
(2009) 11 CHH CK 0027
In the Chhattisgarh High Court
Case No : Criminal Revision No. 55 of 2005

R.B. Singh

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Factories Act, 1948 — Section 41, 92
Madhya Pradesh Factories Rules, 1962 — Rule 73F

Citation : (2009) 4 CGLJ 255

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Advocate : Manindra Shrivastava and Ashish Shrivastava, for the Appellant;
Praveen Das, Deputy Government Advocate and Pankaj Shrivastava, Panel
Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Pritinker Diwaker, J.—This revision is directed against the impugned order dated 24-11-2004 passed in Criminal Appeal NO. 6/M.P.I.R. Act/IV/2003 by Industrial Court, Raipur arising out of the judgment dated 28-11-2002 passed by Judicial Magistrate First Class, Labour Court, Durg in Criminal Case No. 372/Factories Act/99. By judgment dated 28-11-2002 the learned Magistrate has acquitted the applicant/ accused of the offence u/s 92 of the Factories Act, 1948 whereas by the impugned order dated 24-11-2004 while reversing the judgment of the learned Magistrate the learned Industrial Court has convicted the applicant/ accused u/s 92 of the Factories Act, 1948 and sentenced him to pay fine of Rupees One Lakh, in default of payment of fine the applicant/accused to undergo rigorous imprisonment for 6 months.

2. Brief facts of the case are that at the relevant time the applicant/accused R.B. Singh was working as Factory Manager in Continuous Casting Shop, Bhilai Steel Plant, Bhilai. It is alleged that on 4-6-1999 when one Budharu was operating the crane and he was lifting last two heat slabs of a stack, 16 heat slabs stacked

nearby toppled due to jerk and one of the 16 heat slabs fell on the deceased Dharam Singh who was working as Yard Assistant and his duty was to give signal to the crane operator for shifting the slabs to a particular place. After the incident, a case was registered against the applicant/accused on the ground that on the relevant date as he was working as factory manager it is he who was responsible for the entire act.

3. In support of its case the prosecution has examined 2 witnesses namely Mahesh Kumar Agrawal, inspector of Factories and Deputy Director of Industrial Health and Safety, Durg and Budharu the crane operator. After recording evidence of these two witnesses, the learned Magistrate vide his judgment dated 28-11-2002 has acquitted the applicant/accused by holding that the slab fell because of jerk. The learned Magistrate has held that the prosecution has failed to prove its case against the applicant/accused beyond all doubts. It has been further held by the learned Magistrate that Budharu, the crane operator has not supported the prosecution case and, therefore, merely on the basis of the evidence of Mahesh Kumar Agrawal, the applicant/accused cannot be convicted.

4. The judgment dated 28-11-2002 has been reversed by the appellate Court vide impugned order dated 24-11-2004 passed in the criminal appeal preferred by the State Government. Hence this revision.

5. It has been argued by learned Senior Counsel for the applicant/accused that even if the entire evidence is taken as it is, the applicant/accused cannot be held liable for the unfortunate accident which had taken place on 4-6-1999. The learned Senior Counsel submits that the crane operator Budharu has explained as to how the accident had taken place and according to him after receiving signal from the deceased Dharam Singh when Budharu was lifting last two heat slabs of a stack, 16 heat slabs stacked nearby toppled due to jerk and one of the 16 heat slabs fell on the deceased Dharam Singh. Learned Senior Counsel further submits that this witness has not made any allegation whatsoever against the applicant/accused. He further submits that in fact, as per the statement of this witness, the accident took place on account of giving wrong signal by the deceased Dharam Singh and immediately after giving signal, it was expected from the deceased Dharam Singh to leave the spot and to maintain distance of 8 to 10 feet. He further submits that instead of doing so the deceased was standing there only and unfortunately one heat slab fell on him and the accident took place. Learned Senior Counsel also refers the statement of Mahesh Kumar Agrawal. As per the statement of this witness, there is no allegation against the applicant/accused because it has not been brought on record as to what was the duty assigned to the applicant/accused and in what manner he was negligent. Learned Senior Counsel further submits that admittedly the applicant/accused was not present on the spot at the time of the occurrence and the accident was merely reported to the applicant/accused. According to him, when no role was assigned to the applicant/accused and it has not been brought on record as to in what manner the applicant/accused was negligent and failed to perform any

particular act, the applicant/accused cannot be convicted as has been done by the learned appellate Court. It has been argued by learned Senior Counsel that the judgment of acquittal passed by the learned Magistrate is a well-reasoned and speaking judgment and the learned Magistrate has arrived at a particular conclusion after due appreciation of evidence and therefore, while entertaining the appeal against acquittal the learned Industrial Court ought to have been vigilant and aware of the basic principles governing the law of appeal against acquittal. According to learned Senior Counsel, the entire evidence has been re-appreciated by the learned appellate Court which is not permissible under law. Lastly, it has been argued by learned Senior Counsel that the applicant/accused has already retired from his service and on account of the impugned order, which has put a stigma on the applicant/accused, the applicant/accused has suffered a lot and the benefit of his retiral dues has been adversely affected.

6. On the other hand, supporting the impugned order passed by the Industrial Court, it has been argued by Shri Praveen Das, learned Deputy Government Advocate and Shri Pankaj Shrivastava learned Panel Lawyer for the State/Respondent that the accident had taken place as the crane operator was not vigilant while shifting the heat slabs from one place to another place and the slabs were not kept in order as required. It has been further submitted that the applicant/accused cannot shirk from his liability being the factory manager as per Section 41 of the Factories Act, 1948 and Rule 73F of the Madhya Pradesh Factories Rules, 1962. It is the applicant/accused alone who is responsible for the accident.

7. I have heard learned Counsel for the parties and perused the material available on record including the impugned order and the judgment passed by the learned Magistrate with utmost circumspection.

8. Witness Budharu, the crane operator has stated that when he was lifting last two heat slabs of a stack with the help of the crane, the heat slabs stacked nearby toppled on account of jerk which could be caused due to pressure and one of them fell on the deceased Dharam Singh. The evidence of the crane operator Budharu further shows that the deceased Dharam Singh was the person who was giving signal to the crane operator Budharu as to whether the slabs were being rightly picked by the crane operator or not and then where they were to be shifted. His statement further reveals that after giving signal, it was required from the deceased Dharam Singh to shift himself from his place and to maintain distance of at least 8 to 10 feet. However, instead of moving from his place he was standing on the very spot and unfortunately the slab fell on him. The statement of Mahesh Kumar Agrawal gives an entirely different story where the stacking of the slabs was not properly done, as a result of which, one of the slabs fell on the deceased Dharam Singh causing his death. Even this witness has not stated anything against the applicant/accused but has stated that had the factory manager put the slabs on a plane land in a proper and safe manner maintaining a proper distance, the slabs would not have toppled and would not

have caused any injury to the deceased Dharam Singh. The entire statement of this witness does not make out any case against the applicant/accused.

9. Section 73F of the Madhya Pradesh Factories Rules, 1962 reads as under:

73F. Stacking and storing of materials, etc.- No material or equipment shall be stacked or stored in such a manner as to cause risk of bodily injury.

10. For establishing any case against the applicant/accused burden was on the prosecution to lead proper evidence. Except the statement of crane operator Budharu there is no other evidence against the applicant/accused and Budharu has been declared hostile. Merely on the basis of statement of Mahesh Kumar Agrawal who was working as Inspector of Factories and Deputy Director of Industrial Health and Safety, Durg, the applicant/accused cannot be convicted.

The finding as arrived by the learned appellate Court cannot be justified because the evidence has not been led by the prosecution to that effect. Had the prosecution examined more witnesses to show the negligence on the part of Budharu and further negligence on the part of the applicant/accused, the things would have been different. There is absolutely no evidence against the applicant/accused and he has been made accused simply because he was working as factory manager.

There is no evidence on record to show as to in what manner the applicant/accused was negligent, what was the duty assigned to the applicant/accused, what was his nature of work, who were the other persons working in the department/area where the accident had taken place, what were the instructions issued by the applicant/accused and what he was required to do. In absence of any such material, the applicant/accused cannot be held liable for the unfortunate death of the deceased Dharam Singh. Moreover, while reversing the judgment of the learned Magistrate, the learned appellate Court has given a different finding and has ignored the fact that the judgment of acquittal passed by the learned Magistrate was the result of one of the plausible views and the same cannot be interfered with unless the same is perverse. It is already said that it was an unfortunate accident where the deceased Dharam Singh died but there is no material on record to convict the applicant/accused on the basis of evidence adduced by the prosecution. This Court is of the view that the impugned order cannot stand.

11. In the result, the impugned order dated 24-11-2004 passed by the Industrial Court, Raipur, convicting the applicant/accused u/s 92 of the Factories Act 1948 and sentencing him to pay fine of Rupees One Lakh, is set aside. The criminal revision is allowed. The applicant/accused is acquitted of the charge u/s 92 of the Factories Act, 1948. Fine, if paid, shall be refunded.