
(1985) 11 BOM CK 0020
In the Bombay High Court
Case No : C.A. No. 431 of 1984

N.R. Dixit, Manager, Vegoils Ltd.

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-11-1985

Acts Referred:

Factories Act, 1948 — Section 21, 92

Citation : (1986) 1 BomCR 524 : (1986) 52 FLR 41 : (1994) 3 LLJ 30

Hon'ble Judges : R.R. Jahagirdar, J

Bench : Single Bench

Advocate : S.S. Phanse, P.P, for the Appellant; H.V. Mehta, for the Respondent

Final Decision : Allowed

Judgement

R.R. Jahagirdar, J.—Criminal Appeal No. 431 of 1984 which has been filed by the original accused is against the order of conviction and sentence passed by the learned Metropolitan Magistrate, 29th Court, Dadar, Bombay, on 5 9th of January 1981 u/s 21(i)(iv)(c) read with Section 92 of the Factories Act, 1948. The accused has been convicted and sentenced to pay a fine of Rs. 250/-, in default to suffer simple imprisonment for two weeks. The companion appeal being Criminal Appeal No. 271 of 1984 is filed by the State of Maharashtra for enhancement of the sentence, passed by the learned Metropolitan Magistrate. The case of the prosecution may be stated as follows:

2. The accused is the manager of a factory "Vegoils Ltd." situated at Wadala (E), Bombay. On 9th September 1979, an accident 2 had taken place in the factory premises which resulted into a serious injury caused to a workman by name Mahadeo Salunkhe. On 17th of September, 1979, the complainant, who is Inspector of Factories visited 2 and inspected the factory and made enquiries in the accident. The injured workman Mahadeo Salunkhe was an employee of the factory and hence was entrusted with the work of supervising the work of Mathadi 3 Hamals. According to the case of the prosecution, on 9th of September, 1979, he was on the second shift duty supervising the work of

Mathadi workers, who were then engaged in cleaning the elevator which had got jammed. The injured workman then went to the first platform which is about 29 ft. from the ground floor over the elevator, to start the motor. The elevator drives the screw conveyer which is on the second platform at 36 ft. above the ground level. The injured workman Mahadeo Salunkhe went on the second platform to see through the screw conveyer whether the cake was properly falling in the hopper. While going towards the hopper on the second platform he got entangled in a piece of a rope which was lying on the platform and he had a fall. While falling his right hand got stuck into the screw conveyer which was 3 ft. above the second platform with the result that his right hand upto wrist was instantly amputated as there was no cover for the screw. As the cover was neither provided with nor there was fencing provided to the screw conveyer which is a dangerous part of the machine, the accident took place which resulted in serious injury to the workman Mahadeo Salunkhe. The accused, therefore, according to the prosecution, had committed an offence punishable u/s 21(i)(iv)(c) of the Factories Act, 1948. The defence of the accused is one of total denial. It was his case that the screw conveyer had 7 to 8 cover guards and the injured workman wilfully interfered with and removed one of the guards which was normally put in its position. The accident had taken place on the second platform at the height of 38 ft. from the ground floor where no person is normally required to go. The accident had taken place because the workman had wilfully interfered with the screw guards, so as to endanger himself without consent or knowledge of the accused. The learned Metropolitan Magistrate accepted the case of the prosecution and recorded a finding that the accused had committed an offence punishable u/s 21(i)(iv)(c) read with Section 92 of the Factories Act, 1948 and sentenced him to pay a fine of Rs. 250/- in default, he was ordered to suffer simple imprisonment for two weeks. Being aggrieved by this order of conviction and sentence passed by the learned Metropolitan Magistrate, dated 9th of January 1981, Criminal Appeal No. 431 : of 1984 has been filed by the present appellant original accused which is being heard along with companion Criminal Appeal No. 271 of 1984 filed by the State for enhancement of the sentence. It may be stated that initially, against the order of conviction and sentence passed by the learned Metropolitan Magistrate, the appellant had filed Criminal Appeal No. 115 of 1981 in the Court of Session at Bombay and the said Appeal No. 115 of 1981, was transferred, under orders of this Court, from the Sessions Court to this Court, which has now been renumbered as Criminal Appeal No. 431 of 1984.

3. Mr. Mehta, the learned Advocate for the appellant, urged before me that there cannot be any quarrel about the liability on the part of the Manager to securely fence by safety guards the dangerous part of the machinery. It was, however, urged before me that the evidence before the learned Metropolitan Magistrate clearly shows that the Manager viz. the present accused had taken all precautions which were required to be taken u/s 21(i)(iv)(c) of the Factories Act, 1948, viz. that the U shape screw conveyer which undoubtedly is dangerous machinery was properly fenced. The management has already taken the

precautions of covering the same machinery viz. U shape screw machinery by 7 to 8 guards, but it would also appear from the record, according to Mr. Mehta, that the injured person Mahadeo Salunkhe, himself had removed one out of 7 to 8 guards, a few minutes before the accident took place. It was, therefore, urged that the liability on the part of the accused u/s 21 of the Factories Act, comes to an end as soon as it is established that the management had taken all the precautions of covering the U shape screw conveyer by 7 to 8 guards and that Mahadeo Salunkhe, the injured person, on his own admission himself had removed one of the guards. This act on the part of the injured workman Mahadeo Salunkhe in removing one of the safety guards amounts to negligence and if he had not removed the safety guard, the accident would not have occurred. In support of this proposition, Mr. Mehta, the learned Advocate for the Appellant, has invited my attention to the evidence of Mahadeo Sahadeo Salunkhe, who in his examination-in-chief has stated:

"I then went on second platform to ensure the materials being fed properly in the hopper. I had removed one cover of the screw conveyer. While I was going towards the conveyer, I got entangled in a piece of a rope. I fell and while falling my hand stuck in the screw conveyer. My wrist was amputated. The machine was then in operation. "There are, however, certain admissions given by this witness in the cross-examination which are to the following effect: "There is a notice displayed in the factory that no one should touch the moving machines or safety guards. I was instructed to take the precautions for the safety". He further proceeds to admit: "There are about 7 to 8 guards on the U shape conveyer. The guards are normally put there in the positions. I had taken out one guard. I did not tell any one about my taking out the guard from the conveyer. Rest of the guards were in position. Had I not removed the guard there would not have been an accident. I was not asked by the Inspector as to who removed the guard". After going through the cross-examination of the injured person, particularly, his admissions in the cross-examination, I am inclined to accept the submission made by Mr. Mehta that the accused viz. the manager of the Factory had discharged his liability under the Act by providing 7 to 8 guards to the dangerous machinery viz. U shape screw conveyer and that the injured person himself had removed one of the guards, whereas rest of the safety guards were in their position. I also find from his evidence that the injured person has shown utter disregard to the notice displayed in the factory premises by the management that no one should touch the moving machine or safety guards. He has indulged in the rash and negligent act of removing one of the guards although, he had received instructions and training to take precautions for safety. The appellant, in his statement before the learned Magistrate also had taken the same point, viz. that the covers are put on the conveyer very securely and the workman removed the cover and according to the appellant, accident had taken place because the workman removed the cover. The same contention has been raised by him in the written arguments submitted by the appellant-accused before the learned Magistrate after evidence was recorded".

4. In prosecution u/s 21(i)(iv)(c) of the Factories Act, 1948, it is for the prosecution to lead evidence that the accused has violated the mandatory provisions of the said section by not supplying the fencing to the dangerous part of the machinery. Evidence to this effect ought to have been led by the prosecution in the shape of the evidence of Factory Inspector and also of the injured person. As already stated, the injured person Mahadeo Salunkhe in clear terms had admitted that at the time of the accident, all the guards were in the position but he removed one of them. The evidence of the Factory Inspector Vijaykumar Shrivastava is also silent on this vital point. His evidence shows that he received report about the accident on 10th of September 1979 and he visited the factory on 19th of September 1979, though accident took place on 9th of September, 1979. Almost immediately after the accident or at any rate, on the date of the accident the Factory Inspector should have noticed the condition of the dangerous machinery viz. U shape screw conveyer and ought to have noted in the panchanama in the presence of the panchas as to whether all the safety guards to the dangerous machinery were found intact or some of them were missing and if so, how many. Such evidence is not forthcoming from the Factory Inspector Shri Shrivastava. As already stated, case of the accused that he had put covers on the screw conveyer and that they were secured and that the accident took place because, the workman had removed cover, which as already stated, has been admitted by the injured person himself. Therefore, having regard to the facts and circumstances of this case and having regard to the evidence on record, I am clearly of the opinion that the order of conviction and sentence passed by the learned Metropolitan Magistrate against the appellant is illegal and has to be set aside. Mr. Phanse, the learned Additional Public Prosecutor tried to support the order of the learned Magistrate by contending that the defence should have examined the witnesses to establish that the screw conveyer was properly fenced. In my view, this submission is not well founded because injured person himself has admitted that screw conveyer had 7 to 8 guards and that he had removed one of the guards and the rest of the guards were in their position. For the reasons stated in the preceding paragraphs of this judgment and after hearing the submissions made before me by the learned Advocate for the appellant and Mr. Phanse for the Respondent-State, I pass the following order :

5. Criminal Appeal No. 431 of 1984 is allowed. The order of conviction and sentence passed against the accused on 9th of January 1981 is set aside. Amount of fine if paid be refunded to the appellant. In view of the order passed in Criminal Appeal No. 431 of 1984, Criminal Appeal No. 271 of 1984 filed by the State for enhancement of the sentence does not survive and is accordingly dismissed.