

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.247 OF 2020

IN

CRIMINAL APPEAL No.120 of 2022.

Union of India,

Through Director of Mines Safety Shri-
Manishchandra Jaiswal, Aged about:49
years, Nagpur Region No.1, B Block,
Fifth Floor, C.G.O. Complex, Seminary
Hills, Nagpur-440006.

... Appellant

// VERSUS //

1. Shri Rajinder Singh Keinth,
Aged about: 64 years, Occ: Agent
R/o D-2, Kuchana Housing Complex,
P.O. Kuchana, District: Chandrapur,
(M.S.)
2. Shri H.R. Bawariya,
Aged about: 63 years, Occ: Manager,
R/o Rescue Colony, Parasia, District:
Chindwara (M.P.)
3. Shri Milind Mashidkar,
Aged about: 55 years, Occ: Asst.
Manager,
R/o B2/4-3E, Nirmal Nagari, Near
Shitala Mata Mandir, Umred Road,
Nagpur, District: Nagpur.
4. Shri Dinesh Chandra Mishra,
Aged about: 48 years, Occ: Asst.
Manager,
R/o Qtr. No. C-13 (Ashok Vihar) W.C.L.
Colony, Umred, Dist: Nagpur.
5. Shri Baban Prasad Dehriya,
Aged about: 42 years, Occ: Asst.

Manager,
R/o Type-III, 121, Shobhapur Colony,
Post-Pathakera, Dist: Baitul (M.P.)

6. Shri Vijay Kumar Shantaiya,
Aged about: 58 years, Occ: Dumper
Operator,
R/o Qtr. No. TSMQ-8/K, W.C.L.
Colony, Umred, Tahsil Umred, District: ... **Respondents**
Nagpur.

CORAM : ANIL S. KILOR, J.

DATED : 26 FEBRUARY, 2022.

For the reasons stated in the application, the application is allowed.

The application stands **disposed** of.

CRIMINAL APPEAL No.120 of 2022.

ORAL JUDGMENT :

Heard the learned counsel for the respective parties.

2. **ADMIT.**

3. In this appeal filed under Section 378 (3) of the Code of Criminal Procedure, a challenge is raised to the Judgment and order dated 08.01.2020 passed by the learned Judicial Magistrate First Class (JMFC) at Umrer in Summary Criminal Case No.35 of 2015, acquitting the accused Nos.1 to 6 for the offences punishable under Sections 72-C (1)(a), 72-A of the Mines Act, 1952(for short “the Act of 1952”).

4. The brief facts of the present case are as follows:

5. On 17.07.2014 at about 12.50 hours on the haul road of Mkardhokra-II Opencast Mine, a fatal accident had occurred. At the relevant time, accused Nos.1 to 6 were bound to conduct all mining operations as per the provisions of the Mines Act, 1952 and the Regulation made thereunder.

6. On receiving a information of fatal accident at Opencast mine of W.C.L. Ltd., the complainant, Inspector of Mines was appointed under Section 5(1) of the Act of 1952, to conduct an inquiry. During the inquiry, it was revealed that on 17.07.2014, at 12.50 hours, while a light motor vehicle carrying out a service crew of four members, who were going down on the haul road of an Opencast coal mine, one dumper coming from opposite direction, hit and dragged one light motor vehicle i.e. Tata Sumo for distance of about 40 meters, inflicting the fatal injuries to two crew members, who died on the spot and the driver and other members were escaped with minor injuries.

7. In the said inquiry, it was found that there was violation of the provisions of the Act of 1952 and thereby accused Nos.1 to 5 failed to ensure that the haul roads width to be of three times of the width of the largest vehicle plying on it, where one way traffic was not practicable. It is further revealed that the accused No.6 failed to drive the dumper defensibly thus, endangered life or limb of the persons in the mines. Accordingly, the complaint was lodged

by the complainant under Section 200(a) of the Code of Criminal Procedure for the offences punishable under Sections 72-C (1)(a), 72-A of the Mines Act, 1952.

8. The learned JMFC, after marshaling the oral as well as documentary evidence and on recording the reasons in detail, passed the judgment and order dated 08.01.2020 by acquitting the accused Nos.1 to 6. The same is under challenge in this appeal.

9. Shri Dhumane, learned counsel for the appellant submits that the learned trial Court has committed error in not appreciating the documents and oral evidence on record.

10. It is submitted that though the complainant proved the offence against the accused persons, they have been acquitted. It is submitted that the oral evidence led by the complainant, has not been properly appreciated by the learned trial Court and thereby, committed an error by giving an erroneous findings.

11. It is submitted that as per the provisions of the Act of 1952, it is mandatory to ensure that the width of the haul road must be three times of the width of the largest vehicle plying on it, where one way traffic is not practicable. It is further submitted that no sign boards of waiting points were found at the spot of incident during the inquiry conducted by the complainant.

It is therefore, submitted that this fact itself is sufficient to hold that the accused persons are guilty.

12. Lastly, the learned counsel for the appellant submits that the learned trial Court ought to have held guilty to the accused No.6, who was the driver of the dumper involved in the alleged accident, since he failed to drive the dumper defensibly in violation of the provisions of the Regulation 190 of the Coal Mines Regulation 1957 and condition No.8.6.2 (a) and (d) of the Coal Mines Regulation, 1957.

13. On the other hand, Shri Gandhi, learned counsel appearing for the respondents/accused persons submits that in view of the several admissions given by the complainant in his evidence, the learned trial court has rightly acquitted the respondents and there is no legal infirmity or illegality committed by the learned trial Court.

14. It is submitted that the driver of the light motor vehicle is guilty and sufficient evidence has come on record to establish his guilt. However, no complaint was lodged against the driver of the light motor vehicle.

15. It is submitted that it has come in the evidence that it is a duty of the Mines Inspector to point out any deficiencies or any breach in the compliance of the provisions of the Act of 1952 or the Regulations time to time issued in this regard. It is pointed out that at no point of time any

deficiencies have been pointed out by the Mines Inspector about the width of the haul road or sign boards for waiting points.

16. He lastly, submits that there is no perversity in the findings recorded by the trial Court and in view of the well settled principles of law that except there is a perversity or gross illegality, the Court should not interfere with the order of acquittal. To buttress his submission, he has placed a reliance on the judgment of the Hon'ble Supreme Court of India, in the Case of *Ajit Savant Majagvai Vs. State of Karnataka*¹.

17. To consider the rival contentions of the parties, I have perused the record and the impugned judgment and order.

18. Before considering the rival contentions of the parties on merit, at this stage, it is necessary to consider the scope of interference by the Appellate Court in the appeal against acquittal. The Hon'ble the Supreme Court of India in the Case of *Ajit Savant Majagvai (supra)* has held thus:

"14. As a matter of fact, the powers of the High Court are not different from its powers in an ordinary appeal against conviction. The additional burden which is placed on the High Court is that it has to consider each of the grounds which had prompted the trial court to pass the order of acquittal and to record its own reasons for not agreeing with the trial court.

*15. In State of Uttar Pradesh vs. Samman Das*², this Court again reiterated the above principles and pointed out that there were certain cardinal rules which had always to be kept in view in appeal against acquittal. It was pointed out that there is a

¹ (1997) 7 SCC 110

² AIR 172 SC 677 : (1972) 3 SCR 58

presumption of innocence in favour of the accused especially when he has been acquitted by the trial court. It was further to be kept in view that if two views of the matter are possible, the view which favours the accused has to be adopted. The Appellate Court has also to keep in view the fact that the trial Judge has the advantage of looking at the demeanour of witnesses and that the accused is still entitled to the benefit of doubt. The doubt should be such as a rational-thinking person will reasonably, honestly and conscientiously entertain and not the doubt of an irrational mind.

16. *This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under :-*

(1) *In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against an order of conviction.*

(2) *The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.*

(3) *Before reversing the findings of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.*

(4) *In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.*

(5) *If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.*

(6) *The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses*

and observing their conduct in the Court especially in the witness- box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.”

19. In the teeth of the above refereed well settled principle of law, it is to be seen, whether the learned trial Court in the instant case was justified in acquitting the respondents.

20. I have perused the oral evidence of the witnesses.

The complainant PW-1 Shri Supriyo Shivpada Chakravorty, Deputy Director of Mines Safety, Dhanbad Jharkhand has deposed vide Exh.36 and has tried to support the complaint lodged by him vide Summary Criminal Case No. 35 of 2015 against the respondents. In his deposition, he has stated that his duties include the regular inspection of the mine and he has clearly admitted that after inspection of the mines if any deficiency is found, it is his duty to inform the Management of the Mine.

21. PW-1 has also clearly admitted that the driver of the vehicle must have the knowledge and training of the driving of the vehicle in mines area but he has not verified any document in that respect the driver of the vehicle met with the accident.

22 PW-1 has also admitted in his deposition that vide Exh.42 which is the approved map of the mines area that waiting points are existing and the witnesses had corroborated the said fact in enquiry, that there were waiting points and there is possibility of damage caused to the sign board of waiting points by the mob gathered on the spot of the occurrence at the time of the incident.

23. PW-1 has also clearly admitted that he has not personally measured the length and width of the road. He also clearly admitted that when the length of the road is more than required, it can be said to be a “waiting point” and has also clearly admitted that he cannot say as to what was the speed of the dumper and since, he has not seen the dumper by sitting in Tata Sumo vehicle, he cannot say about the dumper and has also admitted that from the turning point dumper must be visible.

24. PW-1 has also clearly admitted that he did not examine the fitness of either dumper or Tata Sumo vehicle and that when he prepared the map of Spot (Exh.49) he has not taken the help of independent witnesses.

25. The driver of Tata Sumo vehicle Raju Tula Turi-PW-2 has clearly admitted that he is not aware as to whether at the time of entering and exiting the Mine, the entries are taken in the register maintained for it. He has also admitted that he is not aware that when any vehicle is entered into the Mine

area, the information about the same has to be given. This admission shows that he had driven the vehicle without proper intimation to the concerned Authorities. He has also admitted that he was not aware about the intimation in respect of the vehicle driven by him MH-40-N-7030 was given to the concerned Department or not.

26. PW-2 has further admitted that he has not handed over any document to the complainant/Investigating Officer to the effect that he was deputed for any work in the Mine on 17.07.2014.

27. PW-2 admitted that there are instructions that the area wherein the dumpers are driven, no vehicle is to be driven and the instructions are also given about the time of the passing of the dumpers so that the persons in such areas may get due information and may take safety measures.

28. PW-5 Ajay Rambhau Khangar who was also inmate of the Tata Sumo vehicle has clearly stated in Paragraph No.5 at Pg. No.69 of his deposition Exh.61 that it is the duty of the driver of any vehicle to stop at “waiting point” whenever the dumper is passing however, the driver of his vehicle did not stop the vehicle and drove his vehicle ahead and then suddenly, the dumper came in front of the vehicle.

29. This evidence is sufficient to demonstrate that it was the mistake solely of the driver of Tata Sumo vehicle.

30. Section 77 of The Mines Act, 1952 exempts owner, agent or manager from liability in certain cases when it is clear that another person is the actual offender. In the case in hand, it is apparent on the face of record that the driver of Tata Sumo vehicle was at fault, the complaint ought not have been lodged by the Investigating Officer. PW-2 has stated that because of the dust, the dumper driver cannot see the front road and even the PW-2 could not see the dumper and therefore, the accident occurred.

31. Shri Dhirendrakumar Namdeo, Surveyor of Director General Mine and Safety, Western Zone, Nagpur-PW-3 has stated that he has surveyed the spot of occurrence and measured the road and prepared Exh.49 but in cross-examination, this witness has clearly admitted that before preparation of Exh.49, he did not see the approved map of Mine as he did not find it necessary. He has also clearly admitted that he has prepared Exh.49 at the instance of the Mine Security Director Shri Prabhat Kumar- PW-6. He has also admitted that he had prepared the said map in his office without seeing any other document. He has also admitted that PW-1 had given him the instructions to prepare Exh.49 and accordingly, he had prepared the same.

32. Thus, it can safely be said that Exh.49 is not at all a reliable document on the basis of which the prosecution was initiated against the respondent.

33. PW-5 who was also the passenger of the subject vehicle, in his cross-examination, he has clearly admitted that they were not permitted in the morning to go in the Mine area. He has also admitted that he was well aware about the Mine area and that there are waiting points at both the sides of the spot of occurrence and that where the waiting points are made, the vehicles are to be stopped at the waiting points until the dumper passes and that the driver of his vehicle did not stop the vehicle and drove ahead and suddenly the dumper came from front side.

34. From the deposition of PW-5, there is doubt that it was the fault of the driver of Tata Sumo vehicle.

35. PW-6 who was Director of the Mines Safety has admitted in his cross-examination that in every Mine, a representative of his office is deputed for safety of mine and the representatives of his office deputed in the mine prepare their report about the safety of the Mine and accordingly, the actions are taken for safety of mine. He has further stated that though he received the report, since it is not relevant with the case, the same is not placed on record.

This witness has also clearly admitted that he had not given any order to prosecute the respondents and had not prepared any Spot Panchnama.

36. The defense had examined DW-1 Shri Chetan Kumar Khupchand Jain, Senior Manager, Department of Safety WCL, Umrer, Nagpur, who has deposed that it is the duty of the officials of the office of Director General of Mines Safety to bring to the notice of the Management of WCL about the dangers and risks in the Mine Area and accordingly the steps are taken to remove the same. He has further deposed that at the spot of occurrence there was no issue safety. It was the haul road and the waiting points were duly given. This spot was earlier inspected by the office of Director General of Mines Safety and no instructions were given for any rectification. He has further deposed that whenever the waiting point arrives, the vehicles are to be stopped and this particular caution is to be taken by the Driver of the vehicle. He further deposed that the driver of Light Motor Vehicle has to take care of the same and in the case in hand the driver of Light Motor Vehicle did drive his vehicle properly and on the road which was available for the Light Motor Vehicle and he brought his vehicle on the way of the Dumpers and because of his mistake, the accident occurred. He has also clearly deposed that the information about the waiting points was duly given to all the concerned officials and workers and everybody in the Mine and to the drivers who are plying the vehicles in the Mine Area.

37. DW-1's evidence remained unchallenged in cross-examination.

38. After going through the oral evidence of the witnesses, it is clear that at no point of time any deficiency or defects were pointed out by the Mines Inspector about safety in the mines, to get it rectified. Nothing has been pointed out from the record that at any point of time, any instructions were issued about erection of sign boards of waiting points. The admission of the PW-1 in cross-examination that, during the enquiry conducted by the PW-1, the witnesses have stated that there were waiting points and there is a possibility of damage caused to it by the mob gathered on the spot of occurrence, is material. Therefore, the contentions of the learned counsel for the appellant cannot be accepted that there were no sign boards of waiting points at the site of occurrence.

39. The appellant has not brought anything on record to show that any intimation was given by the driver of the Tata Sumo vehicle to the concerned authority. Considering the admission given by the PW-2 that there are instructions that the area wherein the dumpers are driven, no vehicle is to be driven and that at the time of passing of the dumpers instructions were being issued so that the persons in such areas may get due information and may take safety measures, it can safely be said that it was a sheer mistake of the driver of the Tata Sumo vehicle, who entered into the mine without an intimation and without following the instructions that the area wherein dumpers are driven,

no vehicle is to be driven. In the circumstances, there is nothing to point out that the respondents have committed the alleged offence.

40. Thus, in view of the oral evidence of the witnesses and the reasons recorded herein above, I do not find any perversity committed by the learned trial Court in acquitting the respondents.

41. The learned trial Court has given reasons in detail after marshaling the oral as well as documentary evidence available on record and as I have observed that there is no perversity in the findings recorded by the learned trial Court, I do not find any merit in the present appeal.

Accordingly, the appeal is **dismissed**.

[JUDGE]

NIRANJAN
DOMAJI
THAWRE

Digitally signed
by NIRANJAN
DOMAJI
THAWRE
Date:
2022.03.19
15:01:40 +0530