

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.814 of 2018**

1. Shankar Sao S/o Baldev Sao, Aged About 19 Years R/o Milan Chowk, Camp 2, P.S. Chavni, District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Rajkumar Kashyap @ Chunnu, S/o Sitaram Kashyap, Aged About 42 Years R/o Thakurpur, P.S. Lamri, District Mungeli, Bihar., Bihar
3. Anil Singh, S/o Late Ramdev Singh Rajput, Aged About 47 Years R/o Belma, P.S. Khijar Sarai, District Gaya, Bihar., District : Gaya, Bihar
4. Upendra Singh @ Kabra, S/o Ambika Prasad, Aged About 45 Years R/o Belma, P.S. Khijar Sarai, District Gaya Bihar., District : Gaya, Bihar
5. Pritam Singh @ Rajesh Singh, S/o Upendra Singh, Aged About 19 Years R/o Belma, P.S. Khijar Sarai, District Gaya Bihar, District : Gaya, Bihar

---- Appellants**Versus**

- State Of Chhattisgarh Through, S.H.O. Kumhari/grp Bhilai-3, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent**CRA No.885 of 2018**

- Chhotu @ Upendra Singh S/o Late Shiv Lal Singh Aged About 40 Years R/o- Lodhi Shadipur, P.S. Buniyadganj, District- Gaya (Bihar), District : Gaya, Bihar

---- Appellant**Versus**

- State Of Chhattisgarh Through- The Police Station Kumhari/g.R.P., Bhilai, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent**CRA No.908 of 2018**

- Pinku Singh @ Varun Singh S/o Manoj Singh Aged About 24 Years R/o- Lakhipur Kawli, P.S. Gaudichak, District Patna, Bihar At Present R/o- New Khursipar, Sindhi Mohalla, Bhilai, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through- S.H.O. Kumhari/grp Bhilai-3, District-Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent

CRA No. 1160 of 2018

- Billu @ Pappu @ Suresh Kumar S/o Mahabir Yadav Aged About 28 Years R/o Ruabandha Azad Chowk, P. S. Bhilai, District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through The Station House Officer, Kumhari/ Grp Bhilai-3 District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Respondent

CRA No.1624 of 2018

1. Upendra Singh @ Kabra S/o Ambika Prasad Aged About 45 Years R/o Village Belma Thana ,khijar Saray District Gaya Bihar ., District : Gaya, Bihar
2. Preetam Singh @Rajesh Singh S/o Upendra Singh Aged About 19 Years R/o Village Belma Thana ,khijar Saray District Gaya Bihar, District : Gaya, Bihar

---- Appellants

Versus

- State Of Chhattisgarh Through Station House Officer Police Station Kumari G.R.P. Bhilai -3 District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent

PRESENT:-

Shri B. P. Singh, Shri R. K. Kesharwani, Shri Neelkanth Malviya and Shri Ganesh Burman, learned counsel for respective appellants.
Shri Subhash Yadav, Deputy Government Advocate for State.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board

Per Manindra Mohan Shrivastava, J.

30/04/2019

1. These batch of appeals (five in number) have been filed by the appellants, who have been convicted vide impugned judgment of conviction and order of sentence dated 24-04-2018 passed by the Additional Sessions Judge, Durg in Joint Sessions Trial No.130/2013, 121/2013 & 276/2013, whereby and whereunder the appellants have been held guilty of commission of offence and sentenced as described below:-

Name of Accused	Under Section	Sentence	Fine	In default of payment of fine
Pritam Singh @ Rajesh Singh, Shankar Sao, Anil Singh, Rajkumar Kashyap, Pinku @ Varun Singh, Suresh@ Pappu @ Billu, Upendra @ Chhotu	120-B of IPC	02-02 years R.I.	500-500 Rs.	01-01 months R.I.
	225 of IPC	02-02 years R.I.	500-500 Rs.	01-01 months R.I.
	332 of IPC (In relation to SanchitSharma)	03-03 year R.I.		
	332 of IPC (In relation to Virendra Singh)	03-03 year R.I.		
	332 of IPC (In relation to Deepak Kumar Thakur)	03-03 year R.I.		
	332 of IPC (In relation to A. R. Taram)	03-03 year R.I.		
	150(2)(b) of the Railways Act	Life Imprisonment		
	146 of Railways Act	06-06 months R.I.		
	395 r/w Section 397 of IPC	07-07 year R.I.	Rs.2,000-2,000	2-2 months of R.I.

Upendra Singh @ Kabra	120-B of IPC	02 years R.I.	500 Rs.	1 months R.I.
	224 of IPC	02 years R.I.	500 Rs.	1 months R.I.
	332 of IPC (In relation to Sanchit Sharma)	03-03 year R.I.		
	332 of IPC (In relation to Virendra Singh)	03-03 year R.I.		
	332 of IPC (In relation to Deepak Kumar Thakur)	03-03 year R.I.		
	332 of IPC (In relation to A. R. Taram)	03-03 year R.I.		
	150(2)(b) of the Railways Act	Life Imprisonment		
	146 of Railways Act	06-06 months of R.I.		
	395 r/w Section 397 of IPC	07 year of R.I.	Rs.2,000/-	2 months of R.I.
Pritam Singh @ Rajesh Singh, Pinku @ Varun Singh	25(1-b)(a) of Arms Act	03-03 years of R.I.	Rs.1000-1000/-	01-01 months of R.I.
	27(2) of the Arms Act	07-07 years of R.I.	Rs.2000-2000/-	02-02 months of R.I.

2. The prosecution story, which is revealed from the impugned judgment of conviction and order of sentence and the records of the case is that one Upendra Singh @ Kabra (one of the appellants in Criminal Appeal No.1624/2018) was undergoing trial under trial No.213/2001 for alleged commission of offence under Section 365, 364-A, 395 and 120-B of IPC in the

Court of 2nd Additional Sessions Judge, Durg, in connection with Crime No.22/2013. On 06-02-2013. He was produced before the said Court during trial, upon being brought from Central Jail, Bilaspur, where he was undergoing life imprisonment in another Crime No.213/2001. From the Central Jail, he was brought by the Head Constable Virendra Singh and Constables Sachit Kumar Sharma and Aasaram. While he was being taken back to Bilaspur from Durg in 'Janshatabdi Express', by chain pulling, train was stopped and thereafter, the appellants entered into the bogi, wherein Upendra Singh was present along with the police constables. It is said that the appellants were armed with weapons and the police personnel were assaulted with the back of fire arms and chilli powder was thrown into their eyes. It is further alleged that in this manner, all the appellants acted in conspiracy to get Upendra Singh @ Kabra escape from police custody. Further case of the prosecution is that thereafter, all the appellants deboarded the train and assaulted Assistant Pilot Dipak Kumar Thakur and kept him in their captivity and appellants boarded the engine of the train, they threatened the Pilot A. S. Taram to move the train and stop at the spot as per their direction. It is alleged that the appellants also threatened and assaulted A. S. Taram and Deepak Kumar Thakur both. The Loco Pilots, who were acting under threat and captivity of appellants, were forced to stop the train near Sirsa Gate. After the train stopped, the appellants ran away. On way, the appellants stopped the car bearing Registration No.CG-04-ZL-4444 which was being driven by its owner Keshav Rao and looted his vehicle to reach to their desired destination and on way, left the vehicle. The aforesaid series of alleged criminal overt act committed by the appellants gave rise to three different cases. One related to the act of assaulting police constable and unlawfully removing Upendra Singh @ Kabra from the police custody of the police official. A report to this effect was lodged at the instance of injured police

constable in Police Station G.R.P. Bhilai under Crime No.09/2013. Second case was instituted in the same Police Station G.R.P. Bhilai at the instance of Deepak Kumar Thakur, Railway Driver, which led to registration of Crime No.10/2013. Third case of loot was registered in the same police station under Crime No.25/2013. Under three different crime numbers registered in the same police station, following offences were registered against the appellants:-

1.	Crime No.09/2013	224, 225, 307, 332, 353, 186 read with Section 34 of the IPC and Section 25 & 27 of the Arms Act
2.	Crime No.10/2013	307, 342 read with Section 34 of the IPC and Section 25 & 27 of the Arms Act and Section 137, 141, 146, 150(2)(b), 156 & 174 of the Railways Act
3.	Crime No.25/2013	395, 397, 120-B of the IPC and and Section 25 & 27 of the Arms Act

Three different investigations under the aforesaid crime numbers was carried out, which led to filing of three charge sheets before the Jurisdictional Magistrate. As all the offences were triable by the Court of Sessions, the Magistrate committed the case for trial before the Sessions Judge which led to registration of three different session trials being Sessions Trial No.121/2013, 130/2013 and 276/2013. It appears that commission of offence under three different crime numbers related to one series of transaction, in which, various offences alleged to have committed by the appellants. All the trials were held jointly by the Additional Sessions Judge, Durg. The trial ended in conviction of the appellants in different offences, which have already been described hereinabove.

3. Learned counsel appearing for the appellants in the aforesaid batch of appeals have assailed the impugned judgment of conviction and order of sentence, in so far as conviction of the appellants under Section 150(2)(b) of the

Railways Act, 1989 (Crime No.10 of 2013) is concerned. It is argued that the appellants have been convicted for aforesaid offences under Crime No.09/2013 and Crime No.35/2013 and the maximum sentence that has been imposed under Section 395 of IPC and Section 27 of the Arms Act for seven years and the appellants have already undergone more than six years, and therefore, at this stage, the legality and validity of the convictions in those sections is being given up.

Even in the matter of their conviction under Crime No.10/2013, the appellants seek to confine their argument in so far as imposition of life imprisonment by holding the appellants guilty of commission of offence under Section 150(2)(b) of the Railways Act is concerned, as sentence awarded under other sections 307, 342 of IPC and Section 25 & 27 of the Arms Act as also under Section 332, 147, 156 & 174 of the Railways Act have already been undergone by them.

4. Assailing conviction of the appellants for alleged commission of offence under Section 150(2)(b) of the Railways Act, it is contended before us that even if entire evidence of the prosecution, particularly the evidence of the Railway Servants (Assistant Pilot-Deepak Kumar Thakur, PW-26, Pilot-Anit Ram Taram, PW-27 and Gaurd-V. V. Rao, PW-3) is accepted as it is, it does not satisfy the ingredients of commission of offence under Section 150(2)(b) of the Railways Act. Learned counsel for the appellants would argue that in order to bring home the charges of commission of offence under various provisions, the prosecution is required to prove that the criminal overt act, as specified under any of the clauses (a) to (e) of sub section (1) of Section 150 of the Railways Act, was done with knowledge that such act or thing is so imminently dangerous that it must, in all probability, cause the death of any person or such bodily injury to

any person as is likely to cause the death of such person. Submission of learned counsel for the appellants is that the provisions, apart from being penal statute, since it entails life imprisonment or death, the provision is not only required to be construed strictly, but the prosecution is required to prove commission of offence by clinching and reliable evidence. Further argument is that even according to the evidence of the prosecution witnesses, referred to above, what can be said to be proved that in order to seek escape of appellant-Upendra Singh @ Kabra, the other appellants got the train stopped by chain pulling and thereafter, they threatened the driver of the train to stop the train at a particular spot, so that, they could flee away. The argument is, that much of criminal overt act on the part of the appellants would not by itself, satisfy the ingredients of commission of offence as provided under Section 150(2)(b) of the Act, though, it may render the appellants liable for commission of offences under other provisions of the Railways Act, for which, they have already been convicted and sentenced.

5. On the other hand, learned State counsel would argue that from the evidence of the prosecution witnesses, particularly Dipak Kumar Thakur, PW-26, A. R. Taram, PW-27 and V. V. Rao, PW-3, it is proved beyond reasonable doubt that while Upendra Singh @ Kabra was being taken from Durg to Bilaspur by the police constables, train was stopped by pulling the chain and thereafter, the appellants jumped out of the train and ran away. The prosecution has proved that these appellants assaulted the driver and took him in their captivity and boarded the engine of the train and threatened the driver to proceed with the train and stop the train at the spot as guided and directed by them. He submits that this evidence proves that the appellants had taken the driver of the train in their control and thus, they were controlling the operations of the train. This act on the part of the appellants, therefore, was an act with an intent or at

least with knowledge that this act was likely to endanger the safety of travelling passengers. He would further submit that the act of the appellants, to their knowledge, was imminently dangerous or in all probability, it could cause death of drivers, because of assault given to them. He would further argue that both the drivers have stated that the appellants were holding firearms and though, gun shot was not fired on them, they had not only given threats, but also given assaults from the back side of the firearms to the drivers to control the movement of the train, according to their desire. One of the prosecution witnesses-A. R. Taram, PW-27 has also stated that on that day and time, another train was likely to run on that track and had it come on that track, it would have led to a very serious accident, though fortunately, it did not happen. Therefore, the criminal overt act of the appellant was a serious and grave one. He would submit that once it is found and proved that the appellants committed the offences under Section 150(2)(b) of the Railways Act, which is punishable with death or imprisonment of life and the learned trial Court has imposed minimum sentence of imprisonment of life.

6. We have given our anxious consideration to the arguments raised by learned counsel for the parties and also perused the records.

7. In order to appreciate the rival contentions of learned counsel for the parties and to find out whether from the evidence on record, the prosecution has succeeded in proving beyond reasonable doubt that the appellants have committed offence under Section 150(2)(b) of the Railways Act, it is relevant to extract the aforesaid provision for ready reference, as below:-

150. **“Maliciously wrecking or attempting to wreck a train.—**

(1) Subject to the provisions of sub-section (2), if any person unlawfully,—

(a) puts or throws upon or across any railways, any wood, stone or other matter or thing; or

(b) takes up, removes, loosens or displaces any rail, sleeper or other matter or things belonging to any railway; or
 (c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway; or
 (d) makes or shows, or hides or removes, any signal or light upon or near to any railway; or
 (e) does or causes to be done or attempts to do any other act or thing in relation to any railway, with intent or with knowledge that he is likely to endanger the safety of any person travelling on or being upon the railway, he shall be punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years: Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, where a person is punishable with rigorous imprisonment, such imprisonment shall not be less than—
 (a) three years, in the case of a conviction for the first offence; and
 (b) seven years, in the case of conviction for the second or subsequent offence.

(2) If any person unlawfully does any act or thing referred to in any of the clauses of sub-section (1)—

(a) with intent to cause the death of any person and the doing of such act or thing causes the death of any person; or

(b) with knowledge that such act or thing is so imminently dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of such person, he shall be punishable with death or imprisonment for life.”

8. A fair and logical interpretation of the aforesaid provision reveals that the provision seeks to punish certain acts or things in relation to any Railways where such Act or thing in relation to any of the Railways is likely to endanger the safety of any person travelling being upon the Railways. While Clause (a) (b), (c), (d) & (e) of sub Section 1 of Section 150 of the Railways Act dealt with specific acts, clause (e) thereof is in nature of residuary clause. Thus, if any person unlawfully does or causes to be done or attempts to do any other act or thing in relation to any railway, other than those, which have been specifically enumerated in Clause-a, b , c or d, with intent or with knowledge that is likely to endanger the safety of any person traveling was being upon the railways, is liable to be punished with imprisonment for life or imprisonment for a term which may extend to 10 years. The proviso also makes it clear that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment

of the court, where a person is punishable with rigorous imprisonment, such imprisonment shall not be less than three years, in the case of a conviction for the first offence and if it is repeated, then minimum sentence shall not be less than seven years.

9. Sub section (2) of Section 150 of the Railways Act is extension of sub section (1) and provides for conviction, when the criminal overt act as specified under sub section(1) is grave. The opening words of sub section(2) of Section 150 of the Railways Act are “if any person unlawfully does any act or thing referred to in any of the clauses of sub section (1)”, which clearly means that in order to attract application of sub section, firstly it has to be a criminal overt act as specified under any of the clauses-(a) to (e) specified under sub section (1) of Section 150 of the Railways Act. When such act is done with intent to cause the death of any person and the doing of such act or thing causes the death of any person, clause (a) of sub section (2) of Section 150 of the Railways Act would be attracted.

Where act is done with knowledge that such act or thing is so imminently dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of such person, clause (b) of sub section (2) of Section 150 of the Railways Act would be attracted. The difference is of intention and knowledge. Once the intention or knowledge, as provided under clause(a) or (b) of sub section (2) of Section 150 of the Railways Act is attributed and proved by the prosecution, the accused would be liable for extreme punishment for death or punishment of imprisonment of life.

Sub section(2) therefore, provides for aggravated form of commission of offences as described under sub section (1) of Section 150 of the Railways Act.

10. Conviction of the appellants in the present case has been ordered under

Section-150(2)(b) of the Railways Act, meaning thereby that the learned trial Court has found the appellants guilty of commission of unlawful act or thing specified under sub section(1) with knowledge as provided under clause(b) of sub section (2) thereof. Our endeavour would be to first scrutinize the evidence on record to find out whether the prosecution has succeeded in proving the offences as provided under Section-150(2)(b) of the Railways Act and imposition of sentence of life imprisonment.

11. As we have earlier noticed in our judgment, the criminal overt act of the appellants is in three different parts. Firstly, that the appellants, except, Upendra Singh @ Kabra got the train stopped by chain pulling and entered the bogi where Upendra Singh was sitting and in order to get him rescued, attacked the police officers by giving them assaults and throwing chili powder on them. Obviously, it was intended to somehow seek escape of Upendra Singh @ Kabra from the custody of the police constables, who were taking the said accused from Durg to Bilaspur after attending the trial.

The second part of the alleged criminal overt act which has resulted in the appellants conviction under Section 150(2)(b) of the Railways Act is that when the train stopped and one of the driver, Deepak Kumar Thakur, PW-26 approached towards the bogi, where the chain was pulled, the appellants, by that time, had deboarded that bogi to catch hold of him and he was assaulted also. It is then said that thereafter, they took him along with him and boarded the engine of the train where other driver A. R. Taram, PW-27 was sitting. He was also threatened and assaulted and asked to move the train and stop the train at the spot, as directed. It has also come in the evidence that the train was made to stop at the spot as directed by the appellants, whereafter, all the appellants jumped out of the train and ran away.

12. Deepak Kumar Thakur, PW-26, who was on duty as Assistant Loco Pilot (driver) in 'Janshatabadi Express' Train, in which, the incident happened, has stated that on 06-02-2013, after the train left Durg Station at 05.10 PM in the evening, chain pulling had taken place near Sirsa Gate, ahead of Bhilai-3 Station and train stopped. When he went towards that bogi, he saw that 5-7 persons holding Katta (countrymade revolver) in their hands and approaching him. He further deposed that on the threat of Katta, they asked him to move towards the engine and he was taken to engine by beating and thereafter, all of them boarded the engine of the train and asked him to move the train and when he informed that unless pressure is released in the concerned bogi, the train would not be able to move, they started assaulting him. He has further deposed that thereafter, they told Taram, the other driver, to move the train and to stop the train at the spot, as directed by them. At this stage, Taram, the other driver told him that if the train moves without signal, thousands of persons may die, whereafter, they started assaulting Taram. The appellants threatening him with revolver, insisted to move the train and stop at the spot, as directed by them. He further deposed that due to assault given to him, he sustained injuries in his hand, shoulder and face. He has further deposed that when the train proceeded ahead of Parsada gate (Kumhari) just before the river, he was asked to stop the train. When the driver Taram stopped the train, all the appellants deboarded and went away. In his cross-examination, it has been elicited that he had lodged a report at G.R.P. Thana, Bhilai, which was recorded in Ex.P-78 and signed by him. Since this witness has not fully supported the prosecution case, he was declared hostile and thereafter, upon being examined by the prosecution, he admits that one of the appellants Pritam @ Rajesh had pointed Katta (revolver) on the temporal part. He has further admitted a suggestion that on the date of incident, 'Janshatabadi Express' was controlled by the appellants and taken to a

direction other than the prescribed direction, by hijacking.

In the cross-examination, omission regarding 5 to 7 persons entering the train by threat and two persons pointing gun on the temporal part and asking to board the train, as not stated in the FIR, has been elicited. Moreover, he has also been confronted with the report, in which, the allegations of pointing gun and taking them to engine, else he would be shot by two persons, has also been elicited. He has further admitted that after the appellants deboarded the train, he and driver-Taram had moved the train on the same track, where it was left. He also admits that the next signal was of Sarona Station, which is situated after the river, but Sarona station is far away from the river and there is a railway station of Kumhari also. He admits in further cross-examination that there is no stoppage of 'Janshatabadi Express' in any of the stations between Durg to Raipur and 'Janshatabadi Express' had proceeded to Raipur on the same track. He further states that from Durg to Parsada Gate and, thereafter, Parsada Gate and river, the train was stopped twice due to chain pulling, which has been duly explained. Further admission has been elicited that on the date of incident, after boarding Janshatabadi Express and requiring train to stop, there was no red signal. At this stage, this witness says that on the same track, Chhattisgarh Express also comes, but unfortunately on that day, Chhattisgarh Express did not come on that track, otherwise, an incident could take place.

The entire evidence of the aforesaid witness proves that the chain pulling had taken place near Sirsa Gate, when he went to the concerned bogi. The appellants had come out and threatened & assaulted him and took him to the engine, where they boarded the engine. Uncontroverted evidence of this witness also proves that after boarding the engine, the appellants threatened and assaulted the present witness and the other driver, insisting him to move

the train and stop the train as directed by them. From various suggestions, which have been given to this witness, in his cross-examination, it has been admitted by him and also proved that the train was to move on the same track. There is no evidence that the train was diverted to another track. Moreover, there is no evidence to show that when this witness was asked to move the train from the spot, where it had stopped due to chain pulling, up to the spot where the train was again made to stop, the train was required to cross any red signal or it was made to change the track without any signal. Moreover, this witness, though has stated that on the same track, mostly Chhattisgarh Express also comes, this evidence is extremely vague. He has not come out with specific details with regard to movement of Chhattisgarh Express, its time of running, possibility of arrival and other details, from which, at least, some inference could be drawn that the other train was likely to arrive on the same track. An admission on the part of this witness that the train was moving in the same track, as desired, it was stopped at two places and finally, it reached Raipur on the same track, only proves that the obstruction caused by the appellants resulted in stopping of the train at two places, one near Sirsa Gate and other ahead of Parsada Gate and River.

13. Anit Ram Taram, PW-27, the other driver has also stated that anti-social elements boarded the engine and they had brought his assistant Deepak Kumar Thakur. He states that they assaulted him and abused and at gun point, he was asked to move the train. When this witness told the appellants that the pressure had not developed, he was again assaulted. He has further deposed that if there is no signal, there is threat of life of travelers and he would not move the train. Upon this, he was again threatened for life and was compelled to move the train by stating that he will have to stop the train as guided to them. He further deposed that when he moved the train and reached near Parsada Gate,

the train was stopped and thereafter, all the appellants deboarded the train and went away.

14. This witness has also produced the report, Ex.P-81 regarding train stoppage due to chain pulling, which is at the instance of the appellants. This witness has been declared hostile by the prosecution, because he did not fully support the prosecution case and upon being cross-examined by the prosecution, he admits suggestion that he was asked to move the train without signal despite they being informed that if he moves the train, it will endanger the life of thousands of persons. In his cross-examination, he however, admits that from Sirsa Gate to Parsada Gate, there was a signal given to the train. He further admits that the train, which he was driving had stoppage only at Raipur after leaving Durg station.

15. The evidence of this witness proves that the appellants had boarded the engine and threatened this witness to move ahead with the train. But then, this witness admits that while the train was moving ahead of Sirsa Gate towards Parsada Gate, there was a signal given to the train. There is nothing elicited in his evidence that he was compelled and threatened to drive the train despite there being red signal. He has also admitted that there was no stoppage of the train between Durg to Raipur and from Durg, the next stoppage was only at Raipur. From the evidence of this witness, it could be inferred that the train was moving on the same track and there was no red signal either when the train was stopped at Sirsa Gate or between Parsada Gate and River and there was no stoppage of the train between Durg to Raipur and from Durg, the next stoppage was directly at Raipur.

16. The third witness V. V. Rao, PW-3, Guard, has not stated any material aspect with regard to criminal overt act of the appellants. According to him,

when the train stopped due to chain pulling, he came out and released the pressure and went back to the Guard Cabin.

17. From the aforesaid evidence of the prosecution witnesses, what is proved is that the train was stopped after pulling chain near Sirsa Gate and thereafter, the appellants went to the engine and there, they threatened two Loco Pilots to move ahead with the train. It has also been proved that the appellants compelled the driver to stop the train at a spot guided by them. The evidence is also to the effect that the appellants had assaulted the drivers also. The injuries found on the body of Deepak Kumar Thakur, PW-26, however, are said to be simple in nature, but, no specific injuries have been reported to other driver A. S. Taram. Thus, from the entire evidence, what is proved is that the appellants, in order to plan escape of one of them, got the train stopped at Sirsa Gate and then threatened the drivers to move the train ahead and stop the train at a spot guided by them and when the train was stopped, the appellants-accused persons deboarded and ran away. However, there is no evidence led by the prosecution that the appellants had either diverted the train at a route, for which, there was no signal or while moving the train on the same track, the appellants compelled the drivers to move the train despite there being red signal.

On the contrary, the evidence of this witness is that this train was otherwise moved towards Raipur without any stoppage and all through, there was no red signal.

18. The aforesaid evidence of the prosecution in order to entail conviction of the appellants under Section 150(2)(b) of the Railways Act, must satisfy the required ingredients of commission of offence as specified under Clause 2(b). The prosecution is required to prove that the act or thing was done with the

knowledge that such act or thing is so imminently dangerous that it must in all probability causes the death of any person or such bodily injury to any person as is likely to cause the death of such person.

The evidence of the aforesaid three prosecution witnesses, who are Railway servants, in which, two of them are the drivers and one guard falls short of the aforesaid legal requirements. It is not that by doing the act of pulling the chain and thereafter, compelling the driver to move ahead on the same track and stop at the place of their choice, was so imminently dangerous that in all probability would have caused the death of any person or such bodily injury to any person as was likely to cause the death of such person.

It is pertinent to mention here that even according to the prosecution witnesses, the appellants were, though, armed with weapons (pistols), but it was not fired. Assault was made only from the back side of the fire arms resulting in two simple injuries to Assistant Loco Pilot-Deepak Kumar Thakur and other Driver-A. R. Taram was only threatened, though it was said that he was threatened and assaulted, but no injury was found. The intention of the appellants was only to ensure that they reach a particular spot and then run away, after deboarding from the train. The criminal overt act of the appellant in captivating the drivers and getting the train stopped to reach at the place of their choice appears to be intended to reach at a particular spot itself and to escape away. From this act, it is difficult to say that this act was imminently dangerous as meant under clause (b) of sub section 2. The criminal overt act of the appellants in asking two drivers to move the train ahead, cannot be said to be so imminently dangerous that it must, in all probability, cause death of any of them or any other person. Moreover, it does not appear to be so imminently dangerous to cause bodily injury to either of the drivers, which would likely to

cause death of them. We thus, reach to the conclusion that the conviction of the appellants could not be sustained under clause (b) of sub section(2) of Section 150 of the Railways Act.

19. However, the entire criminal overt act of the appellants in assaulting the drivers, boarding the engine and threatening two drivers to move according to their directions and stop the train at the place of their choice and not the station, where the train was supposed to halt as per its scheduled operation, could be categorized as an act or thing in relation to Railways at least with knowledge that it was likely to endanger the safety of those, who were travelling in the train. Therefore, the act of captivating the drivers in the train and threatening them to move the train against their wishes and stop the train at the place of their choice, clearly attributing the knowledge, could be dangerous for those persons, who were travelling in the train. Had it been a case that the train was compelled to go on a diverted route not fixed for it or against the red signal and had it been a case proved by the prosecution, by leading cogent evidence that by the act of stopping the train at a particular place, imminent accident was possible, certainly, it would have been a case of commission of offence under clause(b) of sub section 2 of Section 150 of the Railways Act.

20. Therefore, the entire criminal overt act of the appellants, in our considered opinion, though does not satisfy the legal requirement of Section 150(2)(b) of the Railways Act, it nevertheless amounts to commission of offence under Section 150(1)(e) of the Railways Act. The conviction of the appellants, is therefore, altered from that Section 150(2)(b) to 150(1)(e) of the Railways Act.

21. The appellants have already undergone more than 6 years of jail sentence for commission of offence under Section 150(2)(b) of the Railways Act. The proviso of sub section (1) of Section 150 of the Railways Act provides

for minimum three years of sentence, in the case of conviction for the first offence; and seven years of sentence, if offence is repeated. Since present is not a case of repetition of commission of offence, the minimum sentence would be only three years and not more than that.

22. As to what should be the quantum of sentence awarded to the appellants for commission of offence under Section 150(1)(e) of the Railways Act, we have to first consider the sentencing policy under the provisions itself. Commission of offence under Section-150(1)(e) of the Railways Act is punishable with imprisonment of life or with rigorous imprisonment for a term, which may extend to 10 years with proviso that in the absence of any special and adequate reasons to the contrary, which are required to be mentioned in the judgment of the Court, imprisonment shall not be less than three years for the first offence and shall not be less than seven years, if offence is repeated. Therefore, the sentence could be even less than three years which may go up to imprisonment of life.

23. As early as in the case of ***Sham Sunder vs. Puran***¹, the Supreme Court laid down the principles governing imposition of sentence and as to what should be the relevant considerations, it was opined thus:-

8. ... “No particular reason has been given by the High Court for awarding such sentence. The Court in fixing the punishment for any particular crime should take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of the opinion that to meet the ends of justice, the sentence has to be enhanced.”

24. In another decision, in the case of ***Shyam Narain vs. State (NCT of Delhi)***², it has been held that primarily, it is to be borne in mind that sentencing

1 (1990) 4 SCC 731

2 (2013) 7 SCC 77

for any offence has a social goal and sentence is to be imposed, regard being had to the nature of the offence and the manner in which the offence has been committed.

25. In the case of ***Ravada Sasikala vs. State of Andhra Pradesh and another***³, the principles governing award of sentence were considered by referring to earlier decisions, as below:-

15. In ***Shyam Narain v. State (NCT of Delhi)***, (2013) 7 SCC 77, it has been ruled that primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. The Court further observed that on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. It has to be borne in mind that while carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

16. In [State of Madhya Pradesh v. Najab Khan and others](#), (2013) 9 SCC 509, the High Court of Madhya Pradesh, while maintaining the conviction under [Section 326](#) IPC read with [Section 34](#) IPC, had reduced the sentence to the period already undergone, i.e., 14 days. The two-Judge Bench referred to the authorities in [Shailesh Jasvantbhai v. State of Gujarat](#)[5], [Ahmed Hussain Vali Mohammed Saiyed v. State of Gujarat](#)[6], [Jameel v. State of Uttar Pradesh](#)[7] and [Guru Basavaraj v. State of Karnataka](#)[8] and held thus:- “In operating the sentencing system, law should adopt the corrective machinery or

3 (2017) 4 SCC 546

deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice dispensation system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.” In the said case, the Court ultimately set aside the sentence imposed by the High Court and restored that of the trial Judge, whereby he had convicted the accused to suffer rigorous imprisonment for three years.

17. [In Sumer Singh v. Surajbhan Singh & others](#)[9], while elaborating on the duty of the Court while imposing sentence for an offence, it has been ruled that it is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the court’s accountability to remind itself about its role and the reverence for the rule of law. It must evince the rationalised judicial discretion and not an individual perception or a moral propensity. The Court further held that if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined and law does not tolerate it; society does not withstand it; and sanctity of conscience abhors it. It was observed that the old saying “the law can hunt one’s past” cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. The conception of mercy has its own space but it cannot occupy the whole accommodation. While dealing with grant of further compensation in lieu of sentence, the Court ruled:-

“We do not think that increase in fine amount or grant of compensation under [the Code](#) would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society.”

18. [In State of Punjab v. Bawa Singh](#)[10], this Court, after referring to

the decisions in [State of Madhya Pradesh v. Bablu](#)[11] and [State of Madhya Pradesh v. Surendra Singh](#)[12], reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the nature of crime regard being had to the manner in which the offence is committed. It has been further held that one should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it would shock the conscience of the society. Emphasis was laid on the solemn duty of the court to strike a proper balance while awarding the sentence as imposition of lesser sentence encourages a criminal and resultantly the society suffers.

19. Recently, in [Raj Bala v. State of Haryana and others](#)[13], on reduction of sentence by the High Court to the period already undergone, the Court ruled thus:-

“Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the High Court, either on individual notion or misplaced sympathy or personal perception seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft quoted saying of Justice Benjamin N. Cardozo, “Justice, though due to the accused, is due to the accuser too” and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability.” And again:-

“A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked.”

26. Applying the aforesaid principles, if we look into the gravity of the criminal overt act of the appellants, in our opinion, the act of the appellants cannot be said to be of such extreme nature that it otherwise require imposition of extreme penalty of life imprisonment. We find that the entire act of the appellants was only intended to seek escape of co-accused Upendra Singh @ Kabra, who was travelling in the said train and all the acts of the appellants in boarding the engine and compelling the drivers to move the train and stop for a while at the

particular spot, was only intended to execute the appellants design to seek escape of Upendra Singh @ Kabra. There is nothing in the evidence to show that the criminal overt act was committed with an intention or knowledge to cause any harm to the Railways or subject the train to any accident or to otherwise harm the passengers, who were travelling in the train. Moreover, we find that no serious injuries were caused to the drivers. One of the driver was given some assaults with the back side of the firearms, apparently threatened so that he may act according to the appellants wishes and that was to ensure stoppage of train at the place of their choice. We also did not find that in this process, any serious loss was caused to the public property or to the track or the train in all its machinery in the engine. The aggravating circumstance would be that the appellants were holding firearms in their hands and threatened the Railway Drivers.

In this manner, taking into consideration the aggravating and mitigating circumstance both, in our opinion, though the appellants are liable for minimum sentence of three years, in the absence of there being allegation of repetition of offence, it would not be necessary to impose minimum sentence of 7 years, in such eventualities. The appellants have already undergone more than six years but less than seven years, which is somewhere between three to six years or to say approaching almost seven years. In our considered view, the imposition of sentence of six years would be adequate sentence for the criminal overt act of the appellants, taking into consideration all the relevant circumstances, which we have discussed hereinabove.

27. Resultantly, the conviction of the appellants under Section 150(2)(b) of the Railways Act is also unsustainable in law, though the prosecution has succeeded in proving that the appellants have committed offence under Section

150(1)(e) of the Railways Act. Accordingly, conviction of the appellants is altered to that under Section 150(1)(e) of the Railways Act and sentence the appellants for the period already undergone by them. Conviction of the appellants under other offences under Crime Nos.10/2013, 19/2013 and 25/2013 is not interfered with.

28. The appeal is accordingly partly allowed in the manner and to the extent indicated above.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge