

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

Crl.A.No.1707 of 2004

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JUDGMENT :

This appeal is filed questioning the judgment dt.27.08.1996 in C.C.No.353 of 1994 on the file of Judicial Magistrate of I Class, Asifabad. This appeal was admitted after granting Special Leave.

2. On 18.01.1994, a fatal accident had occurred at Mahavirkhani No.1 incline mine of M/s. Singareni Collaries Company Limited in which four coal fillers employed in the said company were buried alive in debris falling from a height of 2.8 meters. The Inspector of Mines as well as the Deputy Director of Mines Safety, Hyderabad Region – II (*de facto* complainant), accompanied by two directors inspected the mine, enquired into causes and circumstances which led to the accident and formed an opinion that the following were the causes for the accident :

“1. The accused did not follow the diagonal line of extraction during the depillaring operations as stipulated in the said permission letter No.488 dt.10.02.1988 and engaged the persons in the place which was located in bye of the diagonal line of extraction.

2. The accused No.3 who is the safety officer failed to appraise the Manager accused No.2 regarding the situation arisen about the formation of “V” in the line of extraction which is a contravention of regulation 41A(1)(a), 41A(f), 41A(1)(g) of the coal Mines Regulations, 1957.”

3. According to *de facto* complainant, the above contraventions constituted an offence punishable under

Section 72A of the Mines Act, 1952 read with Section 18 of the Mines Act, 1952 and the accused are liable for punishment on the ground of vicarious liability, and liable for conviction under Section 72C(1)(a) of the said Act.

4. The appellant/complainant obtained authorization from the Dy. Inspector of Mines under Section 75 of the Act to initiate the prosecution against the accused.

5. The accused are agent, manager and safety officer, respectively of the said mine. The case was taken up against them for offences under Section 72A, 72C(1) (a) of the Act.

6. They were examined under Section 251 Cr.P.C. They denied the offence and claimed to be tried.

7. The appellant examined PWs.1 to 5 and marked Exs.P.1 to P.23.

8. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C., and the incriminating material against them was put to them. They denied it.

9. By judgment dt.27.08.1996, the Court below acquitted all the accused.

10. Challenging the same, this appeal is filed.

11. Sri B. Narayana Reddy, counsel for appellant, contended that the judgment of court below acquitting the accused is unsustainable; that accused were responsible

for the safety of workers working in the mine vicariously; and since they had acted negligently, compromising the safety of workers, the accident occurred killing the above workers; that the evidence of PWs.1 to 5 proved the guilt of accused beyond reasonable doubt; and they are liable for conviction.

12. Sri N. Krishna Rao, counsel for respondents/accused, contended that the Court below has correctly appreciated the evidence on record and acquitted the accused, and since the conclusion of the court below is a reasonable conclusion, this Court in exercise of its jurisdiction under Section 378 Cr.P.C. ought not to disturb the findings of court below.

13. I have noted the submissions of both sides.

14. The main case of prosecution is that condition No.2E contained in permission Letter No.488 dt.10.02.1988, which is marked as Ex.P.1, was violated by accused. The said condition provided that extraction shall commence from depomost slice and advanced systematically towards rise maintaining a diagonal line of extraction, and formation of 'V' in the mine of extraction shall be avoided. The appellant's case against respondents was that respondents had not followed the diagonal line of extraction and formation of 'V' was not avoided.

15. The contention of defence is that A.2 and A.3 have

to manage 3 to 4 mines and supervise 3,000 to 4,000 workers, and the persons actually working at the work spot will be over-man, mine Sardar and short firer, and the coal fillers would be lifting coal. These facts are admitted.

16. The contention of accused is that A.1 had submitted a plan along with application, seeking permission for extraction of coal from complainant and the complainant had accorded permission after approving the plan. But the draft plan was not sent to the company along with the permission Ex.P.1.

17. It is admitted by PW.1 that diagonal line of extraction, otherwise, called line of extraction is only a notional line; in Ex.P.22 plan there is no 'V' formation as shown in Figure 12-5 at page no.399 of the mining regulations; and the authoritative books of mining did not prescribe anything about 'V' formation. PW.1 admitted that he did not measure angle of diagonal line in the instant case and they had not prepared any plan showing any contravention of permission or 'V' formation at the place of accident. He also admitted that in his cross-examination that during the enquiry by him no person had stated that there was bulging of supports, crushing of supporting material, etc. Therefore, the evidence of PW.1 would not prove that there is a contravention of condition No.2E of the permission letter given by accused.

18. Although PW.2, another Deputy Director of Mines,

who accompanied PW.1, stated that accused had not avoided 'V' formation and thereby committed offence punishable under Sections 72A and 72C of the Act, he admitted that an Agent would be in-charge of more than 3 mines and a Manager will be in-charge of one mine and in every mine there will be 1,000 workers; that the actual extraction work in the mine would be done by Overman, Mining Sardar and Short Firer and Coal fillers, who possess competency certificates issued by the Director of Mines and who would be provided with a plan. Even PW.2, admitted that the effect of 'V' formation is not defined anywhere and there are no circulars or orders or instructions or letters defining it. He also admitted that the accused had made available the conditions of permission Ex.P.2 and manner in which coal is to be extracted to the Overman, Mining Sardar and Short Firer; that it was the primary duty of workers who would be working at the spot to detect any contravention; and if the Mining Sardar observed any imbalance of the supporting pillars, they would not have permitted extraction of coal. He also admitted that if there is any geological disturbance, the roof may collapse without any advance warning, such as sound or development of cracks, etc. Hence, his evidence also does not support the case of the prosecution.

19. PW.3 is a coal filler who was present at the spot when the accident occurred. He stated that if there is any

danger, the Mining Sardar, the Short Firer and the Overman would not permit any blast; he did not know whether there was any order issued for blasting by A.3; he did not state before the enquiry officer that the accused are responsible for the accident; and that on the date when the accident occurred, the above persons had checked the particular point and after that only they started filling the coal since they thought that there is no danger. So, the evidence of this witness also does not incriminate the accused in any way.

20. PW.4 is also a coal filler who deposed that there was no sound in the mine earlier to the falling of rock and the rock fell suddenly; that the supports in the mine are intact and the accident had taken place not on account of anybody's negligence, but due to act of God; and all safety measures were taken by the Mining Sardar and the Overman.

21. Likewise, PW.5, the Overman, who worked in the concerned mine, also stated that the accident occurred on account of act of God; that the Mining Sardar and the Short Firer are qualified persons and if they feel any risk in the mine, they will not allow anybody in the mines. He categorically stated that he did not find any risk factor in the mine earlier to the accident and so he allowed the workers to work there.

22. A reading of the above evidence of prosecution

witnesses does not indicate that the accused are in any way responsible for the death of the coal fillers or they were negligent in any manner. Since the Overman, Mining Sardar and Short Firer who were at the spot had not felt any risk, they had allowed the workers to work, but on account of act of God, a large formation of rock fell down from a height of 2.8 meters, killing the workmen. PW.4 stated that the supports in the mine are intact and nobody was negligent.

23. Having regard to the evidence led by the prosecution, I am of the opinion that the prosecution has miserably failed to prove the guilt of accused beyond reasonable doubt.

24. The scope of interference in appeal under Section 378 Cr.P.C. is laid down succinctly in **Chandrappa and**

others Vs. State of Karnataka^[1], as under :

“(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

25. The above principle was reiterated in **State of Rajasthan v. Mohan Lal**^[2] and recently in **Satvir Singh v. State of Delhi**^[3].

26. I am convinced that the view taken by the Court below is a reasonable view and does not warrant any interference in Appeal. Since no compelling reasons have been shown by the prosecution/appellant to disturb the findings of Court below, this Criminal Appeal fails and is accordingly dismissed.

27. Miscellaneous petitions, pending if any, in this Criminal Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-02-2015

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[\[1\]](#) (2007) 4 SCC 415

[\[2\]](#) (2009) 12 SCC 515

[\[3\]](#) (2014) 13 SCC 143