

**Ramchandra Govinda Vs. the State**

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**Court :** Mumbai

**Decided On :** Mar-01-1961

**Reported in :** AIR1962Bom41; (1961)63BOMLR711; ILR1961Bom923

**Judge :** N.L. Abhyankar, J.

**Acts :** Railways Act, 1890 - Sections 101; General and Subsidiary Rules - Rules 52 and 52(1)

**Appeal No. :** Criminal Revn. Appln. No. 575 of 1960

**Appellant :** Ramchandra Govinda

**Respondent :** The State

**Advocate for Def. :** P.G. Palsikar, Hony. Asst. Spl. Govt. Pleader

**Advocate for Pet/Ap. :** M.Y. Sharif, Adv.

**Judgement :**

(1) The accused Ramchandra son of Govinda who was a Mechanical Signal Maintainer in the Central Railways at Dodra Mohor has filed this revision application against his conviction under S. 101 (a) and Section 101 (c) of the Indian Railway Act and the sentence of rigorous imprisonment of four months under each count imposed by the Special Judicial Magistrate, First Class (Railway), Nagpur, in Criminal Cas No. 237 of 1959 decided on 17-5-1960 and

confirmed by the Additional Sessions Judge, Nagpur, in Criminal Appeal No. 178 of 1960 decided on 9-11-1960.

(2) The prosecution allegation is that the work of a system of interlocking of signals was under-taken on the railway track near the Kohili railway station. This work was completed on 27-3-1959. After the completion of this work on the morning of 28-3-1959 Joshi (P. W. 2) who is the Signal Inspector in the railways, deputed the applicant and four other assistants to repair or put right the detector at point No. 29. The applicant and his helpers were commissioned for this job at about 7.30 a.m. on the morning of the 28th March. It is alleged that the applicant who was the man put in charge of this work with the help of his assistants was found to have opened the point and he had clamped the tongue rail with the main rail by means of a clamp. The accused did not issue any intimation to the Station Master at Kohili about his interfering with point No. 29. According to the prosecution, it was the duty of the applicant to give an intimation to the Station Master under Rule 52 of the rules framed as well as under subsidiary rule 52-1. It was also found that the applicant had not clamped the rails tightly and this resulted in the Janata Express called the 18-Up Janata Express which passed at point No. 29 at about 10 O'clock in the morning on 28-3-1959 derailing. The engine and one or two bogies immediately following the engine were found to have derailed. The applicant was therefore prosecuted for endangering the safety of persons under clause (a) of Section 101 of the Railways Act for disobeying the general rule 52 and subsidiary rule 52-1 and also for endangering the safety of persons by the negligent act in not putting the clamp sufficiently tight in the course of repairs undertaken by the applicant.

(3) The contention of the accused is that the responsibility for giving intimation either under rule 52 or subsidiary rule 52-1 and obtaining the consent of the Station Master is not of the applicant but of his immediate boss and superior Joshi, the Signals Inspector. The applicant therefore defended that he could not be held guilty of breach of any duty either under rule 52 or subsidiary rule 52-1. As regards the alleged negligence in not clamping the rails sufficiently tightly, the applicant's case was that the defect was detected not on the morning of the 28th March but on the previous night i.e. on the night of 27th March and that he was in fact

deputed for this work on the night of 27th March by Joshi. According to the applicant Mr. Joshi was fully aware that the applicant was required to put a clamp, that a clamp was put and that before the Janata Express got derailed several trains had passed over the track. Even on the morning of the 28th March three trains had passed over the track, two trains going up and one train going down before the Janata Express actually derailed. According to the applicant, if the clamp was properly fixed initially and had got loosened subsequently on account of the trains passing or by the Janata Express itself, then no fault can be laid at the door of the applicant that he had done his work negligently. It has also been contended by the applicant that in view of the fact that trains had already passed on the track, no occasion could arise of giving an intimation to the Station Master and therefore the charge of breach of rule 52 read with Section 101 (a) of the Indian Railways Act was also not sustainable.

(4) Both the Courts below have rejected these contentions of the applicant. It has been found by the lower appellate Court that the duty of giving intimation was not that of Joshi but of the applicant and that the applicant is the person who should have complied with Rule 52 and subsidiary rule 52-1 to escape liability under Section 101 of the Indian Railways Act. As regards the negligence of the applicant in not doing the clamping work properly, the Additional Sessions Judge has also found against the applicant and rejected his story that the applicant was asked to do the clamping work the previous night, i.e. on the 27th March.

(5) Ordinarily, these findings of the Sessions Judge which are findings of fact as regards the act of negligence should have been accepted in this Court and the only point which would really arise is whether on a true construction of rule 52 and rule 52-1 of the rules the liability could be fastened on the applicant for breach of S. 101 (a) of the Indian Railways Act. But I have heard Mr. Sharif also on the question of negligence and, in my opinion, no case is made out for interference with the findings of the two Courts below in respect of the conviction under Section 101 (a) or Section 101 (c) of the Indian Railways Act.

(5a) Now, rule 52 of the General and Subsidiary Rules is in the following terms:

'No railway servant shall interfere with any points, signals or their fittings, signal wires or any interlocking gear for the purpose of effecting repairs or for any other purpose except with the previous consent of the Station Master.'

(6) Then comes Subsidiary Rule 52-1 the relevant portion of which is as follows:

'Before taking in hand any disconnection of points, signals or any interlocking gear, the person in charge of the work must advise the Station Master or Cabinman on duty in writing in form S.E. 120-B and obtain his signature before the work is started and after it is completed.'

(7) It will be seen that the two rules are really complementary. First, the railway servant concerned has to obtain the previous consent of the Station Master before he does anything which interferes with any points, signals or their fittings, signal wires or any interlocking gear for the purpose of effecting repairs. Then under the subsidiary rule, before the actual work to be commenced for disconnection of points, signals or any interlocking gears is taken in hand the person in charge of the work must advise, i.e. inform, the Station Master or the Cabinman on duty in writing and obtain his signature before the work is started and after it is completed.

(8) It is contended by Mr. Sharif, the learned counsel for the applicant, that the expression 'the person in charge of the work' must mean in the instant case, Joshi, the Inspector, and if Joshi is the person whose duty it was to advise the Station Master in writing and again to obtain his signature before starting the work and after it is completed, no blame can be attached to the applicant for failure to comply with this rule. I do not find myself in a position to agree with this contention. The words used are 'before taking in hand any disconnection of points. . . .'. These words must necessarily refer to a person who has actually to undertake the work of repairs or disconnection of signals or interlocking gears or any other machinery. Even though as a supervisor Joshi may have the authority to direct a subordinate member of the staff to effect the repairs, the hand which effects the repairs must take the responsibility of giving intimation in writing prior to the commencement of the work and again a written intimation after the work is completed. One cannot conceive how a person like the Supervisor or Inspector in the position of Joshi can be charged with this responsibility. It is known that the

Inspector who is the Supervisor had to attend to supervision over several points on the whole track. It is not contended and it cannot be contended that the Supervisor or Inspector actually does the work of disconnection of points, signals or interlocking of gears. I therefore do not see how it can be reasonably said that the duty of giving a memo in form S. E. 120-B as provided by the subsidiary rule 52-1 can be attributed to anyone like an Inspector and not the person who actually does the work of disconnection of signals, interlocking of gears and other points. Not only has the intimation to be given in writing and signature of the Station Master to be obtained prior to the commencement of the work but also after its completion. This rule therefore to my mind leaves no doubt that the duty is cast on the person who is actually entrusted with carrying out the work of disconnection of points, signals or interlocking or gears and this duty cannot be avoided except at the peril of endangering the lives of other persons. I therefore do not agree that it was the duty of anyone else except the applicant of issuing a memo in writing in form S. E. 120-B as provided in subsidiary rule 52-1. It is not also difficult to see the reasonableness of this rule. It is the Station Master who is in control of movements of incoming and outgoing trains or engines on the track. He must be made aware is at any point on the track either a signal, or a point or an interlocking gear is being interfered with. Unless the Station Master is apprised of this fact by a written communication both prior to the commencement and after the completion of the work, the Station Master will not be able to control the movements of the incoming or outgoing trains on the track, and that information must be given directly by the man who is entrusted with the duty of disconnection of points etc. Therefore, the significance of the words 'Before taking in hand any disconnection of points etc.' This would clearly show to my mind that the responsibility is of the person whose hands have to do the work of disconnection of points etc.

(9) Next we come to rule 52 and even with regard to this rule, in my opinion, the previous consent of the Station Master must be obtained by the railway servant concerned before any point, signal or interlocking gear is repaired. It is no answer to a charge of the breach of this rule to say that a Supervisor or Inspector had asked the work to be done. It is possible that more than one person may be required to obtain the consent of the Station Master under this rule and it is possible for the applicant to argue that Joshi should also have obtained the

previous consent of the Station Master but that will not relieve the applicant of his duty to obtain the consent of the Station Master to enable him to interfere with any points, signals or their fittings etc. The rule is made again for ensuring the safety of the track during the period of repairs and the Station Master must be apprised when any such interference with any point, signal or their fittings etc, is contemplated. No servant is absolved of this duty. The words of the rule are very clear and they do not leave room for any doubt that the rule applies to every kind of servant, whether he is working in his own responsibility or on the instructions of another railway servant. If the previous consent of the Station Master is not obtained , then the servant has no right to interfere with any point, signal or their fittings etc.

(10) I therefore uphold the findings of the Court below that it was the duty of the applicant himself and not of Joshi to comply with the provisions of rule 52 and subsidiary rule 52-1 before he could undertake any work of interfering with the points, signals etc., or as in this case, the clamping of the track could not be done without giving an intimation in writing in form S. E. 120-B and obtaining the signature of the Station Master or the Cabinman on duty before starting work or after its completion.

(11) Next we come to the question whether the applicant could be said to be guilty of any negligent act when he clamped the track and subsequently the clamp got loosened and resulted in the derailment of the engine and a couple of bogies of the 18Up Janata Express. The applicant's contention that he was in fact directed to put on a clamp and repair point No. 29 the previous night and not on the morning of the 28th has to be mentioned only to be rejected. There is no evidence worthy of belief on the record in support of the contention and I do not think any circumstances have been established to reject the evidence of the prosecution witness Joshi (P. W. 2) and Beniprasad (P. W. 10) that Joshi instructed the applicant to repair the detector at point No. 29 for the first time on the morning of 28-3-1959 at about 7.30 a.m. According to Joshi's evidence, it is normally not necessary to repair the detector to put on any clamp, but a clamp may be used in order to take more precaution. It has been further admitted by Joshi that in this particular case when he visited the spot after the derailment was detected, he

found from a distance that the clamp was in proper order. To the same effect is the evidence of Beniprasad (P. W. 10). According to Beniprasad, the work of putting on the clamp was done properly as it should have been done. On the other hand, there is the evidence of the driver of the Janata Express, Adhikari (P. W. 12). Adhikari has stated that after the derailment and after the engine had stopped, he went to the spot and found that the clamp had loosened. So there is no doubt that the loosening of the clamp was the direct cause of the accident. According to Mr. Sharif the clamp may have been loosened after it was properly fitted tightly by the passing of trains over the track the previous night and also in the morning of the 28th march 1950 before the Janata Express passed over the track. Now, it is difficult for me to accept the contention that any trains had passed over the track after the clamp was put up. There is no such positive evidence on the record. Beniprasad (P. W. 10) does not say that any trains passed after the clamp was put up, but it is argued that there is no evidence the other way and therefore the applicant's statement should be accepted that the trains did pass after the clamp was put up and therefore it is possible that the clamp might have been loosened on account of the passing of such trains. I am prepared to accept for the sake of argument that the clamp might have been loosened as a result of the passing of the trains even prior to the Janata Express coming on the track, but that fact would not absolve the applicant from his liability under Section 101 and that liability really arises on account of the fact that he did some work in negligent manner. The negligence may be in negligently clamping the rails on the track or the negligence may be in the non-observance of the rules. The duty of the applicant was not only to put the clamps on the rails as best as he could, that is, sufficiently tightly but it was also his duty to give prior intimation in writing and obtain the signature of the Station Master and again to obtain the signature of the Station Master after completion of the work. In my opinion, the negligence may consist not only in not doing the particular work of repairs properly but also in not observing the necessary rules in undertaking the work which ultimately resulted in an accident taking place. So whether or not the accident took place. So whether or not the accident took place as a result of the clamp being loosened by the passing of other trains prior to the coming of the Janata Express or as a result of the Janata Express itself loosening the clamp is really immaterial in this case. In a case of the

accident of this type, it is often difficult to establish what was the exact cause which resulted in the accident, By the negligence of the applicant consists in not following the rules in undertaking the work itself. If the applicant were to observe the rules and especially subsidiary rule 52-1, then the proper authorities would have been aware and apprised of the type of work being done on the track, the applicant's work would have been supervised by the proper authorities and the applicant could not have taken upon himself the responsibility of deciding whether or not to repair the track or repair the point and while doing so put a clamp on the track and remove the bars as he had done. In my opinion, the negligence of the applicant consists not only in not putting the clamp sufficiently tightly but also not following the rules which are the rules expressly made for ensuring the necessary safety of passenger trains and goods trains going on the track. I therefore hold agreeing with the Courts below that the applicant is also guilty of negligence and on account of this negligence he endangered the life and safety of persons going on the track in the train.

(12) Mr. Sharif has also relied on a decision of the Oudh Chief Court in Parbhu Dayal v. Emperor, AIR 1924 Oud 250. In particular he has relied upon a passage at page 251 which is to the following effect:

'Going a step further, a mere breach of rule is not sufficient to support a conviction under S. 101 of the Railways Act. Both the lower Courts misunderstood the defence as one of contributory negligence. The defence really was that the breach of rule did not endanger the safety of passengers. In the ordinary course passengers board a train when it is brought alongside the platform and those who desired to travel by the 8 Down would have entered it when the train had been brought along the platform after the departure of 7 Up. Even supposing the accused had followed the rules to the latter and admitted 7 Up after the 8 Down stopped, the accident would not have been prevented because the passengers contrary to rules, spread themselves over the platform line in their desire to board the 8 Down before it had been brought on to the platform side. It was not the only act of the passengers out of the common. Another act of theirs had not been discussed by the lower Courts. It appears that the time had not arrived for admitting them on to the platform and they actually jumped over or scaled over the

partition railing to come on to the platform from outside.'

The learned Judge then discusses the evidence and comes to the conclusion that as the passengers had not even been admitted to the platform it could not be said that the accused had knowledge that the passengers would break through the barrier and rush on to the line. Thus, on this reasoning the learned Judge has come to make the observations quoted at the beginning of the passage. In my opinion, this decision is not an authority for the proposition that the breach of the rule is not sufficient to support the conviction under Section 101 of the Railways Act. What is meant is that a breach of the rule must be of a character which endangers the safety of persons. Indeed, that is the sine quo non as mentioned in Section 101 itself. Section 101 says that 'if a railway servant, when on duty, endangers the safety of any person (a) by disobeying any general rule made. . . . . . . . . ' Mr. Sharif is quite right in saying that it is not a breach of the rule which is made punishable under Sec.101. The other condition that has to be satisfied is that the breach of the rule must result in endangering the safety of any person. If the breach of the rule is of that character, namely, that it endangers the safety of any person, the disobedience is made punishable under Section 101. Now, in this case, it has been established that the breach of the Rule 52 and subsidiary rule 52-1 did in fact endanger the safety of persons. This is so not only because it resulted in the accident but also because the breach of the rule was such that it must necessarily endanger the lives of persons whether in fact it causes accident or not. If a Station Master is kept in complete darkness and ignorance about the repairs that are undertaken on the track by a railway servant and he is not intimated in writing and his consent is not obtained prior to and after the completion of the work, such a situation is fraught with dangers to any person going on the track and therefore the penalties provided under S. 101 (a) and S. 101 (c) are invited. Rule 52 and subsidiary rule 52-1 are meant to ensure that the Station Master must be made aware whenever there is any occasion for interfering with or repairing any points, signals or any interlocking gear on the railway track. Ultimately it is the Station Master who is responsible for the entry and exit of trains within his jurisdiction. If the Station Master is kept in dark and the Station Master allows any incoming train or outgoing train by giving a signal for its entry or exit, then the work that is in progress over any point on the track is fraught with the

danger of involving the trains in accidents. It is precisely for this reason that rule 52 and subsidiary rule 52-1 are made in a positive form casting a specific duty on every railway servant and every person taking in hand the work of repairs or of interfering with points, signals etc. I do not therefore agree with the contention of the learned counsel for the applicant that it is a mere breach of the rule that is made punishable in this case. It is not a breach of the rule only but it is a breach of the rule which has endangered the lives of persons, and if that condition is established, in my opinion the conviction under Section 101 (a) or Section 101 (c) must follow.

(13) The result is that the revision application fails and is dismissed. The accused shall now surrender to his bail bond.

(14) Application dismissed.

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