

IN THE HIGH COURT OF SINDH KARACHI
Criminal Jail Appeal No.150 of 2023

Appellants : i. Bakhtawar @ Khan s/o Noroz
ii. Orangzeb s/o Ghulam Hussain
Through Mr. Qamar Abbas Abbasi, Advocate

Respondent : The State
Through Syed Samiullah Shah, Special
Prosecutor Pakistan Railways

Date of hearing : 29.04.2026
Date of decision : 29.04.2026

JUDGMENT

MIRAN MUHAMMAD SHAH, J:- Through the instant Criminal Appeal, the appellants, Bakhtawar @ Khan s/o Noroz and Orangzeb s/o Ghulam Hussain, have challenged the judgment dated 22.12.2022, passed by the learned Additional Sessions Judge-X, Karachi South, in Sessions Case No.639/2022 [*The State v. Bakhtawar @ Khan & another*], arising out of FIR No.13/2022, registered at Police Station Railway City Karachi South, under Sections 126 (b) & (c) of Railway Act r/w 34 PPC, whereby the learned trial Court convicted and sentenced both the appellants under Section 265-H(2) Cr.P.C. for the offence under section 126 (b) & (c) of Railway Act r/w section 34 PPC to undergo for life imprisonment and to pay fine of Rs.25000/- each and in default thereof to suffer three months more S.I. However, the benefit of section 382 Cr.P.C was extended to them.

2. Concisely the facts of the prosecution case are that on 12.02.2022, a police party of Police Station Railway City Karachi, headed by ASI Muhammad Abbas, during patrolling apprehended the appellants/accused while they were removing the nut-bolts of fish plates from Railway Track/Loop No.4 situated near PSO Company Gate, R.G. Keamari. The police recovered the nut-bolts, a hammer and a pipe-wrench from their possession. The appellants were arrested under proper mashirnama and brought to the police station, where the present FIR was

registered. After completion of the investigation, challan was submitted before the trial Court.

3. The learned trial Court framed charge against the appellants, to which they pleaded not guilty and claimed trial. In support of its case, the prosecution examined six witnesses.

4. Thereafter, the statements of the appellants were recorded under Section 342, Cr.P.C. in which they denied the allegations and claimed innocence. However, they neither examined themselves on oath under Section 340(2), Cr.P.C. nor produced any evidence in their defence.

5. After hearing the parties and evaluating the evidence, the learned trial Court convicted and sentenced the appellants as mentioned in the impugned judgment. Hence, the present appeal.

6. Learned counsel for the appellants contended that the appellants are innocent and have been falsely implicated in this case. He argued that all prosecution witnesses are police officials and interested witnesses; therefore, their testimony should not be relied upon without independent corroboration. He further submitted that the alleged recovery of nut-bolts, hammer and pipe-wrench was foisted upon the appellants to strengthen the prosecution case. Learned counsel also argued that Section 126 of the Railways Act has wrongly been applied. According to him, even if the prosecution case is accepted in its entirety, no offence under Section 126 is made out as no malicious intention on the part of the appellants has been established. At the most, the allegations may constitute an offence of trespassing and mischief. He, therefore, prayed for acquittal of the appellants.

7. On the other hand, learned Special Prosecutor for Pakistan Railways supported the impugned judgment and argued that the prosecution successfully proved its case through reliable ocular evidence furnished by the witnesses. He

submitted that the learned trial Court rightly convicted and sentenced the appellants and, therefore, the appeal merits dismissal.

8. I have heard the learned counsel for the parties and perused the record with their assistance.

9. The allegation against the appellants is that they removed fish plates from a railway track situated within a railway yard and that nut-bolts, a hammer and a pipe-wrench were recovered from their possession by the police party headed by ASI Muhammad Abbas. However, from the testimony of eye-witnesses namely PW-1 Muhammad Abbas (complainant) and PW-2 HC Muhammad Arslan, it does not appear that the appellants acted maliciously while allegedly removing the fish plates. Consequently, prosecution of the appellants under Section 126 of the Railways Act appears to be misconceived. The learned trial Court convicted the appellants under Section 126 (b) and (c) of the Railways Act read with Section 34 PPC. However, the ingredients of the said provisions do not appear to be attracted in the facts and circumstances of the present case. For the convenience, the section 126 of Railway Act 1890 is reproduced here under:-

126. Maliciously wrecking or attempting to wreck train. *If a person unlawfully-*

- (a) puts or throws upon or across any railway any wood, stone or other matter or thing, or*
- (b) takes up, removes, loosens or displaces any rail, sleeper or other matter or thing belonging to any railway, or*
- (c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway, or*
- (d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or*
- (e) does or attempts to do or causes to be done or abets or conspires the doing of an act which causes or is likely to cause, any explosion by an explosive substance or by any other means upon or near railway or any property belonging to railways,];*

with intent, or with knowledge that he is likely, to endanger the safety to any person travelling or being upon the railway or [any property belonging to the railway or of such property, he shall, whether and injury to any person or property has actually been caused or not, be punished with death or imprisonment for life and shall also be liable to forfeiture of property and fine which may extend to twenty thousand rupees.]

10. It is pertinent to note that the place of occurrence was a railway yard at R.G. Keamari from where the fish plates were allegedly removed. The record shows that the said railway yard is not a regular running track upon which passenger or goods trains ordinarily operate. Rather, it is mainly used for the parking, maintenance and repair of railway engines and bogies, as well as for shunting operations and changing the direction of engines. In such circumstances, no material has been brought on record to establish that the appellants acted with any malicious intention to wreck or attempt to wreck a train or the railway system. The mere removal of fish plates from a railway yard, without proof of such intention, does not by itself attract the offence contemplated under Section 126 of the Railways Act. The essential ingredient of malicious intention, which forms the foundation of the said offence, is therefore missing in the present case. At the most, the allegations may constitute offences relating to criminal trespass and mischief. However, the appellants have been awarded a severe sentence on the basis of presumption and apprehension rather than proof of the essential ingredients of the offence charged. Such conviction cannot be sustained in law. In these circumstances, this appeal was allowed through short order dated 29.04.2026. The conviction and sentence awarded to the appellants were set aside, and they were acquitted of the charges. They were ordered to be released forthwith, if not required in any other case. These are the reasons for the said short order.

JUDGE