

Gauri Dayal Vs. Emperor

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Court : Allahabad

Decided On : Oct-20-1934

Reported in : AIR1935All121

Appellant : Gauri Dayal

Respondent : Emperor

Judgement :

Rachhpal Singh, J.

1. This is a revision application by one Pandit Gauri Dayal against the order passed by the learned Sessions Judge of Pilibhit, dismissing his appeal against his conviction under Section 101, Railways Act. The facts of the case are these : There is a railway station called Mala on the R. & K. Railway. B. Gaya Prasad was the Station Master of that station, and Babu Gauri Dayal was the Assistant Station Master at the same place. On 6th July 1933, Babu Gaya Prasad, Station Master was on duty from 6 a.m. to 6 p.m. He was relieved by Babu Gauri Dayal.

2. There are three railway lines at Mala railway station. One is towards the railway station. The second is in the middle and is meant for run through trains. The third is towards the goods shed. The points Nos. 1 and 4 are on junctions of the station line and the middle line and the points Nos. 2 and 3 are on the junctions of the second and the third lines. The third line is meant for goods wagons, and the first line is meant for those trains which are not run-through trains. On 6th July 1934, a

goods wagon was loaded at the third line. According to the facts found by the learned Sessions Judge this loading work finished at 5 p.m., when Babu Gaya Prasad was still on duty. According to the railway rules, the loading should have been finished by that time. The points Nos. 2 and 3 are permanent locked points.

3. It has been found that Babu Gaya Prasad, Station Master opened the lock at point No. 3 in order to admit the goods wagon on line No. 3. Babu Gaya Prasad should have locked the point No. 3 before he was relieved, but it has been found that when he was relieved he left this point No. 3 unlocked. The diary showing the change of duties was not filled in by Babu Gaya Prasad. The result was that Babu Gauri Dayal, when he relieved Babu Gaya Prasad at 6 p.m., did not know that the point No. 3 had been left unlocked by Babu Gaya Prasad. One train 7 up came after Babu Gauri Dayal had relieved Babu Gaya Prasad. This train should have gone straight on line No. 2, but went on line No. 3 because permanent point No. 3 had been left unlocked by Babu Gaya Prasad with the result that there was a collision between this train and the aforesaid goods wagon, which was standing on line No. 3 as already mentioned. It has been found that seven persons were injured. Babu Gaya Prasad and some other servants of the railway including Babu Gauri Dayal were departmentally dealt with. Babu Gauri Dayal was further prosecuted under Section 101, Railways Act (9 of 1890).

4. The trial Court sentenced Babu Gauri Dayal to a fine of Rs. 60. He appealed against his conviction. The learned Sessions Judge reduced the fine to Rs. 20, but affirmed the conviction of Babu Gauri Dayal under Section 101. Against that order of the learned Sessions Judge, Babu Gauri Dayal has preferred this revision. Section 101 enacts:

If a railway servant, when on duty, endangers the safety of any person...(a) by disobeying any general rule made, sanctioned, published and notified under this Act, or (b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or (c) by any rash or negligent act or omission, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

5. The prosecution case is that the accused disobeyed the Rule 187, Clause 8, Sub-clause 3 which runs as follows:

When it is required to change the position of a permanently locked points the Station Master must see and is personally responsible that such points are correctly re-set and re-locked in the normal position and must have the keys of the locks of each point in his possession before allowing any train to pass over them.

6. The first question which is to be determined in this case is whether the applicant has in any manner contravened the provisions of this rule. If the answer to this question be in the affirmation then it is perfectly clear that he is guilty under Section 101, Railways Act. On the other hand, if it be found that he had done nothing contrary to the provisions of the aforesaid rule, then he has committed no offence at all. Both the Courts below have found that it was the duty of Babu Gauri Dayal to relock the point No. 3 before allowing the 7 up train to pass through the station, and I have to see whether this finding is correct.

7. After a consideration of the question I have come to the conclusion that it cannot be said that the accused has acted in contravention of Rule 187, Clause 8, Sub-clause 3. The rule ordains that it shall be the duty of the Station Master who will be personally responsible to see that when a permanently locked point has been opened then it should be correctly re-set and re-locked, and he should further have the key of the lock in his possession before he allows any train to enter the station. It appears to me that this rule pre-supposes that the Station Master is aware that it had been necessary to change the position of a permanently locked point. If the Station Master unlocks a permanent point then it is his clear duty to re-set it before any train is allowed to enter the station. Now, if Babu Gaya Prasad had been prosecuted one would have had no hesitation in holding him to be guilty of having disobeyed this rule. He had unlocked the point No. 3 in order to permit the goods wagon to go on line No. 3. It was therefore his duty to see that the point No. 3 was re-locked. This duty he did not perform according to the findings of the Courts below. Different considerations however prevail in determining whether the man who relieved Babu Gaya Prasad can be said to have disobeyed the above mentioned rule. Now, if Babu Gaya Prasad on

relief by the applicant had informed the applicant that one point had been allowed to remain unlocked, and then the applicant had not re-set the point by relocking it then, he would have been certainly guilty of disobeying the rule. But in the present case however Babu Gaaya Prasad did not do this. A journal or diary is kept at every station in which these matters are noted. If Babu Gaya Prasad had made a note in that journal or diary, before he was relieved, that the point No. 3 had been unlocked and had not been relocked, then the applicant should have known that he was to perform that duty. I am told the keys of the permanently locked point are kept in the office of the Station Master.

8. If the key of lock No. 3 had not been in its place, then it could have been said that the applicant when he relieved Gaya Prasad ought to have noticed this matter, but it appears that the key of the lock was in its proper place. So the applicant had no notice and had no means of knowing that any permanent point had been left unlocked by the man whom he relieved. So he had no reason to suppose that any permanent point had remained unlocked due to the negligence on the part of Babu Gaya Prasad. Of course, the Assistant Station Master would have discovered this matter if he had gone on a visit of inspection before taking over the charge from Babu Gaya Prasad. But the rule as it stands did not impose any such duty on the applicant. When a man is sought to be made criminally liable for any alleged omission on his part, then, his case must be brought within the terms of the rule or section he is said to have disobeyed. The doctrine of constructive notice should not be pushed too far in order to help the prosecution. If the intention of the framers of the rule mentioned above had been that it shall be the duty of the Station Master or Assistant Master in charge to personally go and inspect the station yard to see whether or no, all the permanent points are locked, then, that intention would have been expressed in the rule in clear manner. I am of opinion that there is nothing in the rule from which we might gather that it enjoins the person on duty, on taking over the charge, to go to the yard and see each and every lock point. In, a big station, it would be difficult for a man taking over charge of his duties from the man whom he is relieving to go all over the station, yard at night to see whether each and every permanent point is locked. It may be that such a course may be absolutely necessary for the safety of the passengers but in that case the rule should be more explicit. The words 'When it is required to

change the position of a permanently locked point' would indicate that the rule assumes that the man on duty is aware that a permanently locked point has been unlocked. It is only in that case that he is bound to re-lock it before any train is allowed to enter the station yard. I am very doubtful whether according to the rule as it stands, the applicant can be said to be guilty of having disobeyed it. When there is a doubt as to the interpretation of a particular rule or section, then, the benefit of that doubt must go to the accused person, who is alleged to have disobeyed the rule. In these circumstances. I am of opinion, that the accused is not guilty and must therefore be acquitted.

9. For the reasons given above I allow this revision application, set aside his conviction and acquit him. The fine if paid shall be refunded.

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