

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4492 OF 2017**

1. Vaibhav Vinayak Shirke,
Age-37, Occupation-Service,
Residing at Rhodia Colony,
A12, A Wing, Roha Kolad Road,
Roha.

2. Rajesh Hajare,
Age-45, Occupation-Service,
Residing at Rhodia Colony,
A7, A Wing, Roha Kolad Road,
Roha.

...Petitioners
(Ori. Accused)

Versus

The State of Maharashtra,
Through the Sub-Inspector of Police,
Roha Police Station

...Respondent
(Ori. Complainant)

Mr. Subodh Desai a/w Ms. Komal Khushalani and Mr. Shadab Jan i/b
Crawford Bayley & Co. for the Petitioners

Mr. A. R. Patil, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 18th NOVEMBER 2019

ORAL JUDGMENT :

1 At the outset, learned counsel for the petitioners seeks leave to
amend prayer clause (b). Leave granted. Amendment to be carried out
forthwith.

2 Heard learned counsel for the parties.

3 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent-State.

4 A few facts as are germane for deciding the aforesaid petition are as under :

The petitioner No. 1 was the Plant Manager, working with Lotus Plant of Rhodia Specialty Chemicals India Private Limited (formerly known as M/s. Rhodia Specialty Chemicals India Limited) (hereinafter, for the sake of brevity, referred to as “the said Company”), since 2nd January 2014 and the petitioner No. 2 was working as a Safety Executive with the said Company since 1st September 2014. The said factory, where the unfortunate incident took place is situated at Plot No. 103 to 105, MIDC, Dhatav, Taluka Roha, District Raigad. In the said incident which took place on 5th January 2016, Akash Patil (deceased) succumbed to death. Pursuant to the said incident, police constable-Rakesh Raut of the Roha Police Station lodged an FIR, as against the petitioners, alleging offences

punishable under Sections 287, 304 r/w 34 of the Indian Penal Code ('IPC'). After investigation, charge-sheet was filed as against the petitioners in the Court of the learned Magistrate since the offence alleged was triable by the Court of Sessions, the case was committed to the Court of Sessions for trial.

The petitioners herein, filed an application before the learned Sessions Judge at Mangaon and sought their discharge from the said case, contending that no offence as alleged was made out *qua* the petitioners. The learned Sessions Judge vide order dated 22nd August 2017 rejected the said application. Hence, this petition.

5 Learned counsel for the petitioners submitted that no offence as alleged under Sections 287, 304 r/w 34 of the IPC is disclosed *qua* any of the petitioner, taking the case as it stands. He submitted that the deceased entered the lift, without any instructions, resulting in his unfortunate death. He submitted that the allegations as against the petitioners is that they failed to take safety precautions, which is not borne out by the material on record. He submitted that the maintenance of the lift was not the petitioners' responsibility, as they were not the manufacturers of the lift. He submitted that the Company in which the petitioners' were working, was incorporated

in the year 1965 and is a subsidiary of a U.K based company and as such is required to mandatorily follow international safety measures and standards, which include conducting periodic and regular training of the employees, in line of the laws applicable in India. He further submitted that Maclift Corporation had installed the Goods Lift on 20th May 2015 in the said Company and that the inspection of the lift was recommended on quarterly basis. He submitted that inspection of the lift was done on 25th September 2015 and that the lift was put into service from November 2015. According to the learned counsel, third party inspection was done on 2nd November 2015 and the incident in question took place on 5th January 2016. According to the learned counsel, the said Company had complied with all the requirements of “Hoist and Lift” as required under Section 28(1) of the Factories Act. He further submitted that the said Company commenced its plant operations in the factory premises on 27th October 2015, after receiving the consent to operate on 19th August 2015 from the Maharashtra Pollution Control Board. He submitted that the said Company had also conducted mechanical equipment inspection in November 2015 by DISH appointed competent person i.e. Ankul Associates. He further submitted that on 2nd December 2015, the Ankul Associates verified the Goods Lift and noted that it was found ‘OK’. Learned counsel relied on the copy of Form 11 issued by Ankul Associates under Rules 62 and 64 of the Rules.

He further submitted that on 27th November 2015 and 18th December 2015, service maintenance of the Goods Lift was conducted by the Company's Maintenance Engineer as per the Maintenance Standard Operating Procedure (SOP) and everything was found to be in order. According to the learned counsel on 22nd and 23rd December 2015, the Company also conducted Site Safety Audit by Soham Consultancy, an external agency, where the safety measures implemented at the plant were found to be satisfactory. Learned counsel relied on the statements of Ganesh Kadam-Plant Operator and Siddhesh Yerunkar-Plant Worker and statements of other persons in support of the submission that the concerned persons had asked the deceased to go on the first floor and check whether the lift door was closed or not. He submitted that at no point of time, any of the persons, much less, the petitioners had given any instructions to the deceased to get into the lift. He submitted that entering the cage by passengers was strictly prohibited. He submitted that the deceased on his own volition, opened the lift door and got into the lift without any instructions, pursuant to which, the unfortunate incident took place.

6 Learned counsel for the petitioners, on instructions, submitted that Rs. 25,00,000/- were paid by the petitioners' Company to the parents of

Akash (deceased) under the Workman's Compensation Act and about Rs. 9,49,000/- were deposited by the Contractor, who had hired Akash (deceased) as contract labourer, with the Labour Court, pursuant to the order of the Labour Court. It is submitted that the said amount has been released by the Labour Court in favour of the parents of the deceased.

7 Learned A.P.P opposed the petition. Learned A.P.P also relied on the statements of Ganesh Kadam and Siddhesh Yerunkar in support of his submission.

8 Perused the charge-sheet and the impugned order with the assistance of the learned counsel for the petitioners and the learned A.P.P for the respondent-State.

As noted above, the petitioner No. 1 was working as a Plant Manager with the said Company since 2nd January 2014 and the petitioner No. 2 was working as the Safety Executive with the said Company from 1st September 2014. The deceased-Akash Patil was working as a Contract Labourer and had joined the said Company only eight days prior to the incident. On 5th January 2016 at about 1:00 p.m, Ramchandra Bendgule-Plant Supervisor asked the operators-Mane and Kadam to load an electrical

pedestal fan weighing around 30 kgs in the Goods Lift from the ground floor to be taken to the second floor. Accordingly, the operators-Kadam and Mane along with the contract labourers-Akash Patil (deceased) and Siddhesh placed the electric fan near the landing gate of the ground floor. At that point of time, the Goods Lift was stationed on the first floor. When Siddhesh Yerunkar pressed the button of the Goods Lift to come down, the said lift did not come and hence, he pressed the button again, but to no avail. It appears that pursuant thereto, the Operators (not the petitioners) asked Akash Patil (deceased) to go on the first floor and to check if the door of the Goods Lift was closed and if not, then to lock the said door and inform the operators. Akash Patil, who was wearing the personal protective equipments such as helmet, goggles, hand gloves, dusk mask and safety shoes went to the first floor via the staircase and within 2-3 minutes, there was a loud sound. The Operators who were standing on the ground floor inquired what had happened and called out to Akash, who was on the first floor, however, received no response. Pursuant thereto, the Operators-Mane and Kadam along with the other contract worker-Siddhesh Yerunkar immediately rushed on the first floor, taking the staircase. On reaching the first floor, they noticed that the landing gate at the first floor was 75% open. On leaning forward into the Goods Lift Duct, it was noticed that the said lift was stuck between the first floor and the ground floor. It was also noticed

that the door of the Goods Lift was half open and a portion of it was broken and that Akash had fallen inside the Goods Lift. The Operators once again called out to Akash, however, received no response and immediately informed the said fact to the Plant Supervisor-Ramchandra Bendgule. Within a few minutes, the employees of the other plant, the petitioners and the company's rescue team arrived at the spot. The rescue team, it is alleged, consisted of five technical persons. Some portion of the top net of the Goods Lift was cut and some of the rescue team entered the Goods Lift and rescued Akash at about 1:45 p.m and handed him over to Sambhaji and Govind More, who were standing on top of the Goods Lift. Akash was in an unconscious condition and had sustained injuries. After he was examined by the Company's visiting doctor, it was decided to shift Akash to a Nursing Home at Roha. At Roha, Akash was given primary treatment in a Nursing Home and thereafter was shifted on the very same day to M.G.M. Hospital, Panvel, where he succumbed to his injuries, soon after his admission.

On the same day, spot panchanama was conducted and statements of witnesses were recorded by visiting the Plant and the Hospital. Pursuant thereto, the police lodged an FIR as against the petitioners as stated aforesaid alleging offences punishable under Sections

287, 304 r/w 34 of the IPC. On the next day, Akash's post-mortem was conducted at M.G.M Hospital, Panvel. The cause of death was stated to be haemorrhagic shock due to polytrauma.

The police, during the course of investigation, recorded the statements of several witnesses i.e. Plant Supervisor, Plant Operators, Contract Workers, Maintenance Fitters, etc. After investigation, charge-sheet was filed as against the petitioners and the case was committed to the Court of Sessions, as the offence under Section 304 of the IPC was triable by the Sessions Court.

The petitioners filed an application before the learned Sessions Judge, Mazgaon and sought their discharge from the said case. The learned Sessions Judge vide order dated 5th October 2016, rejected the said application.

9 The incident of 5th January 2016 has taken place as noted above. It is not the prosecution case that the petitioners had asked Akash to get into the lift. According to the prosecution, the persons who were present at the spot, had asked Akash only to check whether the lift door was open and to inform them, if the same was open. A perusal of the statement

of Ganesh Kadam, Plant Operator and Siddhesh Yerunkar-Contract Worker (co-worker of Akash), are relevant.

Ganesh Kadam, in his statement, had stated that he was working as a Lotus Plant Operator in the said company. He has further stated that the said Lotus Plant was started by the said Company in October 2015. and that in the said Plant, for each shift, there was one Shift Supervisor, two Operators and two employees working and that for a General Shift, there was one additional labourer. According to Ganesh Kadam, the said Lotus Plant was a two-storeyed building and that Maclift Company's lift was installed in the said building, having capacity of two tonnes for loading/unloading goods of the Company. He has stated that the incident took place on 5th January 2016. He has stated that at the time of the incident, he along with his Shift Supervisor-Ramchandra Bendgule, Operator-Nathuram Mane, employees-Siddhesh Yerunkar, Akash Patil (deceased) and Parshuram Ghag were present; that the Supervisor had explained to them the work for the day; that at about 1:00 p.m, the Plant Supervisor-Ramchandra Bendgule asked them to take fan which was on the ground floor of the Plant to the second floor. According to Ganesh Kadam, he, the Operator-Nathuram Mane and the employees Siddhesh Yerunkar and Akash Patil came near the Goods Lift to place the fan in the said lift.

He has stated that Siddhesh pressed the lift button for bringing the lift down, however, the lift did not come down. Hence, Akash Patil was sent on the first floor to check whether the lift door was properly closed or not and if not, to close it and inform them. He has further stated that Akash went to the first floor and within 2-3 minutes, they heard the sound of lift collapsing and hence, called out to Akash, however, received no reply and hence, rushed to the first floor. He has stated that when they went on the first floor, they noticed that the outside door of the said lift was half open and the rope of the lift was seen. It was further stated that on bending in the lift shaft, it was noticed that the said lift was stuck between the first floor and the ground floor and that Akash Patil was stuck in the lift and that the door of the lift was half open. He has stated that they called out to Akash, however, received no reply, pursuant to which, they informed the Supervisor and the Plant Manager and rang the emergency siren of the Company. He has stated that thereafter Akash was rescued and as he was unconscious, was taken to Roha for treatment and from there, to M.G.M Hospital at Panvel.

The statement of Siddhesh Yerunkar, a Contract Worker (co-worker of Akash) is similar to that of Ganesh Kadam and so are the other statements.

10 Admittedly, the petitioners were not present at the spot when the alleged incident took place. As noted above, Goods Lift was installed on 20th August 2015. Outside the lift, there was a caution board placed, wherein, it is mentioned as under :

"This Lift is for the movement of GOODS ONLY, Not for Passengers"

11 The Lift inspection was done on 25th September 2015 as recommended on quarterly basis and was put in service from November 2015. It is also not in dispute that the third party inspection was done on 2nd November 2015. It appears that the Roha Police sought information with respect to certain queries from Maclift Corporation vide letter dated 6th January 2016. In response thereto, Maclift Corporation furnished information to Roha Police, stating therein, "looking at the nature of failure, it must be a mechanical fault developed during operation". A perusal of the statements of the witnesses show that no specific role has been attributed to either of the petitioner. In the facts, the offence with which the petitioners are charged, cannot be said to have been attracted. The petitioners can neither be said to have intention nor the requisite

knowledge that an incident such as this, could have taken place. The facts as they reveal, show that the incident was an extremely unfortunate one, where the co-workers of Akash had sent him to only check whether the lift doors were shut or not and if not, to shut the same. It appears that Akash stepped into the said lift, resulting in the unfortunate incident and consequently, his death.

12 Having regard to the material on record, no offence as alleged as against the petitioners is disclosed. As noted above, the parents of the deceased have received compensation of Rs. 25,00,000/- under the Workmen Compensation Act and Rs. 9,49,000/- from the Contractor, who had engaged Akash Patil, from the Labour Court.

13 No doubt, no amount of money can compensate the loss of a loved one, but in the facts, the petitioners' company to pay an additional compensation of Rs. 15,00,000/- to Akash's parents on humanitarian grounds. The petitioners have also agreed for the same.

14 For the reasons set out hereinabove, the petition is allowed. Rule is made absolute in terms of prayer clause (b).

15 In view of the statement made by the learned counsel for the petitioners, on instructions, the petitioners' Company i.e. Rhodia Specialty Chemicals India Private Limited to pay Akash's mother and father a sum of Rs. 7,50,000/- each. The same to be paid within four weeks from today.

16 Matter to be listed on 9th December 2019 under the caption 'for directions' to submit proof of the said payment.

17 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.