

**Namadevan Vs. the State of Madras**

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**Court :** Chennai

**Decided On :** Jan-20-1972

**Reported in :** 1972CriLJ1414

**Judge :** Somasundaram, J.

**Appellant :** Namadevan

**Respondent :** The State of Madras

**Judgement :**

ORDER

**Somasundaram, J.**

1. Namadevan the petitioner herein, was the driver of the Arkonam Passenger, viz. Train No. 301, on the night of 13th of January, 1968. This train left the Madras Central Station at 18-10 hours. Earlier to it, the Mangalore Mail viz., Train No. 1 had left the Station. The train driven by this petitioner dashed against the rear portion of the Mangalore Mail at a point 227 metres east of the signal ABU 13. One Kader Meeran who was in the rear bogie of the Mangalore Mail, sustained injuries and later succumbed to them. Thirty other persons who were in the compartment also sustained injuries, grievous and simple. The petitioner was tried by the Sub-Divisional Magistrate, Poonamallee for offences under Sections 304-A, 337 and 338 of the Indian Penal Code, read with Section 101 of the Indian Railways Act.

Observing that the petitioner was both rash and negligent, the learned Magistrate convicted him under all the Sections. He sentenced him under Section 304-A, I.P.C. to suffer rigorous imprisonment for six months. He did not award any separate sentence for the other offences viz., under Sections 337 and 338, I.P.C. and Section 101 of the Indian Railways Act. On appeal, the learned Sessions Judge of Chingleput while setting aside the convictions under Sections 337 and 338, I.P.C. confirmed the convictions under Section 304-A, I. P.C. and Section 101 of the Indian Railways Act and the sentence under Section 304-A, I.P.C. The petitioner contends that he has been wrongly convicted.

2. There is no doubt that the Arkonam Passenger driven by this petitioner dashed against the Mangalore Mail at a point 227 metres east of the signal ABU 13 on the night of 13-1-68. Kader Meeran, who was in the rear bogie of the latter train, sustained injuries and succumbed to them. 30 other persons who were in this compartment were also injured. P.W. 1 was the driver of the Mangalore Mail. P.W. 11 was his guard. P.W. 4 the Police Constable was also in it. P.W. 14, Thiru Venkataraman was one of the passengers in the rear bogie. This train had left the Central Station at 6-20 P.M. P.Ws. 5 and 7 are firemen in the Arkonam Passenger. P.W. 6 Balasubramani was the Guard.

P.W. 1 has sworn that he stopped No. 1 Mail at the signal 140-A as the same showed danger signal. He stayed there for two minutes according to the Rules and then proceeded westwards towards ABU 13 at a walking speed as required under the Rules. ABU 13 also showed red colour. P.W. 1 stopped the train there for two minutes. When it showed the yellow signal for loop line, he got the exchange signal from the guard. He whistled and started the train. When the engine and the first bogie had just passed the signal ABU 13, there was a heavy jerk. He fell down and got up. He then realised that the Arkonam Passenger had dashed against the rear bogie. P.W. 2 is the Station Master of Ambattur. ABU 13 is at a distance of about one furlong from the Railway station. He says that P.W. 3, the Assistant Cabin Station Master, cleared ABU 13 signal for No, 1 Mangalore Mail at 18-55 hours. He further saw No. 1 Mail stopping after the operating of the ABU 13 signal. He sent P.W. 3 to find out the reason. He learnt about the impact.

3. The train which proceeds from the Central Station towards the west must pass the signal 140-A after leaving the Ambattur Station. It must then pass the Ambattur Home signal called ABU 13 before it could come to the station. The distance between the signals 140-A and ABU 13 is about 781 metres. The impact occurred after the engine of No. 1 Mail had passed the signal ABU 13. Ex. P-13 establishes this. The place of impact is at a point 227 metres east of the signal ABU 13. Rules 276, 277, 278 and 279 of the General Rules of Indian Railways mention as to what should be done when signals are on. Under Rule 277, when the driver finds that the automatic stop signal is on, he should sound his whistle to warn the guard and stop at such signal. He should wait at such signal for not less than one minute by day and two minutes by night. If, after the lapse of this period the signal remains at 'on, he may proceed to pass it, provided that he can see that the line ahead is clear up to the next stop signal and provided that he has his train under such control that he can stop short of any obstruction.

Under Rule 278, the guard, in such circumstances and in a case where the driver is not accompanied by a fireman, should accompany the driver on the engine before it moves forward to assist him in keeping a sharp look out; Under Rule 279, when an automatic stop signal has been passed at 'on' the train should proceed with great caution until the next stop signal is reached. If the next stop signal is in the caution or clear position, the driver must continue to proceed cautiously to the next stop signal beyond, and provided that signal is in the caution or clear position, may resume ordinary speed. If, however, either of these signals is at 'on' and is an automatic signal, the procedure prescribed in Rule 277 should be observed. Where, owing to curvature of the line fog or any other cause, the next stop signal ahead cannot be seen, the guard or fireman should proceed on foot in advance of the train and the driver should follow with the train at a walking pace in response to the guard's or fireman's signals. The train should stop to pick up the guard or fireman at the point where it can be seen that the line ahead is clear up to the next stop signal. This is Rule 280.

4. The evidence on record establishes that P.W. 1, the driver of No. 1 Mail had followed these rules. He had stopped at 140-A for two minutes and then proceeded with walking speed. He had stopped at ABU 13 as that signal also

showed red. Then, after that signal showed yellow, he had just moved the engine and the impact took place at that time. Obviously, the petitioner did not observe the rules. When he had stopped his train for two minutes at the signal 140-A, he should have proceeded fast only if he could see that the line ahead was clear up to the signal ABU 13. The impact occurred in between the two signals. Clearly, he did not see the line ahead of him. Had he seen it, he could have easily seen the No. 1 Mail. After passing the signal 140-A, he should have kept the train under such control that he could stop short of any obstruction. When questioned in Court, he has stated that there was a curve and as such he could not see No. 1 Mail which was ahead of him. This was not suggested to any of the witnesses when they were in the box. Even then he should have strictly followed Rule 280.

It is urged that at the worst there was only an error of judgment. It is argued that the petitioner mistook the green signal as a signal for his train and that as such he proceeded ahead. P.W. 7 states in his evidence that when the petitioner started, the ABU T3 signal showed green. Even then, the petitioner should have observed Rules 277, 279 and 280. The impact was at a distance of about 227 metres east of the signal ABU 13 and about 550 metres west of the signal 140-A. It was thus after the engine or No. 1 Mail had passed the ABU 13 signal. According to the Rules, the petitioner should be guided by the signal 140-A till his train actually reached the signal ABU 13. Only after the train had reached the home signal ABU 13, the petitioner would be governed by the indications in ABU 13. In other words, the ABU 13 signal is a guidance for the accused for driving the train in between ABU 13 and the Ambattur Railway Station, It could not guide him for driving his train along the line east of ABU 13, that is, in between the signals 140-A and ABU 13. The version that he followed ABU 13 for driving his train along the line east of ABU 13 and that he ignored the danger signal 140-A and the rules governing the same, would clearly establish that he was both rash and negligent in driving this train on that day.

5. The clear duty of a driver is to see the objects which are ahead of him discernible in vision and keep the train in a state of control, to avoid striking against a train which is ahead. His duty is all the more greater when he takes the train at level crossings and at points of signals, for which. special rules have been

provided.

6. The courts below have correctly convicted the petitioner and the convictions are confirmed. The petitioner is not now in service. It is said that he is suffering from Tuberculosis. Hence, while confirming the convictions, I reduce the substantive sentence to three months' simple imprisonment. With this reduction in sentence, the revision is dismissed.

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