
(1969) 12 BOM CK 0016

In the Bombay High Court

Case No : Criminal Revision Application No. 945 of 1969

Manohar Shriniwas Mantri

APPELLANT

Vs

Adtarsingh Gangasingh

RESPONDENT

Date of Decision : 12-12-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 288

Citation : (1970) 72 BOMLR 629 : (1970) MhLj 890

Hon'ble Judges : Chandrachud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chandrachud, J.—A firm of which respondent No. 1 is a partner had taken a contract for the construction of the third floor of a building at Bandra. On April 6, 1968, Shirish, the 12-years-old son of the complainant was playing with a friend in the compound adjoining the building, when a worker engaged in the construction work threw down a brick. The brick fell on Shirish's head causing him grievous injuries. Respondent No. 1 was therefore charged in the Court of the Presidency Magistrate, 9th Court, Bandra, u/s 288 of the Indian Penal Code. He has been acquitted by the learned Magistrate and hence the complainant has filed this revision application.

2. Section 288 has, in my opinion, no application to the facts of this case. It provides, in so far as is material, that whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof shall be punished with imprisonment and/or with fine. In this case the injury was caused to Shirish not in the process of pulling down the building or its being repaired. The injury was caused because a worker engaged in the work of construction of the third floor threw down a brick. What Section 288 requires is that a person must knowingly or negligently omit to take the necessary order with the building in pulling it down or repairing it. It is

not sufficient that an injury is caused while the building is being pulled down or repaired. In other words, the injury must be the direct consequence of the building being pulled down or repaired.

3. It is also not possible to say on the evidence such as is referred to by the learned Magistrate in his judgment that respondent No. 1 had failed to take such order with the building as was sufficient to guard against a probable danger to human life from the fall of that building or a part thereof. This leads to a consideration as regards the compliance with the latter part of Section 288.

4. What the section further requires is that the accused must knowingly or negligently omit to take such order with the building as is sufficient to guard against a probable danger to human life "from the fall of that building or of any part thereof." This makes it clear that the injury complained of must be the consequence of the fall of the building or any part thereof. A worker throwing a brick negligently may be responsible for his rash or negligent act, but a contractor who has engaged a worker in a work of construction cannot be held guilty of omitting to take such order as is sufficient to guard against a probable danger to human life from the fall of a building or of any part thereof, if the injury is caused not because the building or a part of it fell but because the worker threw a brick carelessly or negligently.

5. It is unnecessary to deal with the validity of the defence taken by respondent No. 1. It is enough for the purposes of this revision application that Section 288 has no application and therefore the charge must fail. I would only like to add that the learned Magistrate, without justification, dealt with questions relating to vicarious liability. It does not appear that it was anybody's case that respondent No. 1 would be responsible for the act of his employee. The allegation is that it was his duty to take the necessary order with the building, so that no injury would be caused to anyone and not that he is responsible for the tort committed by his servant. Such a case can be made out in a civil proceeding and it appears from the record that such a proceeding is pending between the parties.

6. I, therefore, confirm the order of acquittal and discharge the rule in the revision application.