

Pronounced On : December 22, 2025

**Main Appeal :**

Aggrieved against the judgment dated 25.07.2023, passed by learned Special Railway Magistrate, Ambala Cantt., whereby the respondent has been acquitted of the charges levelled against him, the appellant has approached this Court by way of present appeal.

Shorn of unnecessary details, the relevant facts, which are required for proper adjudication of the present appeal, are that on 29.05.2021, respondent Dharmender Singh allegedly broke the boom of gate No.97-C, by striking his vehicle bearing registration No.PB-32-L-9716 against it, while the same was closed to the road traffic. Consequently, on the statement of concerned Gateman on duty namely Krishan Kumar, Criminal Case No.93/2021, under Section 160(2) of the Railway Act was registered against the respondent on 29.05.2021 itself. The respondent was arrested. After completion of report, complaint was presented before the Court for trial of the accused.

Finding prima facie case against the respondent, he was charge-sheeted under Section 160(2) of the Railways Act. The respondent pleaded not guilty and claimed trial. Statement of the accused/ respondent was recorded under Section 313 Cr.P.C.

The prosecution, in order to prove its case, examined as many as five witnesses.

PW-1 Krishan Kumar, who was posted as Gateman, proved complaint given to SI Ramesh Kumar RPF Yamuna Nagar as Ex.PW1/A, inspection memo as Ex.PW1/B, arrest and jamatalashi memo as Ex.PW1/C,



site plan as Ex.PW1/D, seizure memo as Ex.PW1/E, confessional statement of accused as Ex.PW1/ F, his statement as Ex.PW1/G, copy of cabin log book Ex.PW1/H and photographs Ex.P1 to P6.

PW-2 Vinay Kumar proved memo as Ex.PW2/A issued by him and his statement as Ex.PW2/B.

PW-3 Ravinder Singh, Mechanic stepped into the witness box and proved letter received by him as Ex.PW3/A, mechanical examination report as Ex.PW3/B and his statement as Ex.PW3/C.

PW-4 Retd. SI Ramesh Kumar proved memo issued by SS/YJUD as Ex.PW2/A, *rojnamcha* entry as Ex.PW4/A, *tehrir* as Ex.PW1/A, inspection memo as Ex.PW1/B, arrest and *jamatalashi* memo as Ex.PW1/C, site plan as Ex.PW1/D, seizure memo as Ex.PW1/E, statements of Gateman and accused Dharmender as Ex.PW1/G and Ex.PW1/F, respectively, *rojnamcha* entry No.19 as Ex.PW4/B, letter as Ex.PW3/A, mechanical examination report as Ex.PW3/B, statement of Ravinder Singh mechanic as Ex.PW3/C, letter qua obtaining damage report as Ex.PW4/ C, damage report as Ex.PW4/D, statement of SSE Bhupender Singh as Ex.PW4/E, superdari memo as Ex.PW4/F, return of *jamatalashi* memo as Ex.PW4/G, cabin log book as EX.PW1/H, photographs as Ex.P1 to P6 and complaint against accused as Ex.PW4/H.

PW-5 Bhupinder Singh, SSE/SIG stepped into the witness box as PW5 and he proved letter as Ex.PW4/C, damage report as Ex.PW4/D and his statement as Ex.PW4/E.

On the other hand, no defence evidence was led by the



accused.

After appreciating the oral as well as documentary evidence on record, the learned Trial Court reached the conclusion that the prosecution could not prove the allegations levelled against the accused and thus, vide judgment dated 25.07.2023, the respondent was acquitted of the charges levelled against him, giving him benefit of doubt.

Aggrieved against the aforesaid judgment, the appellant Union of India has knocked the doors of this Court while assailing the said judgment dated 25.07.2023.

Learned counsel for the appellant contended that the learned Trial Court has ignored the cogent and trustworthy evidence brought on record by the prosecution. The testimonies of the prosecution witnesses remained consistent and unshaken and charge against the accused has been duly proved. The evidence on record has not been appreciated in the right perspective by the Trial Court and accused had been wrongly acquitted of the charges framed against him. The Trial Court has ignored the fact that while passing the impugned judgment of acquittal that the accused/respondent drove the vehicle in a rash and negligent manner and dashed into the barrier, resulting into offence under Section 160(2) of the Railways Act. He argued that intention is immaterial in such like cases.

Learned counsel further urged that the identity of the accused, being driver of the offending vehicle, is not in dispute and besides that, even the accused admitted his guilt vide his confessional statement Ex.PW-1/F. The mechanical examination report Ex.PW-3/B also lends



corroboration to the prosecution version and offence against the accused has been proved beyond reasonable doubt. He therefore prayed that the present appeal be allowed and impugned judgment dated 25.07.2023 be set aside, being not sustainable in the eyes of law.

Perusal of Section 160(2) of the Railways Act reveals that breaking of any gate or chain or barrier, set up on either side of a level crossing, which is closed to road traffic, is made punishable with an imprisonment, which may extend to five years. This Section is meant to punish an intentional misconduct. Reliance in this regard can be placed upon a judgment passed by a Co-ordinate Bench of this Court in **Union of India vs. State of Punjab** reported as **2007(4) RCR (Criminal) 102**, wherein it has been held as under :-

“.....Though not specifically mentioned but intention appears to be part of the offence created under [Section 160\(2\)](#) of the Act. Any act on account of negligence or rashness would per force has to exclude intention to commit the act alleged. Breaking of gate or chain or barrier would include an element of intention in it as there is no indication that this offence is meant to punish rash or negligent act.

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The nature of offence created under [Section 160\(2\)](#) can further be appreciated by making reference to the contents of [Section 160\(1\)](#). It provides that "if any person, other than a railway servant or a person authorised in this behalf opens any gate or chain or barrier set up on the



either side of a level crossing, which is closed to road traffic, he shall be punished with imprisonment for a term which may extend to three years." Obviously, opening of gate or chain etc. by any person who is not a railway servant or not authorised in this behalf commits an offence under [Section 160\(1\)](#) of the Act. On the face of it, this Section is meant to punish the deliberate conduct on the part of such person to open the gate etc. In other words, it would not include any rash or negligent conduct. [Section 160\(1\)](#), thus, provides an act of opening of the gate etc. and Sub-section (2) of [Section 160](#) of the Act creates an offence on the part of any person who breaks any gate or chain or barrier. This whole Section, as such, would exclude the element of rash or negligent act or omission meaning thereby that the Section is meant to punish an intentional misconduct."

In the instant case, PW-1 Krishan Kumar – Gateman, who is alleged to be eye-witness of the incident, deposed that on 29.05.2021, he was discharging his duties as Gateman at Gate No.97-C. At about 12:43 PM, when he was closing the gate for smooth passing of M-BCN, at that time, vehicle bearing registration No.PB-32-L-9716 came at high speed and rammed into the gate boom of upside. Due to collision, gate boom was broken. The Trial Court has rightly held that from the deposition of PW-1, it is not made out that the accused was having prior intention to damage the railway property i.e. gate of level crossing in present case and from driving



the offending vehicle at high speed, at the maximum, rashness and negligence can be presumed, but from it, it cannot be said that there was prior intention of the accused to damage the railway property. Even in his confessional statement Ex.PW-1/F, the accused/respondent stated that he applied the brakes of the vehicle, but because of high speed, same could not be effectively applied. As such, ingredients of offence under Section 160(2) of Railways Act are not complete.

Much stress has also been laid upon the confessional statement of accused Ex.PW-1/F by learned counsel for the appellant and it has been contended that on the basis of said confessional statement, the findings of guilt are to be returned against the accused. The Trial Court has rightly held that confessional statement of an accused suffered in custody of RPF officials is not hit by Sections 25 and 26 of Indian Evidence Act and in this context, has rightly relied upon **Bal Kishan A. Devi Dayal and others versus State of Maharashtra** reported as **1981 AIR (SC) 379**.

In order to rely upon the confessional statement, for giving a verdict of guilt, the due execution of confessional statement by accuses is to be proved. The Trial Court has referred to Crime Manual, released by Railway Protection Force on 11/19.09.2019, as per which, some prior requirements before recording the confessional statement of accused have been delineated, the relevant portion whereof is reproduced hereunder for ready reference :-

“26. Statement of the accused

26.1 First of all, statement of the arrested person will be recorded.



26.2 *If the statement given by the accused is confession, then the following precautions should be taken at the time of recording the same :-*

i) If the accused agrees to write the statement of confession in his own handwriting, then the statement should be got recorded in his handwriting.

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xiii) After the signature or thumb impression of the accused on the statement of the accused, signatures of two independent witnesses shall also be taken, in whose presence statement was recorded.”

Now, adverting to the present case, perusal of the confessional statement of accused Ex.PW-1/F reveals that it is not in the handwriting of accused Dharmender Singh and accused had put his signatures on the confessional statement in Punjabi language instead of Hindi language. It has not been explained that if it was voluntary statement of the accused, then why it was not taken in his own hand. Furthermore, it is also revealed that Ex.PW-1/F was not got attested by two independent witnesses despite it being a mandate. The Trial Court has thus rightly observed that keeping in view these lapses, the confessional statement Ex.PW-1/F cannot be made the basis for conviction of the accused.

As per Section 160(2) of the Railways Act, it is also one of the requirements for the offence under the aforesaid Section that at the time, when gate or chain or barrier had been damaged, level crossing should be closed to road traffic. In the instant case, it is revealed from the statement of



PW-1 Krishan Kumar – Gateman that the occurrence happened when he was closing the gate to ensure smooth passage of train i.e. M-BCN. Thus, it is obvious that at the relevant time, the gate was not fully closed for the road traffic and as such, the ingredients of Section 160(2) of the Railways Act are not completed.

A perusal of mechanical examination report Ex.PW-3/B shows that at point No.4, it was mentioned that on the front bumper of offending vehicle, there were signs of rubbing. PW-3 Ravinder Singh – Machanic, who proved the aforesaid mechanical report, stated that he never visited the spot of occurrence and also stated that he had mentioned in his report about the signs of rubbing and he could not tell that how the same were formed and how old they were. So, it cannot be held that the signs of rubbing found on the offending vehicle were due to collision of offending vehicle with gate boom.

It has not been proved on record by the prosecution that the alleged damage, so caused to the gate, was ever got repaired. PW-4 Retd. SI Ramesh Kumar, who was the Enquiry Officer, deposed that there was no movement certificate available on the record, which could demonstrate about the details of persons, who came at the spot to repair the gate. He also stated that along with damage report, there is no document, which could show that any articles were got issued for repairing the said gate. PW-5 Bhupinder Singh, SSE, who proved the damage report Ex.PW-4/D also deposed during his cross-examination that it was right to suggest that on the day, when gate was repaired, no damage certificate had been issued by them.



He also admitted that no movement certificate was available on the record. The Trial Court has, thus, rightly observed from deposition of PW-4 and PW-5, that even the damage and repairing of gate boom, at the instance of railway officials, did not stand proved.

In the light of above, it can be safely concluded that the prosecution has miserably failed to prove its case beyond the reasonable doubt. No infirmity, perversity or illegality could be found in the impugned judgment passed by the learned Trial Court. Accordingly, the present appeal, being bereft of any merits, is hereby dismissed.

Pending application(s), if any, shall stand disposed of along with the present appeal.

December 22, 2025
monika

(SUKHVINDER KAUR)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.