

Reserved

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Case :- CRIMINAL APPEAL No. - 638 of 2021

Appellant :- Annu Tandon and three others

Respondent :- State Through Railway Protection Force

Counsel for Appellant :- Rohit Tripathi, Syed Zulfiqar Husain Naqv

Counsel for Respondent :- Mrs. Suniti Sachan, Shiv P. Shukla,

Hon'ble Dinesh Kumar Singh, J.

1. The present appeal under Section 374(2) read with Section 389 Cr.P.C. has been filed by the appellants against the judgement and order dated 18.3.2021 passed by the Special Judge, MP/MLA/Additional Sessions Judge, Court No.19 in Session Case No.578 of 2020, State Vs. Smt. Annu Tandon and others, arising out of Case Crime No.243 of 2017, under Section 174(a) of the Railways Act, 1989, Police Station RPF Post, Unnao, whereby the learned Special Judge has convicted and sentenced the appellants under Section 174 (a) of the Railways Act with simple imprisonment for two years and further under Sections 357 and 359 Cr.P.C. has imposed fine of Rs.25,000/- to each appellant to be deposited with the Railway administration and default of payment of fine, one month additional simple imprisonment.

2. The facts, in brief, are that a complaint was filed by the RPF, Post-Unnao stating that the Station Master, Northern Railways, Unnao on 12.6.2017 at around 11.42 AM gave information to the RPF/GRP, Unnao that Train No.18191 UP was stopped soon before it was about to reach Platform No.2 by some protesters of the Congress Party having flags and banners in their hands. On the said information, In-charge Inspector, Srinivas Mishra along with Constables Durgesh Kumar Yadav, Dheeraj Kumar Singh and Antesh Kumar Tewari reached to the over bridge, which was on the eastern side of the

Unnao Railway Station. The RPF team found that 150-200 people having Congress Party flags and banners in their hands standing under the over bridge. At that time, Train No.18191 UP was coming to Platform No.2. These protesters seeing the train coming, came on the railway track of Platform No.2. The driver of the train finding the crowd standing on the railway track, stopped the train near the over bridge before Platform No.2 at around 11.38 AM. As soon as the train was stopped, some protesters climbed on the engine of the train and raised slogans. GRP/RPF team could, however, persuade them to come down from the engine of the train, and the crowd was also persuaded to leave the railway track. The track was cleared at around 11.50 AM and the train started from the said place at around 11.54 AM to Platform No.2. Altogether, the train was detained by the protesters for 12 minutes.

3. Annu Tandon, appellant no.1, Surya Narayan Yadav, District President of Congress Committee, Unnao and Amit Shukla, City President of Congress Committee, Unnao and Ankit Parihar were leading the protest. There was apprehension of law and order getting disturbed if these people were arrested and, therefore, no arrest was made.

4. Necessary formality was completed at the Post and a complaint was registered against the appellants and 150-200 other unknown persons at Case Crime No.243 of 2017, under Section 174(a) of the Railways Act on 12.6.2017 at 1300 Hours. The said offence was investigated by Sub-Inspector, Srinivas Mishra. Charge sheet was submitted against the appellants under Section 174(a) of the Railways Act. Appellants were summoned. Accused denied the charge and claimed for trial. The prosecution to prove its case produced as many as 22 documentary evidence and examined seven prosecution witnesses.

5. P.W.-1, Hyder Mehndi, who was posted as Station Master, Unnao on 12.6.2017, deposed that Train No.18191 UP, Tata-Chapra Express was reaching to Platform No.2. However, some unknown protesters stopped the train before it could reach Platform No.2, as a result thereof, the rail traffic got interrupted. The incident was registered at 11.42 AM, and a copy of the same was given to the GRP/RPF. He proved the said report, which was marked as Ext.Ka-1.

6. P.W.-2, Dheeraj Kumar Singh, Constable of RPF, deposed that on 12.6.2017 after receiving information regarding stoppage of Train No.18191 UP by the crowd, the police team reached to the place and found that Train No.18191 UP was stopped by 150-200 protesters and some of them, had climbed on the engine of the train. These protesters had Congress Party flags and banners. These protesters were staging the protest under the leadership of Annu Tandon, appellant no.1, Ex-Member of Parliament, Surya Narayan Yadav and Amit Shukla etc., and all these persons were demanding that the City Magistrate, Unnao should come there and accept a memorandum from them, which was in the name of the President of India. With a lot of persuasion by the RPF/GPF personnel, protesters vacated the railway track and allowed the train to move on. In this process, the train was detained from 11.38 AM to 11.50 AM. He proved the report prepared at the site on which he had put in his signatures and it was marked as Ext. Ka-2. The said report was made entry in the General Diary at 1300 hours on 12.6.2017, and the case was registered against the appellants and others. The said GD entry was marked as Ext.Ka-3. He also proved the statement recorded by one witness and it was marked as Ext.Ka-4.

7. In the cross-examination, P.W.-2 said that he was carrying mobile phone, but did not take photograph. He did not name the protesters and he did not remember other names than the names of appellants no.1 to 3.

8. P.W.-3, Girish Kumar Verma, who was Guard in the said train, deposed that the train got stopped by the protesters before it could reach the platform. He inquired from the Driver, Ajay Kumar, who said that some protest was going on and the protesters had claimed on the engine of the train. The track would get cleared by the GRP and because of the said protest, the train got held up for 15 minutes from 11.39 AM to 11.54 AM.

9. In the cross-examination, P.W.-3 said that he did not get down from the train to see the protest. He saw that some protesters were sitting on the railway track and that is why the train was stopped.

10. P.W.-4, Srinivas Mishra, Sub-inspector, RPF, had given a statement in this regard, which was marked as Ext.Ka-4A. He also proved the photocopy of the Guard Memo and it was marked as Ext.Ka-4B. The said witness was cross-examined by the defence.

11. P.W.-4 deposed that as soon as he was informed regarding detention of Train No.18191 UP by 150-200 protesters by the Station Master, Unnao, he along with his team reached to the site. He said that appellant nos.1 to 3 and others were making demand to call the City Magistrate, Unnao to accept the memorandum from them, which was in the name of the President of India. Some of the protesters have climbed on the engine of the train, and some of them were on the railway track. The train was detained from 11.39 AM to 11.54 AM. He got the track cleared by persuading the protesters and the leaders of the Congress Party. After the track was cleared by the protesters, the movement of the train could become possible.

12. In the cross-examination, which took place on 23.1.2019, P.W.-4 said that the incident took place more than two years back and he was not able to remember the protesters, including the three appellants. He

said that he recognized appellant no.1, Smt. Annu Tandon as he had seen her photo in the newspaper.

13. P.W.-5, Ajay Kumar (Loco Pilot) deposed that on 12.6.2017 he was the Pilot of Train No.18191 UP from Lucknow to Farrukhabad. When the train was reaching to Unnao Railway Station, he found that some protesters having flags and banners of the Congress Party in their hands were standing near the Railway over bridge. He blew horn for several times, but the protesters did not clear the railway track and then he had to stop the train. As soon as the train was stopped, the protesters climbed on the engine of the train and started raising slogans. He informed through Walkie-Talkie to the Guard and the Station Master, Unnao and, thereafter, the team of RPF/GRP reached at the place of incident, and they could remove the protesters from the engine and the railway track got cleared. In this incident, the train remained stopped for 15 minutes and the railway traffic got interrupted for 15 minutes. These protesters were having Congress Party flags and banners in their hands. He proved the statement given to the Investigating Officer and it was marked as Ext.Ka-6.

14. P.W.-6, Constable, Aman Kumar deposed that on 12.5.2017 he was posted as Constable at the RPF Post-Unnao. His duty was to maintain the diary from 0800 hours to 1600 hours. At around 1300 hours, In-charge Inspector, Srinivas Mishra with Constables Antesh Kumar, Dheeraj Kumar and Durgesh Kumar came to the office and said that Ex-Member of Parliament of Congress Party, Annu Tandon, Surya Narayan Yadav and Amit Shukla and 150-200 other people had stopped Train No.18191 UP near the railway over bridge at KM .54/35-37. These protesters had climbed on the engine of the train and staged protest. The Ex-Member of Parliament was persuaded to come down from the engine and after the railway track was cleared, the train started to the Railway Station. The train remained stopped from 11.39 Am to 11.54 Am. In-charge, Sub-Inspector got the FIR

registered at case Crime No.243 of 2017, under Section 174(a) of the Railways Act on the same day at 1300 hours, which was entered in the General Diary by him. The report which he had brought, proved by him and it was marked as Ext.Ka-7.

15. P.W.7, Vimlesh Kumar Yadav, Sub-Inspector, RPF, in his statement said that he received the investigation report of Crime No.243 of 2017 from the office. He proved the charge sheet, which was marked as Ext.Ka-8, and also proved the documents annexed with the charge sheet, which were marked as Ext.Ka-9 to 22.

16. Accused-appellants in their statement recorded under Section 313 Cr.P.C. said that they were not involved in stopping the train, but the protest was going on in an open area near the railway track. In respect of the statements of the witnesses, they said that they had no knowledge about it. However, they did not produce any defence witness.

17. Learned trial court has held that the prosecution witnesses have proved the presence of the appellants at the time and place of the incident. The witnesses have also said that they were the eye witnesses to the incident. The trial court also held that there was no such a glaring contradiction, which would raise suspicion regarding the prosecution case. It has also held that the prosecution has proved the case beyond reasonable doubt by leading oral and documentary evidence that on 12.6.2017, the accused-appellants had led the protest/ Rail Roko Agitation at the Unnao Railway Station and in this sequence, Train No.18191UP was stopped near the railway over bridge and the railway traffic got disrupted for 15 minutes because of the said agitation.

18. The trial court also held that the offence under Section 174(a) of the Railways Act has been proved against the accused-appellants.

Therefore, vide impugned judgment and order, the accused-appellants have been convicted for offence under Section 174(a) of the Railways Act and sentenced them as mentioned above. The trial court also held that the Railways had suffered Rs,3,06,0015/- @ Rs.20,402/- per minute loss for 15 minutes disruption of the railway traffic, therefore, under Sections 357 and 359 Cr.P.C. each accused was fined for Rs.25,000/-, which fine has been deposited by the appellants.

19. Ms. Kamini Jaiswal, learned counsel assisted by Sri Rohit Kumar Singh and Sri Rohit Kumar Tripathi, appearing for the appellants has submitted that the protest was staged at the open space near the railway track by the appellants and other Congress workers, and it was not the Rail Roko Agitation as held by the learned trial court. The Congress workers led by the appellants wanted to give a representation/memorandum to the President of India through the City Magistrate, Unnao regarding the alleged atrocities on the farmers of the Madhya Pradesh by the Bhartiya Janta Party Government of the said State. A protest against the alleged atrocities on the farmers of the Madhya Pradesh, was organized near the railway track in the open space by the Congress workers. The driver seeing the crowd near the railway track, slowed down the train and stopped the train and some protesters allegedly climbed on the engine of the train and after some time, they came down from the train and allowed the train to move.

20. Learned counsel for the appellants has forcefully submitted that it is not the prosecution case that appellants instigated or exhorted the people gathered near the railway track to stop the train, which was going to the Railway Station. The appellants did not ask the protesters to come on the railway track or climb on the engine of the train. She has further submitted that this was neither 'Rail Roko' Agitation nor the protest on the railway track, but it was a symbolic protest to hand over the memorandum to the President of India through City Magistrate, Unnao. If some protesters came on the railway track and

climbed on the engine of the train, it would not come within the meaning of Section 174(a) of the Railways Act. To organise and hold peaceful protest against the Government, is permitted in democratic polity. It is part of right of freedom of speech and expression. These are fundamental rights guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. The appellants and other protesters were exercising the said fundamental right on 12.6.2017 and they were holding the symbolic agitation to raise the issue. This was not a violent protest. For holding a peaceful protest, the appellants could not have been prosecuted for offence under Section 174(a) of the Railways Act.

21. Learned counsel for the appellants has placed reliance on the judgement of the Supreme Court in the case of *Mazdoor Kisan Shakti Sangathan Vs. Union of India and another*, (2018) 17 SCC 324 to buttress her submissions. She has also submitted that except for the appellants, charge sheet was not filed against any other person though it was mentioned that the appellants and 150-200 people had assembled and stopped the train and disrupted the railway traffic movement for 15 minutes. She has further submitted that the prosecution has failed to prove by leading the unimpeachable, cogent, credible, reliable and specific evidence to distinguish the case of four appellants from the rest of the crowd, but only the appellants have been prosecuted for offence under Section 174(a) of the Railways Act, and they have been convicted and sentenced vide impugned judgement and order. It is submitted that the offence under Section 174(a) of the Railways Act, is not attracted in the facts and circumstances of the case. Therefore, the impugned judgment and order passed by the trial court may be set aside and the appellants should be acquitted of the charges.

22. On the other hand, Sri Shiv P. Shukla, learned counsel for the respondent has submitted that it is admitted case that the train was

stopped for 15 minutes due to the agitation led by the appellants and other protesters, and the track got cleared after the RPF/GRP team reached there. Appellant no.1 was leading the protest with three other appellants and other Congress workers had obstructed the running of the train for 15 minutes inasmuch as they were on the railway track and they also climbed the engine of the train, which would amount to picketing. The prosecution by cogent and credible evidence had proved the case against the appellants, and there is no ground to interfere with the well reasoned judgement and order passed by the learned trial court, which is based on sound reasoning and appreciation of evidence. He submits that the appeal is liable to be dismissed.

23. I have considered the submissions advanced on behalf of the learned counsel for the parties and perused the record.

24. As mentioned above, the facts are not in dispute inasmuch as on 12.6.2017 the appellants, who were leading the protest along with 150-200 Congress workers were staging a protest with flags and banners of the Congress Party in their hands and demanding that the City Magistrate, Unnao should come there to receive the memorandum in the name of the President of India. It is nobody's case that it was a violent protest. However, the fact remains that Train No.18191 UP was detained by the protesters, including the appellants, and as per the prosecution case, when the train reached near the railway over bridge, the protesters in large number came on the railway track and the driver slowed down the train and stopped it finding large number of protesters on the track. Statement of the Driver (P.W.-4) is cogent and credible piece of evidence, which cannot be brushed aside. Thus, because of the protest by the appellants and other Congress workers, the railway traffic got disrupted for 15 minutes on 12.6.2017 between 11.39 AM to 11.54 AM. The presence of appellants on the date, time and place of incident is not in dispute

nor the incident is denied except to say in their 313 Cr.P.C. statements that they were not involved in stopping the train in question.

25. The question which arise for consideration, is whether the said incident would come within the definition of Section 174(a) of the Railways Act or not. Section 174(a) of the Railways Act is in respect of obstruction of running of train, which is clear from the heading of the section itself, which reads as under :-

“174. Obstructing running of train, etc.—If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway,—

(a) by squatting or picketing or during any rail roko agitation or bandh; or

(b) by keeping without authority any rolling stock on the railway; or

(c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.”

26. Thus, if any Railway servant or any other person obstructs any train by squatting or picketing or during Rail Roko Agitation and Bandh etc., the offence under Section 174(a) of the Railways Act would get attracted. Though the trial court has mentioned that it was a ‘Rail Roko’ Agitation. If the said finding is discarded, even then this Court would be required to consider as to whether the offence under Section 174(a) of the Railways Act was committed by the appellants or not. As per provisions of Section 174(a) of the Railways Act, if running of the train is obstructed by squatting or picketing, this would attract the offence under Section 174(a) of the Railways Act.

27. The Driver of the train in his evidence very categorically said that he found that large number of people having Congress Party flags and banners standing on the railway track on the date, time and place of

the incident, and then he had to slow down the train and had to stop the train near the railway over bridge. Large number of people on railway track staging protest would amount to picketing. It has also come in evidence that as soon as the train got stopped, several persons/Congress workers climbed on the engine of the train. Appellant no.1, Smt. Annu Tandon and other appellants were persuaded to come down from the engine of the train and the railway track was cleared. Thereafter, the train could move and in this process, the train got detained for 15 minutes. Therefore, presence of the appellants at the site is not in dispute. The defence has not led any evidence to support their case that the protest was being staged at nearby ground and field, whereas the prosecution had led cogent and credible evidence to say that the protesters staged the protest on the railway track and stopped the train. It was not a 'Rail Roko' Agitation, but the incident would amount to picketing, which obstructed the running of Train No.18191 UP on 12.6.2017 between 11.39 Am to 11.54 AM by the protesters, including the appellants.

28. Even if a peaceful agitation/protest can lead to obstruction of running of any train by squatting or picketing or during any Rail Roko Agitation or bandh, the same would amount to an offence under Section 174(a) of the Railways Act. It is no one's case that the protest was violent, but the fact remains that the protesters, including the appellants, had stopped the train for 15 minutes by picketing on the railway track and climbed on the engine of the train when it was stopped.

29. In view thereof, the offence under Section 174(a) of the Railways Act is clearly established against the appellants and the trial court has not committed any error of law or jurisdiction or evidence in convicting them for offence under Section 174(a) of the Railways Act.

30. In a democratic polity governed by a written Constitution, people have rights of protest against the Government's policies, perceived atrocities. The right to protest, is also part of fundamental rights guaranteed under Article 19 of the Constitution of India. The citizens of this country have rights for demonstration, agitation and staging protest. However, this right is not an absolute right, and it is subject to reasonable restriction. If law prohibits or restricts exercise of this right in certain ways and manners, then such a law would amount to putting reasonable restriction in exercise of the said right. The citizens of this country are not permitted to violate a law enacted by the legislation while exercising their right of protest, freedom of speech and expression.

31. However, so far as the sentence is concerned, this Court finds that awarding the sentence to the appellants for maximum sentence of two years of simple imprisonment in the facts and circumstances of the case, is excessive. In democracy under our Constitution, people have right to protest against Government policies/action/inaction, provided the protest does not lead to commission of an offence by the protesters. Except for detaining the train for 15 minutes, there was no damage to private and public property by the protesters by and large it was a peaceful and symbolic protest.

32. In view thereof, this Court finds that imprisonment of two years is unwarranted in the facts and circumstances of the case and, therefore, the impugned judgement and order dated 18.3.2021 passed by the trial court is modified to the extent that the appellants are sentenced with fine only. The appellants had already deposited the fine of Rs.25,000/- each and, therefore, no further fine is required to be deposited by them. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged.

33. Subject to above modification of the impugned judgement and order, the appeal is allowed in part.

(Dinesh Kumar Singh, J.)

Order Date: 1st September, 2022
Rao/-