

(1991) 11 GUJ CK 0011
In the Gujarat High Court

Case No : Criminal Revision Application No. 1139 of 1991

Bhimabhai Kalabhai

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 01-11-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 304A, 337, 338

Citation : (1992) CriLJ 2585

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : M.J. Thakor, for the Appellant; K.C. Shah, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Seven innocent village people lost their lives and eight persons received injuries at village Bagdana due to water tank collapsed in 1984. The said water tank was constructed by the petitioner original accused No. 1, for the purpose of convenience of the people of village Bagdana for the purpose of getting water and for washing clothes, etc. from the water of the tank.

2. The Police filed charge sheet against the present petitioner and two other accused i.e. Ravji Kala accused No. 2, Sarpanch of the village and brother of the present petitioner and Niranjan Dinkarra Jani, Supervisor of P.W.D. before the Court of J.M.F.C., Mahuva for the offences punishable u/s 304A, 337, 338 and 114 of I.P.C. The Id. Magistrate found the original accused Nos. 2 and 3 not guilty for the offences charged against them as the prosecution fails to prove its case against them beyond reasonable doubt. However, the Id. Magistrate found petitioner-accused No. 1 guilty for the offence punishable u/s 304A, I.P.C. and ordered to suffer R.I. for two years and to pay fine of Rs. 5,000/- i/d. to further undergo S.I. for six months. The Id Magistrate has also ordered that if the petitioner pays fine of Rs. 5,000/- then Rs. 4,000/- be paid equally to the legal representatives of the deceased. The petitioner was also convicted for the

offence punishable u/s 337, I.P.C. and also ordered to undergo six months R.I. and to pay fine of Rs. 500/- i/d. to undergo two months S.I. Out of Rs. 500/-, Rs. 400/- is also ordered to be equally distributed to the injured persons. However, both the sentences were ordered to be run concurrently.

3. In appeal, the learned Addl. Sessions Judge by his impugned judgment and order dated 21st October, 1991 dismissed the appeal and confirmed the order of conviction and sentence recorded by the learned Magistrate, Mahuva.

4. Being aggrieved by the impugned judgment and order passed by both the courts below, the petitioner preferred this Revision Application.

5. On appreciation of evidence the Courts below found that due to the sheer negligence of the petitioner the water tank had collapsed and because of that seven persons lost their lives and eight persons were injured. The said tank was constructed by the petitioner. Material which was used for the construction of the said water tank was of a low quality and the same was to be purchased by the petitioner and the said material was purchased by the petitioner not only that the said material was of a low quality. The petitioner has used Class-B lime instead of Class A lime for the construction of the Water Tank. The lime (Chuna) which was used was of lowest quality much below than of a standard quality. Therefore, the tank had not that strength to prevent the pressure of the water and because of that the water tank had collapsed and this unfortunate incident had occurred. It was also found that no completion certificate was obtained before making use of that water tank and it was the duty of the petitioner to obtain that completion certificate and without obtaining the said certificate the use of the water tank could not have been permitted. It was also found that flooring period was not over in spite that water was filled-in in the tank which was against the rules and the water also ought to have been filled-in according to its capacity.

6. In view of the aforesaid finding of facts arrived at by the courts below this Court would not and cannot interfere in its revisional jurisdiction and reappraise the evidence which was appreciated by the Courts below. However, Mr. Thakor, L.A. for the petitioner tried to take me through the evidence which I refused to look into the same, because it is not open to this Court to reappraise the evidence in Revision Application. However, Mr. Thakor submitted that there is no evidence to show that the petitioner has filled up the water in the water tank. But, there is ample evidence on the record to show that the petitioner was in charge of said water tank which was constructed by him and the water was also filled-in the said water tank. That apart there is no suggestion made to any of the prosecution witness that the water was filled-in in the water tank by any other person against his order or instruction. No other question of law involved in this matter and therefore this Revision Application is required to be rejected in limine; at the admission stage.

7. Mr. Thakor next contended that the learned Magistrate has committed an error in awarding maximum sentence of two years and the sentence is very harsh. Mr.

Thakor submitted that the alleged incident took place in 1984, almost seven years before, and therefore lenient view should be taken by this Court, and as the petitioner is in jail since 21st October, 1991 the day on which the learned Addl. Sessions Judge confirmed the order of conviction and sentence passed by the learned Magistrate the order of sentence as undergone may be passed by this Court.

8. It is true that u/s 304A, I.P.C. maximum sentence is of two years R.I. and the Ld. Magistrate has awarded maximum sentence of two years R.I. However, in my view there cannot be any lesser sentence in such type of cases where a person like petitioner who for the purpose of making money make such construction because of which seven valuable human lives have been lost. Merely because the period of more than seven years has passed in this case would not be a ground for this Court to reduce the sentence by passing the order of sentence as already undergone. The petitioner has remained in jail only for ten days and only on the ground of delay, if I have to reduce even sentence of a day, from two years" R.I., it would be an injustice to those seven persons who have lost their lives. Therefore I do not see any reason even to interfere with the order of sentence passed by the courts below.

9. Accordingly there is no substance or merit in this Revision Application and therefore, it fails and is rejected in limine at the admission stage.