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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 1 of 2013

The State of Maharashtra ..Applicant.

Versus

Serjio Sarigumba Villas ..Respondent.

Mrs P.P. Bhosale APP for the State.
None for the respondent.

CORAM : A.R.JOSHI,J
DATE : 3rd July, 2015

PC. :

1) Heard the learned APP for the State on this application for leave to file appeal challenging the judgment and order of acquittal dated 31st August, 2012 passed by the M.M. 16th Court, Ballard Pier, Mumbai. By the said judgment and order, the present respondent was acquitted of the offences punishable under sections 280 and 336 of IPC.

2) The case of the prosecution, in nut-shell, is that Indian Coastal Guards ship, namely "ICGS Vivek", was under the repair work during the period March, 2010. Said repairing work was

assigned to some private company. On 23rd March, 2010, 49 crew members were serving on the ship and it was anchored at 10:00 I.D. and employees of M/s Krasny Marine Company were carrying repairing work. At about 4:25 p.m. on that day the vessel by name "Global Purity" was navigated by the present respondent, being the captain of the said vessel and he navigated said vessel "Global Purity" in negligent manner endangering human life and in fact gave dash to the Coastal Guard ship "ICGS Vivek". Attempts were made by the persons working on the coastal guard vessel to attract the attention of the respondent who was watching the navigation of his vessel from the bridge wing. He could not control his vessel and as such his vessel passed by brushing its star board side to the star board side of the coastal guard ship. Due to this impact, the coastal guard ship got tilted to the side of Port Jetty and the water ingressed rapidly through the portion which was under repair.

3) The respondent denied the allegations and also submitted his written statement in which giving of a dash to the Coastal Guards Ship was admitted. It is submitted that it was

very superficial and causing minor scratches and dent and the respondent was neither negligent nor he was navigating his vessel rashly and negligently.

4) The prosecution has examined total 12 witnesses. What weighed with the trial Court was, over all effect of substantive evidence of these witnesses and the anomalies and shortcomings in the case of the prosecution witnesses enlisted in para No. 24 of the Judgment and order of the trial Court. For the sake of ready reference, the observations of the Trial Court are reproduced from para 25.

“Thus, the facts emerged on record through evidence of witnesses are that [I] the hot work of ICGS Vivek was going on at 10-ID in the Wet dock as per the permission of Dy.Manager, Indira dock provided concurrence of Sr.Dock Master to be obtained ; [ii] There is no documentary evidence on record that concurrence of Sr. Dock Master has obtained prior to the commencement of the work which is also deposed by PW No.9 Shailendra Kohli, Sr. Dock Master that his permission was never sought; [iii] In spite of the cut portion of the Port side of having length of 6 mts. (10% of the total length of ICGS Vivek) and of the height of 1 meter of wall of the Engine room was removed and which was just above water level in the dock; [iv] It has come in the evidence of PW No.4 Liasharam B. Singh that there was shallow water level and according to him, 9.6 mts. draught is required in the dock for the movement of ICGS Vivek while it was 9.2 mts which have certainly affected the smooth movements

of M.V.Global Purity. Thus, the drought plays a pivotal role in the movements of vessel Global Purity which was in fact not available to it; [v] It has come in the evidence of PW No.10 Vijaykumar Vadhera that captain of Global Purity has followed his directions till the Lock gate even entire evidence of PW No.4 Liasharam Singh does not speak about any order has disobeyed by the captain of Global Purity; [vi] It has come on record that in Indira dock there is compulsory pilot-age as Berthing Master i.e. PW No.4 L.B.Singh have knowledge about the dock area as foreign captain being unaware and not familiar with the circumstances and conditions of dock area; [vii] It has rather come on record that ICGS Vivek was berthed at 10-ID at the turning of vessels at basin in Indira Dock; [viii] The rapid ingress of water through the cut portion of ICGS Vivek is the major cause for Capsizing of it and if the said portion would not have been cut, the mishap amounts to sinking would have certainly averted; [ix] The evidence came on record the vessel Global Purity was not in high speed, in fact it was assisted by 4 tugs which carrying it through narrow space at basin in Indira Dock; [x] The evidence on record does not show that Captain – accused was negligent at the relevant time; [xi] It has come on record that instructions were exchanged in Hindi language which Captain – accused failed to understand. All these foregoing grounds go to the root of the prosecution case and plays an important and vital role in deciding the present case in hand which are proved to be fatal to the prosecution case.”

- 5) Apart from the above, the trial Court came to the conclusion that the vessel on which the respondent was working as Captain was depending upon the compulsory pilot-age and that there was nothing on record to show that the respondent

Captain had disobeyed the instructions or omitted to do any such directions. Also what weighed with the trial Court was the shallow water space in the area where the Coastal Guard vessel was being repaired, the available draught in the dock and behaviour of the vessel of the respondent being assisted by four tugs, were the crucial aspects, which have affected the movement and stability of the said vessel and it was held that the said vessel was not in the hands of the respondent accused. Moreover, he was not well conversant and acquainted with the topography of the area of Indian harbour where the incident occurred. Moreover, there was language problem for him as he is Philippines National and residing at Zamboga city, Philippines.

6) Considering the substantive evidence of the prosecution witnesses and mainly that of PW No. 1 who is the Commanding Officer of Indian Coast Guard in the ship "ICGS Vivek" and considering the substantive evidence of PW 4, in the considered view of this Court, there is nothing to re-agitate the matter as the view taken by the trial Court cannot be considered as perverse view so as to alter it in the appeal.

7) In the result, there is no substance in the application for leave to file appeal and same is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)