NAGARAJ

v.

UNION OF INDIA

(Criminal Appeal No. 324 of 2019)

FEBRUARY 21, 2019

[ABHAY MANOHAR SAPRE AND

DINESH MAHESHWARI, JJ.]

Railways Act, 1989 – s.160(2) – Opening or breaking a level crossing gate – Appellant -driver while driving the bus hit it against the railway crossing gate – Due to the said hit, the railway crossing gate was broken – Trial Court found appellant guilty for commission of the offence u/s. 160(2) of the Act and he was sentenced to undergo simple imprisonment for a period of six months – Appellate Court affirmed the conviction – In Revision, High Court upheld the order of the Appellate Court – On appeal, held: Three Courts below, on appreciation of evidence had found that appellant had committed offence – Such finding being concurrent finding of fact is binding while hearing appeal u/Art.136 of the Constitution – However, appellant has already undergone one month's jail sentence and the offence in question was neither against the society nor it involved any moral turpitude nor it resulted in causing any harm or injury to any human being except causing some damage to the railway property – Thus, jail sentence altered to "what appellant has already undergone".

Partly allowing the appeal, the Court

1. The first submission of the appellant that he was wrongly convicted has no substance. It is for the reason that when the three Courts below, i.e., the Court of Magistrate, Appellate Court and the High Court in its revisionary jurisdiction, on appreciation of evidence, have arrived at a conclusion that the appellant was found to have committed the offence, such finding being concurrent finding of fact is binding on this Court while hearing appeal under Article 136 of the Constitution. [Para 16] [854-E-F]

2. However, it is for the reasons that, first, the appellant has already undergone one month's jail sentence; second, the offence in question is neither against the society nor it involves any moral turpitude and nor it has resulted in causing any harm or injury to any human being except causing some damage to the railway property, viz., one railway crossing gate; and lastly, the offence is now 13 years old. [Para 18][854-G-H; 855-A]

3. Keeping in view the aforementioned three reasons and in the interest of justice, the six months' jail sentence awarded to the appellant by the three Courts below deserves to be altered to "what has already undergone by the appellant till date". [Para 19][855-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 324 of 2019.

From the Judgment and Order dated 15.03.2018 of the High Court of Karnataka Dharwad Bench in Criminal Revision Petition No. 100297 of 2017.

Anand Sanjay M. Nuli, Dharm Singh, Prawal Mishra, Suraj Kaushik (for M/S. Nuli & Nuli), Advs. for the Appellant.

R. Balasubramanian, Bharat Singh, Akshay Amritanshu, Mukul Singh, R. B. Yadav (for Mrs. Anil Katiyar), Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 15.03.2018 passed by the High Court of Karnataka, Circuit Bench at Dharwad in Criminal Revision Petition No.100297 of 2017 whereby the High Court dismissed the criminal revision petition filed by the appellant herein and affirmed the orders passed by the Courts below.

3. The appeal involves a short point as would be clear from a few facts stated hereinbelow.

4. The appellant was a driver working in the Karnataka State Road Transport Corporation. On 03.08.2006 at around 11.15 p.m., the appellant while driving the bus hit it against the railway crossing gate KM No. 350-5-6, which was set up on the railway line between Chalageri

and Ranebennur Railway Stations. Due to the said hit, the railway crossing gate was broken. A

5. Section 160(2) of the Railways Act, 1989 provides that if any person breaks any gate or chain or barrier set up on either side of a level crossing which is closed to road traffic, he shall be punished with imprisonment for a term which may extend to 5 years. B

6. The appellant was, therefore, prosecuted for commission of offence punishable under Section 160(2) of the Railways Act, 1989 by the Principal Civil Judge and 1st Additional JMFC, Ranebennur and pursuant to which FIR No.385/2006) was lodged against him on 04.08.2006 in RPF Police Station, Ranebennur. C

7. By order dated 05.04.2011 passed by the 1st Additional JMFC, the appellant was found guilty for commission of the offence for which he was charged and was accordingly sentenced to undergo simple imprisonment for a period of six months.

8. The appellant felt aggrieved and filed appeal before the Additional District and Sessions Judge, Haveri. By order dated 04.03.2016, the Additional District and Sessions Judge dismissed the appeal filed by the appellant resulting in affirmation of his conviction and sentence awarded by the JMFC by his order dated 05.04.2011. D

9. The appellant carried the matter further in Revision in the High Court of Karnataka at Dharwad Bench. By impugned order, the High Court dismissed the revision and upheld the appellate order dated 04.03.2016 giving rise to filing of this appeal by way of special leave by the appellant in this Court. E

10. Heard Mr. Anand Sanjay M. Nuli, learned counsel for the appellant and Mr. R. Balasubramanian, learned counsel for the respondent. F

11. The submission of learned counsel for the appellant was three-fold. In the first place, he contended that the appellant was wrongly convicted for an offence punishable under Section 160(2) of the Railways Act. According to him, there was no sufficient evidence to prosecute the appellant much less to convict him for an offence punishable under Section 160(2) of the Railways Act. G

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A 12. In the second place, learned counsel contended that in any event, when admittedly there was no injury caused to any human being in the incident except causing some damage to the railway crossing gate, the six months' jail sentence to the appellant for commission of such offence was not justified. According to him, it was excessive and disproportionate to its nature and the resultant loss caused. It was also B urged that the appellant out of six months' jail sentence has already undergone around one month's jail sentence and, therefore, in the interest of justice, his jail sentence is liable to be altered and reduced to what he has already undergone.

C 13. In the alternative, learned counsel urged that the appellant at the time of commission of offence was hardly 21 years of age and, therefore, keeping in view the totality of the circumstances of the case and the nature of offence, he be released under the Probation of Offenders Act, 1958.

D 14. In reply, learned counsel for the respondent supported the impugned order and contended that the appeal is liable to be dismissed by affirming the impugned order.

15. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part.

E 16. In our view, the first submission of learned counsel for the appellant has no substance. It is for the reason that when the three Courts below, i.e., the Court of Magistrate, Appellate Court and the High Court in its revisionary jurisdiction, on appreciation of evidence, have arrived at a conclusion that the appellant was found to have committed the offence, such finding being concurrent finding of fact is F binding on this Court while hearing appeal under Article 136 of the Constitution.

17. Even otherwise, we have not been able to notice any kind of perversity or illegality in the concurrent finding, which may call for any interference in this appeal.

G 18. Coming now to the second submission, we find substance therein. It is for the reasons that, first, the appellant has already undergone one month's jail sentence; second, the offence in question is neither against the society nor it involves any moral turpitude and nor it has resulted in causing any harm or injury to any human being except causing

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some damage to the railway property, viz., one railway crossing gate; and lastly, the offence is now 13 years old. A

19. Keeping in view the aforementioned three reasons and in the interest of justice, we are, therefore, of the considered opinion that the six months' jail sentence awarded to the appellant by the three Courts below deserves to be altered to "what he has already undergone by the appellant till date". B

20. In the light of the foregoing discussion, the third submission urged by the learned counsel for the appellant deserves to be rejected. Even otherwise, we find no merit in it for the reason that the appellant did not raise such plea before the three Courts below though it was available to him at all stages of the proceedings. C

21. In view of the foregoing discussion, the appeal succeeds and is allowed in part. The conviction of the appellant is upheld but sentence awarded to the appellant is reduced to "what he has already undergone". In other words, now the appellant is not required to undergo any further jail sentence in this case except what he has already undergone. D

22. The appellant is already on bail, his bail bond is discharged.

Ankit Gyan Appeal allowed partly.