Bhalchandra alias Bapu & Another

Vs

State of Maharashtra

Criminal Appeal No. 193 of 1965

(CJI M. Hidayatullah, C. A. Vaidialingam, A. N. Grover JJ)

11.04.1968

JUDGMENT

GROVER, J.-

This is an appeal by special leave in which the main question for decision is whether the appellants were rightly convicted for offences under ss. 304A and 337 of the Indian Penal Code.

The facts lie within a narrow compass. The appellants held licences under the Indian Explosives Act 1884, hereinafter called the Act, and the Rules framed thereunder to manufacture, possess and sell fire works and gum-powder not exceeding 200 pounds and to possess and sell safety fuses. It appears that the appellants had a factory for manufacturing explosives in a house on Shad Road in Latur town. It is said that an explosion occurred in that place on May 5, 1962 at about 12 O'clock as a result of which 11 persons died and 7 persons were injured. The appellants along with one B. G. Kamble were tried for offences under the various provisions of the Act and the Rules as also for offences under ss. 304A and 337 of the Code. The trial judge acquitted B. G. Kamble but convicted the appellants of the various charges framed against them and imposed fine for offences under the provisions of the Act and awarded a sentence of one year under s. 304A and three months under s. 337 of the Indian Penal Code with a direction that they were to run concurrently. The learned Additional Sessions Judge dismissed the appeal preferred by the appellants against their conviction and sentence. The appellants then moved the High Court on the revisional side. The order of conviction was confirmed by the High Court as also the sentence on all the counts except that under s. 304A the substantive sentence was reduced to one of rigorous imprisonment for six months but for the reasons mentioned in the judgment of the High Court the appellants were directed, in addition, to pay a fine of Rs. 1,500 each.

Now there can be no manner of doubt and it has been so found that in the explosion which took place the persons who were working in the so called factory of the appellants where crackers etc. were being manufactured died or were injured. According to the courts below the appellants had, in their possession, unauthorised explosives in contravention of the Act and the rules and had committed a number of breaches of those rules and the conditions of the licences issued to them. The principal contention on behalf of the appellants is that even on the facts found it is not possible to hold that they were responsible for the explosion or had done anything which could be regarded as a direct and immediate cause of the explosion. Thus criminal liability could not be imposed on them under ss. 304A and 377 of the Code as it has not been established that the deaths or injuries caused were the direct result of any rash or negligent act on the part of the appellants or that any such act had been proved which was the proximate and efficient cause of the explosion without the intervention of another's negligence. In the High Court emphasis was laid on the absence of any

positive evidence pointing to the presence of the appellants at the material time. The High Court while holding that there was no direct evidence in respect of the immediate cause of the explosion referred to the conclusion of the courts below that the appellants had committed a number of hazardous breaches of the rules framed under the Act and the conditions of the licences issued to them, particularly the storage of prohibited explosives and employment of children below the age of 18. This, it was pointed out, showed a callous disregard for the safety of the employees. It was noticed that the Assistant Inspector of Explosives had also attributed the explosion to the storage of prohibited explosives of a high degree. Therefore the appellants were found to have been rightly convicted under ss. 304A and 337 of the Indian Penal Code.

Our attention has been invited by the learned Counsel for the appellants to certain decisions of this Court. In Kurban Hussein Mohammedali Rangwalla v. State of Maharashtra [[1965] 2 S.C.R. 622.] a factory was licenced on certain conditions to manufacture paints. The manager and the working partner did not have a licence for manufacturing wet paints but nevertheless the factory manufactured them. Certain burners were used for the purpose of melting rosin or bitumen by heating them in barrels and adding turpentine thereto after the temperature cooled down to a certain degree. While this process was going on froth overflowed out of the barrel and because of heat, varnish and turpentine which were stored at a short distance caught fire and resulted in the death of seven persons working in the factory. The question was whether the manager and the working partner of the firm which ran the factory was guilty under ss. 304A and 285 of the Indian Penal Code. It was held that the mere fact that the burners were allowed to be used in the same room in which varnish and turpentine were stored even though it might be a negligent act would not be enough to make the appellant before this Court responsible for the fire which broke out. The cause of the fire, it was observed, was not merely the presence of burners in the room in which the varnish and turpentine were stored though this circumstance was indirectly responsible for the fire which broke out. The requirement of s. 304A was the causing of death by doing any rash or negligent act and this meant that the death must be the direct or proximate result of the rash or negligent act. It was found that the direct or proximate cause of the fire which resulted in seven deaths was the act of a labourer who acted in a hurry and who did not wait until the bitumen or rosin cooled down and thus it was his negligence which was the direct and proximate cause of the fire breaking out. The appellant, namely, the manager and the working partner of the firm could not be held to have committed the offence under s. 304A of the Code.

The ratio of the above decision was applied in Suleman Rahiman Mulani & Another v. The State of Maharashtra [Cr. A. 50 of 1965, decided on 1-12-67.]. In that case the question was whether the first appellant who had only a learner's licence and was driving a jeep which knocked down the deceased had been rightly convicted of an offence under s. 304A of the Code read with certain provisions of the Motor Vehicles Act. On the material on the record the court found it impossible to discover under what circumstances the accident had taken place. This Court held that it was not known what was the proximate cause of the accident and the possibility that it had been caused due to the fault of the deceased could not be ruled out. The mere fact that the appellant in question held a learner's licence did not establish that he did not know driving. His proficiency might furnish a defence which the learner could not have but the absence of proficiency did not make him guilty. His conviction under s. 304A was therefore set aside.

The facts of the present case are somewhat different and distinguishable from those of the above two cases as will be clear from a close examination of the material evidence relating to the substances which were being used in the manufacture of the fire works etc. in the factory of the appellants.

It appears that soon after the explosion the Inspector of Explosives, West Circle, Bombay, proceeded to Latur for investigation. He took into possession certain substances from the scene of the accident. By means of a letter, dated May 11, 1962 sent from the office of the Inspector of Explosives these substances were forwarded to the Chemical Examiner, Government of Maharashtra for examination, the samples were as follows :-

> 1. A white substance in a packet suspected to be potassium chlorate.
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> 2. An orange yellow substance suspected to be arsenic sulphide.
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> 3. A round stone piece containing smears with orange yellow chemical adhering to it. (This was to be examined for the presence of arsenic sulphide and potassium chlorate).
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> 4. A contraption to test the explosibility of a mixture of potassium chlorate and sulphur.

Dindeshchandra P. W. 10 Assistant Inspector of Explosives also went to the scene of the explosion along with the Inspector on May 9, 1962 and various samples were collected from the shops of the appellants as well. All these were forwarded to the Chemical Examiner for examination. The report of the Chemical Examiner (Ex. 87) which is to be found on the original record gives the following analysis in respect of the above substances :-

> "Exhibit (1) is potassium chlorate.
>
> Exhibit (2) is arsenic sulphide.
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> Exhibit (3) has sediment containing arsenic sulphide and sulphur adhering to it.
>
> Exhibit (4) has Potassium Chlorate and Sulphur in its cavity."

Apart from the original record these facts stand established from the evidence of Dindeshchandra P.W. 10 and the report (Ex. 38) which he had submitted on November 2, 1962 which was duly proved by him when he appeared as a witness. He has further stated that when he inspected the premises of the factory on May 9, 1962 he noticed half burnt raw material like sulphur white powder the ingredients of which he could not ascertain. There were grinding stones as also empty tubes for manufacturing exhibition fire works. As regards the cause of the explosion his opinion may be given in his own words :-

> "Probable cause of the explosion must have been the large quantities of the raw materials gun powder and finished fireworks and raw materials for the same were stored in the premises. At the time of the explosion there were large quantities of the fireworks, finished as well as in the process of preparation, loose compositions and the gun-powder. There were being dried in the open court yard of the premises. Some of the items contained very sensitive explosive compositions which might have exploded due to the spark, percussion or friction or fire."

Although there was no direct evidence of the immediate cause of the explosion but indisputably the explosives the possession of which was prohibited under the notifications issued under the Act were found in the shops on the premises where the appellants carried on their business and on the

substances that have been mentioned which were of a highly hazardous and dangerous nature were apparently being used in the manufacture of the fire works since they were found at the scene of the explosion, (vide the evidence mentioned before and the finding of the trial court and the Additional Sessions Judge). As stated by Dindeshchandra P.W. 10 these explosives had sensitive compositions and even friction or percussion could cause explosion. It is further proved that in the factory itself where the explosion took place the persons who were employed were mostly women who brought their small children with them and young children below the age of 18 had been employed in the manufacture of the fire works etc. The factory was situate in close proximity to residential quarters. It become therefore all the more incumbent on the appellants to have completely avoided the use of highly sensitive compositions of the nature mentioned above.

The decision which is apposite to the present case is the one recently delivered by this Court on April 3, 1968 in Rustom Sherior Irani v. State of Maharashtra [Cr. A. No. 72/65.]. There the chimney of a bakery had collapsed and 11 persons were killed and certain persons were injured. The appellant had submitted no plan for the alteration of the chimney for the third time and had asked just a manson to remove the iron pipe which had corroded and to bring the height of the chimney to 65 feet. The mason had told him that while the work was being executed it was unnecessary to completely keep the bakery closed except during the period the repair work was being done. After the chimney fell down a number of officers visited the spot and inspected the bakery. The Chief Inspector of Boilers was of the opinion that the cause of the collapse of the chimney was the explosion which occurred in it because of the products of combustion and gases not being permitted to escape freely as a pipe of 6 inches diameter had been put instead of 12 inches diameter. It is unnecessary to refer to the detailed discussion of the evidence. It was established that the construction of the new chimney had been done without the advice of a properly qualified person. The argument raised was on the lines similar to the one which had been advanced in Kurban Hussein Mohammedali Rangwalla v. State of Maharashtra [[1965] 2 S.C.R. 622.]. It was maintained that no negligence on the part of the appellant had been established and it was on account of the negligence of the mason that the chimney had fallen down. This Court was of the view that the proximate and efficient cause of the deaths was the negligence of the appellant in choosing a pipe of 6 inches diameter and asking a mason (who was apparently not a qualified person) to carry out the alterations and also continuing working at least one oven there during the period while the alterations to the chimney were being made.

In another recent decision, Balachandra Waman Pathe v. The State of Maharashtra, [Cr. A. 62 of 1965 decided on 20-11-67.] this Court referred with approval to what was said by Straight, J. in Empress of India v. Indu Beg [I.L.R. III All. 776.] that criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. In Queen Empress v. Bhutan [I.L.R. XVI All. 472.] the lessee of a government ferry having the exclusive right of conveying passengers across a certain river was held to be guilty under s. 304A when he had committed the negligent act of putting a boat in the ferry which was in an unsafe condition and which sunk resulting in some of persons getting drowned. The Punjab Chief Court found a person guilty under ss. 304A and 338 in Kamr-ud-din v. King Emperor [1905 P.R. 22. (Cr.)] when he had consigned two boxes containing fire works to the Railway falsely declaring them to contain iron locks with the result that in loading one of the boxes exploded killing one coolie and injuring another. The inadvertence to the result of concealing the true character of the contents of the box which was the failure of duty to the public at large and the knowledge of the dangerous nature of the contents which must be inevitably presumed coupled with the consequences were

regarded as constituting a complete offence under the sections.

Adverting to English law, the case of Regina v. David Dant [169 English Reports (C.C.) 1517.] is highly instructive. This is what Erle, C.J. observed :

> "The defendant turned a dangerous animal on to a common where there was a public footpath. This has been found by the jury to be culpable negligence, and the child's death was caused by it. Ordinarily speaking these are all the requisites of manslaughter. It is contended, however, that no offence was committed, because as we must take it, the child was not on the path, the jury having found that it was very near, but that they could not say whether it was on or off. In my opinion the defendant is responsible for having brought so great a danger on persons exercising their right to cross the common; and it is not a ground of acquittal that the child had strayed from the path."

In another case, Rex v. Pittwood [(1902) 19 T.L.R. 37.] the prisoner was charged with manslaughter on the ground that he had been negligent in not closing a gate when a train passed which it was his duty to do with the result that White who was in a hay cart was killed while the cart was struck by the train which came when it was crossing the line. Wright, J. was of the opinion that the prisoner had been guilty of gross and criminal negligence as he was paid to keep the gate shut when the train came and protect the public. It was a clear case of misfeasance as the prisoner directly contributed to the accident and he was guilty of manslaughter.

All the above cases show that criminal negligence can be found on varying sets of circumstances. The tests which have been applied appear to be fully applicable to the facts of the present case including the one of direct and efficient cause. The appellants had, undoubtedly displayed a high degree of negligence by allowing or causing to be used dangerous and prohibited compositions and substances which must be held to have been the efficient cause of the explosion.

The appellants were therefore rightly convicted and sentenced under ss. 304A and 337 of the Indian Penal Code. As no other point has been pressed or arises for consideration, the appeal is dismissed. The appellants shall forthwith surrender to their bail bonds.

Appeal dismissed.##

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