

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 622 of 2006

Rajaram Karsh S/o. Amarnath Karsh, aged 27 years, R/o. Village Dewri, P.S. Saragaon, District Janjgir -Champa (C.G.)

----- Applicant

Versus

State of Chhattisgarh

----- Respondent

For Applicant : Applicant present in person.

For Respondent/ State : Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

11. 12. 2017

1. This revision is directed against the judgment of conviction and order of sentence dated 05-10-2006 passed by the First Additional Sessions Judge Bilaspur in Criminal Appeal No. 94/2006 whereby the said Court has altered and modified the sentence awarded vide judgment dated 15.06.2006 passed in Criminal Case No. 1743/2004 by the trial Court (Special Railway Magistrate, Bilaspur) and sentenced the applicant to undergo S.I. for three months instead of R.I. for six months while maintaining the conviction under section 160(2) of the Railways Act.

2. The case of the prosecution in brief is that on 31.07.2004 at about 14.30 hours when gate man of railway namely M. Chitti Babu (PW-2) closed the crossing gate situated at Janjgir Level Crossing at that time, the applicant who was driving the tractor dashed the barrier of Level Crossing and thereby broke the crossing gate. The matter was reported to Police Station Railway Protection Force Champa. After registration of the First Information Report matter was investigated by the Police.
3. After completion of the investigation, charge sheet was filed against the appellant in the Court of Special Railway Magistrate, Bilaspur, to which the appellant did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellant as mentioned above.
4. The revision is preferred on the ground as mentioned below.
 - (I) Statement of the persons present at the time of incident were not recorded and real story of the incident had not been brought on record.
 - (ii) That as per the evidence of witnesses it is not established that the appellant had broken the gate of barrier set up on the railway crossing, therefore, no offence is made out under Section 160(2) of the Railways Act.

(iii) That on the basis of confession of the appellant made before the Sub-Inspector of Railway Protection Force, the conviction is not proper and same is liable to be set aside.

5. *Per contra*, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of revision.
6. To substantiate the charge prosecution has examined as many as 5 witnesses in their support. To nullify the charge the defence side has not examined any witness in his support.
7. N. Chitti Babu (PW-2) is the eyewitness to the incident he deposed that he was directed to perform the duty at railway crossing of Janjgir on 31.07.2004 from 8 AM to 4 PM. At 13.45 hours, he was directed to close the crossing gate and when he was closing the crossing gate at that time the applicant came at crossing level by driving a tractor negligently and dashed the barrier gate whereby the same got damaged. He further deposed that he informed the incident to cabin man of Naila Railway Station, thereafter, Police personnels of Railway Protection Force rushed to the spot and inquired about the incident from the revisioner. Version of this witness is remained unshaken during the cross-examination. Version of this witness is supported by the version of L.N. Hansda (PW-3) and L.Toppo (PW-4) and Shahni Ram (PW5). Again the version of this witness is supported by the version of K.P. Mahilange (PW-1). Version of M.Chitti Babu (PW-2)

and L.Toppo (PW-4) is stable since investigation to deposition before the Court.

8. It is settled law that it is the quality of the witnesses that is to be weighed and any witness is stable right from investigation to deposition before the Court and there is nothing on record to discard the same, the Court can safely act upon it. Statement of the revisioner recorded under Section 313 of the Cr.P.C. is plain denial and the same is merit less. When the prosecution has established its case by direct evidence the applicant was under obligation to explain the facts and circumstances of the case but instead of explaining the same, he opted for mere denial of facts. In this way, evidence adduced by the prosecution is unrebutted and on the basis of it the Court below has rightly concluded that the applicant had broken the gate of the barrier of level crossing gate and his act falls within the mischief of section 160(2) of the Railways Act 1989 and conviction for the said offence is hereby affirmed.
9. The incident took in the year 2004 i.e. 13 years ago and the revisioner has suffered a lot and he is facing trial for such long period of 13 years. Since the applicant had already undergone jail sentence from 05-10-2006 to 19-10-2006 to the period of 15 days, it will not be proper to send him back jail again. The revisioner is sentenced to the period already undergone by him for the offence under Sections 160(2) of the Railways Act, fine amount will remain intact.

10) With this modification the revision is allowed in part.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Santosh