

A.F.R.

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2026:AHC:49013

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Appeal No. - 2868 of 1986

Rajendra KumarAppellant(s)

Versus

State of U.P.Respondents(s)

Counsel for Appellant(s) : Anurag Upadhyay, G.S Saxena,
Ravinath Tiwari
Counsel for Respondent(s) : A.G.A.

Court No. - 89

HON'BLE AVNISH SAXENA, J.

1. Heard Sri Ravinath Tiwari, learned counsel for the appellant and Sri Chandra Badan, learned A.G.A. for the State.
2. The accused-appellant Rajendra Kumar 'Conductor of UPSRTC Bus' (Uttar Pradesh State Road Transport Corporation) was held guilty by the learned trial Judge for offences under Sections 333 and 332 IPC of voluntary causing grievous hurt to Nathu Ram, Traffic Inspector and causing of hurt to Traffic Inspectors Attar Singh and Budhi Mal, to deter them in discharge of their duties, while conducting inspection. He was consequently, sentenced to two and three years rigorous imprisonment for offences under Sections 332 and 333 IPC, respectively. It is directed

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that both the sentences to run concurrently. This judgment was passed in Sessions Trial No.142 of 1984 (State Vs. Rajendra Kumar) for offence under Sections 332 and 333 IPC, arose out of Case Crime No.371 of 1981 reported at Police Station Roorkee, District Saharanpur.

3. The prosecution case evolved from the F.I.R. dated 06.08.1981 at 18:30 hours, Police Station Roorkee, the then District Saharanpur, registered by three informants, namely, Attar Singh, Nathu Ram and Budhi Mal, the Traffic Inspectors Grade-II of U.P. Roadways lodged against the appellant, who is conductor of Roadways Bus No.UST5238, for the offence under Sections 332, 333, 353, 426, 506 IPC with the allegation that about 16:00 hours, a Bus No.UST5238 of Saharanpur Depot, plying from Saharanpur to Haridwar was made to stop in the route. The three traffic inspectors got on the bus and asked the conductor Rajendra Kumar to show way-bill, who has handed it with objection. The bus was plying towards Roorkee. While the team was counting the heads, the conductor, who was not in uniform has started using abusive language with indecent behaviour and instigated the passengers against the department and its officers. The bus then reached Ram Nagar Camp, Roorkee, where Nathu Ram has advised the conductor to be obedient to the department and its officers, on which he gave two fist blows on his face, when Attar Singh intervened, the conductor snatched his diary and torn it apart. Nathu Ram suffered injuries on his face and his two upper teeth were broken, he also fell down and suffered knee injury. Attar Singh and Nathu Ram came to the office of Station Incharge Roorkee Bus Station. Budhi Mal was pulled inside the bus and was asked to delete the report on way-bill or to face consequences. Attar Singh and Nathu Ram had informed the Station Incharge about the incident. They waited for the bus for half an hour, thereafter, Budhi Mal came to Roorkee. He has informed that he was threatened and pressurized to delete the report on way-bill. His shirt, under shirt and pant were torn and was made to alight from the bus at Bahedi toll barrier, who was also threatened not to report the matter.

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4. The chik F.I.R. was registered by P.W.-6 Hitlar Singh on 06.08.1981 at 18:30 hours for the incident of 06.08.1981 occurred at 16:00 hours. The injured Nathu Ram and Budhi Mal were taken to Civil Hospital Roorkee by CP 130 Kuda Singh. The medico legal examination has been conducted by P.W.-4 Dr. Vipin Kumar Premi. The **medico legal examination of Nathu Ram**, carried out on 06.08.1981 at 7:35 p.m. reveals that he suffered three injuries. **“(1) Abrasion 0.5 cm x 0.2 cm on inner aspect of upper lip; (2) upper two middle incisor teeth missing with healthy tooth sockets with bleeding from them. Other teeth are normal; (3) Abrasion 1.5 cm x 1 cm on front of right knee.”** It is reported that injury no.2 is grievous, while injury nos.1 and 3 are simple. **All injuries are caused by blunt object and friction.** Duration is fresh. The **medico legal examination report of Budhi Mal** reveals that he was examined on 06.08.1981 at 7:45 p.m. with the reported injury **“contusion 1 cm x 0.5 cm on right shoulder and complaining of pain in chest”**. It is observed that **injury is simple and caused by blunt object.** Duration is fresh. Both the injury reports have been exhibited as Exhibit Ka-3 and Ka-4, respectively. It is also mentioned in the injury report that police case, F.I.R. number not mentioned.

5. The Investigating Officer, P.W.-5 S.I. Mahabir Singh, during investigation, has recorded the statements of five witnesses, namely, Attar Singh, Nathu Ram, Budhi Mal, Hitlar Singh, Dr. V.K. Premi and submitted charge sheet against the accused-appellant stating therein that the offence under Sections 332, 333, 353, 426 and 506 IPC is established against the accused, from the material collected during investigation.

6. On 23.04.1985, charge has been framed against the accused-appellant for offence under Sections 333, 332 IPC and not under Sections 353, 426 and 506 IPC.

7. The accused has denied the charge and pleaded not guilty, hence, claimed to be tried.

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8. The prosecution has produced all the six witnesses, namely, P.W.-1 Attar Singh, P.W.-2 Nathu Ram and P.W.-3 Budhi Mal, P.W.-4 Dr. Vipin Kumar Premi, P.W.-5 S.I. Mahabir Singh and P.W.-6 Hitlar Singh.

9. The accused-appellant in his statement under Section 313 CrPC stated that the three traffic inspectors have falsely implicated the accused. The Traffic Inspectors have wrongly asked for the ticket of four and a half year old child, who was exempted. The traffic inspectors have beaten him, which infuriated the passengers. The passengers then, caught Budhi Mal to produce him before ARM Haridwar, on which Budhi Mal has given an apology letter on his own.

10. The accused-appellant has produced three defence witnesses. Dr. S.C. Singhal as D.W.-1, who has examined the injury on the person of accused-appellant; Mohd. Umar Head constable as D.W.-2, the scribe of F.I.R., which he has lodged against Attar Singh, Nathu Ram and Budhi Mal, the subject matter of cross case in Sessions Trial No.162 of 1984 (State Vs. Nathu Ram and others); and B.D. Tyagi, D.W-3 a passenger of the bus, who was traveling on the date, when the said checking has been conducted.

11. The learned counsel for the appellant submits that the appellant is 77 years of age. He was the conductor of the bus, which was plying from Saharanpur to Haridwar and falsely implicated by the informants, traffic inspectors. He submits that some of the passengers were infuriated due to the conduct of traffic inspectors. When the bus stopped at Ram Nagar Camp, Traffic Inspectors Attar Singh and Nathu Ram alighted from the bus, whereas, the passengers have stopped Budhi Mal from alighting the bus. Budhi Mal was to be produced before ARM Haridwar and he had wisely recorded the apology letter on his own, so that he may escape from encountering ARM Haridwar. Further submits that the accused-appellant has not beaten the traffic inspectors, but Nathu Ram might have suffered injuries somewhere else after alighting from bus. He further submits that the statements of witnesses of fact are inconsistent in respect to their stopping and boarding the bus. Further submits that the

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Traffic Inspectors have not disclosed that they were authorized for checking on the route of Saharanpur to Haridwar. The prosecution has not produced any document to substantiate that the informants left the office of Saharanpur Bus Depot for the purpose of checking. He further submits that the appellant has also lodged the F.I.R. against the accused and there was a cross case, which has not been decided by the trial court. Further submits that the trial Judge has wrongly appreciated the evidence on record and recorded conviction. Further submits that the three witnesses produced by the prosecution are interested witnesses and their testimonies are to be looked into more cautiously. It is, therefore, submitted that the appeal is liable to be allowed and accused shall be acquitted of the charge.

12. *Per contra*, learned A.G.A. for the State submits that the trial court has rightly appreciated the evidence on record. The trial court has made specific mention in the judgment that why independent witnesses have not been produced, including the driver. Further submits that the three traffic inspectors had checked the bus and found anomalies in the way-bill, on which, the accused-appellant has deterred the traffic inspectors in doing their duties. Further submits that the F.I.R. lodged by the accused-appellant against the traffic inspectors is in counter blast, which has rightly been taken into consideration by the trial court in its judgment. The trial court has also rightly dealt with the defence witnesses. It is therefore, stated that the appeal is devoid of merit and liable to be dismissed.

13. This Court has taken into consideration the rival submissions made by the parties and perused the record.

14. **The point of concern and determination is whether the trial court has rightly appreciated the evidence on record and reached to the right conclusion that the accused has voluntarily caused hurt to Attar Singh and Budhi Mal and grievous hurt to Nathu Ram, who are the public servants, when they were discharging their duty, as such.**

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15. To establish the offence of voluntarily causing hurt and grievous hurt to deter a public servant from performing his duty, which is the point of concern in this case, the provision of Sections 332, 333 IPC is required to be reiterated:-

“ 332. Voluntarily causing hurt to deter public servant from his duty.—Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Voluntarily causing grievous hurt to deter public servant from his duty.—Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. ”

16. The prosecution, to establish guilt of the accused under these sections was required to prove following facts:-

- (I) The accused has voluntarily caused hurt or grievous hurt;
- (II) That the persons so hurt or grievously hurt was a public servant;
- (III) That such public servant was then discharging his duty, as such.

17. The admitted fact in the entire case is that the informant and the accused both are public servants, in view of Section 21, sub-Section twelfth (b) of Indian Penal Code, 1860, as both the parties drew their pay from the corporation established by the State Act, UPSRTC. Now, the point of concern is voluntarily causing of hurt and grievous hurt by the accused upon the informants while they were discharging their duties, as such.

18. To consider the appreciation of evidence made by the trial court, it is expedient to reiterate the statements of three witnesses, namely, Attar

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Singh, Nathu Ram and Budhi Mal, who were recorded as Prosecution Witnesses 1 to 3.

19. P.W.-1 Attar Singh has stated in his examination-in-chief that on 06.08.1981, he was posted as Traffic Inspector and his duty was to check the buses of U.P. Roadways of Saharanpur to Haridwar route. The accused was the conductor of Bus No.UST5238. Nathu Ram and Budhi Mal were also traffic inspectors and conducted inspection of the bus of accused, which was stopped by them at Kishanpur for checking. They got on the bus and asked for the way-bill from the conductor, who was not in uniform. Six passengers boarded the bus from Baghwanpur. These entries were not available on way-bill. On query, the conductor started entering the way-bill, by that time the bus reached Ram Nagar, Roorkee. The accused started hurling abuses and deter them to do the official work. Nathu Ram has made endorsement in the way-bill. The appellant has read out the endorsement and asked Nathu Ram whether he wants to take his service and gave two fist blows on the face of Nathu Ram due to which, his two teeth got broken, Nathu Ram fell in the bus and suffered knee injury. He ran to save Nathu Ram on which, accused has snatched his diary and torn it a part. He and Nathu Ram had alighted from the bus, but Budhi Mal was pulled back in the bus. He and Nathu Ram went to Station Incharge where they have intimated the incident to Station Incharge, after half an hour, Budhi Mal had also returned. He has written the written information and got it forwarded by the Senior Depot Incharge Roorkee, for getting the F.I.R. registered. He further submits that the departmental inquiry was initiated against the accused, who was dismissed from service and his departmental appeal was also dismissed by RM and DGM. During his cross-examination, he has given the following replies:-

(a) Inspection note does not mention that six passengers were not mentioned in way-bill. It also does not mentioned that accused was not in uniform.

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(b) Inspection note mentioned that “checked 42 passengers. The conductor misbehaved and interfered in checking.”

(c) This inspection note was later on deleted by Budhi Mal.

(d) The inspection note also does not reveal that the entry of six passengers has been made by the conductor in his presence.

(e) He has denied the suggestion that the entry of 42 passengers was made by the accused and no entry was entered by the accused in his presence.

(f) The torn up diary was not on record, because they tried to save their life.

(g) His duty was on the route, whereas, the other two traffic inspectors were on surprise visit and met this witness due to co-incidence.

(h) Kishanpur and Bhagwanpur is at a distance of 5 km. They have boarded the bus at Bhagwanpur, after the petrol pump.

(i) The accused did not reach the Roorkee bus stand, but directly went to Haridwar via Roorkee Cantt.

(j) He submits that the self booking system was applicable for buses, but despite that the buses used to enter the bus stand and their entry is made at the bus stand. He denied the suggestion that no entry is made at the bus stand regarding the buses with self booking system.

(k) According to way-bill, 18 passengers have alighted at Roorkee bus stand and some of the passengers have alighted at Ram Nagar Camp Bus station, in his presence. He further stated that according to way-bill, 27 passengers have boarded the bus from Roorkee bus stand. He has refuted the suggestion that due to the cross case, he has lodged a false and frivolous complaint.

(l) He along with the other traffic inspectors alighted from the back door of the bus.

20. Nathu Ram in his statement as P.W.-2, has stated that on 06.08.1981, he was posted as traffic inspector in the U.P. Roadways.

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Attar Singh and Budhi Mal were also traffic inspectors. All the three had boarded the bus at 4:00 p.m. for checking at village Kishanpur and Bhagwanpur is situated at a distance of 7 km towards Roorkee. After boarding the bus, all the three had asked for way-bill. Six passengers boarded the bus at Bhagwanpur. The accused was not in the uniform. When they have asked for way-bill, the accused started hurling abuses. He has made entry in the way-bill. He has admitted his signatures on the written information. When he was alighting the bus, the accused has seen the remark on the way-bill and asked to delete the same. When he stated not to delete the remark, the accused gave him two fist blows on his face, due to which, he lost his two teeth and fell. He then suffered injury on his knees. Attar Singh when tried to intervene and save Nathu Ram, the accused had snatched his diary, torn it apart and threw it inside the bus. He and Attar Singh alighted from the bus, whereas, Budhi Mal was pulled inside, they came to the roadways bus station and waited for Budhi Mal. After half an hour, Budhi Mal came to the bus station. Budhi Mal has intimated him that on the fear of his life, he has deleted the remark on the way-bill and also gave an apology letter. During his cross-examination, he has submitted as below:-

(a) He along with the other traffic inspectors boarded the bus at Kishanpur and at 10 to 12 minutes, the bus reached Ram Nagar Camp. After checking, he gave the remark on the way-bill. He has alighted from the front door of the bus, where the accused has caught hold of him and started fighting and fell on the ground of the bus. He also suffered knee injuries.

(b) He further submits that Budhi Mal and Attar Singh had alighted from the back door of the bus and he from the front door.

(c) Whatever incident happened with Budhi Mal, has not happened in his presence. He has not made any remark regarding the entry of six passengers, in the way-bill.

(d) The diary of Attar Singh, which was snatched by the accused, was torn and thrown away.

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(e) He refuted the suggestion of any altercation with the accused on the point of issuance of ticket to a child.

(f) He refuted that to save themselves from the cross-case, a false case has been lodged by them.

21. Budhi Mal (P.W.-3) has stated that on 06.08.1981, he was on the post of Traffic Inspector and checking the U.P. Roadways Bus No.UST5238. Nathu Ram and Attar Singh, the Traffic Inspectors were with him. All the three traffic inspectors have stopped the bus at Kishanpur for its checking and boarded the bus. The conductor of this bus was Rajendra Kumar, the accused. They have asked the accused for way-bill to check. He avoided to hand it over to them and in their presence he has made entry of six passengers in the way-bill, who boarded the bus from Bhagwanpur. Bhagwanpur is situated at a distance of 6 to 7 kms from Kishanpur. He submits that as per the rules, the entry of passengers would have been carried out at Bhagwanpur. The accused has started using abusive language and also instigated the passengers against them. The accused was also not in uniform. The bus reached Ram Nagar, Roorkee bus stop. In the way, the traffic inspector Nathu Ram has made his remark on the way-bill. The accused has asked Nathu Ram to delete the entry and asked him whether he wants to take his service. Nathu Ram has refused to delete the entry, on which, the accused Rajendra has given two fist blows on the face of Nathu Ram, which resulted in loosing of his two teeth and he fell down. All the three traffic inspectors have alighted from the bus, but accused and his two friends have pulled him inside the bus. He was beaten. Nathu Ram and Attar Singh went away on Rickshaw and the bus moved. He has asked to take the bus to the bus stand, but the bus was not taken to the bus stand and stopped at a distance, where the passengers of Roorkee were alighted and other passengers had boarded. Bus then reached Bahedi Gate. The accused has torn his shirt, under shirt and pant and pressurized him to delete the entry and forcefully asked him to write an apology letter and thereafter, he has alighted from the bus. He has taken

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another bus and returned to the Roadways Bus Stand and informed the Station Incharge. He also found Attar Singh and Nathu Ram at the bus stand. The report is written by Attar Singh, which carries his signatures. The same forwarded by the Station Incharge, given at the police station. Lastly, submits that for checking he has boarded the bus at 4:00 p.m. During his cross-examination, he has given following replies:-

(a) He was confronted on the points that what he has stated to have informed the Investigating Officer is not mentioned in his statement under Section 161 CrPC, but found place in his examination-in-chief. As the accused has made an entry of six passengers, who have boarded the bus at Bhagwanpur in his presence; accused has asked Nathu Ram to delete the entry and that he wants to take his service; the accused has pulled him with the help of his two friends inside the bus; and has asked to take the bus to bus stand. All these statements are not recorded in Section 161 CrPC.

(b) The flying squad for surprise checking is not at Saharanpur. He and Nathu Ram were authorized to do the surprise checking. He refuted the suggestion that there is no such authorization of surprise checking.

(c) The distance between Kishanpur to Ram Nagar Camp is 4 to 5 km and from Ram Nagar Camp to Roorkee Roadways Bus Stand is 2 km.

(d) It is the duty of conductor to deposit, the items left in the bus, at the Depot and a receipt is issued for that. He was shown Parcha 1 and 2. He has recognized the signature of Station Incharge Mr. Chaudhari in Parcha No.1, but could not recognize the signature in Parcha No.2.

(e) At Haridwar, there is office of Assistant Regional Manager.

(f) He has counted the passenger of the bus. They have made entries after counting and has not talked to the accused or the passengers.

(g) They have talked to the accused only after entry of six persons in the way-bill and the altercation between them and accused was after checking.

(h) The booking can be done by the conductor in the bus.

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(i) In the way, the accused and his friends had beaten him and also threatened to kill him. Further stated that at the bus stand, there are shops and taxi stand.

(j) Further stated that at toll barrier, there were five to six persons employed and he has alighted from the bus at toll barrier.

(k) He admitted that the apology letter was written by him in his handwriting. Some passengers have also made signatures on it, which is in favour of the accused.

(l) He refuted the suggestion that he is stating incorrect, to save him from cross-case. He has further refuted the suggestion that he has written the apology letter, because the passengers were adamant to produce him before ARM, Haridwar and therefore, he has prepared the apology letter, on which, he was released.

22. The informants are the public servant, being traffic inspectors of UPSRTC. The accused is also a public servant, who is the conductor of UPSRTC Bus. There is counter allegation levelled by the accused that the traffic inspectors were not acting in discharge of their duties, harassed the passengers, which has infuriated them. It is the wrath of passengers, which forced Budhi Mal to enter the apology letter, so that he may not be produced before ARM, Haridwar. There is nothing on record to show, except a reference about the cross-case lodged by the accused. The three traffic inspectors are also an interested witnesses and therefore, their testimonies are required to be closely scrutinized, considering their boarding of Roadways Bus for the purpose of checking on 06.08.1981. It is also required to be taken into consideration, the essential requirements for the traffic inspectors, while checking of Roadways Bus, which is a public transport and carries the public and whether those requirements have been complied.

23. To consider the action of informant and accused in discharge of their respective duties, it would be necessary to consider the Road Transport Corporation Act, 1950 and the Rules, governing the same,

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which were found applicable at the relevant point of time. The U.P. State Road Transport Corporation Rules, 1972, which deals with the issuance of ticket and duty of conductor. The relevant Rules are required to be reiterated below:-

“20. Issue of ticket for journey and receipt of goods.—

The conductor or any other employee of the Corporation, authorised in this behalf, shall issue to a passenger on payment of proper fare a ticket for the journey and on payment of proper freight a receipt for any goods, if chargeable, carried by him.

21. Liability to obtain ticket or receipt.—No person, not being a driver or conductor, shall travel or carry goods in a vehicle operated by or on behalf of the Corporation unless he has obtained a ticket for the journey or a receipt for the carriage of the goods, if chargeable as the case may be.

22. Penalty for breach of Rule 21. —Whoever does any act in contravention of Rule 21 shall, without prejudice to any action that may be taken against him under any law for the time being in force, be liable, subject to the provisions of Section 46 of the Act, to the penalty provided therein.

23. Production of ticket or receipt by a passenger.—Every passenger shall, during the course of or immediately before or after the journey, whenever required by Magistrate or an authorised employee, produce the ticket or receipt for the goods carried by him and shall for contravention of this rule be liable to the penalty provided in Section 46 of the Act.

24. Liability of passenger for breach of Rule 23.—On the failure of the passenger to produce the ticket or receipt under Rule 23, the Magistrate or the authorised employee, as the case may be unless satisfied that such passenger has not intentionally travelled without a ticket or carried goods without a receipt may without prejudice to any action that may be taken against such passenger under any law for the time being in force, take action for his prosecution under Section 46 of the Act.

25. Duty of conductor and liability of breach.—(1) It shall be the duty of the conductor of a vehicle to ensure that no passenger travels or carries goods in that vehicle in contravention of Rule 21 and any conductor who commits a breach of this rule shall be liable to the penalty under Section 46 of Act.”

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24. In the U.P. State Road Transport Corporation Services Manual, the 'Traffic Inspectors' are of clerical staff in Grade-II, Cadre, whereas, the 'conductor' is of semi skilled category. The above category is created under the minimum rates of wages for various categories of employers in employment of Transport workshop, which was notified. (vide notification No.3539/XXXVI-3-4-(M.W.)-90, dated November 28, 1991, published in Gazette of India Extra. Dated 28.11.1991). Though, it is of later date but taken to consideration. The concerned paragraph 11 is reiterated underneath:-

“11. If any employer undertakes any work of employment through contracts labour engaged under the provisions of Contract Labour (Regulation and Abolition) Act, 1970, such contract labour shall also be entitled to same rate of wages and Special Allowance which has been made admissible under paragraphs (1) and (2) for employees engaged directly by the employer.

Note-If any contract labour is being engaged by any employer without obtaining the certificate under the Contract Labour (Regulation and Abolition) Act, 1970 such labour will be deemed to be labour engaged by the employer directly in view of Section 9 of the aforesaid Act read with Section 2(i) (iv) of U. P. Industrial Disputes Act, 1947

Annexure

1. Clerical staff. (A) Highly skilled and Clerical, Grade 1- Minimum Educational qualification High School and must have experience of five-years work in the establishment.

Traffic Superintendent, Station Superintendent, Manager, Works Incharge, Overseer, Foreman, Head Clerk, Stenographer, Senior Accountant, Draftsman, Godown Keeper, Head Cashier, Store Superintendent and other employees doing similar nature of work by whatever name called.

(B) Clerical, Grade-II-Minimum Educational Qualifications High School and one who has not completed five years in the establishment.

Accountant, Assistant Accountant, Clerk-cum-typist, Melaman, Accounts Clerk, Out Agency Clerk, Cashier, Assistant Godown Keeper, Superintendent Receipt and Despatch, Storekeeper, Progress Checker, Station Incharge/Master, **Traffic Inspector**, Head Time

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Keeper and other employees doing similar nature of work by whatever name called.

2. (A) Skilled-Serviceman, Workshop Supervisor, Mechanic, Driver, Turner, Fuse Injection Punchinan, Painter, Fitter, Latheman, Air-Conditioner, Mechanic, Mistry, Gate Sergeant, Electrician, Tin Smith, Compounder, Supervisor. Assistant Storekeeper, Carpenter, Vulcanizer, Upholster and other employees doing similar nature of job by whatever name called.

(B) Semi-skilled-Grinder, Boringman, Assistant Painter, Radiator, **Conductor**, Daftri, Zamadar, Bundle Lifter Dafadar and other Repairer, Welder, Blacksmith, Assistant Fitter, Assistant Mechanic, employees doing similar nature of job by whatever name called.

(C) Unskilled-Orderly, Peon, Bhisti, Waterman, Chowkidar, Mazdoor, Sweeper, Cleaner, Hair Dresser, Cobbler, Chamber Servant, Treasury Peon, Store Mazdoor, Loader, Vehicle Washer, Coolie, Office Boy, Petrol Pump Attendant and other employees doing similar nature of job by whatever name called.”

25. It is an admitted fact not taken into consideration by the trial court that the three witnesses of fact, namely, Attar Singh, Nathu Ram and Budhi Mal have not produced any authority (per Rule 23, quoted above) that they were authorized to stop and check the roadways UPSRTC Bus No.UST5238, wherein the accused was the conductor. The trial court in its judgment has presumed that the informants are the public servants and therefore it is obvious that they were discharging their duties. On the point of inspection of the bus, P.W.-1 Attar Singh has stated that he was the traffic inspector for the route of Saharanpur to Haridwar. He submits that it was sheer co-incidence that Nathu Ram and Budhi Mal were also on surprise inspection and they have boarded the bus at same point. It is not the case that the three traffic inspectors have boarded the same bus for different objectives to conduct the inspection and all the three did not have the authority, though while conducting a surprise inspection or the inspection at the Roadways Bus, which carries passengers and is a mode of public transport it would be the duty to introduce them as traffic inspectors and the purpose for which they have boarded the bus. It is not

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mentioned either in the F.I.R. or in the statement of the three witnesses discussed hereinabove. Though, P.W.-3, Budhi Mal has denied the 'flying squad' at Saharanpur Depot.

26. The copy of way-bill, which is proved by the prosecution as Exhibit Ka-2, on asking P.W.-1 Attar Singh stated that they checked 42 passengers entered in the way-bill. He has also stated that the way-bill shows that 18 passengers have alighted at Roorkee Bus Stand and some passengers have alighted at Ram Nagar Camp Bus Station. He further stated that the way-bill shows that 27 passengers have boarded the bus from Roorkee Bus Stand. This shows that the bus was initially halted at Ram Nagar Camp and subsequently at Roorkee Bus Stand, where the passengers have alighted and boarded the bus. There is inconsistency in the statement of three witnesses regarding boarding the bus at Kishanpur or Bhagwanpur. The distance between Bhagwanpur and Kishanpur is nearly 4 to 5 kms in view of the statement of P.W.-1. The statements of the three witnesses of fact, the traffic inspectors does not reveal that any of the passengers was without ticket, but their main objection was that six persons have boarded the bus at Bhagwanpur, whose entry has not been made in the way-bill, whereas, Rule 20 of U.P. State Road Transport Corporation Rules, 1972 provides conductor with the authority to issue the tickets to the passengers. P.W.-3 Budhi Mal, who has authored the apology letter has admitted it in his deposition as P.W.-3. This apology letter is proved by the defence as Exhibit Kha-4. It is necessary to reiterate the apology letter, which was produced in S.T. No.162 of 1984 (State Vs. Nathu Ram and others), under Sections 332, 341 IPC, Police Station Bhagwanpur, District Saharanpur.

"सेवा में,

सहायक क्षेत्रीय प्रबन्धक

सहारनपुर।

निवेदन है कि आज दिनांक 6/8/81 को वाहन को चेक किया वाहन ठीक प्रकार थी। जो वेबिल पर रिमार्क दिया गया था व गलत है वह काट दिया गया है। अब इनके खिलाफ कोई कार्यवाही नहीं की जायेगी नाथू राम व अतर

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सिंह मार कर भाग गये हैं। मैंने बीच बचाव किया तो मेरे कपड़े फट गये हैं। मैं अपनी गलती की माफी मांगता हूँ। यह मैं सब कुछ रजामन्दी से लिख रहा हूँ।

ह०
(भवदीय)”

27. The apology letter, which is proved as Exhibit-Kha-4 reveals that the inspection was carried out on 06.08.1981. The bus was rightly being plied. The remark on the way-bill was incorrectly made, which is deleted, as such, it has no adverse effect. Further discloses that Nathu Ram and Attar Singh sprinted away after beating. His clothes were torn, when he was meddling between the two and tendered apology. This apology letter is denied by P.W.-3 Budhi Mal to be written out of free will and volition but he wrote it under pressure. It is not the case of prosecution that the apology letter has been dictated to Budhi Mal. This means that what he has written, is in his own language. He has made specific mention that the remark made on the way-bill was incorrect. The Rules, 1972 quoted hereinabove, particularly, Rules 21, 22, 23 and 24 clearly reveals the liability to obtain ticket, for boarding the bus. This liability is on the passenger. Rule 22 provides penalty for breach of Rule 21 and the authority is the Magistrate or an authorized employee before whom, on requirement, the passenger would produce the ticket. Moreover, Rule 21 is a non-obstante clause, and authorizes only driver and conductor to travel in a bus without ticket and does not exempt even traffic inspectors. Therefore, what authorizes the informants, the three traffic inspectors to enter into the bus for checking, has not been proved by the prosecution, which is an essential per-requisite for recording conviction for the offence under Sections 332, 333 IPC. In the case of **D. Chattaiah and another Vs. State of Andhra Pradesh**¹, Hon'ble the Supreme Court has categorically observed that there should be a nexus of act of accused to deter the public servant in discharge of his official duty.

1 (1979) 1 SCC 128

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28. The learned trial judge has utterly failed to appreciate this necessary requirement in the judgment of conviction. The entire evidence on this point is presumptive in nature. Assuming the informants were discharging their duties, whereas, the Rule of 1972 provides the phrase 'authorized employee' in Rules 23 and 24. Thus, to my opinion the prosecution has failed to prove that the public servants, the three traffic inspectors, were discharging their official duty as such.

29. This Court further requires to consider whether the accused-appellant has given a blow on the face of Nathu Ram in the bus, which has resulted into loosing of his two teeth. This is because the prosecution case is such that Attar Singh and Budhi Mal were being hurt and Nathu Ram was grievously hurt.

30. It is an admitted fact that the informants, the three traffic inspectors have boarded the bus of Roadways, wherein the accused-appellant was a conductor. It was the testimonies of three witnesses of fact that they have been beaten by the accused-appellant in the bus. It is also stated by the three witnesses of fact that in the departmental inquiry initiated against the accused-appellant, his service was terminated.

31. On the point of voluntary causing hurt or grievous hurt, P.W.-1 Attar Singh has stated in his examination-in-chief that after reading the remark on the way-bill, the accused has challenged Nathu Ram, whereas, in the written information, Exhibit Ka-1 this witness has mentioned that Nathu Ram has advised the conductor to be obedient to department and its officers on which, he gave two fist blows on his face. It is due to the hitting that Nathu Ram lost his two teeth and fell down, suffered injury on his knee. According to this witness, the incident took place at Ram Nagar Camp, Roorkee. He further stated that he and Budhi Mal were tried to save Nathu Ram. It is at this juncture that accused has snatched the diary, torn it apart and threw it. There is nothing on record to show the torn diary, which is only in statement. Attar Singh and Nathu Ram have alighted from the bus, whereas Budhi Mal was pulled inside the bus.

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32. On the point of incident, P.W.-2 Nathu Ram has stated in his examination-in-chief that after entering the remark when he was alighting from the bus at Ram Nagar Camp, Roorkee. The accused has seen the remark and asked him to delete the same. On his refusal to delete, the accused gave two fist blows on his face and he has lost his two teeth. He further stated that when Attar Singh came to save, the accused has snatched his diary, torn it and threw it inside the bus and also tattered the shirt, under shirt and pant of Budhi Mal. According to Budhi Mal, his clothes were torn by the accused, when he was pulled inside the bus and pressurized by the accused and his two friends to write an apology letter. During his examination-in-chief, P.W.-2 Nathu Ram has stated that he was alighting from front of the bus, where the accused was standing and further stated that Budhi Mal and Attar Singh had alighted from the back side of the bus. He has further stated that he has not seen the incident occurred with Budhi Mal, he was only pulled in the bus. During his further cross-examination, he has stated that the diary of Attar Singh, which was torn by the accused, was thrown away from the bus.

33. Budhi Mal (P.W.-3) in his examination-in-chief has stated that Nathu Ram has made remark on the way-bill, which the accused asked to delete and stated that was he interested in taking his service. Nathu Ram has refused to delete the entry, on which the accused gave two blows on the face of Nathu Ram, due to which, he has lost his two teeth.

34. The reason, which is stated by the witnesses for giving two fist blows on the face of Nathu Ram, is not mentioned in the written information. This shows that all the three witnesses have changed the version in their examination-in-chief. It is also a matter of concern that Attar Singh and Nathu Ram had alighted from the bus at Ram Nagar Camp, Roorkee and reached the Roorkee Bus Stand, but did not lodge any report or under went medical treatment, but choose to wait for Budhi Mal at the Roorkee Bus Stand. Though the police station is one and a half kilometers away from the place of incident. Hence, the delay in lodging the F.I.R. is attributed to concoction of a story, when all the three

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informants came together. The natural corollary would be to lodge report soon after alighting the bus with the case of abduction of Budhi Mal. Moreover, two fist blow on the face with loosing of two teeth must have an outer impact, which is not reflected from the medico legal report of Nathu Ram. The injury is an abrasion on inner aspect of upper lip. In the opinion of Dr. Vipin Kumar Premi (P.W.4) that the injuries caused by blunt object and friction. This opinion reflects that Nathu Ram might have jerked on ground and suffered the injury. On further elaboration, it is also a point to notice that how a person give two fist blow with such a precision that it cause only one injury in the inner aspect of upper lip. P.W.-4, Dr. Vipin Kumar Premi has stated in his cross-examination that in such type of fist blow swelling is a must feature and further stated injury no.2 the loss of two teeth may be due to fall while running. On the point of injury of Bhudi Mal on his shoulder, which is contusion, P.W.-4 Dr. Vipin Kumar Premi has stated that if a person is wearing shirt then such type of injury is not possible. Therefore, the accused-appellant cannot be held responsible for causing the injuries on the person of Nathu Ram and Budhi Mal. As the medical and ocular testimonies are inconsistent in nature.

35. The Investigating Officer, P.W.-5 S.I. Mahabir Singh has not recorded the statement of any of the passenger of the bus and has not taken any authority from the three traffic inspectors, which authorizes them for conducting surprise inspection.

36. A passenger of the bus was produced as Defence Witness-3, namely, B.D. Tyagi, an employee of BHEL, resident of Ram Nagar Colony, Haridwar. He boarded the bus from Saharanpur to Haridwar, has stated that the three inspectors had boarded the bus at the petrol pump after Bhagwanpur, checked the way-bill, counted heads and asked for ticket of a four and a half year old child and entered remark. The conductor, when asked that the remark is incorrect, the three traffic inspectors started beating the conductor after alighting from the bus. This infuriated the passengers. Two Inspectors had fled away but the

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passengers caught hold the third for producing him before the officers at Haridwar. It is then that Budhi Mal, the third Inspector has deleted the remark and wrote an apology letter. Counter signed by passengers including him. The other passengers who have signed the apology letter were Ravindra Kumar Goyal, the resident of Roorkee; B.M. Sharma resident of Jwalapur; and Singhasan Pandey, resident of village Bansdila. He has stated to have given his statement before the court in S.T. No.162 of 1984 (State Vs. Nathu Ram). He further stated that he did not know Budhi Mal and accused Rajendra, but knew Nathu Ram and Attar Singh prior to the incident. Attar Singh was ticket collector at Dhurmalpur and Nathu Ram was conductor.

37. The trial court while taking into consideration, the arguments of the defence counsel has considered the truthfulness of the testimonies of prosecution witnesses of fact. The trial court has failed to appreciate the cross-examination of the witnesses of fact, which reveals that the inspection note does not contain that the accused was not in his uniform. The trial judge has further negated the arguments about the tearing of diary of Attar Singh by the accused and tearing of shirt, under shirt and pant of Budhi Mal, without considering that the same have not been produced before the court. The trial judge has also negated the arguments of defence about the writing of apology letter by Budhi Mal out of his own free will to escape the wrath of passengers, who had made up their mind to produce Budhi Mal before ARM Haridwar, but considered that the apology letter was written by the Budhi Mal under pressure and threatening extended by the accused. In totality, the trial judge has appreciated the evidences on record considering that the informants are the public servants and were under the duty to conduct the inspection, without taken into consideration that there would be set of Rules for conducting such inspection and therefore, skipped the essential per-requisite for convicting the accused for offence to deter a public servant in conduct of his duty, as such.

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38. The trial Judge in the judgment has held that there were two versions of the case and he has find out which version is true. This observation is against the principle of law enunciated in the case of **Nathi Lal Vs. State of U.P.**² (Paragraph.2), about the appreciation of evidence in cross cases, the same is reiterated underneath:-

“2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.”

39. In the case of **Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh**³ Hon’ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate could should not shy away in giving benefit of doubt to the accused.

40. Therefore, the appellant is held not guilty for offence of hurt or grievous hurt to a public servant to deter him from discharging his duty or any other offence and liable to be acquitted, as the trial court has incorrectly appreciated evidence. Thus, the judgment of conviction and

² 1990 Supp SCC 145

³ (2024) 2 SCC 666

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sentence dated 23.10.1986 in Sessions Trial No.142 of 1984 (State Vs. Rajendra Kumar), arose out of Case Crime No.371 of 1981, for offences under Sections 332, 333 IPC, Police Station Roorkee, District Saharanpur, is set aside.

41. The appeal is **allowed**. The accused-appellant Rajendra Kumar s/o Raj Kishore, resident of Madanpuri Colony, Chilkana Road, Police Station Mandi, District Saharanpur, is acquitted of offence under Sections 332, 333 IPC. Appellant is on bail. His bail bonds is discharged.

42. Record be remitted back forthwith alongwith the copy of judgment.

(Avnish Saxena, J.)

March 11, 2026

Shivangi