

(1968) 10 MP CK 0005

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 348 of 1964

State of Madhya Pradesh

APPELLANT

Vs

N. K. Bhattacharya

RESPONDENT

Date of Decision : 16-10-1968

Acts Referred:

Factories Act, 1948 — Section 29(1), 29(2), 29(I), 92

Citation : (1971) ILR (MP) 350 : (1969) JLJ 455 : (1969) MPLJ 136

Hon'ble Judges : P.K Tare, J;K.L. Pandey, J

Bench : Division Bench

Advocate : M. V. Tamaskar, for the Appellant; Rajendrasingh, for the Respondent

Final Decision : Dismissed

Judgement

K. L. Pandey, J.

The respondent N. K. Bhattacharya, working Manager of the Steel Melting Shop, Bhilai Steel Works, Bhilai, was tried for, and convicted of an offence punishable u/s 92 of the Factories Act, 1948, for failing to properly maintain a lifting tackle in contravention of clause (a) (ii) of section 29 (1) of the Act and he was sentenced by Magistrate First Class, Durg, to pay a fine of Rs 250 or to undergo, in default, simple imprisonment for one month. However, in the appeal preferred by him, he was acquitted. The State Government have filed this appeal against his acquittal.

The material facts, which are established by evidence and also admitted by the respondent, are these. On 13th October 1981, when the permanent Manager of the Steel Melting Shop, Bhilai Steel Works, was on leave and the respondent was working as the Manager, there was an accident. As usual, molten metal is conveyed from the furnace to the ladle through a launder. This launder is provided with four lugs casted in it. A lifting tackle with four chains hooking the four lugs of the launder is used to lift it up for taking it to another furnace. It transpired that one of the chains had become unserviceable because its shackle had melted. Even so, the respondent allowed the lifting tackle, with only three

working chains, to be used. At the material time, when the launder was being taken to another furnace, one of the remaining three shackles snapped with the result that the launder tilted and some hot slag, steel and brick fell over It wariram, a ground workman, who, in consequence, died on the spot instantaneously.

The prosecution case, inter alia, was that the respondent contravened clause (a) (ii) of section 29 (1) of the Act in that he did not properly maintain" the lifting tackle and allowed it to be used when only three of the four chains were working. The trying Magistrate accepted this part of the prosecution case and, as already indicated, convicted the respondent. In appeal, the Additional Sessions Judge took the view that only two chains hooked to diagonally opposite lugs of the launder were necessary and sufficient for effective working and, therefore, the respondent's omission to get the melted shackle repaired or replaced before allowing the tackle to be used did not amount to a failure to maintain it properly within the meaning of clause (a) (ii) of section 29 (1) of the Act.

The main ground urged in support of this appeal is that the lifting tackle could not be worked properly without using the four chains and, there fore, in causing the unserviceable chain to remain in a state of disrepair, the respondent was clearly guilty of contravention of clause (a) (ii) of section 29 (1) of the Act. This involves a consideration of the question whether four chains are necessary for a proper use of the tackle or, as successfully contended in the lower Court, only two of them are necessary and sufficient for the purpose, the other two being surplus to the requirements and over provided for use in the event of the other pair becoming unserviceable. C K. Sundram P. W. 2, who is a specialist in metallurgy with experience of working for 34 years, stated that, for a launder of the type in use in Bhilai Steel Works, only two diagonally opposite chains were necessary. According to him, more lugs are provided in the launder made to order and obtained from foreign countries so that, if one or more of them be damaged by molten metal, a pair of diagonally opposite lugs be readily available without dislocation of work [Paragraphs 9, 10 and 11]. To the same effect is the evidence of B. Nath P. W. 3, Superintendent of the Steel Melting Shop, who too has wide experience of steel manufacture from the year 1926 [Paragraphs 3, 4 and 6]. He stated:

In 99% cases, the launder is lifted with two chains diagonally opposite to each other here in India and in foreign countries.

These witnesses were not declared hostile or cross-examined and it is difficult to accept the criticism that they are untrustworthy.

The third witness on the point is M. K. Mehta D. W. 5. He stated that the proper method of lifting up a rigid article like a launder is to use a two-legged sling, that is, two chains [Paragraph 7], In this connection, he referred to the following passage from British standard specification on wrought iron chain slings published by the British Standards Institution in 1950:

Four-leg slings. Four-leg slings are chiefly used for lifting boxes, platforms, or containers which have some inherent flexibility tending to equalise the load distribution on the legs of the sling. Such slings are not normally used for lifting rigid articles (e. g. castings) as in such cases unequal load distribution is inevitable and two legs may carry the total load.

P. R. Lamborey P. W. 1, Factory Inspector, who filed this complaint, gave evidence in support of it. According to him, when the tackle is working, all the four shackles are engaged at the four corresponding lugs and then only is it possible to carry the launder from one furnace to another in a horizontal position but, since in this case one of the shackles had become unserviceable, that was a major defect [Paragraphs 5, 12 and 13]. In cross-examination, the witness stated that there were multi-legged slings but it was not necessary to provide as many chains as there were lugs. He admitted also that he did not know if, in all the steel plants, only two lugs were used. Finally, he accepted the correctness of the views expressed in the passage quoted at the end of the last paragraph from the booklet on wrought iron chain slings published in 1950 by the British Standards Institution.

It is plain enough that a launder is a rigid narrow channel used for conveying molten metal from the mouth of the furnace to the ladle and, for this purpose, it is taken from one furnace to another by means of a tackle. Our attention is, however, drawn to certain observations about slinging ladles in a pamphlet styled "The use of chains and other lifting gear" published by the Factory Department of the British Ministry of Labour and National Service. Those observations are:

Large ladles for molten iron and steel are sometimes suspended by means of chain slings, the hooks of the latter being attached to eye-plates secured to the top of the ladle. This method of suspension is not to be recommended, and the more common practice now is to use a yoke or cross piece and side bars made with hooks at the bottom to take the ladle trunnions. Any chain slings used for a ladle should have an ample factor of safety and be made with four legs, so arranged that if one leg should fail, the ladle will not tilt and cause molten metal to be spilled.

We are of the view that the opinion expressed in the observations reproduced above are not in point because, in this case, the tackle is used for lifting and moving a rigid body like a launder and not for suspending large ladles meant for receiving and containing molten iron and steel. We need hardly add that the launder does not cease to be a rigid body only because some hot slag and scab remain in it in the process of being carried to another furnace. So, when we visited the spot, it was shown to us that the launder could be carried in a horizontal position by using only two chains and it was further demonstrated that, even when four chains were actually used, two diagonally opposite chains were slack.

It was argued that, if only two chains be used, there would be a disregard of sub-

rule (iv) of rule 7 of the Madhya Pradesh Regulation of the use of cranes and other lifting machinery Rules, 1952. That sub-rule reads:

(iv) The maximum working load for any short or close-link chain should not exceed $6 \frac{1}{2}$ tons (the maximum working loads specified in Table A when used under normal conditions without shock; $5 \frac{1}{2}$ tons where there is any special danger of life or limb, or $3 \frac{1}{2}$ tons where the chain is subjected to shock or heavy wear or is used for lifts of molten metal or heated liquid, being the diameter in inches of the iron of the chain. The maximum working load for a long-link chain should not exceed two-thirds of that for a short link chain of the same diameter.

The contention is that the formula 3.5 given in the sub-rule applies because the launder contains metal and slag in red-hot molten state. As we have indicated elsewhere, what remains in the launder is some hot slag and scab and that too not in a molten state. That being so, the tackle cannot be regarded as one used for "lifts of molten metal or heated liquid". In our opinion, the formula applicable is 5.d and, on the basis of that formula, the maximum working load on each of the two legs of the tackle making an angle of not more than 30 degrees should not exceed-

$5 \frac{1}{2}$ tons (where d is the diameter in inches of the rod of iron used for the tackle).

$= 5 \times \frac{5}{8} \times \frac{5}{8}$ tons (the diameter in this case was $\frac{5}{8}$ ")

$= \frac{125}{64}$ tons

= nearly two tons.

In this case, the weight of the launder is only 3 tons and, therefore, the load carried by each leg of the tackle comes to 1.5 tons which is well below the prescribed maximum.

The learned Deputy Government Advocate placed reliance upon two English decisions also, but we think they have no bearing on the facts of the case as placed before us. In *Whitehead v. James Stott, Ltd.* (1949) 1 All E R 245. a question arose whether the shaft of a lift, which had broken, was of sound material within the meaning of section 22 (1) of the Factories Act, 1937, and it was held that it was not of sound material because the defect, though latent on ordinary inspection, could have been detected by modern methods. In the case before us, we are not required to consider whether the shackle that had snapped on 13th October 1961 was of sound material. In *Galashiels Gas Co. Ltd. v. O'Donnell* (1949) 1 All E R 319. there was a claim for damages on account of a fatal accident and in that context it was held on the basis of the language employed in section 152 (1) of the Factories Act, 1937, that the liability to maintain the brake of the lift, which failed to work on account of no discoverable cause" and in spite of every possible step taken to ensure that it worked properly and safely, in an efficient working order was absolute. In the case before us, which does not relate to damages, we are not, at this stage concerned with the

failure to maintain properly the shackle which had snapped on 13th October 1961. The precise indictment which we have to consider in this appeal is whether the respondent, who had not repaired the fourth chain of the tackle and so allowed it to be worked with only three chains, committed, by reason of that omission, an offence punishable under clause (a) (ii) of section 29 (I) of the Act.

It is not altogether free from doubt whether, even if there were four legs of the tackle and if one of them suddenly failed as in this case, the stress and strain developed as a consequence thereof would not lead to tilting like the one in this case, when two diagonally opposite legs were, as shown, slack. But assuming that it is necessary as a measure of abundant safety that in such cases the tackle should have four legs, provision for this could have been made in the rules framed u/s 29 (2) of the Act which enables the State Government to prescribe further requirements over and above those set out in that section. If that had been done, the respondent would have been bound to repair the fourth chain before the tackle was allowed to be brought in use. We need hardly state that no such provision was brought to our notice.

In the result, we agree with the lower appeal Court, that, in this case, only two diagonally opposite chains were necessary and sufficient for working the tackle and that, in allowing the fourth chain of the tackle to remain in a state of disrepair, the respondent did not contravene the provisions of clause (a) (ii) of section 29 (1) of the Act. The appeal, therefore, fails and is dismissed.