



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 739 OF 2005

The State of Maharashtra
Through G.R.P. Bhusawal

Appellant

Versus

Madhukar Dhodu Dhangar
Age : 39 yrs, R/o Mahsawad,
District Jalgaon

Respondent

...
Mr. Rajdeep R. Raut, A.P.P. for the appellant State.
Mr. S.R. Patil, Advocate for the respondent.
...

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 10 MARCH 2025.

JUDGMENT :

1. The appellant/State has filed this appeal against the acquittal of respondent/accused recorded by learned Judicial Magistrate, First Class (Railways), Bhusawal i.e. learned trial Court in R.C.C. No. 24/2000 under the judgment and order dated 04.04.2005 from the offence under Sections 151 and 154 of the Railway Act.

2. As per the prosecution story, the complainant Sahebrao Dhudaku Patil was attached to 'K' Cabin, Mahsawad as a Cabin Master from 8.00 hrs to 16.00 hrs on 26.01.2000. At about 15.00 hrs he got message of departure of empty BCN

goods train from Maheji Railway Station. Accordingly, he was shutting down the gate No.114-B by blowing the closing horn. As the said gate was halfly closed one tractor from Vawada, driven by the respondent/accused came there and gave dash to the said gate and resulted into bending of boom of the gate. For such rash and negligent act on the part of respondent/accused, the complainant lodged report with Railway Police and accordingly crime under the aforesaid sections was registered against the respondent/accused. During the investigation, the Investigating Officer drawn spot panchnama and by recording statements of witnesses, the respondent/accused was charge-sheeted. However, the learned trial court, after conducting the trial, acquitted the respondent/accused from the aforesaid offence.

3. The learned A.P.P. vehemently argued that the complainant had lodged immediate report to the concerned authority. Further, his evidence is corroborated by evidence of Station Master and in the spot panchnama it was revealed that there was bending of boom of the gate. According to him, the learned trial Court has ignored this vital evidence and acquitted the respondent/accused merely by observiong that there was no damage to the bonnet or upper part of the tractor

who allegedly dashed with the gate.

4. On the contrary, the learned Counsel for the respondent/accused supported the judgment of learned trial court. He pointed out that there is no corroboration to the evidence of complainant as no other person was present as an eye witness to the alleged rash and negligent act of respondent/accused. According to him, only interested persons are examined and the only independent witnesses which were panch of the spot panchnama, have not supported the case of prosecution. Under such circumstances, he prayed for dismissal of the appeal.

5. Heard rival submissions. Also perused the record and proceeding of the original case.

6. On going through the evidence on record the prosecution has examined in all six witnesses, out of them PW-1 Sahebrao is a complainant, PW-4 Sudhakar is the Assistant Station Master, whereas PW-6 Vikas is the person who had issued damage certificate in capacity as an Expert. However, it is extremely important to note that just after the incident the spot panchnama was prepared by Investigating Officer i.e. PW-5 Sanjay in presence of panchas. PW-2 and PW-3 are those

panchas. On going through the spot panchnama, though it appears that the boom of the gate got bent, but the panch witnesses have not supported the said contention by stating that they had seen such bending. Therefore, there is no evidence of independent witness on record to show that the boom of gate had actually bent.

7. Further, though PW-4 Sudhakar Tanaji Jadhav supported the case of prosecution, but he was not an eye witness and his evidence is in form of hearsay evidence only. Further, the damage certificate issued by PW-6 Vikas is also placed on record, but in absence of actual evidence in respect of the damage from the independent witnesses, it cannot be considered to record conviction against the respondent/accused. Here in this case, only complainant was present on the spot who had witnessed the incident. It is significant to note that learned trial Court has given benefit of doubt to the respondent/accused mainly because there was no damage caused to the tractor to its bonnet or upper part after the alleged dash. Admittedly, there is no investigation to that effect and therefore, a judicial note can be taken that had the tractor dashed to the boom of gate, then there would have been certain damage to its bonnet or upper part. Further, it is

also significant to note that there might be possibility of the tractor entering into gate before the horn was blown by the complainant. As such, in absence of evidence of any independent eye witness, it would not be safe to record conviction against the respondent/accused on the basis of sole testimony of the complainant, specially when the damage caused to the gate is not established. Under such circumstances, the acquittal recorded by the learned trial Court against the respondent/accused is justified. As such, no interference is required in the impugned judgment and accordingly appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)