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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 93 OF 2004

Shri Vasant Ganesh Joshi,
Age: 58 years, Occ: Service,
R/o. N3/238, Aurangabad. ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr R.F. Totala, Advocate for applicant;
Mr C.V. Dharurkar, A.P.P. for respondent;

CORAM : N.W. SAMBRE, J.

DATE : 25th August, 2016

ORAL JUDGMENT :

Learned Adhoc Additional Sessions Judge, Aurangabad, vide judgment and order dated 27th February, 2004 dismissed the appeal being Criminal Appeal No. 7 of 2002 preferred by the present applicant, confirming the conviction and sentence recorded by learned Chief Judicial Magistrate, Aurangabad in Summary Criminal Case No. 80303 of 1998 on 16th January, 2002, whereby present applicant, in exercise of powers under Section

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255(2) of the Code of Criminal Procedure, for an offence under Section 32(c), punishable under Section 92 of the Factories Act, 1948, was ordered to suffer rigorous imprisonment for a month and fine of Rs.60,000/-, in default, to suffer rigorous imprisonment for 15 days by learned Chief Judicial Magistrate.

2. Present revision is directed against the above referred conviction.

3. The facts as are necessary for deciding present revision are as under :-

Deceased Ajit Ganpatrao Gaikwad was working as Boiler Attendant in M/s. Aurangabad Breweries Limited, of which, present applicant was working as Manager. In an fatal accident of 19th July, 1998 at about 6-15 a.m., said Ajit Gaikwad fell from the platform, which had no side support, resulting into his death. It is claimed that present applicant, in the capacity of Manager, has

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failed to provide fencing or otherwise ensured safety of the person working i.e. deceased Ajit and as such, committed an offence under Section 32(c), punishable under Section 92 of the Factories Act, 1948.

4. The offence came to be registered pursuant to the complaint lodged by Ramesh Venkatrao Jadhav, who, at the relevant time, was working as Joint Director, Industrial Safety and Health at Aurangabad. He claimed to be Inspector under Section 8 of the Factories Act and the factory i.e. M/s. Aurangabad Breweries Ltd., came to be registered under the Factories Act and upon receiving an information of fatal accident on 19th July, 1998, he visited the said factory for inquiry purpose. According to him, he made inquiry with co-workers of the deceased Ajit namely Shivaji Gadekar, Process Technician, Rajan Pille, Electrician and Eknath Giri, Canteen Contractor and recorded their statements, pursuant to the provisions of Section 9 of the Factories Act. In

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the inquiry under Section 9 of the Factories Act, according to him, it revealed that the deceased Ajit was employee of the factory of the accused as Boiler Attendant Ist class and as per instructions of Shivaji Gadekar, Process Technician, deceased Ajit went on RCC Plant which is situated at the height of 16 feet from ground level for opening steam supply valve for releasing the steam to the process house. It is then claimed that overhead RCC platform situated at the height of 16 feet is connecting two Sections i.e. Boiler and Refuseration.

It is then claimed that from the articulate platform, the deceased was required to walk 30 feet to reach the valve after walking on the pipe line laid on MS channels, which are created on RCC platform for about 10 feet and while doing so, he fell from open south side of RCC platform on the ground floor from the height of 16 feet, received serious head injuries and he was removed to Kamalnayan Bajaj Hospital, Aurangabad

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for treatment, where he succumbed to serious injuries at 10-30 a.m. It is then claimed that platforms, on which, deceased Ajit made to work, were not secured from both sides, as there was no fencing, railings of suitable heights, to prevent the fall. It is then claimed that, as such, the present applicant has contravened the provisions of Section 32(c) of the Factories Act.

5. Said Ramesh Jadhav, Factory Inspector, filed complaint against the applicant-accused on 14th October, 1998 and proved the same by adducing evidence in support of contents thereof. He forwarded inquiry report with covering letter dated 1st August, 1998 to the accused by R.P.A.D., which is at Exhibit-19, contents of the inquiry report were proved at Exhibit-20, a show cause notice came to be issued to the accused on 20th August, 1998, which is proved at Exhibit-21 and same was replied by present applicant at Exhibit-22 on 13th August, 1998. There is additional reply given by the accused at Exhibit-25. The said Inspector also

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recorded the statements of Rajan Pille, electrician and Shivaji Gadekar, process technician at Exhibits-29 and 30 in addition to statement of Eknath Giri, canteen contractor, at Exhibit-28.

6. The prosecution then examined Shivaji Gadekar, Rajan Pille and also recorded the statement of accused under Section 313 of the Code of Criminal Procedure. Learned Chief Judicial Magistrate convicted the accused as observed herein above and confirmed by the appellate Court i.e. Adhoc Additional Sessions Judge, Aurangabad.

7. While questioning the legality of the order of conviction, Mr. Totala, learned Counsel for the applicant would submit that the ingredients of Section 32(c) of the Factories Act are not satisfied. According to him, the complainant has not established about the place of working of the deceased is at height. He would then submit that the evidence of PW-1 complainant i.e. factory inspector, does not speak of short fall. He would

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then urge that the statement of Eknath Giri was recorded, however he was not examined, who happened to be canteen contractor and first person who saw the deceased Ajit at the place of incident. According to him, even if the evidence of other witnesses namely Shivaji Gadekar and Rajan Pille is considered, the same does not depict that there was satisfaction of offence under Section 32(c) punishable under Section 92 of the Factories Act.

By relying upon the judgment of the Apex Court in the matter of **Jivanbhai Patel vs. State of Gujarat** reported in **1997(1) SCC 329**, learned Counsel for the applicant would urge that since the applicant was not owner, who only was working as a Manager, his liability/responsibility under the Factories Act is required to be assessed. According to him, the applicant was in custody for almost five days in the present case and compensation of Rs.1,55,000/- was already paid to legal heirs of deceased Ajit. Looking to the age of the applicant, which is of 78 years and his serious

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ailments, in case this Court is not convinced as regards acquittal, this Court may order release of the applicant on undergone sentence.

8. Learned A.P.P., while opposing the revision, would submit that the scope for appreciation in revisional jurisdiction is very limited. According to him, the entire incident was duly inquired into and inquiry report was submitted by PW-1 Ramesh, as is apparent from his evidence. He would then urge that the entire documents were duly proved. He would then urge that even if testimony of independent witnesses Shivaji Gadekar, and Rajan Pille, PW-2 and PW-3 do not in detail corroborate with that of prosecution story, however testimony of PW-1 is sufficient to sustain the conviction ordered by both the Courts below. According to him, present revision is liable to be dismissed.

9. It is required to be noted that PW-1 Ramesh Jadhav, Factory Inspector, upon receiving

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information of fatal accident, personally visited the factory on 19th July, 1998. He then inquired with the witnesses, whose statements are recorded and in detail, narrated in his examination in chief as to mode and manner of which the accident took place. Not only detail narration but he has prepared inquiry report and also forwarded the same to the applicant. He has proved the complaint at Exhibit-19, inquiry report dated 19th July, 1998 at Exhibit-20, show cause notice issued to the accused at Exhibit-21, reply given by the applicant to show cause notice at Exhibit-22, enclosures to the reply at Exhibits-23 and 24, additional reply to the show cause notice at Exhibit-25. In his cross examination, he has stated that under Section 92 of the Factories Act, only Manager or occupier of the factory is responsible for the accident. In the cross examination, all the above referred factual matrix, which are proved by PW-1 Ramesh Jadhav, are not at all demolished by the applicant. PW-2 and PW-3 have proved their statements to be true and in cross examination what is brought on record by the

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applicant is that of place of work of deceased Ajit Gaikwad was on lower side and operation of boiler can be done at the lower level. PW-2 Shivaji has stated that he had not seen Gaikwad after 11 p.m. Another witness Rajan Pille supports giving of his statement to PW-1, however, states that the contents are not true and correct.

10. What is required to be appreciated from the evidence of PW-1 and PW-2 is that there was fatal accident, in which Ajit Gaikwad lost his life. PW-1 in his examination in chief has stated as to place from which deceased fell down in the factory premises and non providing railings. Reply dated 18th August, 1998 given by the applicant-accused at Exhibit-22 narrates about providing of railings after the incident. The said fact admits that there was short fall of provisions of Section 32(c) of the Factories Act. What is gathered from the evidence and judgments of both the Courts below that both the Courts below have dealt with the evidence of PW-1 and PW-2 in detail including that

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of documentary evidence and have reached to the conclusion of ordering conviction.

11. Upon appreciation of submissions of Mr. Totala, learned Counsel for the applicant, what could be inferred is the conviction as was ordered by learned Court below, in my opinion, is just and proper based on material available on record. The conviction could be properly justified based on the testimony of PW-1 Factory Inspector, who proved the entire accident, inquiry report etc.

12. Though Mr. Totala, learned Counsel for the applicant has harped upon the fact that Eknath Giri was not examined as witness by the prosecution and same is fatal for the prosecution, in my opinion, will be of hardly any consequence, as the evidence of PW-1 and PW-2 is sufficient to form an opinion that the prosecution proved an offence in question and responsibility of the applicant for such fatal accident and his liability under Section 32(c) of the Factories Act.

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13. This takes me to the next submission of Mr. Totala, learned Counsel for the applicant that the applicant is a person, who is aged about 78 years and was already in the custody for five days, pursuant to the conviction ordered. The applicant is no more in the service of employer and is suffering from serious ailments of cancer. He would then urge that looking to the age of applicant and sentence that he had already undergone, the applicant be ordered to be released on undergone sentence or benefit of Section 360 of the Probation of Offenders Act be given to him. The fact remains that the applicant was in the custody for period of five days pursuant to the conviction upheld by learned Sessions Judge. Apart from above, it is not in dispute that the applicant has attained age of 78 and is not in the employment. Looking to the age of the applicant and the fact that he had already undergone sentence of five days, in my opinion, the benefit of Section 360 of the Probation of Offenders Act could be very much

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extended to the applicant. Hence I propose to pass following order :

(a) The applicant be released on probation, particularly looking to his age of 78 years and he is not employed anywhere, the execution of bond is not warranted as the conviction is only for a month.

(b) Fine amount as is deposited shall be equally diverted to the legal heirs of deceased Ajit Gaikwad.

(c) The Factory Inspector, Aurangabad shall forthwith take steps for payment of entire amount towards fine deposited in this Court alongwith interest to be paid to the legal heirs of deceased Ajit Gaikwad in equal parts and shall submit report to that effect within a period of ten weeks from today.

14. Criminal Revision, as such, stands partly allowed in above terms.

Learned A.P.P. to communicate this order to the Factory Inspector, Aurangabad for necessary action.

Sd/-
(N.W. SAMBRE, J.)

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