

DISTRICT: JALPAIGURI



**IN THE COURT OF JUDICIAL MAGISTRATE, 1ST CLASS,
RAILWAY COURT, NEW JALPAIGURI**

**Present: - Sri Kallol Ghosh, W.B.J.S.
Judicial Magistrate, 1st Class
Railway Court, New Jalpaiguri**

Dated the 19th Day of September, 2023

**NGR Case No.620 of 2022
CIS Registration No.620 of 2022
CNR No.WBJP0A0006312022**

State (N.F. Railways) ... Complainant

-Vs. -

Dipak Singha ... Accused person

Offence under section 160(2) of the Railways Act

Sri Soumen Ghosh ... Ld. Public Prosecutor for the NF Railways

Sri Abhijit Chakrabarty ... Ld. Advocate for the accused person

J U D G M E N T

Prosecution case, in brief

The prosecution case, in brief, is that on 08.11.2022 Shri Biswajit Mallick, Gateman working on LC Gate No. SK-217 located at KM No.5/2-3 in between BORA-SGUJ Railway Station at about 12:30 hrs. received an information for closing the LC Gate No. SK-217 for passing Train No. 07520 DN. After receiving the information, he started the process of closing the LC gate blowing hooter alerting the road traffic. It is alleged that while the complainant was closing the gate barrier with proper siren and red signal for controlling the road traffic to pass Train No. 07520 DN, suddenly one road vehicle (Red

coloured TATA Magic) bearing registration no. WB-73B-4833 coming from BSF camp side speedily and dashed the boom barrier resulting boom barrier broken. Accordingly, the complainant attended the spot and detained the offending vehicle with the driver namely Dipak Singha. The matter was informed to the Station Master/BORA for taking necessary action. On the basis of the complaint by the complainant, on duty Gateman a case vide no.47/22 was registered by IPF/BORA under section 160(2) of the Railways Act. The offending vehicle was seized by preparing seizure list. However, no independent witness was agreed to become the witness of seizure. The enquiry was started accordingly.

Prosecution Report and Taking Cognizance

Sri Vipendra Kumar, SIPF/BORA was entrusted to enquire the matter. During enquiry the Enquiry Officer (E.O.) recorded the statement of the available witnesses. He went to the place of occurrence, prepared rough sketch map and collected the report of the mechanical expert in respect of the offending vehicle. The E.O. recorded the confessional statement of the accused person. After completion of the enquiry, the Enquiry Officer Sri Vipendra Kumar submitted the Prosecution Report against the accused person alleging his involvement in breaking the LC gate boom barrier u/s 160(2) of the Railways Act and the instant case was taken up for trial.

This Court was pleased to take cognizance of the offence made out in the Prosecution Report u/s 190 (1) of Code of Criminal Procedure 1973 (herein after referred as Cr.P.C. for the sake of brevity).

Supply of copy and Framing of Charge

Copy was served to the accused person as per section 207 of Cr.P.C.

During trial two witnesses were examined before charge and after the completion of the evidence before charge and after due hearing, the charge

under section 160(2) of the Railways Act was framed against the accused person and the substance of accusation was read over to the accused person to which he pleaded not guilty by saying “Ami Nirdosh” in Bengali and claimed to be tried in open Court. Thus, trial has commenced.

Evidence Adduced

In order to prove the case, the prosecution adduced **02 witnesses**-

- **PW1**- Sri Biswajit Mallick (Complainant, Gateman & Seizure witness)
- **PW2**- Vipendra Kumar (Enquiry Officer) and

During the course of examination, the following **documents** were marked on behalf of the prosecution-

- **Exhibit 1**- Written complaint dated 08.11.2022;
- **Exhibit 1/1**- Signature of the PW1 on the Written complaint;
- **Exhibit 2**- Seizure list I dated 08.11.2022;
- **Exhibit 2/1**- Signature of the PW1 over the Seizure list I;
- **Exhibit 2/2**- Signature of the PW2 over the Seizure list I;
- **Exhibit 3**- Seizure list II dated 08.11.2022;
- **Exhibit 3/1**- Signature of the PW1 over the Seizure list II;
- **Exhibit 3/2**- Signature of the PW2 over the Seizure list II;
- **Exhibit 4**- Arrest Memo dated 08.11.2022;
- **Exhibit 4/1**- Signature of the PW2 over the Arrest Memo;
- **Exhibit 5**- Personal search list dated 08.11.2022;
- **Exhibit 5/1**- Signature of the PW2 over the Personal search list;
- **Exhibit 6**- Mechanical examination report dated 18.11.2022;
- **Exhibit 7**- Joint inspection report dated 08.11.2022;
- **Exhibit 7/1**- Signature of the PW2 on Joint inspection report;
- **Exhibit 8**- Rough sketch map dated 08.11.2022;
- **Exhibit 8/1**- Signature of the PW2 on Rough sketch map; and

➤ **Exhibit 9-** Confessional statement of the accused.

Two witnesses were examined before charge and were cross examined after charge and were discharged. Accordingly, upon the prayer of the Ld. P.P. that there was no requirement to examine any further witness considering the evidence adduced by the witnesses so far examined. Thus, the stage of witness for the prosecution stood closed.

The defense neither did adduce any evidence nor did exhibit any document on their behalf.

Examination of accused u/s 313 of Cr. P. C

The accused person was examined u/s.313 of Cr.P.C. after closure of the evidence of the prosecution and the examination was reduced into writing and was kept with the record. The incriminating materials, arising out of the evidence of the prosecution witness, were explained and read over to the accused person in question and answer format. He did not make any admission of any kind nor did he plead innocence. The defence did not adduce any defence witness. Thereafter, the matter was fixed for argument and argument of both side was heard. After conclusion of argument the case has now come up for delivery of judgment.

Points for Consideration

Is the accused person guilty of the offence punishable under section 160 (2) of the Railways Act, 1989, i.e. guilty of breaking gate boom barrier?

Burden of Proof

The question on which of the contending parties the burden of proof would lie has to be decided on the relevant provisions of the Evidence Act. Section 101 of the Evidence Act, 1872 provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Section 102 provides

that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the burden of proof of that fact shall lie on any particular person. This is a criminal case in nature. The fact-in-issue of this case is whether or not the accused has committed the offence under section 160(2) of the Railways Act, 1989. According to the cardinal principle of common law countries Criminal Jurisprudence, the prosecution must prove the guilt of the accused persons beyond all reasonable doubt. The accused always has the presumption of innocence in his favour and the rule of evidence which has received judicial sanction is; the prosecution must prove the guilt of the accused and establish all the ingredients of offence with which he is charged. The anvil for testing and interpreting what constitutes 'proof of guilt' in a criminal trial has been formulated by the Hon'ble Apex Court of India. While in civil cases facts may be proved by mere preponderance of probability, but in a criminal trial the prosecution must prove the charge beyond reasonable shadow of doubt. In order to get the answer to such bone of contention, it is to be seen how far the prosecution has been successful in bringing home the charge under section 160(2) of the Railways Act, 1989 against the accused person through its evidence on record. It is the settled position of the law of evidence that 'one who asserts certain facts must prove the same'. In other words, the burden of proof lies upon the person who is asserting a fact. In as much as the prosecution has brought the charge u/s 160(2) of the Railways Act, 1989, the burden of proof lies strictly upon the prosecution to bring home the said charges against the accused in the instant case.

Argument

Prosecution argued briefly. Ld. PP submits that the accused person was well aware of siren of closing of the Level Crossing Gate, but without stopping before the gate he tried cross it. He was also driving at a high speed and could not control his road vehicle. The road vehicle was seized. It is also contended that the incident of breaking of gate boom is not denied by the Defense side. Each of the witnesses identified the accused person during oral evidence. The prosecution also gave emphasis on the confessional statement of the accused person. Ld. P.P during the course of argument submitted that the case of the prosecution has been proved beyond reasonable doubt. According to the Ld. P.P. the accused person is directly involved in the commission of the alleged crime and as such he should be given appropriate punishment.

On the contrary Ld. Counsel appearing for the accused person had advanced argument in support of acquittal of the accused person from the alleged charge. It is submitted that the case against the accused person is totally false and fabricated and the accused person has been falsely implicated. According to him the prosecution failed to corroborate the facts at the time of alleged incident. No independent witness was there to state against the accused person. According to him, the seizure list was not prepared properly and no reference of the case is there. He also argued that the RPF personnel did not act as per the provision of law. According to the Ld. Defence Counsel the accused person is entitled to be acquitted from the alleged charge.

Decision with Reasons

1. Now, I am to analyze and assess by taking into account the arguments of both sides, the total evidence and materials on record to arrive at a just decision in the case instant.
2. To judge and appreciate this case properly under section 160 (2) of the Railways Act, 1989 has to be looked into first.

Section 160 (2) of the Railways Act, 1989 lays down-

“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 punishable with imprisonment for a term which may extend to five years.”

3. To prove a case under section 160 (2) of the Railways Act, 1989 the prosecution has to prove the following things at first, as the initial burden to prove guilt of the accused lies with the prosecution.

Firstly, that the accused person has broken the DN line side gate boom barrier which was set up on side of LC gate no. SK-217;

Secondly, the level crossing must have been closed to road traffic.

If the prosecution succeeds to prove these two points the burden will shift to the accused person to disprove the said facts.

In the light of the above provisions and legal position let us now see how far under the canopy of the factual aspect of this case the prosecution has been able to prove the said two criteria needed to be proved by the prosecution to bring home the charge against the accused person under section 160 (2) of the Railways Act, 1989.

4. **PW1** namely **Biswajit Mallick** is the **Complainant, Gateman & Seizure witness** of this case and for that reason his evidence assumes supreme importance. The fate of the prosecution case largely depends on how he deposes in his examination-in-chief and how steadily he faced the acid test of cross examination.

5. **PW1** in his examination-in-chief narrated the incident almost in verbatim and in a flawless manner without any kind of hiccups. He corroborated the antecedent of the alleged incident and how the accused person dashed the DN line side gate boom barrier Level Crossing Gate when it was closed and the gate boom was broken and stopped working. He has

correctly mentioned the date, time, place and manner of the alleged incident. During his examination-in-chief he proved his written complaint, seizure list-I and seizure list-II which have been marked as **Exhibit-1, Exhibit-2** and **Exhibit-3**.

6. The complainant stated in his examination in chief that on 08.11.2022 at about 12:25 hrs. he closed the LC Gate No. SK-217 located at KM No.5/2-3 in between BORA-SGUJ Railway Station for passing train no. 07520 DN after blowing hooter and glowing red lights of both sides. At about 12:30 hrs. when the gate was closed that time a road vehicle (Red coloured TATA Magic) bearing registration no. WB-73B-4833 coming from BSF camp side dashed with the Eastern side LC gate resulting gate barrier was broken. The complainant at once detained the driver with the offending vehicle.

7. If I go through the examination-in-chief of this witness, I find that he has corroborated the written complaint and he did not make any statement which could weaken the prosecution case. There appears to be no deviation in his examination-in-chief from what has written in the written complaint. He has stated the entire chain of events sequentially in his examination-in-chief.

8. **PW-2** is the evidence of **Sri Vipendra Kumar** who is the **Enquiry Officer** of this case. In his examination-in-chief he stipulated what function and duties he performed as the Enquiry Officer of this case. PW-2 stated that he had prepared the rough sketch map of the place of occurrence and also jointly inspected that place. He also collected the Mechanical examination certificate wherefrom it reveals that the vehicle accident had occurred due to the reason other than the mechanical failure. He proved all his signatures in three seizure lists, joint inspection report and rough sketch map. He supported the prosecution case by dint of his examination-in-chief and his evidence was very much consistent with the evidence of PW-1. It can safely be inferred that this

witness corroborated the chain of incident by dint of his examination-in-chief and seems to have performed his role as Enquiry Officer with due diligence and intelligence.

9. The PW2 and PW3 thus corroborated the prosecution case and they did not make any statement which could weaken the prosecution case. There appears to be no deviation in their examination-in-chief from what has written in the written complaint. They have stated the entire chain of events sequentially in their examination-in-chief.

10. The confessional statement of the accused has marked herein as **Exhibit-9**. Perusing the confessional statement, it appears that the accused had admitted that he had committed the offence under section 160(2) of the Railways Act and the statement was recorded by the Enquiry officer.

11. In **State Vs. Gangula, reported in (1997)1 SCC 272** it was observed that Extra Judicial Confession before 'Custody' can be relied on even if reduced to writing inside the police station and it is not hit by Section 26 of the Evidence Act. Here, in this case, the RPF personnel is not the police officer and it was recorded when the accused person was detained by the RPF personnel, at RPF Post. Here, the person who recorded the statement is not a police officer rather a RPF personnel.

12. In **Kojja Sreenu Vs. State (2004)6 SCC 158** it was observed that if the confessional statement is clear, cogent and appeared to have been made in the normal course without any pressure that is admissible. The statement of accused person was not recorded in the police station or under the custody of a police officer, rather, it was recorded at the RPF Post, at RPF Post by the RPF personnel. If pressure was exerted the accused person must have taken that plea at any stage of the trial or at least have adduced defence witness to that effect, but it is wanting in this case. Therefore, confessional statement of the

accused marked herein as Exhibit-9 is well admissible and is proved too.

13. Now let me consider whether the Ld. Defence Counsel succeeded in shaking the veracity and credibility of these witnesses by dint of his cross-examination. All of the witnesses were subjected to extensive cross examination and the Ld. Defence Counsel suggested that each and every allegation of the witnesses was false, concocted, malafide, manufactured and the same was meant to harass the accused unnecessarily. The main point of attack in cross-examination was to establish falsity of the complaint and the seizure list and they were not an eye witnesses and they were not present at the time of the incident.

14. No cross-examination was made as to shake the credibility of these witnesses with respect to time, place and manner of incident as mentioned both in the written complaint and their examinations-in-chief. It could also be said that those aspects remained untouched during cross-examination. These witnesses did not make any admission in the cross- examinations that tend to make this case less reliable and less trustworthy. I also find no deviation or inconsistency in the evidence of the witnesses.

15. On careful scrutiny of the available materials as well as considering the argument advanced by both the sides, it appears that the witnesses categorically stated everything about the alleged incident against the accused persons about their involvement in the alleged unlawful act.

16. Ld. Advocate for the accused persons argued that the Prosecution has failed to establish the instant case. No independent witness of the incident was examined. The procedure of seizure was not proper.

17. Here, the prosecution argued that the presence of independent witness is not mandatory as because all the witnesses have already corroborated the

prosecution case. He argued that non-examination of any independent witness cannot be a ground to destroy the prosecution case where the prosecution case is corroborated by all the witnesses. Ld. Public Prosecutor submitted that people were gathered at the place of occurrence. Efforts were made to call independent witnesses but none came forward to stand as a witness.

18. The Hon'ble Supreme Court of India in the case of **Appabhai and Anr. vs. State of Gujarat reported in AIR 1988 SC 696** has discussed this issue. The Hon'ble Apex Court observed that "It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place near East Cabin, NJP. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensible when a crime is committed even in their presence. They withdraw both from the victim and the vigilant. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate but it is there, everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witnesses must consider the broad spectrum or the prosecution version and search for the nugget of truth with due regard to probability if any, suggested by the accused."

19. In **Tahir v. State (Delhi) [(1996) 3 SCC 338]**, dealing with a similar question, the Hon'ble Supreme Court held that "In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that

conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case. The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record."

20. In **Ramjibhai Vs. State (2004) 1, SCC (Cri) 184** the Hon'ble Apex Court of India was pleased to hold that "If a witness is otherwise reliable and trustworthy, the fact sought to be proved by that witness need not be further proved through other witness". The *ratio decidendi* of this solemn judgment of the Hon'ble Apex Court of India seems to be perfectly applicable in this given circumstances.

21. Now let me consider whether the Ld. Defence Counsel succeeded in shaking the veracity and credibility of the PW1, PW2 and PW3 by dint of his cross-examination. The main point of attack in cross-examination was to establish falsity of the written complaint and according to the Ld. Defence Counsel, the written complaint is filed with an ulterior motive. However, no cross-examination was made as to shake the credibility of this witness with respect to date, time, place and manner of incident as mentioned both in the written complaint and his examination-in-chief. It could also be said that those aspects remained untouched during cross-examination and the witness was

not subjected to face the acid test of cross-examination with respect to date, time, place and manner of alleged incident. I failed to understand why the Ld. Defence Counsel not made cross- examination on those aspects which are very much vital to establish commission of any offence. The witnesses did not make any admission in the cross- examinations that tend to make their case less reliable and less trustworthy. I also find no deviation or inconsistency in the evidence of PW1, PW2 and PW3.

22. In the given case, I do not find any reason to discard the evidence of the all prosecution witnesses. From the study of their evidence, it appears to be clear, cogent and credible.

23. Considering the evidence and the available materials on record it is evident that the defence has failed to disproof the case of the prosecution. Accordingly, prosecution case succeeds to prove the prosecution case. No defense witness was adduced on the part of the accused persons to contradict the Prosecution Case. So, from all probability of available materials on record the alleged activity of the accused person for dashing and breaking the gate boom barrier and thereby breaking it is proved.

24. Thus, after a detailed critical analysis of the entire materials on record and after considering both sides' argument, I may decisively reiterate that the witnesses, including the complainant cum eye witness, have effectively corroborated each other as well as the prosecution case as to the material particulars. They have deposed in such a manner that neither of them is contradictory to each other. They have been consistent in their statement as a whole and there is no sustainable inherent improbability in their testimony to doubt their credibility. It is to be kept in mind that some minor discrepancies were supposed to take place and they did take place in the ocular account of witnesses but they are not going to destroy the prosecution case. Rather some

variations are bound to occur spontaneously and naturally since perception and way of description vary from person to person, since human memory is fallible.

25. It is crystal clear from the materials on record that the DN line side gate boom barrier in the Level Crossing Gate No. LC Gate No. SK-217 located at KM No.5/2-3 in between BORA-SGUJ Railway Station was broken by the accused by dashing of his road vehicle (Red coloured TATA Magic) bearing registration no. WB-73B-4833. The present case is well established against the accused person for the offence stated above and he is found guilty for the offence punishable under section 160(2) of the Railways Act.

26. The Court has also given due consideration whether the provisions of the Probation of Offenders Act, 1958 can be applicable in the instant case, but from the conduct of the accused person, circumstances evident from the evidence on record this Court is of the opinion that this is not a fit case to release the accused person under the Probation of Offenders Act, 1958 as the offence committed by the accused person involve endangering of human life, his own as well as of others, loss of Government property and exchequer.

27. The accused person has not invoked the provision of section 334 of IPC to reduce penal liability or any provision from Chapter IV (General exceptions) of IPC to absolve criminal liability. On scrutinizing the evidence on record, I do not find any such possibility either.

28. Thus, at the end of my discussion I once again reiterate that the prosecution has been successful in proving the incident of breaking of boom barrier of LC Gate beyond reasonable shadow of doubts. It cumulatively lead this Court to the inevitable conclusion that the sole accused person is guilty of the offence punishable u/s 160(2) of the Railways Act and he is liable to get convicted accordingly.

Hence, it is

ORDERED

That the accused person is found guilty of the offence punishable u/s 160(2) of the Railways Act and consequently he is convicted u/s 248(2) of the Code of Criminal Procedure, 1908.

The bail bond of the accused person, now convict, stands cancelled and they are taken into custody forthwith. He will be heard on the point of sentence at 4:00 P.M.

LATER AT 4:00 P.M.

The convict is present before the court. The Ld. Defence Counsel and the Ld. PP are present.

Heard the convict and his Ld. Advocate as well as Ld. PP on the point of sentence. The convict claims to be innocent and prays for mercy.

The convict on being asked on the point of sentence has stated that he is innocent. Considered.

Considering the submission of the convicts and their Ld. Advocate and also considering the nature and gravity of the offence (as it reveals from the record) it appears that the convict is sole bread earner of his family. He is not hardened criminal. There is no previous conviction against him.

Having taking into consideration of all the facts and circumstances of this case this Court does not have any other alternative but to pass sentence of imprisonment along with compensation to be paid to the Indian Railways to mitigate the hardship and meet out the repairing cost of damaged boom barrier.

Hence, it is

ORDERED

That the convict **Dipak Singha** is sentenced to suffer simple

imprisonment for 6 days for the offence u/section 160(2) of the Railways Act. The period of detention already undergone by the accused person during inquiry or trial stage be set off against the imprisonment awarded as provided Under Section 428 of Cr.P.C.

He is also directed to pay Rs.2000/- (Two thousand five hundred rupees) to be paid to the Indian Railways as compensation to mitigate the hardship and meet out the repairing cost of the damaged LC gate boom barrier.

Let a copy of this judgment be supplied to the convict free of cost as per section 363 (1) of Cr.P.C.

At the time of pronouncing judgment of conviction and sentence, I informed the convicts that they had a right to prefer an appeal against the judgment and they had a right to avail of legal aid in that regard from the District Legal Services Authority, Jalpaiguri [Reference: Rule 192B read with Rule 192A of Calcutta High Court (Sub-ordinate Courts) Rules, 1985].

Let a soft copy of the judgment be uploaded in the CIS within 48 hrs. from this day as per Rule 121A of the C.R.O of Hon'ble High Court, Calcutta.

The other seized article, if any shall be disposed of as per the provision of law.

Documents if there be any filed by the parties be returned to the concerned party after necessary identification and notes in the case-record.

Judgment pronounced in open court, signed and sealed on this the **19th day of September, 2023.**

Dictated and corrected.

(Kallol Ghosh)
Judicial Magistrate (1st Class)
Railway Court, New Jalpaiguri
(JO Code- WB01262)

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