

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 33 OF 1997

1. D. S. Chavan,
Deputy Director,
Industrial Safety & Health,
Mumbai.
2. The State of Maharashtra. :: **APPELLANTS**

(Org. Complainants)

-: Versus :-

Gr. Captain P. K. Krishnan,
Occpier of M/s. Parle Beverages Ltd.,
Western Express High Way, Andheri (E),
Mumbai-99. :: **RESPONDENT**
(Ord. Accused)

Ms R. M. Gadhvi, A.P.P. for the appellants.
Mr. Sanjay Udeshi, Advocate and Mr. Netaji Gawate, Advocate for the
respondent.

CORAM : S. B. SHUKRE, J.
12th JUNE, 2015

ORAL JUDGMENT

1. This is an appeal preferred by the State against the judgment and order dated 02/7/1996 commonly delivered in two criminal cases being C. C. Nos. 180/S/1995 and 179/S/1995 by Metropolitan Magistrate, 22nd Court, Andheri, Mumbai, thereby acquitting the respondent of the offence punishable under Section 21(1)(iv)(c) of the Factories Act, 1948 and also under

Sections 7A(1) and 7A(2) of the Factories Act, 1948. Briefly stated, the facts of the case are as under.:

The respondent, at the relevant time, was working as General Manager in-charge of the operations and maintenance of a plant at the manufacturing unit of M/s Parle Beverages Limited situated at Western Express Highway, Andheri, Mumbai (hereinafter referred to as; 'the occupier', for short). In the criminal complaints initiated against him for the afore-stated offences, the respondent was shown as occupier being in-charge of the affairs of M/s Parle Beverages Limited. The incident, which was in the nature of an accident, took place at about 3.55 p.m. on 14/4/1995 in production section of the unit of the occupier. It so happened that deceased Ramdas Menol, a cleaner engaged on contract basis for the purpose of cleaning of machine and tools at the production section of the occupier, while cleaning a machine, called as Ankesar machine, model No.DU-3-5, Sl.No. 38004, got struck in the machine while its various parts were rotating and moving and thus got seriously injured. The deceased was extricated from the machine and while being taken to a hospital, succumbed to the injuries. The report of the accident was made on the next date and thereupon, one Shri Vijay More, Deputy Director of Industrial Safety and Health visited the place of accident and made inquiry into the matter. His inquiry revealed

that adequate safety measures were not taken at the occupier unit for preventing such accidents and in particular it was alleged that no guards or to be specific, requisite iron nets were not put in place so that while cleaning the machines, accidents could be prevented. The inquiry officer submitted his report and being prima facie convinced that the accident took place because of failure of the occupier to take adequate safety measure and, therefore, criminal complaint case under Section 21(1)(iv)(c) of the Factories Act, 1948 was initiated against the occupier. Similarly, another criminal complaint case was filed against the occupier and it was for the offence punishable under Section 7A(1) and 7A(2) of the Factories Act, 1948 alleging that the occupier failed to discharge its general duty of ensuring, as far as a practicable, the health, safety and welfare of all the workers engaged in running of the occupier's unit.

Charge for the afore-stated offences was framed against the occupier and on merits of the case, learned Metropolitan Magistrate by his common judgment and order dated 02/7/1996 found that the offences with which the occupier was charged in these cases were not proved beyond reasonable doubt and accordingly learned Magistrate acquitted the occupier of the same. The appellant, Dy. Director, Industrial Safety and Health, not being satisfied with the said judgment and order, has

preferred the present appeal.

2. I have heard learned A. P. P. for the State and learned Counsel for the respondent. I have carefully gone through the record of the case and also the impugned judgment and order.

3. Learned A.P.P. has submitted that appreciation of evidence brought on record by the prosecution is not only incorrect but also appears to be perverse and, therefore, the result is an erroneous finding of innocence of the respondent for offences with which he has been charged. She has submitted that the learned Magistrate ought to have given due weightage to the evidence of P.W.-2 Vijay More, who had visited the place of accident and inquired into the matter. She also submits that the evidence of Machine Operator – P.W.-3 Bhaskar Tondavalkar and also the other prosecution witnesses; P.W.-4 Ganpat Solanki and P.W.-5 Sahadeo Betkar, ought to have been considered in the light of the evidence of P.W.-2 Vijay More. Therefore, she submits that this is a fit case for making interference with the impugned judgment and order.

4. According to learned Counsel for the respondent, it is well settled law that in an appeal against acquittal, interference with the impugned judgment and order is not permissible if the view taken by the lower Court is possible and it is not open to the Court to take another view only because it is possible to take other

view. He further submits that there are vital admissions given by the prosecution witnesses and these admissions clearly show that adequate safety measures were taken by the occupier unit and this is not a case of any negligence on the part of the occupier unit and as such, the impugned judgment and order need not be interfered with in this appeal.

5. Upon going through the prosecution evidence and also the findings recorded by the trial Court, I am of the view that there is great substance in the argument advanced by learned Counsel for the respondent and no merit in the argument of learned A.P.P. for the appellants.

6. P.W.-1 M. D. Chavan, was the complainant. He had no personal knowledge of either the place of accident or manner in which the accident took place and, therefore, his evidence would be of no help to the prosecution.

7. P.W.-2 V.A. More, the officer of the Directorate of Industrial Safety and Health, who had visited the place of accident on 15/4/1995, had only made his report on the basis of the statements recorded by him and what he had noticed there. Curiously enough, P.W.-2 V. A. More did not make any panchanama of the place of accident or the machine, which was responsible for causing of injury to the deceased. In such a case, the learned Magistrate did not have any other option than to rely

upon the evidence of the other prosecution witnesses namely, P.W.-3 Bhaskar Tondavalkar , P.W.-4 Ganpat Solanki and P.W.-5 Sahadeo Betkar, and therefore I do not find any illegality or incorrectness in the approach so adopted by the learned Magistrate while appreciating prosecution evidence.

8. The evidence of the Machine Operator – P.W.-3 Bhaskar Tondavalkar is of extreme importance. He is a person, who was present near the spot of accident at the time when it took place. He was operating another machine situated near by the machine in question. He has admitted that safety guards were in place on the machine in question and the usual time of cleaning the machine was not of the afternoon time but was of evening time. According to him, usually cleaning of machines used to be undertaken from evening at about 7.30 p.m. and that it was the usual practice that before cleaning process was started, the operators were informed of the starting of cleaning of the machines. He has stated that in the instant case, the deceased, for the reasons best known to him, undertook cleaning of the machine not at the usual time but at the unusual time of 3.25 p.m. and that too without giving due intimation to him or any other in-charge of operation of the machine regarding starting of cleaning the machine by him. The evidence of this witness is also supported by other prosecution witnesses namely P.W.-4 Ganpat Solanki and

P.W.-4 Sahadeo Betkar. Both of them have stated that guards were already put upon the machine in question.

9. With such prosecution evidence available on record, the only possible conclusion in this case was that there was no negligence by the occupier unit in either operating of the machines used for production purpose or ensuring general safety, health and welfare of the workers working at the occupier unit. The learned Magistrate has, therefore, rightly concluded that the prosecution has failed to prove beyond reasonable doubt the offences with which the occupier was charged in this case. I see neither perversity nor illegality in the approach adopted by the learned Magistrate while appreciating the prosecution evidence. No case has been made out for making any interference with the impugned judgment and order. The appeal deserves to be dismissed.

The appeal stands dismissed.

S. B. SHUKRE, J.