

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL No. 20 OF 2014

STATE OF GOA (GOVT OF INDIA)

...Appellant

Versus

SHRI G.V. KANEKAR AND ANOTHER

...Respondents

Mr. Mahesh Amonkar, Additional Public Prosecutor *for the Appellant.*

Mr. Gaurang Panandikar, Advocate *for the Respondents.*

CORAM: MANISH PITALE,J.

DATED: 28th October, 2021.

ORAL ORDER :

1. By this appeal, the State of Goa has challenged the judgment and order dated 30/04/2013, passed by the Court of the Judicial Magistrate First Class, Sanguem, whereby the respondents-accused persons were acquitted of offences punishable under Sections 73 and 72-C(1) (a) of the Mines Act, 1952.

2. The incident in the present case leading to prosecution of the respondents occurred on 09/12/2006, when portion of a mine called Tollem Iron Ore Mines suddenly collapsed and six persons lost their lives as they were buried in the debris of the said mine. As a consequence of the said incident, investigation was launched and offences were registered against the respondents-accused persons.

After completion of the investigation, chargesheet was filed and by order dated 13/08/2009, charges were framed against the accused persons. In the said order, it was recorded that the respondents were to face charges for the contravention of Section 18(4) of the Mines Act, 1952 r/w. Regulation 181 of Metalliferous Mines Regulations, 1961. It was stated that the respondents had committed offences punishable under Sections 72-C (1)(a) and 73 of the Mines Act, 1952. A perusal of the said provision would show that under Section 72-C(1)(a) of the said Act if contravention of the provisions of the Act and Regulations framed therein occurs, which results in loss of life, the persons responsible would face imprisonment extending upto two years or with fine extending up to Rs.5,000/- or with both. Under Section 73 of the said Act, which pertains to general provisions for disobedience of orders, the prescribed sentence is imprisonment for a term which may extend to three months, or with fine extending upto Rs.1,000/- or with both.

3. In order to prove the charges levelled against the respondents, the appellant had examined 12 witnesses. Documentary evidence was also brought on record. After recording statements of the respondents under Section 313 of the Code of Criminal Procedure (Cr.P.C.), the Court below heard arguments and by impugned judgment and order held that the appellant had failed to prove the offences against the

respondents, beyond reasonable doubt. Accordingly, the respondents stood acquitted for the aforesaid offences.

4. Mr. Amonkar, learned Additional Public Prosecutor on behalf of the appellant submitted that a perusal of the oral and documentary evidence on record would show that sufficient material was brought on record to prove the guilt of the respondents. Much emphasis was placed on the evidence of PW-1 i.e. the Deputy Director of Mines Safety, Goa Region, the original complainant herein, to contend that negligence on the part of the respondents, particularly violation of the provisions of the Act and Regulations framed thereunder, was brought on record. It was submitted that this witness specifically stated as to the manner in which the incident had occurred and that persons were deployed at the site wherein soft strata of the mine existed and no mining operations could have been undertaken in the first place. By reference to the evidence of the said witness and that of the other prosecution witnesses, including Supervisors at the site of mine, the learned Additional Public Prosecutor submitted that sufficient material was brought on record to show that the respondents were responsible for the incident in question, which had resulted in the death of as many as six persons.

5. It was submitted that the Magistrate while passing the impugned judgment and order failed to appreciate the fact that the site where the incident occurred was full of clay and mud, indicating that it was soft strata and no person or machinery could have been deployed at the site. According to the learned Additional Public Prosecutor, the impugned judgment and order passed by the Magistrate was cryptic in nature and the evidence on record was not properly appreciated.

6. On the other hand Mr. Panandikar, learned Counsel appearing for the respondents submitted that perusal of the evidence on record would show that no expert witness was examined by the prosecution. No efforts were made on behalf of the prosecution to prove the charge that the respondents–accused persons had deployed persons and machinery on the soft strata of the mine and that the responsibility could be affixed on the respondents for the incident in question. It is submitted that merely because the incident had occurred, it could not be said that the responsibility for the same had to be foisted on the respondents before this Court. It was submitted that none of the charges were proved beyond reasonable doubt and that since the judgment and order passed by the Magistrate acquitted the respondents, the presumption of innocence in their favour was further buttressed. On this basis, it was submitted that the appeal deserved to be dismissed.

7. This Court has perused the impugned judgment and order as well as the evidence and other material on record.

8. There can be no doubt about the fact that the incident in question, which occurred on 09/12/2006, was a serious incident causing the death of as many as six persons working in the mine. But, before examining as to whether the impugned judgment and order could be said to be unsustainable, it would be appropriate to refer to the position of law as regards the manner in which an appeal against acquittal is to be considered.

9. It is settled law that when an appeal against acquittal is under consideration, the Appellate Court is not expected to reverse the finding of acquittal in favour of the accused persons merely by taking a different view on the basis of the evidence and material available on record. It is settled law that when two views are possible on the basis of the evidence and material on record, the order of acquittal cannot be reversed. The benefit must accrue to the accused persons. The Appellate Court is expected to deal with the each and every aspect of the judgment and order of acquittal and if a finding is rendered that the conclusions given in the judgment and order of acquittal are perverse and in the teeth of evidence and material available on record, the Appellate Court can reverse the order of acquittal. Thus, the test is

stringent and the presumption of innocence in favour of the accused is already buttressed and confirmed by an order of acquittal passed in their favour.

10. Applying the aforesaid position of law to the evidence and material available on record in the present case, it needs to be examined whether the appellant is justified in contending that the order of acquittal deserves to be reversed and the respondents need to be convicted for the offences with which they were charged.

11. In order to examine the aforesaid aspect of the matter, this Court perused the oral and documentary evidence available on record. The learned Additional Public Prosecutor took the Court through the evidence of material prosecution witnesses. PW-1 was the original complainant working as the Deputy Director of Mines Safety. In his examination-in-chief, the said witness has stated that he reached the place of the incident in the morning of the next day i.e. 10/12/2006 and he observed that three clay benches had slipped and pushed the machinery underneath and that no machinery was visible at the site of the incident. The said witness is obviously not an eyewitness to the incident but being Deputy Director Mines Safety, his evidence assumes significance. It is found in the cross-examination of the said witness that when he had undertaken routine inspection of the mine in

June,2006, he had not found any particular violation. In the cross-examination it is stated that observations were made in the inspection conducted on 08/06/2006 and violation letters were given to the Management of the mines for compliance. But it is crucial that the said witness stated that he did not have the relevant papers concerning any violation with him when he came for deposition before the Court. It is also stated by this witness that on the date of the inspection he had satisfied himself that all relevant permissions issued by the department were in force and that all statutory employees duly qualified were being employed at the said mine.

12. It is further significant that in the cross-examination the said PW-1 stated that no independent technically qualified person was engaged by the Department for establishing the cause of the accident. The reason stated was that, the Department itself was the competent authority to enquire into the accident inside the mine and hence, there was no necessity to take the opinion of an independent technically qualified person. It was further conceded by the said witness that during the course of the enquiry conducted by the Department for establishing the cause of the accident the witnesses who gave statements made some remarks, but none of them made any accusation against the respondents.

13. The prosecution examined other witnesses, including Supervisors at the site of the mine and also employees including drivers of dumpers at the site of the mine when the incident took place. All of them stated that they did not notice any cracks at the relevant site on 6th, 7th, 8th and even on 9th of December, 2006 i.e. on the date of the incident. None of the witnesses made any statement as regards the condition of the mine at the site where the collapse took place. Most of the prosecution witnesses stated that the collapse occurred all of a sudden and that they had not seen such an incident in their lifetime while working in the mines.

14. It is crucial that the charge levelled against the respondents in the present case was that they failed to ensure that machinery was not deployed at the place of the incident which had soft strata, particularly when there was a dump situated in the vicinity near the top edge of the quarry. The prosecution made no attempt to examine any independent expert witness. There is nothing to show that during the course of investigation samples of condition of soil at the place of the incident were taken for examination for proving the fact that there was soft strata where the incident occurred and that men and machinery ought not to have been deployed at the said place. No attempts seem to have been made on the part of the prosecution to bring on record any documentary or oral evidence to buttress the claim that men and

machinery ought not to have been deployed at the place of the incident and the respondents had been grossly negligent in permitting mining activities at the place of the accident.

15. Nothing was brought on record to show the acts on the part of the respondents - accused persons which would demonstrate violation of relevant provisions of the Act, Rules and Regulations, thereby attracting offences under Sections 72-C (1) (a) and 73 of the Mines Act. The respondents could not be convicted merely by stating that since such a major incident had occurred resulting in loss of life of six persons, it could be inferred that the respondents-accused persons were responsible for the incident.

16. The accused persons cannot be convicted on the basis of the conjectures and surmises and it is for the prosecution to prove its case beyond reasonable doubt.

17. In the present case, an attempt was made on behalf of the State to contend that since no explanation was put forth by the respondents-accused persons as regard the aforesaid incident and no defence evidence was led on their behalf, they deserved to be convicted for the alleged offences. This Court is unable to accept the said contention for the reason that it was the duty of the prosecution to prove its case beyond reasonable doubt.

18. The Magistrate in the impugned judgment and order took into consideration the oral and documentary evidence available on record and came to a reasonable conclusion in favour of the respondents. The appellant - State has not been able to prove any perversity in the view taken by the Magistrate in the impugned judgment and order. Therefore, no case is made out for reversal of acquittal. Accordingly, the appeal is dismissed.

MANISH PITALE, J.