

Emperor Vs. Ramchandra Hari

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Court : Mumbai

Decided On : Jun-27-1913

Reported in : (1913)15BOMLR702; 20Ind.Cas.620

Judge : Basil Scott, Kt., C.J. and ;Shah, J.

Appeal No. : Criminal Appeal No. 99 of 1913

Appellant : Emperor

Respondent : Ramchandra Hari

Disposition : Appeal allowed

Judgement :

Basil Scott, Kt., C.J.

1. The accused was charged in the Court of the First Class Magistrate Sholapur as follows:-

That he on or about the 9th day of August 1912 being on duty at Kadabgaon station between 19 o'clock and 22 o'clock endangered the safety of passengers travelling in 16 up from Borati by disobeying General Rule No. 99(c) and No. 100 of the General Rules for all open lines of Railways sanctioned under Section 47 of the Indian Railways Act of 1890 and published under Notification No. 183, dated the 8th September 1906, by the Governor General in Council by giving permission

to approach to 16 up at J Jorati and subsequently fouling the main line by carrying on shunting on the main line and on to the siding ; and thereby committed an offence punishable under Section 101 of the Indian Railways Act, 1890.

2. The facts briefly are that the accused who was Station Master at Kadabgaon at about 7-45 on the night of the 9th of August 1912 gave orders to the driver of goods train No. 174 which was drawn up on the third line in the Station Yard to detach his engine and shunt nine waggons which were standing on the loop line to a dead end siding in order to make room for No. 43 down mail. This shunting operation involved taking the trucks on to the main line from the loop line and then passing them some little distance along the main line to the dead end siding. In the course of the shunting one of the waggons got derailed at the points where the siding joins the main line The derailment was caused by one Taty Paddoo working the point badly. The Station Master of Borati, the next station to Kadabgaon on the east, after the orders for the shunting has been given by the accused asked Kadabgaon for line clear in order to pass on the 16 up passenger train and Kadabgaon gaon line clear at once. The accused says line clear to the 16 up passenger and No. 43 down mail were to be given when he had two lines clear on which to receive them, because the loop line was clear and the main line would have been cleared within two minutes if there had been no derailment ; line clear was given in anticipation of the line being cleared. He thought there was ample time to do the shunting and if he had not done the shunting No. 43 down mail would have been seriously detained.

3. At this time the distant and home danger signals were up against the advancing 16 up from Borati and while the siding key was in the points it was impossible to take out from the key-box the key of the levers working the signals against the 16 up. The stations are protected by home and outer signals against advancing trains. Under these conditions the 16 up passenger left Borati and though running to Kadabgaon on a marked incline where steam has to be shut off for the last three miles and the train would be under such control that it could be pulled up at the first danger signal the driver disregarded both danger signals and dashed into the derailed waggon causing some injury to two of the passengers and the guard. Upon these facts the Magistrate held that the accused had broken Rule 100 which

is as follows :-' When permission to approach has been given, no obstruction shall be permitted outside the Home signals, or, on the line on which it is intended to admit the train, up to the Starting signal which controls the train; ' but had not by so doing endangered the safety of any person within the meaning of Section 101 of the Indian Railways Act (IX of 1890).

4. The accused was therefore acquitted.

5. Against the order of acquittal this appeal has been preferred by Government.

6. There can be no doubt that the two chief causes of the collision were the disregard by the driver of 16 up passenger train of the danger signals and the existence on the main line of the derailed waggon.

7. The derailment may have been caused by the negligent working of the points by Tatyá Paddoo. But the waggon would not have been on the line at all but for the disregard by the (sic) Station Master of Rule 100. The object of the rule is to (sic)sen the risk of accidents through shunting on a through line after line clear has been given. The disregard of the rule enhances the danger to passengers. It is the risk thus entailed which renders the rule-breaker liable to punishment; see *Snell v. The Queen* I.L.R. (1883) Mad. 201. We therefore convict the accused of an offence under the section.

8. As regards the punishment we have to bear in mind that the offence is the endangering of the passengers not the contributing to an accident, for the rule-breaker may be punished even though no accident occurs. Taking this as the object of the section the gravity of the offence should be estimated not by the actual ultimate consequences but by the risk involved. In this view the following matters appearing in evidence are relevant.

9. It is found that the accused some months before the accident viz. on the 19th April 1912) wrote to the District Traffic Superintendent Sholapur in reference to a memo regarding detention of waggons that there was no separate siding for loading and unloading purposes and this had to be carried out on the loop line which occupied double the time and they had to be hand-shunted in a siding

before loading was completed to make the line clear to admit a train. On many occasions owing to the running of trains the loading of a waggon would not be completed for three days. The letter continues : ' The labour engaged no doubt are bound to bring waggons in a position to load and unload only once and not often and often : so we have to wait for engine power. So time is lost a loading is not promptly completed. Are When you had been here last time I explained the difficulties and requested you to provide one separate siding holding about ten waggons and a gang of hamals. The absence of the hamals and siding puts me into great difficulty about loading and unloading business so kindly arrange for a separate siding.'

10. The District Traffic Superintendent deposes that there are A and B class stations, the distinction between the two classes being mainly with reference to fouling the line on which the incoming train is to be received. Kadabgaon was an A-class station till the 1st November 1912 since when it has been of the B-class. The Station Master and merchants had before November 1912 complained that more siding accommodation and loading facilities were wanted at Kadabgaon and the Station Master complained on the ground that shunting had to be stopped in order to enable him to give permission to trains to approach 201, according to the rules. This Station Master is apparently the successor of the accused.

11. The result of making Kadabgaon a B-class station is that shunting may continue between Home and Starting signals although line clear is given for an advancing train to approach.

12. In these circumstances the Station Master must keep the Home and Outer signals against the train.

13. The inference is that the risk of the driver disregarding the signals is now considered by the Railway administration so remote as not to warrant the prohibition of shunting after line clear has been given at Kadabgaon. The best evidence of the actual risk involved in such an operation as that undertaken by the accused on the night of the 9th of August is the conduct of the experts most capable of appreciating it. The offence of the accused in the light of these considerations cannot be regarded as deserving of serious punishment on this

appeal. He has already been degraded to the post of signal-man and reduced Rs. 15 per mensem in pay. We have ascertained that the driver Valentine whose default was the causa proxima of the collision has been punished under Section 101 with a fine of Rs. 100. We sentence the accused to pay a fine of Rs. 25 or to undergo one week's simple imprisonment.

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