
(2003) 11 GAU CK 0036
In the Gauhati High Court
Case No : Criminal Revision No. 654 of 1995

Durga Dutta Tiwari

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Factories Act, 1948 — Section 29, 32, 91, 92

Citation : (2004) GLT 401 Supp

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : N.M. Lahiri, N. Choudhury, H.S. Thaangkhiew, S.C. Kayal and B.W. Phira, for the Appellant; P.P., for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—Head the learned Counsel for both sides.

2. This revision is directed against the judgment and order dated 16.11.95 passed by the Sessions Judge, Cachar, Silchar in Criminal Appeal No. 2(3)/95 upholding the conviction and sentence passed by the Chief Judicial Magistrate, Cachar, Silchar in Case No. 3144/94 convicting the Petitioner u/s 92 of the Factories Act and sentencing him to pay a fine of Rs. One lakh in default to suffer R.I. for six months.

3. The Petitioner before us is a Manager of Borojalingah Tea Company, Cachar, Silchar and he was tried for the offence u/s 92 of the Factories Act for violation of the provisions of Section 29/32 of the Act. The prosecution story is that on 5.4.1994 a fatal accident occurred in the drier section of the Factory of the Tea Estate situated at Barjalenga. The Inspector of Factories visited the spot on the same day and found that there was a chimney behind the drier which was divided into three cylindrical portion and each is eight feet in length and twenty eight feet in diameter made of cast iron. The said chimney was under repairing and after repairing the chimney was erected against and the first portion was

installed and subsequently when the second portion was erected on the first one, the rope gave way and an accident took place where one person was injured and he subsequently succumbed to the injuries. The matter was informed to the factory Inspector who made an enquiry and submitted offence report. The accused Petitioner pleaded not guilty and the trial court examined the complainant. On conclusion of the trial, the trial court convicted the accused Petitioner u/s 92 of the Factories Act and sentenced him to pay a fine of Rs. 1 lakh and in default to undergo R.I. for six months. Feeling aggrieved, the Petitioner preferred C.A. No. 2(3)/95 before the Sessions Judge, Cachar, Silchar. The learned Sessions Judge dismissed the appeal and affirmed the conviction and sentence passed by the trial court. Hence, the present revision.

4. In the case. The accused has been charged for violation of the provisions of Section 29 and 32 of the Factories Act. However, during trial no evidence was led regarding violation of the provisions of Section 32(a) of the Factories Act and allegation has been made in respect of Section 29 of the Act, which reads as follows:

29 lifting machines, chains, ropes and lifting tackles. In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:

(a) All parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be

(i) of good construction, sound material and adequate strength and free from defects;

(ii) properly maintained; and

(iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing; and a register shall be kept containing the prescribed particulars of every such examination;

(b) No lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register, and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises,

(C) While any person is employed or working on or near the wheel track of a traveling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within (six meters) of that place.

(2) That State Government may make rules in respect of any lifting machine or

any chain, rope or lifting tackle used in factories

(a) prescribing further requirements to be complied with in addition to those set out in the section.

(b) providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.

(3) For the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

5. Admittedly, the sole prosecution witness P W1 was not present when the incident took place. As per his own statement, he visited the site subsequently and on the basis of the statement made by the workers and other witnesses, he submitted the offence report. Surprisingly enough, none of these persons or witnesses were cross examined by the prosecution during trial and when the lacuna was brought to the notice, the same was brushed aside without any finding. Admittedly, the P.W. 1's evidence is hearsay evidence as he learnt the incident from other witnesses and it is not admissible in evidence in criminal trial.

6. The trial court has acted on the evidence of P.W.-1 wherein it was stated that the rope used for lifting the portion of the chimney was not of required standard or it was not of standard specification etc. Admittedly, none of these articles were examined by the experts and there is no report of the experts to show that the said accessories/tools used for the purpose of lifting the chimney were not as per specifications required u/s 29 of the Factories Act. Further, the complainant did not produce these articles before the court to show that these were not in conformity with the required specification. The mere statement of the complainant that he found the rope etc. to be of not required standard or quality can not form basis for conviction as he arrived at the place of occurrence subsequently. It seems that the complainant was in hurry in taking up matter in discharge of his duties as required under the Act. We may refer to the provisions of Section 91 of the Factories Act which provides that an Inspector may at any time take samples and get the things examined or analyzed by any Government Analyst. Admittedly, P.W.-1 did not perform his duties as required.

7. In this case, we find that there is another aspect of the matter which was given complete go-bye by both the trial court as well as the appellate court. As per the prosecution story itself the said chimney was dismantled for the purpose of repairing which means that the chimney was lifted and brought to the ground for the purpose of repairing. It seems that during the process of dismantling and lifting of the chimney, there was no mishap. Further, we find from the P.W.-1's own evidence that one portion of the chimney was successfully installed and the accident took place when the second part of the chimney was being placed. All

these things go to show that the apparatus used for the purpose of lifting the chimney was of required strength and we find force in the submission that the incident was because of an accident only and there was no negligence on the part of the management. There cannot be presumption of things that the rope used was not of required specification etc. The burden was on the prosecution and admittedly, the prosecution has failed to discharge the same.

8. In view of the what has been stated above, we hold that the prosecution has failed to establish the violation of Section 29 of the Factories Act and hence, the conviction and sentence u/s 92 of the Factories Act is not tenable.

9. In the result, the revision petition is allowed. The conviction and sentence is set aside.

The accused Petitioner is acquitted and set at liberty forthwith.