

came in front of the gate. P.W.-5 further stated that he detained the offending vehicle though the offending vehicle did not make any attempt to flee away from the spot and sent the message to the concerned officer. There is no evidence on record to show as to why P.W.-5 had not been made a Seizure witness in this case though he was very much present during the incident as well as at the time of seizure at the spot. P.W.-5 who is the only occurrence witness in this case had categorically stated in his evidence at Para 16 that he had not submitted any written document regarding the accident before the Railway authority hence no FIR was filed by him to set the law into motion. P.W.-5 is a vital witness in this case who is also the sole occurrence witness, though he has not been made a seizure witness. But the version of P.W.-5 creates enough doubt as no reason has been substantiated as to why the written First information report has not been submitted by him with regard to the accident and why P.W.-5 has not been made a seizure witness in this case as he himself had detained the offending vehicle at the spot which creates doubt with regard to the factum of seizure. P.W.5 stated in the examination in chief that because of the accident the boom of the L/C gate became bent and came in front of the track but in the cross examination he stated that after the accident the L/C gate boom was broken into two pieces which is a notable contradiction in these two versions of P.W.-5.

8. 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.-3 is also a seizure witness in this case and had admitted his signature on the seizure list marked as Ext-1 and his signature on it marked as Ext-1/3.

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.-5 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.-5 had no where stated in his evidence that while the gate was being closed for passage of Train, the accused forcibly entered inside the L/C gate and dashed against it though the version of P.W.-1 and the joint finding report (Ext 3) reveal it creating contradiction. The testimony of the sole occurrence witness creates doubt and does not prove the guilt of the accused in consonance with the spirit of the provision in this case. Though there is ample corroboration with regard to the fact and manner of the accident but the guilt of the accused in this case is not proved beyond reasonable doubt by the complainant. The sole occurrence witness P.W.-5 has not been made a witness in seizure list. The import of Section 160(2) of Railway Act, 1989 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. In this context, there is contradiction in version of P.W.-5 regarding whether the accused forcibly tried to get inside or it simply dashed with the L/C gate while the gate was in the process of closing.

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.”

S.R.M
Khurda Road.

Typed by me in my own official laptop and pronounced the judgment in the open court on this the 8th day of July, 2014 under my hand and seal of this court.

S.R.M
Khurda Road.

List of witnesses examined for the Prosecution.

C.W.1	Dillip Kumar
C.W.2	Tarakanta Mohapatra
C.W.3	Satya Narayan Barik
C.W.4	P.S.Ravi
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.-3 on Seizure List
Ext 2	Message
Ext 2/1	Signature of P.W.-1 on it
Ext3	Joint Finding Report
Ext 3/1	Signature of P.W.-1 on Joint Finding Report
Ext 3/2	Signature of P.W.-4 on Joint Finding Report

List of documents marked for the Defence.

Nil

S.R.M
Khurda Road.