

MHAU140014812022



Received on : 07.12.2022

Registered on : 07.12.2022

Decided on : 16.05.2024

Duration : 01Y 05M 09Ds.

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS (RAILWAYS)
AURANGABAD.

(Presided over by A. A. Motale Pore)

S.C.C. No.1835/2022

Exh. No.29/B

Complainant	Union of India Shri. Jadhav Indal Asst. Sub Inspector, RPF, Parbhani.
Represented by	Ld. Advocate Dr. Shri. G. D. Mishra.
Accused	Pathan Yahyya Khan Pathan Ismail Khan, Age: 57 years, Occ. : Labour R/o : Bori, Tq. Jintur, Dist. Parbhani.
Represented by	Ld. Advocate D. D. Dahifale.

Date of Offence	27.04.2022
Date of complaint	27.04.2022
Date of Plea	27.07.2023
Date of commencement of evidence	10.01.2024
Date on which judgment is reserved	02.05.2024
Date of the Judgment	16.05.2024
Date of the sentencing order, if any	Imprisonment till rising of Court and fine of Rs. 3000/-.

ACCUSED DETAILS

Rank of the	Name of Accused	Date	Date of Release	Offences	Whether	Sentence imposed	Period of
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(Judgment) S.C.C. No.1835/2022
RPF Parbhani Vs. Ismail Pathan

Accused		of Arrest	on Bail	charged with	acquitted or convicted		detention undergone during trial.
A1.	Pathan Yahyya Khan Pathan Ismail Khan	-	-	Section 154 and 174(c) of The Railways Act	Convicted	Imprisonment till rising of Court and fine of Rs. 3000/-.	Nil

LIST OF COMPLAINANT WITNESSES

Rank	Name	Nature of evidence
CW-2	Shri. Jadhav Indal	Complainant.
CW-1	Vikash Kumar Zha	Witness

LIST OF DEFENCE WITNESSES

Rank	Name	Nature of evidence
	Nil	Nil

LIST OF COURT WITNESSES

Rank	Name	Nature of evidence
	Nil	Nil

LIST OF COMPLAINANT EXHIBITS

Sr.No.	Exhibit Number	Nature of evidence
1	Exh.12/CW-1	Joint Observation Report
2	Exh.13/CW-1	Letter of station Master Pingli.
3	Exh.14/CW-1	Vehicle particulars
4	Exh.15/CW-1	Confessional statement of accused.

5	Exh.16/CW-1	Seizure panchnama
6	Exh.17/CW-1	Supurtnama
7	Exh.20 and 21/CW-2	Statements of two panch witnesses.
8	Exh.22/CW-2	Statement of SSE Signal Shri. Baburao
9	Exh.23/CW-2	Statement of Shri. Vikas Zha
10	Exh.24/CW-2	Evidence close puris

DOCUMENTS ADMITTED BY DEFENSE

Sr.No.	Exhibit Number	Nature of evidence
1	Exh.15/CW-1	Confessional Statement of accused.

LIST OF DEFENSE EXHIBITS

Sr.No.	Exhibit Number	Nature of evidence
1	Exh.26.	Evidence Close Pursis

LIST OF COURT EXHIBITS

Sr.No.	Exhibit Number	Nature of evidence
1	Nil	Nil

MATERIAL OBJECTS

Sr.No.	Material Object No.	Description
1	Nil	Nil

J U D G M E N T

1. The accused is prosecuted by the complainant for the offence punishable U/s. 154 and 174(c) of The Railways Act 1989.

2. The facts giving rise to the complainant's case in nutshell are that on 27.04.2022 at about 03.20 p.m., Shri. Vikas Kumar Zha, Sub Inspector, RPF Post Parbhani received message by phone from Railway Protection Force Department Nanded, that one Six wheeler Tata Motors

vehicle bearing registration No.MH-22-AN-1151 gave dash to the LC gate No.125 situated between Parbhani to Pingli Railway stations due to which the boom of said gate got damaged from North side. Thereafter the complainant along with his staff reached at the spot of the incident. They observed that, the boom of the said gate was damaged from North Side and the vehicle who gave dash to the boom was not at the spot of the incident. The complainant thereafter, made inquiry with the on duty gateman who narrated that, at around 02.20 p.m. the boom of the said railway gate was opened and at that time one Tata Motor Vehicle No.MH-22-AN-1151 gave dash to the said gate due to which boom got damaged. The Officer thereafter, along with SSE Signal Parbhani Shri. S. N. Baburao prepared the joint observation report. The Officer then issued letter to Station Master Pingli and obtained train detention certificate from him. As per the said certificate due to the said incident one train was detained for about 08 minutes. Thereafter, the Officer Shri. Zha registered the crime No.284/2022 against unknown accused for the offence punishable U/sec.154, 174 (c) of The Railway Act 1989 at RPF Post Parbhani.

3. During further inquiry, the Officer Shri. Zha issued letter to RTO Parbhani and collected the information about the owner of the said vehicle. On basis of said vehicle particulars received from RTO Parbhani, he contacted the owner of the said vehicle and called him at RPF Post Parbhani. Thereafter, on 29.05.2022 the owner of the vehicle Shri. Firoj Khan Mansur Khan along with his driver/accused and said vehicle appeared at RPF Post Parbhani. Thereafter, Officer Shri. Zha called two panch witnesses. The accused disclosed his name as Yaya Khan Pathan in presence of panch witnesses. The accused confessed before the Panch witnesses that, his act of negligence and giving dash to the LC gate of railway at the time of incident by his vehicle and he ran away from the spot. Thereafter, the Officer Shri. Zha recorded the confessional statement of accused. During further inquiry, the Officer seized said Six wheeler Tata

Motors Vehicle bearing registration No.MH-22-AN-1151 and seizure panchnama was drawn accordingly. The Officer then connected the accused with already registered crime.

4. Thereafter, on 05.07.2022, the investigation of the case was handed over to complainant Shri. Jadhav Indal, Asst. Sub Inspector RPF Post Parbhani. Thereafter, the complainant recorded the statements of two panch witnesses namely Abdul Alim and Ravi Chaudhari and SSE Signal Parbhani Shri. S. N. Baburao. The complainant also recorded the statement of Sub Inspector Shri. Vikas Kumar Zha. After completion of the inquiry of the matter, as sufficient evidence occurred against the accused the present complaint came to be filed against accused.

5. Particulars of offence punishable under Sections 154 and 174(c) of The Railway Act 1989, stated to the accused in his vernacular at Exh.09 to which he pleaded not guilty and claimed to be tried. In support of its case complainant examined himself as (CW2) below Exh.19 and also examined Shri. Vikas Kumar Zha, Sub Inspector Parbhani as (CW No.1) below Exh.11. Thereafter, on basis of pursis below Exh.24 further evidence of the complainant came to be closed. Statement of accused u/sec. 313 of Cr.P.C. was recorded below Exh.25. From the statement of the accused the defense of the accused appears to be of false implication. Accused has filed pursis at Exh.26 stating that, he does not want to lead any defense evidence.

6. On hearing and on perusal of oral as well as documentary evidence available on record following points arose for my determination and I have recorded my findings thereon for the reasons stated below :-

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Does complainant prove that, on 27.04.2022 between Parbhani to Pingli railway stations at LC gate No.125 accused	

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
	drove his Six wheeler Tata Motors Vehicle bearing registration No. MH-22-AN-1151 in such a rash and negligent manner and gave dash to LC gate No.125, which is likely to endanger the safety of persons traveling or being upon any railway and committed the offence punishable under section 154 of the Railways Act, 1989 ?	Proved.
2.	Does complainant further prove that, on above mentioned date time and place the accused drove his aforesaid vehicle in negligent manner and gave dash and damaged railway LC gate No.125 resulting in attempt to tampering, disconnecting or interfering railway signal and obstructed running of train and thereby committed the offence punishable under section 174(c) of the Railways Act, 1989?	Proved.
3.	What order?	Accused is convicted as per final order.

REASONS

As to point Nos.1

7. In order to prove the alleged offence against the accused, the complainant examined Shri. Vikas Kumar Zha, Sub Inspector RPF Post Parbhani as (CW No.1) below Exh. 11. He deposed that, on 27.04.2022 at about 03.20 p.m., he received message by phone from Railway Protection Force Department Nanded, that one Six wheeler Tata Motors vehicle bearing registration No.MH-22-AN-1151 gave dash to the LC gate No.125 situated between Parbhani to Pingli Railway stations due to which the boom of said gate got damaged from North side. The witness further deposed that, thereafter, he along with his staff reached at the spot of the incident. They observed that, the boom of the said gate was damaged from

North Side and the vehicle who gave dash to the boom was not at the spot of the incident. The witness further deposed that, he then made inquiry with the on duty gateman who narrated that, at around 02.20 p.m. the boom of the said railway gate was opened and at that time one Tata Motor Vehicle No.MH-22-AN-1151 gave dash to the said gate due to which boom got damaged. The witness further deposed that, he along with SSE Signal Parbhani Shri. S. N. Baburao prepared the joint observation report. He then issued letter to Station Master Pingli and obtained train detention certificate from him. As per the said certificate due to the said incident one train was detained for about 08 minutes. Thereafter, he registered the crime No.284/2022 against unknown accused for the offence punishable U/sec.154, 174 (c) of The Railway Act 1989 at RPF Post Parbhani.

8. The witness further deposed that, during further inquiry, he issued letter to RTO Parbhani and collected the information about the owner of the said vehicle. On basis of said vehicle particulars received from RTO Parbhani, he contacted the owner of the said vehicle and called him at RPF Post Parbhani. Thereafter, on 29.05.2022 the owner of the vehicle Shri. Firoj Khan Mansur Khan along with his driver/accused and said vehicle appeared at RPF Post Parbhani. The witness further deposed that, thereafter, he called two panch witnesses. The accused disclosed his name as Yaya Khan Pathan in presence of panch witnesses. The accused confessed before the Panch witnesses that, his act of negligence and giving dash to the LC gate of railway at the time of incident by his vehicle and he ran away from the spot. Thereafter, he recorded the confessional statement of accused. During further inquiry, he seized said Six wheeler Tata Motors Vehicle bearing registration No.MH-22-AN-1151 and seizure panchnama was drawn accordingly. The witness further deposed that, he then connected the accused with already registered crime. The witness further deposed that, then, on 05.07.2022, the investigation of the case was handed over to complainant Shri. Jadhav Indal, Asst. Sub Inspector

RPF Post Parbhani.

9. In order to prove his case complainant examined Shri. Jadhav Indal Asst. Sub Inspector RPF Post Parbhani as (CW No.2) at Exh.19. He deposed that, during further inquiry, he recorded the statements of two panch witnesses namely Abdul Alim and Ravi Chaudhari and SSE Signal Parbhani Shri. S. N. Baburao. He also recorded the statement of Sub Inspector Shri. Vikas Kumar Zha. After completion of the inquiry of the matter, as sufficient evidence occurred against the accused the present complaint came to be filed against accused

10. From the evidence of aforesaid witnesses it appears that, the confessional statement of accused recorded in presence of panch witnesses which is at Exh.15. During inquiry complainant (C.W.2) recorded statement of panch witnesses at Exhs. 20 and 21. Both the witnesses have identified the accused in the Court. On perusal it also appears that, both the witnesses deposed as per complaint and remained stickup to their version through out their evidence. The witnesses denied all adverse suggestion put to them during cross examination. All the exhibited documents are supporting to the testimony of both the witnesses. Therefore, it can be further observed that, on 27.04.2022 the accused who was driving said vehicle gave dash to LC gate No.125, between Parbhani to Pingli Railway station by which the boom of the said gate got damaged. The oral testimony of the complainant (CW2) and witness (CW1) corroborates with confessional statement of the accused which is Exh.15. It appears that, in his confessional statement accused has narrated about act of negligence and giving dash to LC gate No.125 at the time of incident by said vehicle. Thus the act of the accused shows that he committed act of damage to railway gate situated on spot of incident. It is pertinent to note here that, as per settled law, the R.P.F. is not the police machinery and therefore the confessional statement recorded before them is admissible.

Also, the accused himself has admitted his confessional statement. As per section 58 of The Indian Evidence Act, the facts admitted need not be proved. Considering, all evidence on record and the facts and circumstances of the case, I have no doubt to hold that, the complainant has proved the offence against the accused beyond reasonable doubt. Hence, I answer point No.1 and 2 in the affirmative.

11. As the guilt of accused established for offence punishable under Section 154 and 174(c) of the Railway Act 1989, he is liable to be convicted for the same. But it is necessary to hear the accused, Ld. Advocate for the accused and Ld. PP for railway on the point of sentence. Hence, I stop here to hear prosecution and accused on point of sentence.

Place :- Aurangabad.
Date :- 16.05.2024

(A. A. Motale Pore)
Judicial Magistrate (F.C.)
Railway Court, Aurangabad.

12. Heard accused, his Ld. Advocate and Ld. PP for railway on the point of sentence. Ld. advocate for the accused submitted that, the accused is only bread winner of his family and the entire family depends upon him. He further submitted that lenient view be taken. Ld. PP for railway submitted that, maximum punishment be awarded.

13. After making inquiry to accused in person, he submitted that he is working as driver and earns limited amount from said job. Thus, these facts are required to be considered while deciding the punishment of the accused. Looking to the nature of the offence, I am not inclined to grant the benefit of the Probation of Offenders Act to the accused. However, looking to the age and dependency of the accused and also looking to the nature of proved offence, I am of the view that, some lenient view may be taken and it would be just and proper to award, the

punishment of imprisonment till rising of the Court and fine of amount of Rs.1,000/- (Rs. One Thousand Only) for the offence punishable U/s. 154 of the Railways Act and punishment of imprisonment till rising of the Court and fine of amount of Rs.2,000/- (Rs. Two Thousand Only) for the offence punishable U/s. 174 (c) of the Railways Act would be the ends of justice. Hence, in answer to point No. 3, I proceed to pass the following order :-

ORDER

1.	The accused Pathan Yahyya Khan S/o Pathan Ismail Khan is hereby convicted as per section 255(2) of Code of Criminal Procedure 1973 for commission of the offence punishable U/s. 154 of the Railway Act 1989 and is sentenced to suffer imprisonment till rising of the court and shall pay fine amount of Rs.1,000/- (Rs. One Thousand Only) in default to suffer simple imprisonment of 05 days.
2.	The accused is hereby convicted as per Section 255(2) of Code of Criminal Procedure 1973 for commission of the offence punishable U/s. 174 (c) of The Railway Act 1989 and is sentenced to suffer imprisonment till rising of the court and shall pay fine amount of Rs.2,000/- (Rs. Two Thousand Only) in default to suffer simple imprisonment of 05 days.
3.	Accused shall surrender his bail bond.
4.	Copy of judgment be given to the accused free of costs.
5.	Judgment dictated and pronounced in open court.

Place :- Aurangabad.
Date :-16.05.2024.

(**A. A. Motale Pore**)
Judicial Magistrate (F.C.)
Railway Court, Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : B. S. Jadhav

Court Name : J.M.F.C. (Railways), Aurangabad.

Date : 16.05.2024.

Judgment signed by the

Presiding Officer On : 16.05.2024.

Judgement uploaded on : 18.05.2024.