

IN THE COURT OF SPECIAL RAILWAY MAGISTRATE, NJP

N.G.R. CASE NO. 01 /19

State
-Vs-
Sri Parimal Singha

PRESENT- Sri Gourab Sen, Special Railway Magistrate, 1st class, NJP

Date of Argument21-09-2019

Date of Judgement 30-09-2019

U/S 160(2) Railways Act, 1989

Judgment

1. The case of the prosecution in brief is that on 01-01-2019 at about 10:58 hrs one white colour Bolero Pick Up Van bearing registration no. WB-73/D-5162 dashed the gate boom of LC Gate No: SK-217 located near KM number 5/3 in between Siliguri Jn. & Bagdogra railway station which resulted interfering of gate signal and failure of gate indication & the broom barrier was broken . The vehicle was seized by Sri R. K. Roy ASI/RPF on the spot in presence of witness and the same was brought to RPF/Post/ Bagdogra. In this regards an FIR was lodged by Sri Kishan Thapa Gate man under SSE/P-Way/Bagdogra. On the strength of the written complainant a case vide no: 01/19 U/S 160(2)/174 (b) Railways Act dated 01-01-2019 was registered and was endorsed to SI/RPF S.N. Mishra for enquiry into the case and submit report.

2. After the completion of the enquiry of this case the enquiry officer (here-in after as E.O.) submitted the prosecution report against the accused person U/S 160(2)/174(b) Railways Act (here-in after as R.A.). Finding a prima facie material this court took cognizance of the offence. After hearing both sides this court framed charge U/S 160(2) R.A. and the particulars of the offence were read over

and explained to the accused person after furnishing the copies to which he pleaded not guilty and claimed to be tried.

3. During trial to prove its case the prosecution examined 3 (three) numbers of witnesses as Prosecution witness. On the contrary the defence examined none.

4. Statement of the accused under section 313 CrPC was recorded on 16.03.2019 wherein he denied all the allegations and pleaded innocence. He stated that nothing was recovered from his possession. He claimed that he has been falsely implicated in the present case . However, accused chose not to lead any evidence in defence.

5. It is in these circumstances that the Ld. PP for RPF has argued that the prosecution/complainant has been able to prove its case beyond reasonable doubt against the accused. He has primarily submitted that all the witnesses have supported its case and no contradiction can be seen in their testimony. Heard the arguments of learned counsels on both sides. Gone through the evidence on record.

6.Points for determination:

Whether the accused person on 01-01-2019 being driver of Bolero Pick Up Van bearing registration no. WB-73/D-5162 dashed the gate boom of LC Gate No: SK-217 located near KM number 5/3 in between Siliguri Jn. & Bagdogra railway station causing damage to it and committed offence U/S 160(2) R.A. or not?

7. Discussion, Decision and Reason Thereof:

Now let me at the outset, consider the evidence on record before deciding the points for determination.

PW1 in his evidence deposed that on 01-01-2019 while he was discharging as gateman at LC Gate No: SK-217 located near KM number 5/3 in between Siliguri Jn. & Bagdogra railway station at about 10:58 PM as per the direction of SM/Bagdogra he closed the gate for passing train no. 15719 Up after buzzing hooter and then a Bolero Pick Up Van bearing registration no. WB-73/D-5162 dashed the gate boom of LC Gate No: SK-217. He informed the matter to SM/Bagdogra on asking and after sometime RPF attended the place of occurrence

along with signal personal. Thereafter the offending vehicle was seized by RPF in his presence & the witness put his signature on the seizure list which he proved in court [Exhibit 1(1)]. The witness filed written complaint [Exhibit 2]. He had identified the accused person in the court. During cross examination he stated that he had been serving as Gateman on the said gate since long. The gate barrier became broken due to the incident. He denied the suggestion that the said vehicle did not dashed the gate barrier.

PW2 in his evidence deposed that on 01-01-2019 he got information to the effect that one white colour Bolero Pick Up Van bearing registration no. WB-73/D-5162 dashed the gate boom of LC Gate No: SK-217 located near KM number 5/3 in between Siliguri Jn. & Bagdogra railway station which resulted interfering of gate signal and failure of gate indication & the broom barrier was broken . Thereafter he along with other RPF staff visited the PO & seized the broken broom barrier by preparing seizure list (Exhibit 3). the witness also seized the offending vehicle along with its papers by preparing seizure list (Exhibit 1). PW2 prepared label (Exhibit 4). The witnesses also proved his signature on the rough sketch map & the same was marked Exhibit 5/1. PW2 conducted joint inspection & prepared report(Exhibit 6) to IPF/RPF/NGC regarding the incident. During cross examination he denied all the suggestions given by the defence counsel. During his cross examination he stated that the accused person has verbally admitted his guilt before him and there was no signature of local witness in the seizure list.

PW4 in his evidence deposed that on 01-01-2019 the instant case was endorsed to him as a Bolero Pick Up Van bearing registration no. WB-73/D-5162 dashed the gate boom of LC Gate No: SK-217. PW 3 recorded confessional statement of the accused which was marked as exhibit 7. the witness visited PO & prepared rough sketch map (Exhibit 8). Thereafter he recorded the statement of all the relevant PWs and after completion of enquiry finding prima facie materials against the accused person he submitted prosecution report U/S 160(2)/174 Railways Act . He identified the accused in the court.

8. Now appreciating the evidence of the PWs it seems that PW-1 is the sole occurrence witness of the incident from the version of which it brings forth the fact that the said offending vehicle i.e. the Bolero Pick Up Van bearing registration no. WB-73/D-5162 dashed the gate boom of LC Gate No: SK-217

when the said L/C Gate was closed to road traffic. Further the evidence of PW-2 who immediately attended the L/C Gate after was informed about the incident corroborates with the version of the PW-1 and took necessary action. The evidence of PW-3 the seizing officer who reached the place of occurrence on receipt of the information further consolidate the version of PW-1 of the breaking of the gate barrier and seizing the offending vehicle in presence of PW-1 who detained it after the incident at the place of occurrence.

Further the witness during enquiry conducted joint spot verification of the gate ascertaining the status of the gate to be in out of order. He also collected the MVI report after examination of the vehicle which confirms that the vehicle was mechanically sound and train detention particulars for the affect of the movement of the trains due to the incident. Finally the confessional statement of the accused driver recorded by the E.O.i.e. PW3 of the case in course of enquiry categorically corroborated with other PWs for establishing the fact of the commission of the offence by the accused.

9. The defense counsel in his argument pointed out that the accused person was innocent as the incident took place due to the brake fail of the vehicle.

10. Now coming to the ingredients of the section 160(2) Railways Act as per the provision of which 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. From the plain reading of the section it can be construed that the offender is strictly liable if he commits such act during the period when the gate is closed for road traffic and any event preceding the occurrence such as brake failure of the vehicle except the fault of the complainant will not absolve the liability of the accused.

11. From the evidence of the occurrence witness PW-1 it is quite clear that that the said vehicle dashed with the gate barrier in closed condition which was closed to road traffic. Also this section take into consideration the magnitude of damage in the event of the breaking of the gate barrier but though in this case though the train had crossed the gate during the incident which may caused lesser damage in terms of the magnitude of damage yet the accused person has damaged the gate thereby bringing into the risk of occurrence of untoward incident.

12. From the above appraisal, appreciation of evidence on record and the application of law I find that the prosecution has been successful to prove the offence U/S 160(2) of the R.A. against the accused beyond all reasonable doubts.

Hence it is Ordered

13. That the accused person is convicted of the case U/S 160(2) R.A. Considering the nature and gravity of the offence I find no reason to release the accused on probation.

14. Heard the accused person on the point of sentence. The accused person submitted that he is very poor and sole earning member of the family without any previous criminal instance. So he prayed for leniency.

15. Considering the plea of the accused, I sentence him to undergo simple imprisonment (S.I.) for period of 12 (twelve) days and with compensation of Rs. 2000/- to be paid to the Railways Deptt. to mitigate the hardship and meet out the repairing cost of damaged boom, signal etc. in default S.I. for another 15 days. Period already undergone in jail hazot shall be set off.

16. Seized materials are returned as per law.

17. Bail bond stands cancelled and bailor discharged of liabilities.

18. The convict is informed that he has right to prefer appeal against the judgment of this court & he has right to avail free legal aid from legal services authority under the Legal Service Authorities Act, 1987. Furnish free copy of judgment to the accused person.

(GOURAB SEN)
SPECIAL RAILWAY MAGISTRATE
NJP, JALPAIGURI