

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2015

CORAM

THE HON'BLE MR.JUSTICE P.DEVADASS

CrI.A.No.599 of 2006

Union of India Represented by
The Deputy Director (Safety)
Inspectorate Dock Safety,
Ministry of Labour,
Government of India,
Anchor Gate Building, III Floor,
Rajaji Salai,
Chennai-600 001.

... Appellant

-vs-

1. M/s.Bharat Heavy Electricals Ltd.,
Represented by its Chairman and Managing
Director, "Bell House", Siji Fort,
New Delhi.
2. K.G.Ramachandran,
Chairman and Managing Director,
M/s.Bharat Heavy Electricals Ltd.

... Respondents

This Criminal Appeal is preferred under Section 378 of Cr.P.C., to set aside the JUDGMENT passed in C.C.No.4022 of 2001 on the file of the learned XVI Metropolitan Magistrate at George Town, Chennai dated 16.3.2006.

For Appellant

: Mr.S.M.Deenadayalan,
Special Public Prosecutor for
Central Government.

For Respondents

: Mr.S.Ramasubramaniam,
Senior Counsel for
M/s.S.Ramasubramaniam
Associates.

J U D G M E N T

1. The complainant, namely, the Deputy Director (Safety), Inspectorate Dock Safety, Chennai, in C.C.No.4022 of 2001 on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai preferred this Criminal Appeal as against the order of acquittal passed by the learned Magistrate on 16.3.2006.

2. The case of the prosecution runs as under:

(i) Bharat Heavy Electricals Limited (hereinafter, in short, 'BHEL')/A-1 imported steel pipes of various lengths and dimensions through the ship M.V.Ravi Das. The consignment has to be unloaded in two locations, one at West Quay III Wharf at the Chennai Port Trust (hereinafter, in short, Ch.PT) another one location, A-1 had deployed its own mobile crane and at another location it had used Fork Lift Truck bearing No.V9 belonging to Ch.PT.

(ii) 'BHEL' had employed many workers to unload and handle the said consignment. 'BHEL' had asked for vehicles for the purpose of handling the steel consignment from Andal Lorry Transport.

(iii) The Trailer belonging to M/s.Velan Transport engaged by M/s.Namakkal South Indian Transports had been sent. One Arumugam drove the Trailer No.TN-45-F-7171. He has been engaged for A-1's work at Ch.P.T. Thus, he has become a dock worker. 'BHEL' has become the employer;

(iv) On 11.8.2000, at about 5 p.m., during the second shift operations, at the location where the Fork Lift Truck was deployed, an untoward incident took place. Certain steel pipes slide downwards and one of the steel pipe hit on the foot of Arumugam, and the steel pipe rolled on him. He sustained serious bleeding injuries;

(v) PW-2, Walter Ebenezer, the then Shed Master employed by Ch.PT rushed to the spot. He sent Ex.P-3 Memo to the Superior Officers; PW-1, Gnanasundaram, Deputy Director Safety Inspectorate of Dock Safety, Chennai came there. He drew sketch of the place and took photos. He enquired PW-2, recorded his statement Ex.P-4, also recorded Ex.P5 statement from PW-3, Selvaraj, Manager, Aandal Transports. By its letter/Ex.P-6, Ch.PT confirmed the Import Application filed by A-1 for the clearance of steel pipes and also supply of one Fork Lift Truck No.V9 by Ch.PT to A-1 to effect delivery of steel pipes belonging to it. In the meanwhile, Arumugam died at the hospital;

(vi) PW-1, the Authorised Officer of the Central Government (Ex.P-1 Central Gazette Notification) laid the complaint in the Court of the learned XVI Metropolitan Magistrate, Chennai that A-1 and A-2 have failed to provide necessary safety to the dock workers in unloading the steel pipes and because of their negligence, the fatal accident took place and he complained of violation of Regulation 65

(4), 66(1) and 117 of the Dock Workers (Safety, Health and Welfare) Regulation 1990 read with Regulation 7(4)(b) and it is punishable under Section 14(2) of the Dock Workers (Safety, Health and Welfare) Act, 1986 and deal with them according to law.

3. The learned Magistrate took cognizance thereon. He issued summons to the accused. Supplied them copies of documents. Questioned them on the accusations levelled against them. They denied the offence.

4. In the circumstances, prosecution examined PWs-1 to 3 and marked Exs.P-1 to P-6;

5. On the incriminating aspects in the prosecution evidence, the accused were questioned under Section 313 Cr.P.C. The accused denied the offence also stated that their Head Office is in New Delhi and they have no connection with the alleged offence. No defence evidence has been let in.

6. Appreciating the said evidence and the arguments of both, the trial Court coming to the conclusion that in Ex.P-4 PW-2 had stated that wooden and steel wedges were provided to prevent the pipes rolling down, however, the deployment of Fork Lift Truck to unstuck the steel pipes is the cause for the rolling down of the steel pipes and it fell on the said dock worker. The deployment of Fork Lift Truck instead of mobile Crane is the reason for this fatal accident. To highlight the same, the Trial Court noted that no accident took place where the mobile Crane has been deployed. However, during his evidence before the trial Court, PW-2, gave diametrical by an opposite version, putting the blame on the accused and further though PW-1 has prepared the sketch and took photograph of the scene place, however, prosecution did not produce them in Court as it is an important piece of evidence the trial Court drawn adverse inference to the effect that since they were against the prosecution version of the case, they were not produced before the Court, there is no negligence on the part of the employees of A-1/BHEL and A-2 as its Chairman-cum-Managing Director cannot be held vicariously liable for the alleged or negligence on the part of the BHEL employees and thus giving them benefit of doubts, the trial Court acquitted them under Section 255 (1) Cr.P.C.

7. Aggrieved as stated at the outset, the complainant has preferred this Criminal Appeal.

8. The learned Special Public Prosecutor for Central Government contended that in an appeal against the acquittal this

Court can reappraise the entire evidence and find out whether the findings recorded by the Trial Court are perverse or unreasonable. In this connection, the learned Special Public Prosecutor cited Lal Bahadur and others vs. State (NCT of Delhi) {2013 (4) SCC 557}.

9. The learned Special Public Prosecutor also contended that sufficient oral and documentary evidence has been let in to establish the offences alleged as against the accused, however, no sound reasoning has been given by the trial Court to acquit them. Its findings are perverse and also unreasonable. In such circumstances, this Court can interfere with such an order of acquittal, substitute with its own judgment and visit the accused with penal consequences.

10. The learned Special Public Prosecutor also submitted that the judgment of the trial Court is heavily leaned towards Ex.P-4. It is a statement given by PW-2 to PW-1. It is not a substantive evidence. It is only a previous statement. Further, the attention of PW-2 was not drawn to Ex.P4 and his answers with reference to that was also not elicited from him. In his evidence, P.W.2 had clearly stated that the accident was due to the negligence on the part of BHEL employees, however, the Trial Court overlooked his substantive evidence in the place of Ex.P-4.

11. The learned Special Public Prosecutor also contended that the accused have not denied the fatal accident. In such circumstances, the marking of the rough sketch and the photograph is not necessary.

12. The learned Special Public Prosecutor further submitted that the Trial Court's comparison of nil accident at the place where mobile Crane was deployed in the place where the Fork Lift Truck has been deployed is not proper appreciation of evidence in a criminal case.

13. The learned Special Public Prosecutor further submitted that the evidence adduced clearly disclosed that the accused as employer has not provided supporting and safety arrangements to prevent the sliding of the pipes from the stack. Thus, the accused was negligent. Thus, the offence alleged has been established beyond all reasonable doubts. Thus the accused have to be dealt with according to law.

14. The learned Special Public Prosecutor referring to Statement of Objects to the Dock Workers (Safety, Health and Welfare) Act 1986 has submitted that it seeks to instill a sense of

responsibility on the employers to provide adequate safety measures to the dock workers and the Regulations also have been framed in this regard and penalty also has been prescribed as against those who violate these safety measures. In such circumstances, in these matters, strict approach is to be adopted as the Legislation and the Regulations are Social Welfare Legislation.

15. In this connection, the learned Special Public Prosecutor cited *W.H.King vs. Republic of India* {AIR 1952 SC 156}, *Indian Handicraft Emporium and others vs. Union of India* {2003 (7) SCC 589}, *Balram Kumawat vs. Union of India* {2003 (7) SCC 628} and *J.K. Industries Ltd vs. Chief Inspector of Factories and Boilers and others* {1996 (6) SCC 665}.

16. The learned Special Public Prosecutor further submitted that A-1/BHEL is an inanimate body, it has to operate through human beings. When some deviant behaviour which is criminal in nature has been committed by the eyes and ears of such an inanimate body, the individual is liable for criminal prosecution and the individual is also liable for his individual act. To deal with such a situation involving vicarious criminal liability, Section 15 has been inserted in the Dock Workers (Safety, Health and Welfare) Act, 1986.

17. In this connection, the learned Special Public Prosecutor cited *Sunil Bharti Mittal vs. C.B.I.* {2015 (4) SCC 609}. Thus, the accused cannot say that they are not vicariously liable for any act.

18. On the other hand, the learned Senior Counsel for the respondents/accused would submit that there is nothing unreasonable and perverse to interfere with the well reasoned judgment of the Trial Court. Everyone is presumed to be innocent. One's such right of presumption of innocence itself is his basic human right. When an order of acquittal has been passed in favour of a person, it reinforces, reaffirms, confirms the said presumption. In such an event, there is double presumption in his favour. Such is the presumption available to the respondents in this case.

19. The learned Senior counsel submitted that in this case the prosecutor/complainant has failed to establish the offence alleged as against the accused beyond all reasonable doubts. There is categorical finding to that effect has been recorded by the Trial Court. Such finding is clearly based on evidence. In such circumstances, unless the finding is perverse or unreasonable, it cannot be set at naught.

20. The learned Senior counsel for the respondents further submitted that appreciating the oral and documentary evidence, the Trial Court has recorded clear cut findings and arrived at the conclusion and in the facts and circumstances of the case and on the evidence adduced such a conclusion is inescapable. Thus, there is no occasion here to interfere with the order of acquittal passed by the trial Court.

21. The learned Senior Counsel for the respondents also would contend that in Criminal law, a person cannot be simply imputed with vicarious criminal liability for the acts of others. When a person commits some criminal act on behalf of an inanimate body and there is sufficient evidence showing his active role coupled with his criminal intent/mens rea (guilty mind) then only he will be mulcted with criminal liability for the act of the other, it may be an inanimate body. In this connection, the learned Senior Counsel also cited Sunil Bharti Mittal cited (supra).

22. The learned Senior Counsel for the respondents further submitted that in case, when a Company is being prosecuted, a person who is already named and informed to the authority that he will act on behalf of the Company alone has to face criminal prosecution on behalf of the Company. But in this case, A-2 who was the then Chairman-cum-Managing Director of A-1/BHEL has not been so named. There is no material to that effect. Further, then A-2 was positioned in New Delhi. BHEL has Regional Offices headed by top level Officers for each Region. Chennai Region has one such office and officers. The handling of steel pipes in at Ch.PT. fell within the purview of such an Officer. In such circumstances, implicating A-2 in this case is unsustainable in law.

23. The learned Senior Counsel for the respondents also submitted that when the consignment arrived at the Port till the goods are delivered to the consignee, the responsibility lies with the Port Trust and the Port Trust is in the position of a bailee. In such circumstances, as per Sections 42 and 43 of the Major Port Trust Act, 1963, till the delivery of the consignment to the consignee, Port Trust alone will be liable for any happenings, including any fatal accident, during this period.

24. In this connection, the learned Senior Counsel cited THE CHAIRMAN, MADRAS PORT TRUST VS. K.P.A.T. ANNAMALAI NADAR & ANOTHER (1967(2) M.L.J. 594) THE SHIPPING CORPORATION OF INDIA LTD., BOMBAY AND ANOTHER VS. UNION OF INDIA AND ANOTHER {AIR 1976 AP 261}, BOARD OF TRUSTEES OF THE MADRAS PORT TRUST VS. VINOD SELVEXTRACTS PVT. LTD AND ANOTHER {2003 (1) LW 437 (DB)}.

25. In reply, the learned Special Public Prosecutor would submit that the provisions of Major Port Trust Act and the decisions rendered thereon with reference to certain provisions cited by the learned Senior Counsel for the respondents are concerned with damage to goods etc., however, in the case before us, the matter is concerned with the responsibility fixed on the employer for providing certain safety measures to Dock Workers and violation of the Regulation thereto by the negligence of an employer. In such circumstances, the Major Port Trust Act and the said decisions are not applicable to the facts of this case.

26. I have anxiously considered the rival submissions, perused the entire materials on record and the decisions cited by both side.

27. Now the question is whether the prosecution has established the offence alleged as against the accused beyond all reasonable doubts.

28. In this case, BHEL/A-1 on 11.8.2000 was unloading steel pipes imported from the ship M.V.Ravindra and this handling operation was carried out at Chennai Port Trust. BHEL has engaged a Transport Contractor. It has supplied vehicle for this purpose. One of the vehicle driver is Arumugam.

29. On 11.8.2000, at about 5 p.m., an untoward incident took place. Steel pipes slide downwards, rolled down and it fell on Arumugam. He was seriously injured. And he died subsequently. Thus, the fatal accident case.

30. The crux of the matter is whether there was any negligence on the part of the accused in not providing safety measures as mandated in the Regulations framed under the Dock Workers (Safety, Health and Welfare) Regulations, 1990. Non following of the said Regulations leads to punishment under section 14(2) of the Dock Workers (Safety, Health and Welfare) Act, 1986.

31. Major Port Trust Act entirely deals with different subjects. It deals with goods, delivery of the same, any loss thereon and fixing responsibility for damages for damage with reference to consigner, consignee, insurer, demurrage charges etc. The decisions cited by the learned Senior counsel for the respondents deals with such aspects. Thus, they are not in pari materia with the subject in issue before us. So they cannot be pressed into service in this case.

32. Referring to the statement of objections and reasons appended to the said legislation under our discussion, there is no doubt that it is a social welfare measure, labour welfare oriented legislation. Among other things, it deals with providing of safety measures to Dock workers. It also prescribes punishment for those who violate those provisions of the Act and the Regulations.

33. They are not out and out a penal statute-Inter alia it deals with invoking of penal provisions under certain contingencies. It is a quasi-penal legislation.

34. One of the basis of the Anglo-Saxanic Criminal Jurisprudence is that prosecution has to prove the guilt alleged as against the accused beyond all reasonable doubts. (Per Lord Justice Goddard in WOOLMINGTON VS. DIRECTOR OF PUBLIC PROSECUTION (1935)AC 462). The penal provisions in the Dock Workers Act 1986 and the Regulations of 1990 did not make any departure from this basic principle of Criminal law. We are also wedded to this English notions of Criminal Justice. Unless they were dispensed with expressly by statutory provisions the said legal thought will have its sway in full force in Indian Legal System also. The penal provisions under the Dock Workers regulations did not make any departure from this principle of English Criminal law.

35. There is marked distinction between an appeal against conviction and an appeal against acquittal. Merely because an appellate Court can come to a different conclusion, it cannot substitute an order of conviction for the order of acquittal passed by the trial Court. An order of acquittal cannot be simply interfered with by the appellate Court because it wishes to do so. This Court while exercising its appellate power over an order of acquittal is entitled to re-appraise the entire evidence to see whether the findings recorded by the trial Court are perverse or unreasonable, no reasonable man would have come to such a conclusion. (See Lal Bahadur and others vs. State (2013(4) SCC 557).

36. The appellate Court should also see whether in passing an order of acquittal, the evidence and materials ought to have been considered has been overlooked by the trial Court, in other words, whether any relevant piece of evidence has been left out or whether any material ought not to have been considered has been considered by the trial Court, in other words, irrelevant materials have been considered. These are facets of rendering perverse findings. When the findings of the trial Court in passing an order of acquittal is perverse, it is the bounden duty of the appellate Court to revise such a judgment of the trial Court and render justice accordance to law.

37. Now, keeping this basic principles, in our view, let us approach the order of acquittal in issue before us in the light of the oral and documentary evidence adduced and the rival submissions placed before us.

38. P.W.2 Walter Ebinezer was then a Shed Master in Ch.PT. On hearing the untoward incident at the West Quay III Wharf he had rushed to the place, there he found steel pipes were over one Arumugam, a Dock Worker employed by the accused. P.W.2 has informed this incident to P.W.1 Gnanasundaram, a Central Government official by way of his Ex.P3 memo. Thereafter, P.W.1/complainant conducted the enquiry and recorded Ex.P4 statement from P.W.2.

39. In his evidence before the Court, P.W.2 had stated that since BHEL has not provided sufficient safety precaution measures to prevent steel pipes from rolling down, the incident has occurred and thus the accused was negligent. However, in his Ex.P4, P.W.2 has stated that when he had visited the scene place, steel wedges were provided to prevent the stack from rolling down during destacking operation. He also stated that Mobile Crane was pressed into service by Chennai Port Trust for removal of stack at another place and fork lift truck stood lifted the pipes from the body of injured Arumugam.

40. In Ex.P4 P.W.2 alleged negligence due to the deployment of fork lift truck. He also stated that sufficient wooden and steel wedges were provided to prevent their rolling during the destacking operation. P.W.2 did not allege any negligence on the part of BHEL employees. He did not implicate BHEL employees for this fatal accident. However, during his evidence before the trial Court, he made diametrically opposite turn. He resiled from his Ex.P4 statement. This aspect has been referred to by the trial Court. In such circumstances, the evidence of P.W.2 cannot be accepted as Gospel truth.

41. The learned Special Public Prosecutor has been categorical in the trial Court making use of Ex.P4 in assessing the evidence of P.W.2. According to him, Ex.P4 is not a substantive piece of evidence and it is only a 'previous statement'.

42. Pressing into service such 'previous statements' in criminal cases to appreciate the veracity of the evidence of a witness is not an uncommon event. Such previous statements contains the earliest version as to the prosecution version of the case. They were recorded 'res inter alia acta' (behind the back of a party). Then the accused will not be there. They are not subjected to cross

examination. Such previous statements can be used to test the truthfulness in the evidence of a person who comes to the Court to adduce his testimony. It may be used to impeach the credibility of such a witness. Such previous statement can be used by the accused. And it cannot be used by the prosecution. To record an adverse finding against an indicted person, a statement (previously) recorded in his absence, which is untested on the altar of cross examination cannot be used. Statement recorded under section 161 Cr.P.C. from the witnesses, statement recorded from the witnesses by the Revenue Divisional Officers in dowry death, abetment to commit suicide cases are also of similar ilk. They can be used by the accused and not by the prosecution (See RAM KISHAN SINGH VS. HARMIT KAUR (A.I.R. 1972 SC 468) and R.PALANICHAMY VS. INSPECTOR OF POLICE, RAMANADHAPURAM POLICE STATION (2013-2 L.W. (Cr1.) 169 (DB)). The same analogy could be given to Ex.P4 statement given by P.W.2 to P.W.1, who has conducted an enquiry after the fatal accident taken place.

43. The argument of the learned Special Public Prosecutor that the trial Court before relying on Ex.P4 ought to have drawn the attention of P.W.2 to Ex.P4 did not arise because Ex.P4 has been introduced in evidence through the relevant witness and further P.W.2 himself is its author.

44. While appreciating the evidence of P.W.2 the trial Court tested his veracity with reference to his Ex.P4 previous statement. The result was P.W.2 had made improvements in his evidence, he gave diametrically an opposite version. In such circumstances, the reluctance of the trial Court to rely on his testimony implicating the accused does not suffer from any illegality or perversity.

45. The evidence of P.W.1 is that after the intimation from P.W.2 he had visited the scene place prepared rough sketch and also took photograph. However, they were not placed before the trial Court. On this aspect, the trial Court drawn adverse inference that they were withheld because they contain information adverse the prosecution case.

46. The sketch and photograph will give first hand information about the occurrence. It will also demonstrate 'res ipsa loquitur' (the thing speaks for itself). It will furnish information as to the true version of the accident when especially the fork lift truck was deployed to unload the steel pipes and when especially the tenor of Ex.P4 statement is that the deployment of fork lift truck has contributed to the accident. In such circumstances, on the non production of the said materials the trial Court having drawn adverse inference cannot be stated to be unreasonable.

47. At about that time at two places unloading of steel pipes were carried out. At one place mobile Crane was deployed and at another place fork lift truck was employed. At one place a fatal incident took place. In such circumstances, their deployment assumed signal importance. The trial Court drawn distinction and comparison as to the absence of a fatal accident when the Mobile Crane was deployed and the happening of the fatal accident when the fork lift truck was deployed. In the facts and circumstances, such comparison cannot be stated to be unreasonable.

48. In view of the foregoing, on the analysis of the evidence adduced before it, the findings recorded by the trial Court, this Court does not see any perversity or unreasonableness.

49. In the facts and circumstances of the case, the trial Court coming to the conclusion that the prosecution has not established its case against the accused beyond all reasonable doubts and consequently passing the order of acquittal cannot be faulted. In the circumstances, there is no occasion here to interfere with the well reasoned judgment of the trial Court.

50. Thus, this Criminal appeal is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn/vaan

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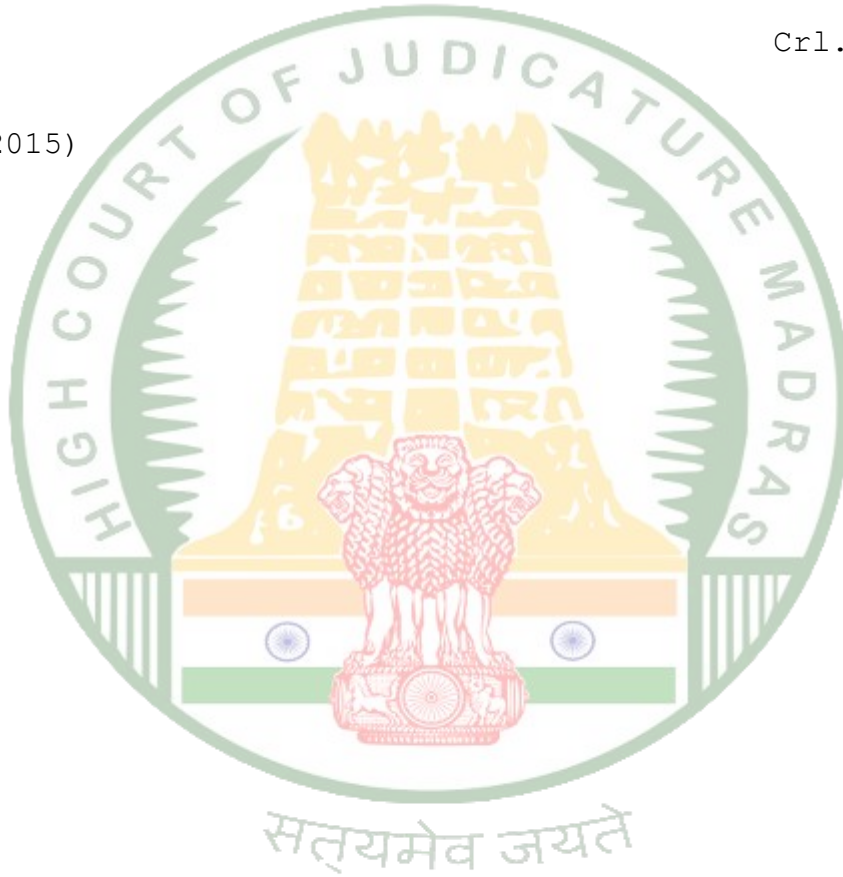
- 1.The Chief Metropolitan Magistrate,
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- 2.The XVI Metropolitan Magistrate,
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