

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

G.A. 3 of 2003

**State of West Bengal
-Vs-
Sarat Singh Choudhury**

For the State : Mr.Avishek Sinha

For the Respondent : Ms. Smruti Rekha Das,
Mr. Soumitra Dey

Heard on : 01.08.2023, 11.12.2023

Judgment on : 12.12.2023

Ananya Bandyopadhyay, J.:-

1. This instant appeal is directed against a judgment and order dated 26th February, 2002 passed by the Learned Chief Judicial Magistrate, Howrah in connection with the Case No. 515C of 2001 under Section 92 of the Factories Act, 1948 convicting the opposite party under Section 92 for contravention of Section 21(1)(IV) of the Factories Act, 1948 and sentencing him thereunder to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for one month.
2. On 4th May, 2001, Mr. Arindam Sarkar, Inspector of Factories, West Bengal a public servant within the meaning of Section 21 of the Indian Penal Code,

in discharge of his official duty made a complaint in writing before the Learned Chief Judicial Magistrate, Howrah against the opposite party for commission of an offence punishable under Section 92 of the Factories Act for violation of the provisions of Section 21(1)(IV) of the said Act.

3. Upon the aforesaid complaint filed before the Court, the Case No. 515C of 2001 was registered and summons was issued against the opposite party directing him to appear in the Court to face trial for commission of the aforesaid offence.
4. The prosecution case precisely stated that the complainant, Mr. Arindam Sarkar, Inspector of Factories, Government of West Bengal along with A.K. Chattopadhyaya, Dy. Chief Inspector of Factories, Government of West Bengal inspected the place of occurrence, i.e. the Factory known and registered as Ajoy Industries situated at 10B, Dharmatala Road, P.O.- Ghusuri, District-Howrah, P.S.- Mali Panchaghora on March 30, 2001 in order to investigate the occurrence of the serious accident at the factory on March 23, 2001 at about 12.30 noon which subsequently proved to be fatal to Budhiram Gaur (Furnace-in-Charge).
5. Thereafter it revealed that on March 23, 2001 the victim Budhiram Gaur, the deceased, was working in the general shift (8.00 a.m. to 5.00 p.m.) as Furnace-in-Charge in front of the furnace inside the factory.
6. At about 12.30 noon while the victim was working near the furnace, the main coupling of rolling mill broke and one broken piece of the coupling flew off through the gap conspicuous at the right head side (on the North-West)

by damaging the coupling barrier and hit Budhiram at the backside of his neck after refounding from chimney, the base structure of which was made of brick and cement work.

7. The stand rolling mill was fitted with 200 horse-power electrical motor and the mill was rotating with 300 r.p.m. It was also learnt that before the accident one Lalan Kumar Gupta (tong man of the factory) was pushing the red-hot iron bar to rolling mill with the help of long hand tong for re-rolling the rollers, as such, a twisting moment (torque) was generated from the motor-shaft to the jammed roller and the main cylindrical C.I. coupling of 18 centimeter diameter and 16.5 cm. length, situated between the flange coupling and roll stand was broken into pieces. Although a small inadequate fabricated (M.S.Flat) window-barrier was provided on the main cylindrical C.I. coupling but the impact of the broken piece of coupling was so high due to considerable centrifugal force that broken piece of the coupling while running away displaced heavy thrust and after refounding to the chimney base it struck vehemently at the neck of the victim Budhiram at his back who was then working in front of the oil-fired furnace situated at the North-West corner of the factory. Although the aforesaid coupling was the part of the transmission machinery connecting the prime mover shaft and the rolling machine shaft, however it was not securely fenced by safeguards of substantial constructions, the broken portion of the coupling were flown away from its position.

8. It was further stated that the aforesaid barrier failed to provide secure fencing in absence of complete covering of the said rotating cast iron cylindrical coupling as required. Neither it was safeguarded nor the guard was built with substantial construction and was in clear violation of the statutory safety provision enumerated in Section 21(1)(IV) of the Factories Act, 1948. The opposite party, the accused being the occupier-cum-Manager of the said factory was guilty for the offence punishable under Section 92 of the Factories Act for violation of Section 21 of the said Act.
9. February 26, 2002 was fixed for examination of the accused/opposite party under Section 251 of the Code of Criminal Procedure in connection with the above-noted case.
10. On February 26, 2002 in course of his examination under Section 251 of the Code of Criminal Procedure in connection the above-noted case the accused/opposite party pleaded guilty before the Learned Chief Judicial Magistrate, Howrah.
11. Upon pleading guilty by the accused/opposite party as aforesaid the Learned Chief Judicial Magistrate recorded his plea and thereafter accepting his plea, convicted him under Section 92 of the Factories Act and sentenced him to pay a fine of Rs.10,000/- and in default to suffer simple imprisonment for one (1) month.
12. Learned Advocate for the State/appellant submitted that:-
 - i. The impugned order of sentence of fine is wholly illegal, erroneous and improper and hence is liable to be set aside.

- ii. The impugned order of sentence of fine whereby the respondent on his conviction under Section 92 of the Factories Act for contravention of Section 21(1)(IV) of the said Act, resulting in the death of the victim was directed to pay a fine of Rs. 10,000/- and such fine amount being less than the statutory limit of fine is wholly illegal and erroneous and the amount of fine ought to have been raised adequately in accordance with the statutory provision.
- iii. The impugned order of sentence of fine passed against the respondent for his conviction under Section 92 of the Factories Act for violation of Section 21(1)(IV) of the said Act is wholly inadequate being less than prescribed statutory limit of fine is illegal and is liable to be enhanced in accordance with law.

13. Heard the submissions of the Ld. Advocate for the respondents claiming the sentence pronounced by the Ld. Trial Court to be adequately considered.

14. Its pertinent to mention the following Sections of The Factories Act, 1948

92. General penalty for offences.—

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93 , if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 2 [two years] or with fine which may extend to [one lakh rupees] or with both, and if the

contravention is continued after conviction, with a further fine which may extend to 4 [one thousand rupees] for each day on which the contravention is so continued: 5 [Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than 6 [twenty-five thousand rupees] in the case of an accident causing death, and 7 [five thousand rupees] in the case of an accident causing serious bodily injury. Explanation.—In this section and in section 94 “serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.]

21. Fencing of machinery.—

(1) In every factory the following, namely:—

(iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely:— (a) every part of an electric generator, a motor or rotary converter; (b) every part of transmission machinery; and (c) every dangerous part of any other machinery;

15. Section 92 of the Factories Act, 1948 provides for a disjunctive clause ‘or’ with regard to imprisonment for a term which may extend to two years or

which may extend to one lakh rupees as the upper limit. The Ld. Trial Court did not commit any error to take assistance of the disjunctive clause in the provision and convicted the opposite party to pay a fine of Rs.10,000/-.

16. In view of the above discussions, the instant Government Appeal being GA 3 of 2003 is dismissed.

17. There is no order as to cost.

18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)