



IN THE COURT OF SPECIAL RAILWAY MAGISTRATE, BONGAIGAON

SPECIAL CR 951/16

U/S 160(2) of the Railways Act

STATE OF ASSAM.....PROSECUTION SIDE.

-Versus-

SRI MANOJ BARMAN.....DEFENCE SIDE.

PRESENT: - SMTI JUMA SINHA, AJS

Special Railway Magistrate,
Bongaigaon.

COUNSELS:

FOR the Prosecution: - DR. ANAND SINGH, Ld. Railway P.P.

FOR the Defence: - SRI GOBINDA SHOME & SRI KAMAL CHAKRABORTY, Ld.
Counsels.

EVIDENCE recorded on: - 24.10.17, 01.11.17, 18.01.18, 12.03.18.

STATEMENT DEFENCE recorded on:- 21.03.18.

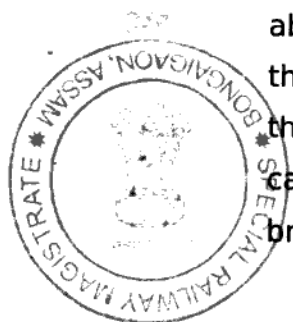
ARGUMENT heard on: - 07.04.18.

JUDGMENT delivered on: - 17.04.18.

J U D G M E N T

1. THE PROSECUTION STORY as unfolded by the Complaint filed by complainant Sri Sunil Kumar is that on 31.07.11 at about 15.55 hrs one memo was received from Deputy Station Superintendent New Bongaigaon regarding dashing and breaking of barrier of LC Gate No.NN 151 main gate in between New Bongaigaon and Bongaigaon railway station by vehicle No. AS-26C-1279 whereby he along with ASI Sri D.Rabha attended the spot and found the north side barrier of said gate in broken condition and stay wire in torn condition and the gate function was out of order and the above vehicle with its driver was found near the said gate as detained by the gateman. On being asked the driver of the said vehicle confessed that when he was coming from New Bongaigaon and when he reached near the above gate at

[Handwritten Signature]
Special Railway Magistrate
Bongaigaon, Assam



about 15.42 hours he saw the gate was going to close whereby he raised the speed of his vehicle intending to cross the gate before it closed and in that process the upper portion of his APE rickshaw dashed the barrier causing bend. Then he seized the above vehicle and arrested the driver and brought then to the New Bongaigaon RPF Post for taking legal action.

2. On receipt of the Complaint, case vide No.25/2011 u/s 160(2) Railways Act was registered at RPF Post New Bongaigaon and enquiry was conducted. Then after completion of the enquiry Prosecution Report was filed u/s 160(2) of the Railways Act against the accused whereby cognizance was taken and evidence before charge was recorded. Then charge was framed u/s 160(2) Railways Act against the accused which was read over and explained to him to which he pleaded not guilty and claimed trial.

3. **Points for Determination**

1. **Whether accused on 31.07.11 at 15:55 hours broke or damaged the LC Gate No. NN 151 in between New Bongaigaon and Bongaigaon by dashing it with vehicle bearing number AS-26C-1279 and thereby committed an offence u/s 160(2) of the Railways Act?**

4. To bring home the charge the Prosecution side examined five (5) witnesses and then statement of accused was recorded u/s 313 Cr.P.C where accused stated that though he did not dash any railway gate with his auto rickshaw and when he was going through the railway gate RPF caught him without any reason and filed this false case.

5. Heard Id. Counsels for both sides. Perused evidences on record. My decisions with reasons on the above framed points are as follows:-

DISCUSSION, DECISION AND REASONS THEREON

6. Here the first question for determination is regarding the identification of the seized vehicle as the offending vehicle?

In this regard eye witness **PW1 Sri Dine Boro** i.e. the gateman of LC gate No. NN 151 at the time of occurrence stated that after he closed the gate slowly one auto rickshaw from highway bearing no.AS-26C-1279 came and hit one of the barrier of the gate whereby he immediately sent message to the Station Master and the driver of the auto-rickshaw kept his vehicle by

17/7/11
Special Railway Magistrate
Bongaigaon, Assam

the side of the road. Then RPF came and seized the documents of the vehicle as well as of the accused. **PW3 Sri Prasanna Kumar Das** deposed that on date of occurrence when he was on duty at New Bongaigaon railway station from 6 am to 6 pm then on receipt of information from PW1, they went to the spot and found the auto-rickshaw along-with its driver Sri Manoj Barman at the place of occurrence whereby PW4 seized the vehicle and its documents. **PW5 Sri Sunil Kumar** also deposed that on date of occurrence at about 15.55 hours they received memo from Deputy Station Superintendent regarding the occurrence whereby he along with PW4 and one staff went to the spot and saw the broken gate and the gateman kept the offending auto rickshaw and its driver detained there. Then the auto numbering AS-26C-1279 was seized on the spot.

From the above evidence of PW1, PW3 and PW5 it is found that PW1 saw the auto rickshaw number AS-26C-1279 dashing the LC Gate No.NN 151 when he had closed the said gate whereby said vehicle stopped there and later when PW4 and PW5 arrived at the spot they found that vehicle there whereby PW4 seized that vehicle. Seizure-list as Ext.1 also shows the seizure of above auto-rickshaw from the place of occurrence on date of occurrence at 16.20 hours, which is after the occurrence. Accordingly it becomes well established that the seized vehicle i.e. auto-rickshaw no.AS-26C-1279 is the offending vehicle.

The next question for determination is regarding the identity of the accused as the driver of the above-mentioned vehicle at the time of alleged occurrence?

In this regard eye witness **PW1** deposed that after the above vehicle dashed the LC gate no.NN 151 the driver of the auto-rickshaw kept his vehicle by the side of the road whereby RPF came and took the vehicle with the driver. PW1 stated that he remembers the name of the driver as Sri Manoj Barman but he had forgotten the face of the driver as the incident took place long back. **PW3** supported PW1 stating that when he went to the spot after occurrence he saw the vehicle whose driver was Sri Manoj Barman and this PW identified the accused in the dock as the driver of the offending vehicle. **PW4 Sri Dhireswar Rabha** also deposed similarly stating that on date of occurrence when he was posted as IPF of RPF New Bongaigaon accused Sri Manoj Barman was handed over to him by PW5 whereby



18/4/18
Special Railway Magistrate
Bongaigaon, Assam

accused was forwarded to the SRM Guwahati. Complainant **PW5** also corroborated above fact as he deposed that when he went to the spot the gateman was found to have detained the vehicle and its driver Sri Manoj Barman who was then taken into custody and brought to post.

The evidence of the above PWs makes it clear that accused was found at the spot immediately after the occurrence with the offending vehicle whereby PW1, PW4 and PW5 clearly stated the name of the accused as the said driver who was taken into custody from the spot immediately after the occurrence with the offending vehicle and PW3 categorically identified the accused in the dock as the said driver. Accordingly there is no iota of doubt that it was the accused who was driving the offending seized vehicle at the time of alleged occurrence.

Now the last and most important question to be determined is whether the accused dashed and broke/damage the LC gate no.NN 151 at the relevant time by driving the said seized vehicle when the gate was closed?

Here eye witness **PW1** gateman deposed that on 31.07.11 when he was on duty at LC gate no. NN 151 between Bongaigaon and New Bongaigaon from 2 pm to 10 pm then at 3.45 pm he was informed by Station Master of New Bongaigaon that Dn 14055 Brahmaputra Mail was coming from New Bongaigaon railway station to Bongaigaon railway station whereby he used the alarm of the gate and saw both sides where there was no vehicle on either side and then he closed the gate slowly and at that time the offending vehicle from highway came and hit one of the barrier of the gate. **PW2 Sri Bishnu Pada Ghosh** deposed that on 31.07.11 when he was on duty at New Bongaigaon Railway station he received information that LC Gate No. NN 151 has been broken by a vehicle whereby he went to the spot and found one of the barrier was broken and after that they replaced the said barrier. **PW3** deposed that on date of occurrence they went to the place of occurrence and saw the northern barrier of said gate was broken. They found the offending vehicle at the spot and then the accused and his vehicle were brought to the New Bongaigon Railway station. **PW5** supported the other PWs stating that on date of occurrence after getting memo from Deputy Station Superintendent regarding breakage of above gate he along with PW4 and one staff went to the spot and saw the north side barrier was



[Handwritten signature]
Special Railway Magistrate
Bongaigaon, Assam

damaged and was bend in middle portion and gate function was out of order and PW1 had detained the vehicle and its driver whereby the vehicle was seized and accused was taken into custody.



From the above evidence it becomes clear that PW1 is the only eye witness to the occurrence and PW2, PW3 and PW5 arrived at the spot after receipt of information. Above evidence clearly shows that when PW1 had closed the LC Gate No.NN 151 for passing of Down Brahmaputra Mail at about 3.45 pm after using signal then accused came on his auto-rickshaw and dashed the north side gate barrier causing damage whereby PW1 gave information to the different authorities and then PW2, PW3 and PW5 arrived at the spot and saw the broken gate barrier whereby PW2 replaced the broken barrier and PW5 seized the vehicle and arrested the accused. Defence here failed to shake the credit of the above PWs especially PW1 regarding dashing of the said gate by the accused with the before mentioned vehicle when the same was in closed to road traffic. Accordingly it becomes crystal clear that when the said gate was closed accused dashed it with his before mentioned vehicle causing damage in the form of bending.

Here question may arise that S.160(2) Railway Act deals only with breaking of gate but PW5 stated that said gate was bend in middle and gate was out of order. This doubt can be overthrown as the word 'break' does not always imply breaking into pieces but it also means and includes making inoperative or to interrupt (referred Concise Oxford English Dictionary, Twelfth Edition, South Asia Edition, page No.171) and evidence of all PWs, especially PW2 and PW5 clearly shows that said gate became inoperative or was interrupted due to the damage caused.

7. Accordingly I am of the opinion that Prosecution has been able to prove charges u/s 160(2) Railways Act against the accused beyond all reasonable doubt. However considering the nature of offence involving damage to public property and endangering public life, I do not deem it fit to extend the benefit of Probation of Offenders Act as it will send a wrong message to the society at large.

[Handwritten Signature]
17/4/18
Special Railway Magistrate
Bongaigaon, Assam

8. Accordingly accused is heard on point of sentence whereby he prayed for leniency as he has a family to look after and his statement on sentence is recorded in separate sheets.

9.

ORDER



Taking into view all aspects of the case, accused Sri Manoj Barman is convicted u/s 160(2) of the Railway Act and considering the fact that he has no previous criminal antecedents and also the nature of damage sustained by the gate barrier he is sentenced to suffer RI for 1 month and also to pay compensation of Rs.2000/- to be given to the Railway Department to mitigate the hardship and to meet out the repairing cost of damaged gate i/d R.I. for 10 days. Period of detention, if any, already undergone shall be set off. Seized articles to be disposed of in accordance with law.

Furnish free copy of this judgment and order to the Convict.

Given under my hand and seal of this Court on this the 17th day of April, 2018.

(Handwritten signature)
17/4/18

(JUMA SINHA)

Special Railway Magistrate
Bongaigaon, Assam

Special Railway Magistrate, Bongaigaon.

APPENDIX**Prosecution Witnesses:-**

PW1:- Sri Dine Boro

PW2:- Sri Bishnu Pada Ghosh

PW3:- Sri Prasanna Kumar Das

PW4:- Sri Direswar Rabha

Prosecution Exhibits:-

P.Ext.1:- Seizure list

P.Ext.2:- Prosecution Report

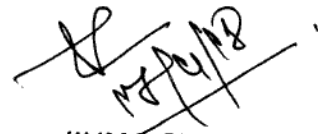
P.Ext.3:- MVI Report

P.Ext.4:- Complaint Petition

Ext.5:- Memo

Defence Witnesses & Exhibits:-

Nil


(JUMA SINHA)

Special Railway Magistrate, Bongaigaon.