

# SUPREME COURT OF INDIA

Awadh Behari Sharma

Vs.

State of M.P.

Crl.A.No.71 of 1955

(B. Jagannadhadas and B. P. Sinha, JJ.)

10.05.1956

## JUDGEMENT

### **JAGANNADHADAS J. –**

1. The appellant was the acting Station Master of Ghatara railways station on the Bina-Katni section of the G.I.P. Railway. He has been convicted under S. 101. Indian Railways Act, in connection with a head-on collision at his station, of two goods trains on 31-5-1950. He has been sentenced to rigorous imprisonment for six months. Along with him an Assistant Station Master, M. S. Sharma, a pointsman, Budhu Singh, of the station, as well as a Guard, Badriprasad, were also prosecuted. They were acquitted by the trial Court. The conviction of the appellant was confirmed on appeal to the Sessions Judge and on revision to the High Court. This is an appeal therefrom by special leave.

2. The facts which lead to the prosecution were as follows. Ghatara is a non-interlocked station in the Bina-Kanti section. the outlying stations on each side are Sagoni and Bandakpur. Up trains are being received from Sagoni and down trains from Bandakpur. The station has one main line and two loop lines.

On 31-5-1950, the appellant was the Acting Station Master on duty at the relevant time. A ballast train had first arrived and was standing on the outer loop line. A double-headed goods train. H. 10 Up arrived thereafter at Ghatara at 15-15 hours and was admitted from Sagori side on the inner loop line which is adjacent to the main line. Almost immediately after the arrival of this train F. 45 Dn. - a double-headed goods train - steamed in from Bandakpur side into the same inner loop line and there was a head-on collision with the previously arrived. H. 10 Up goods train which by then had become stationary.

The result was that the engines of both the trains and eight vehicles were completely damaged, two drivers and one firman were immediately killed on the spot, and some other persons also received injuries. The prosecution case is that in view of the fact that a Ballast train and H. 10 Up were occupying the two loop lines, the F. 45 Dn. Should have been received on the main line but that the accident occurred because the signals on the down side had been wrongly lowered without previously setting the points for reception of the incoming down train into the main line.

The defence of the appellant was that at the time when F. 45 Dn. steamed in, both the home and the outer signals on the down side were at danger and not lowered down as the prosecution alleges but that the driver of the train rushed into the station at excessive speed without noticing that the signals

had not been lowered for reception of the train into the station.

3. To understand the prosecution case and the defence, it is necessary to appreciate the system in vogue at that time in that station for the working of the signals and for the setting of the points for reception of the trains into the various lines in the station. They are to be found from the working orders of the station and the evidence of the permanent Station Master, P. W. 4. For receiving any train on the loop lines the points at both the far ends of the particular loop line must be set to connect with the main line and the line must be clear for a distance of not less than 200 yards beyond the outer-most trailing points.

If there is already a train on the outer loop line as in this case, and if the inner loop line has to be set for reception of another train the Guard of the stationary train shares the responsibility of seeing that the points are properly set for reception of the incoming train into the inner loop line. Similarly when at about the same time another incoming train is also due to arrive, it has to be received on the main line and the Guard of the next previous train shares the responsibility of seeing that the points are again properly reset for reception of the fresh train into the main line. On each of these occasions the points are set at both ends.

It is only after the points are properly set that both the home and outer signals on the side from which the train is to be received are lowered for reception. The home signal on each side is about two to three furlongs away from the station as appears from the evidence of P. W. 6. The setting of the lines as well as the lowering of signals, each require manipulation of the respective locks and keys. All the keys of the points and signals are generally in the custody of the Station Master. The keys for setting of the lines are given at the appropriate times to the Mukaddam by the Station Master. Similarly the keys for the signals are given to the signaller by the Station Master at the appropriate time after the ascertainment from the Mukaddam that the lines have been properly set.

4. Now, in the present case, what appears in the evidence is this. As already stated a Ballast train had arrived in the station first and was stationary on the outer loop line. Next the H. 10 Up was to be received from the Sagoni side. For that purpose after receiving the necessary instructions from the Controller, the Station Master handed over the key to the Mukaddam on duty for setting the lines for the reception of the up train into the inner loop line and the Guard of the Ballast train accompanied the Mukaddam and saw that this was done properly.

After the points were set and the locks were fixed, the Mukaddam and the Guard conveyed signs to the Station Master. On receipt of these signs the Station Master handed over to the signaller the keys for lowering the home and outer signals on the up side, i.e. Sagoni side. After the signals were lowered the up train was received into the inner loop line. When it became stationary, the Mukaddam and guard reset the points on that side to the main line. There after the Mukaddam was coming over to the station so that he may hand over the keys of the points on the up side to the Station Master. The collision was at this stage.

The further procedure which remained was that the guard of the up train which had already arrived had to join the Mukaddam and both had to proceed to the down side to reset the points on that side to the main line for reception of the expected down train to the main line. After doing so, they had to sign from there to the Station Master that the points on the down side have been reset to the main line. Thereafter the Station Master had to issue to the signaller instructions for taking off, the signals on the up side, and hand over the keys for lowering the signals on the down side. Then those signals were to be lowered by the signaller. Once this is done, the incoming down train would

have the requisite permission to proceed into the station, for by then the lines on both sides would once again have been set back for reception of a train on the main line.

There is no direct evidence of any steps in this further procedure having been taken. Now in this case, it is not dispute that the setting of the points and the lowering of the signals on the up side was correctly done according to the standing orders for reception of the up train from Sagoni side and that the said train was correctly received on the inner loop line. It must be remembered that this necessary meant that the points on the down side also had been set to as to connect the main line beyond the points, with his loop line.

But it also meant that the signals on the down side, at that time, would remain at danger. Now the point of controversy between the prosecution and the defence is whether without the points having been reset on the down side for reception of the down train into the main line, the signals on the down side had been lowered prematurely resulting in the down train getting straight into the inner loop line instead of into the main line.

5. At this stage, it is necessary to note the exact timings of the arrival of the two trains which had collided. The H. 10 Up goods train arrived at Ghatara at 15-15 hours. The f. 45 Dn. Passed Bandakpur at 15 hours as a run-through train. The distance from Bandakpur to Ghatara is 6 3/4 miles. The running time between them for a goods train which was to halt at Ghatara, as this train was expected to do, was 22 minutes. The collision actually occurred almost immediately - probably a minute or two - after the arrival of the H. 10 Up.

It is clear, therefore, that the down train arrived about five minutes before time. There was a speed restriction of ten miles an hour over a certain bridge on the way. There was also a speed restriction of ten miles per hour on the facing points before entering the station. It is in evidence and not now disputed before us that at the time when the collision took place the down train was running at a speed of about 25 miles per hour. The evidence of P. W. 1, A.T.S., is that the train was travelling at a speed of 25 miles an hour. Indeed the very charge-sheet filed in the case states that the down train came from Bandakpur side with a speed of 25 to 30 miles an hour and collided with H. 10 Up.

6. The question at issue, however, is ultimately whether in fact the Station Master was negligent and failed to observe the rules, by getting the signals on the down side lowered for reception of the down train without getting the points on the down side reset from the inner loop line to the main line. On this question conflicting oral evidence was given on either side. There was a considerable body of evidence of railway servants connected with the station and with two trains already standing on the line, who appeared on each side.

Seven witnesses were examined on the prosecution side and six for the defence. Those who appeared on the side of the prosecution stated that at the very time of the collision they noticed that the signals on the down side were in a lowered position. Those who appeared on the defence side gave evidence to the contrary and stated that they were at danger. The trial Court preferred the evidence on the side of the prosecution.

7. The trial Court was also of the opinion that the appellant was negligent in giving the line clear to the Bandakpur Station Master at about 14-15 hours for this down train, knowing that the up train was due to arrive at 15-15 hours and that the down train was to arrive a few minutes thereafter and that there would hardly be enough interval to reset the points correctly from the loop line to the main line for reception of the down train into the main line.

Thus the trial Court held that the appellant was negligent in both these respects. The appellate Court substantially agreed with this view. When the matter came up in revision to the High Court the learned Judge had the matter relating to the question of line clear clarified by recalling the permanent Station Master, P. W. 4, and asking him what is meant by line clear. His answer was as follows:

"when the track is clear between the two outer-most signals, the line is said to be clear. In the control area, we act under the instructions of the Controller. It is he who gives a line clear after receiving instructions from the Station Master".

From this answer it follows that what is meant by line-clear is not that the lines in the station yard are clear for reception of the train but that there is no obstruction on the track beyond the outer-most signals on the down side of the station which the train has to enter. If this is properly understood, it is obvious that no negligence could be imputed to the Station Master for having informed the Controller at 14-45 hours that the line was clear.

Notwithstanding that the interval between the expected times of arrival of the two goods trains was rather short, the Station Master had the right to expect that a train would not steam into the station until the signals on that side were lowered. Indeed in view of this clarification the learned Judge of the High Court himself appears to have accepted this position though he has not said it in so many words.

8. The learned Judge of the High Court, however, considered that on the balance of oral evidence he could see no reason to differ from the view taken by both the lower Courts, viz., that when the collision occurred, the signals on the down side had in fact been found lowered. Accepting this finding he came to the conclusion that this must have been due to the wilful default or negligence of the appellant and in that view confirmed the conviction and sentence.

Learned counsel for the appellant urges that in appreciating the evidence relating to this matter on both the sides, which may be said to be somewhat evenly balanced, what turned the scale against the appellant, as appears from the judgments of the appellate Court and the High Court is a statement attributed to the Mukaddam, Ramchand, P. W. 6, in the evidence of Balmukund, P. W. 25, Guard of H. 10 Up. It may be recalled that according to the Mukaddam, P. W. 6, he went to the up side to set the points for the reception of H. 10 Up into the inner loop line and after the train was properly received and became stationary he reset the points on the up side on the main line and was proceeding to the Station Master. It is his evidence that the collision occurred before he could reach the Station Master to hand over the keys to him.

Now it is the evidence of P. W. 25, the Guard of H. 10 Up, which had just arrived that after his train stopped on the inner loop line he remained in the brake van and that while he was in the brake he received a big jolt, heard the noise of collision and came to the verandah of the brake van and saw Mukaddam, P. W. 6, coming. He stated that the Mukaddam then informed him that the new porter had lowered the signals and that the down train had collected with the stationary up train. This he stated in his chief examination. The new porter referred to herein is the acquitted accused. Budhu Singh, who was the porter and the signaller of the station at the time having joined the station only a few days previously. He was in charge of the lowering and raising of the signals.

A perusal of the judgments of both the appellate Court and the High Court shows that it was this statement which weighed to a substantial extent with those Courts in accepting the prosecution

evidence. Now it is rightly and legitimately pointed out that when the Mukaddam, P. W. 6, was under examination no such question was put to him. He was not asked whether in fact he made any such statement to the Guard, P. W. 25. It may be noticed that the Mukaddam, P. W. 6, was examined on 12-10-1950, while the guard, P. W. 25, was examined on 19-2-1951, i.e. about four months later.

Both were prosecution witnesses. The prosecution would not have been unaware as to what its own witness seven though, to be examined later on, was going to say in his chief examination regarding what a previous witness states to him. If it was sought to be made use of, it is clear that the very person to whom it is ascribed must be given an opportunity to explain it. To say the least, P. W. 6 should have been recalled for the purpose. There is, therefore, every justification for the grievance that on a crucial matter inadmissible evidence given some months later actually turned the scale.

9. It appears to us, however, that the correct approach in a matter of this kind should have been to determine the crucial issue not on a mere balance of oral evidence but on broader considerations and clear probabilities. In a matter of this kind, oral evidence is likely to be honestly discrepant and the question is not one of weighing the reliability of witnesses. Whatever may be the position as regards the trial Court and the appellate Court, the High Court had before it some additional evidence relating to the relevant mechanical aspects which was permitted to be given and which clinches the issue. In the High Court affidavit of one Mr. A. H. Burnett, the Divisional Superintendent, Central Railways, Jabalpur, was filed. It states to the following effect:

"The signals at this station at the time of the accident were worked from a 4 lever ground frame situated opposite the Station Master's Office. There is a Home and Outer signals provided on each side of the station. The Home signal levers are secured in the normal position by means of padlocks, the keys of which remain in the custody of the Station Master on duty. The looking in the signal frame is such that-

(a) The outer signal cannot be lowered unless the Home signal is first lowered.

(b) Only one Home signal can be lowered at a time. ... .. Ghatara is a non-interlocked Station. The points are not interlocked with the signals. The Home signal was a signal common to the three reception lines. It was the responsibility of the Station Master on duty to ensure that the points are correctly set for the line on which the train is to be received and that this line is clear of obstruction before lowering the Home signal."

Now in view of this evidence it is that when the home and outer signals on the up side were lowered for reception of H. 10 Up train the home and outer signals on the down side must have been at danger. If so, it is important to consider when and how they could have been lowered. In the normal course it is only when the Mukaddam returns to the station after setting the points on the side to the main line and gives back the keys of those points to the Station Master that the signalsman would receive instructions to raise the signals on the upside to danger. It is only after this that he will be in a position to lower the signals on the down side on receiving the requisite keys from the Station Master.

On the evidence both of P. W. 25 and of P. W. 6, it is absolutely clear that the Mukaddam had not reached the station Master but was on his way to the station (which was about two furlongs from the points) by the time the collision occurred. It is, therefore, difficult, if not unfair, to assume against the appellant that the signals on the up side would have already been raised to danger so as to enable the signals on the down side to be lowered for the down train. If there had been any scope for

signals on both sides to have been simultaneously lowered down then it might have been possible to attribute to the Station Master the responsibility for the negligent lowering of signals on both sides. But this, as has been clarified by the affidavit in the High Court, is mechanically impossible.

Assuming however that in some unexplained way the levers on the down side were found to have been lowered at the very time of the collision witnesses have deposed, this does not necessarily mean that the negligence is to be attributed to the appellant. It is not disputed that the actual physical act of lowering is to be done not by the Station Master. It is not his job but that of the signaller, accused Budhu Singh, who had been acquitted. There is absolutely no indication in the evidence that he had by then received instructions from the Station Master to lower the down side signals or had received the necessary keys from him to enable him to operate the down side signals.

If the evidence on the prosecution side is true and if the lowering was due to any negligence, there is no reason why that negligence should be attributed to the appellant and not to somebody else such as the pointsman, Budhu Singh. The wrong approach of the Courts below on this aspect appears clearly from the following passage in the judgment of the trial Court which acquitted the accused Budhu Singh and which appears to have been tacitly accepted on appeal and on revision.

"It is alleged that Budhu Singh pointsman lowered the signal and allowed the train F. 45 Dn. To come and collide with H. 10 Up. Assuming it to be so, it cannot be said that Budhu Singh had the same knowledge as that of A. B. Sharma. Budhu Singh is supposed to act according to the orders of S. M. or A. S. M. on duty. If he lowered the signals for F. 45 Dn. he did so at the bidding of A. B. Sharma, accused."

There is absolutely no evidence to justify the underlined statement. The appellant cannot be convicted on the basis of an assumption relating to such a crucial matter. It is also our opinion that the question at issue should not have been decided in this case on a mere balance of oral evidence and that balance allowed to be weighed down against the accused on the basis of the inadmissible statement of P. W. 6 to P. W. 25 without P. W. 6 having been asked about it. In view of the clear excessive speed with which the driver of the F. 45 Dn. brought it into the station it is more likely than not that the accident was due to the driver having failed to notice the signals. In our opinion this is a case in which it must be held that the prosecution has failed to adduce evidence on the most crucial point and it must, therefore, be held that the charge has not been brought home to the accused.

10. The appeal is accordingly allowed and the conviction and sentence of the appellant, Awadh Behari Sharma, are set aside.

Appeal allowed.

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