

**Durga Prasad and ors. Vs. State**

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**Court :** Rajasthan

**Decided On :** Feb-22-1961

**Reported in :** AIR1962Raj92

**Judge :** C.B. Bhargava, J.

**Acts :** Railways Act, 1890 - Sections 99 to 105 and 106 to 120

**Appeal No. :** Criminal Ref. No. 90 of 1960

**Appellant :** Durga Prasad and ors.

**Respondent :** State

**Advocate for Def. :** B.C. Chatterjee, Adv.

**Advocate for Pet/Ap. :** K.C. Gour, Adv.

**Disposition :** Reference rejected

**Judgement :**

ORDER

**C.B. Bhargava, J.**

1. This is a reference by the learned Additional Sessions Judge, Churu, recommending that the conviction of the accused namely Durgaprasad, Tilakraj, Dharamvir and Mahavir who are railway employees be set aside. Each of them

has been sentenced to a fine of Rs. 25/- under Section 120 of the Indian Railways Act by the First Class Railway Magistrate, Jodhpur.

2. The learned Additional Sessions Judge has made the recommendation on the ground that the prosecution evidence is discrepant and does not establish the guilt of the accused. The learned Judge after discussing the prosecution evidence says that it has been not proved beyond all manner of doubt that the accused applicants gave beating to Jhumarmal or abused him. The learned Railway Magistrate on the other hand has believed the statements of Jhumarmal and Ranjitsingh and held that it is proved from their evidence that all the accused persons abused and beat Jhumarmal. In his opinion the evidence of these two witnesses was clear, convincing and consistent.

3. In my opinion it is not necessary to go into the evidence in revision as the learned Magistrate has come to a finding that the evidence of Jhumarmal and Ranjitsingh proves that the accused had abused and beat Jhumarmal on the railway platform. It is true that Dungarmal and Moolchand who were cited as witnesses in the first information report did not support Jhumarmal's statement in the court but the Prosecuting Inspector had requested for permission to cross-examine these witnesses and to contradict them with their previous statements recorded under Section 162 of the Code of Criminal Procedure, but it was refused by the learned Railway Magistrate though under the law the Prosecuting Inspector was entitled to contradict these witnesses with their previous statements during investigation. The other reasons mentioned by the learned Judge for rejecting the evidence of Jhumarmal and Ranjitsingh also do not appear to be sufficient to call for any interference in revision with the finding of the fact recorded by the learned Railway Magistrate. Ranjitsingh is an independent witness and his evidence does lend support to the statement of Jhumarmal. The inconsistency pointed out by the learned Judge is not such that the entire evidence of Jhumarmal may be rejected on its basis.

The learned Judge further points out that it has not been proved what actual words were used by the accused persons and whether they amounted to abusive language or not. He has referred to *Budha Singh v. Emperor*, AIR 1925 Lah 151,

in this connection. There is the categorical statement of Jhumarmal that he was abused in the name of his mother and sister. This evidence was enough to warrant a finding that the accused persons used abusive language. Apart from that the finding is that the accused persons also beat Jhumarmal on tile railway platform. Nuisance ordinarily means that which annoys or hurts or that which is offensive. If persons indulge in the act of beating on a railway platform it is bound to cause annoyance to other persons who happen to be there at that time. The case would also come under Sub-clause (b) because it would amount to the committing nuisance on the Railway Platform. For these reasons I do not consider it a fit case for interference with the finding of the Railway Magistrate. But a point of law which does not seem to have been raised before the courts below has been raised before this Court and that is that Section 120 of the Indian Railways Act does not apply in the case of railway servants and as such the accused could not have been convicted under that section. Section 120 of Indian Railways Act runs as follows:

"If a person in any railway carriage or upon any part of railway-

(a) is in a state of intoxication, or

(b) commits any nuisance or act of indecency, or uses obscene or abusive language or

(c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp

he shall be punishable with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant'.

The controversy turns round the meaning to be given to the word 'person' appearing in Section 120 of the Indian Railways Act in the light of the other sections of the Act.

4. There are conflicting decisions on this point. In *A.F. Cuffiy v. Muhammadali Mahomed Ibrahim Sahib*, AIR 1919 Mad 971, a Bench of Madras High Court held that the word 'person' in Section 120 includes railway officials. This view was followed in *Appal Swamy v. Emperor*, AIR 1934 Pat 52 (1). The same view was taken in *Dinanath Haveli Ram v. Emperor*, AIR 1946 Nag 150 and *Gajadhar Singh v. Emperor*, AIR 1946 Nag 200 where Bose J., as he then was, after considering the contrary view expressed in *Gurunath Shankar v. Emperor*, AIR 1937 Bom 357, given the reasons in detail for his decision. The same view has been followed in *Lalit v. State*, AIR 1957 All 636. On the other hand it was held in *Mulchand v. Emperor*, AIR 1929 Sind 249 (1) that Section 120 of the Indian Railways Act does not apply to railway servants. This was followed in *Gurunath's case*, AIR 1937 Bom 357 where Beaumont C. J. delivered the judgment. In *Vishwanath Pandey v. State*, AIR 1960 All 721 the same view has been followed.

In my view the word 'person' used in Section 120 is of wide import and there is no reason why a restricted meaning should be given to it so as to exclude the railway servants from its purview. The word 'person' has to be given its plain meaning unless it leads to absurdity or is susceptible of another meaning and if no such alternative construction is possible the ordinary rule of literal construction must be adopted. It may be that the provisions of Section 120 to some extent overlap the provisions of Section 100 but all the acts described in Section 120 are not covered under Section 100 and there is no other provision in the Act which makes the acts described in Section 120(b) and (c) committed by railway servants punishable. Because Sections 99 to 105 deal with the offences by railway servants and Section 120 appears under the offences falling under the head 'other offences', it cannot be said that the offences mentioned after Section 106 do not apply to railway servants.

Offences under Sections 99 to 105 are of special kind relating to railway servants but the offences mentioned in Sections 106-120 are such which can be committed both by railway servants as well as other persons. The reasons which compelled the learned Judges of the Bombay High Court to take the view that this section does not apply to the railway servants were considered by Bose J. in *Gajadhar Singh's case*, AIR 1946 Nag 200 and the reasons why the learned Judge arrived

at this conclusion that the word 'person' in Section 120 includes railway servants have been thus summed up:

'that the word in its ordinary grammatical sense is wide enough to cover such servants; (2) that there is no express limitation in Section 120 or anywhere else upon its ordinary grammatical meaning, and (3) that any limitation by implication is not warranted, because (a) when the Act wishes to make limitations it does so expressly as witness the words railway servants 'on duty' and the word 'person' in Sections 100, 101 and 105 must, in my opinion include railway servants whether on or off duty. Now it is a well established canon of construction that when a word is used in one sense in one part of an Act it ought to be construed in the same sense throughout unless there is something in the context to indicate the contrary. This is particularly so when the sense contended for imports the ordinary, grammatical meaning of the word. If 'person' includes railway servants even in the portion of the Act relating exclusively to offences by railway servants, why should it not be used in its general, ordinary and grammatical sense in the more general part of the Act which deals generally with 'other offences' and makes no special limitations?'

In my opinion neither on the language of the section itself nor for other sections in the Act a different meaning other than its natural meaning can be given to the word 'person' occurring in Section 120 of the Indian Railways Act. I, therefore, with respect agree with the view taken in the Madras, Patna, Nagpur and the earlier Allahabad decisions and hold that Section 120 equally applies to railway servants. The accused have been rightly convicted under this section.

5. This reference is therefore, rejected.

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