

V. R. Bhate and Others

Vs

State of Maharashtra

Criminal Appeal No. 145 of 1967

(CJI M. Hidayatullah, A. N. Ray, I. D. Dua JJ)

13.03.1970

JUDGMENT

RAY, J. -

1. This is an appeal by special leave from the judgment, dated 26th June, 1967, of the High Court at Bombay convicting Vishwanath Raghunath Bhate, Yeshwant Krishna Karmarkar and Ismail Shaikh Daud Pawaskar, accused Nos. 1, 4 and 5 respectively under Section 282 of the Indian Penal Code. Accused No. 1, Bhate was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- and in default to undergo a further rigorous imprisonment for one month.

Accused No. 4 Yeshwant Krishna Karmarkar was sentenced to undergo rigorous imprisonment for four months and to pay a fine of Rs. 1,000/- and in default to undergo a further rigorous imprisonment for one month. Accused No. 5, Pawaskar who was the captain of the launch was sentenced under Section 282 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four months and to pay a fine of Rs. 500/- and in default to undergo rigorous imprisonment for one month.

2. The High Court also convicted accused Nos. 1, 2, 4 and 5, viz., V. R. Bhate, Ganesh Krishna Karmarkar, Yeshwant Krishna Karmarkar and Ismail Shaikh Daud Pawaskar, for offences under section 58 of the Inland Steam Vessels Act. No separate sentence was passed on accused Nos. 1, 4, 5, viz., V. R. Bhate, Yeshwant Krishna Karmarkar and Ismail Shaikh Daud Pawaskar under Section 58 of the Inland Steam Vessels Act, 1917, though their convictions under the said section were confirmed and the separate sentences imposed by the Sessions Judge was set aside. The fine of Rs. 990/- at the rate of Rs. 10/- per extra passenger was imposed on Ganesh Krishna Karmarkar, accused No. 2 and in default simple imprisonment for one month.

3. V. R. Bhate, Ganesh Krishna Karmarkar, Madhusudam Krishna Karmarkar and Yeshwant Krishna Karmarkar, accused Nos. 1, 2, 3 and 4 respectively and one Anant Krishna Karmarkar since deceased were partner of a firm under the name and style of Shrikrishna Motor Launch Service. The said firm had its head office at Veavi and also another office at Bombay. The firm used to ply its motor launches, whereof M. L. Hyderi was one, in the Banket Creek in Kolaba District, Bombay and used to carry passengers on hire from Bagamandale to Dasgaon. There are 28 parts in all in this creek. Bagamandale is the first and Dasgaon is the last port, Port Bhapral where the incident forming the Subject-matter of this appeal took place on January 1, 1962 is the 26th Port. Accused No. 5 Pawaskar was the master of the launch. Accused No. 6 Ramchandra was the ticket collector. The other five accused formed the crew of the launch in question.

4. The prosecution case is that all the accused were continuously overloading the Hyderi launch

during its journey in the Bankot Creek and in the month of October, 1961 all the accused entered into an agreement with one another for doing an illegal act, namely, conveying for hire on Hyderi launch several passengers in excess of the number prescribed in the certificate of survey. It is alleged that in pursuance of the said conspiracy between them accused Nos. 5 and 6, the master and the ticket collector illegally overloaded the launch Hyderi on January 1, 1962 and actually carried 187 passengers by the said launch. It is further alleged that because of this overloading the launch capsized at Mhapral jetty resulting in the death of 68 persons.

5. The alleged incident took place at about 1 p.m. on the New Year's Day 1962 at Mhapral. The charges framed against the accused were under Sections 120-B and 282 of the Indian Penal code and Section 58 of the Inland Steam Vessels Act, 1917 and Section 54 of the Indian Ports Act, read with Rule 19 of the Bombay Minor Ports Passengers Vessels Rules. The crew accused Nos. 5 to 11 were also charged for offences under Section 63 of the Inland Steam Vessels Act and Section 304-A of the Indian Penal Code.

6. On the New Year's Day, 1962, the launch Hyderi capsized at Mhapral port. The principle question which falls for consideration is whether the launch Hyderi capsized at Mhapral port because of overloading of the launch or because of stampede caused by persons from the jetty on the one hand who rushed on to the launch and got on to its deck and passengers on the launch of the other who went to the deck for disembarking at the port.

7. On the relevant date the launch was carrying 125 passengers when it reached Mhapral. The certificate survey issued on November 3, 1961 by the Principle Officer, Mercantile Marine Department, Bombay District, under the Inland Steam Vessels Act, 1917 (Exhibit 166), showed that besides the crew of 6 persons the launch was authorised to carry 46 passengers. The launch was 42 feet 6 tenths in length and 42 feet 2 tenths in breadth, 3 feet 9 tenths in depth. The gross tonnage was 12.21. It was an open launch. It had roof which was 32 feet in length and 11 1/2 feet in breadth. The roof was known as sun-deck or awning.

8. On the crucial date a large number of persons were present at the Mhapral jetty at the time of the arrival of launch Hyderi. When the launch reached Mhapral port and after it had been tied to the stones of the jetty with ropes, persons from the jetty rushed on to the deck of the launch and the passengers on the launch including those who wanted to get down a Mhapral also thronged on the deck. This assembly of so many persons on the deck caused the sudden shifting of weight on one side. The launch first tilted towards the jetty and water gushed into the launch. Because of this the passengers on the launch were frightened and they moved to the other side with the result that the ropes gave way and the launch tilted on the other side and capsized. This was the evidence of the majority of the witnesses.

9. One of the expert witnesses Donald Dyer said that when the passengers in the launch out of fright moved from one side to the other and thus caused the launch to heel to that side, the heeling was due to the shift of weight in side the launch. It was also the evidence of the expert witness that there was no possibility for such a shift of weight to take place when the launch was packed to its capacity. He also said that 182 passengers could be accommodated on the launch but 129 of the 182 could sit at the bottom of the launch either on seats or on the floor and the rest could stand. The witness said that the vessel capsizes when its centre of gravity goes above the point of metacentre. The metacentre is a point round which the vessel might be said to rotate transversely. Center of gravity is that point above which all loads on the vessel are assumed to be acting.

10. Sixty-eight persons died when the launch capsized. Six of them were among the many who rushed on to the deck of the launch from the jetty at Mhapral. The other 62 died consisted of passengers. About 30 passengers on the launch wanted to get off at Mhapral. They had come on to the deck at the portside for disembarkation. There were no barricades at Mhapral jetty. There was no policemen or any other person in authority or any person on behalf of the firm to regulate and control the entry and exit of the passengers. More than 100 persons were waiting on the jetty for the arrival of the launch. The people scrambled for entry on the launch and they rush on with rapidity. When the persons from the jetty rushed on to the deck regardless of disembarkation of passengers, the weight of the crowd resulted in the launch heeling, towards the port side. Water flowed into the launch. There was panic. Particularly passengers sitting at the bottom of the launch were seized by fear of life. Those passengers as also persons who were at the deck went to the other side of the deck, namely, the opposite side of the jetty in the hope of adjusting the balance. The result was that the launch again heeled on the other side of the jetty and the ropes with which the launch had been tied snapped and broke. The launch capsized.

11. The Trial Court found that accused No. 5 Ismail Shaikh Daud Pawaskar, the master and accused No. 6, Ramchandra, the ticket collector were responsible for overcrowding of the launch and for carrying a large number of passengers in excess of the licensed number. The trial Judge, however, did not accept the charge of conspiracy.

12. The Trial Court, however, found that accused Nos. 1, 2 and 4, V. R. Bhate, Ganesh Krishna Karmarkar and Yeshwant Krishna Karmarkar, partners of the firm should have knowledge of overcrowding the therefore they were negligent in not taking due care to stop overcrowding and were therefore guilty of an offence under Section 282 of the Indian Penal Code. The excess number of passengers however was held by the Trial Court not to be the immediate cause of directing the capsize of the launch. The Trial Court also found accused Nos. 5 and 6 guilty of an offence under Section 282 of the Indian Penal Code. The Trial Court convicted each of the accused Nos. 1, 2, 4, 5 and 6 under Section 282 of the Indian Penal Code and sentenced each of them to pay a fine of Rs. 500/- and in default simple imprisonment for one month.

13. The Trial Court held that under Section 58 of the Inland Steam Vessels Act the owner and the master were liable. Accused No. 5 was held liable because he was the aster. Accused Nos. 1 and 2 were found to be partners of the firm which was in ownership of the launch and accused No. 4 who was the certified owner of the launch was also held liable under Section 58 of the Inland Steam Vessels Act. The Trial Court convicted accused Nos. 1, 2, 4, and 5 under Section 58 of the Inland Steam Vessels Act and sentenced each of them to pay is fine of Rs. 495/- and in default simple imprisonment for one month.

14. The High Court, however, found that the death of 68 persons was the result of the capsizing of the launch in the circumstances which could be said to be materially but not solely contributed by the overloading of the launch. The High Court said that because of the overloading of the passengers the crew of the launch was not in a position to regulate the entry of the incoming passengers or the exit of the outgoing passengers who were to disembark at the Mhapral port.

15. It cannot be denied that the number of passengers was in excess of the permissible limit. The overloading did not cause danger to the passengers of the launch at all in the year 1961 when it was overloaded at all seasons. Again the overloading did not endanger the passengers on the fateful day when the launch plied from the port of origin to the 26th port. It was only when the launch arrived at Port Mhapral which was the 26th port that there was a sudden onrush of persons waiting at the

jetty on to the deck of the launch. That happened after the launch had been tied to the jetty. The persons from the jetty rushed on to the launch and the passengers on the launch who wanted to get down at Mhapral Port had also assembled on the deck of the launch. It is because of this shifting of weight on one side that the launch became tilted towards the jetty and water flowed into the launch. The passengers on the launch were frightened and they moved to the other side. The weight was then suddenly shifted to the other side. The launch tilted and as a result thereof the tops gave way and the launch capsized. It cannot, therefore, be said that the capsizing of the launch was because of any negligence of the owners of the master. The launch capsized by reason of the stampede that followed the sudden rush of persons waiting at the jetty on to the launch which resulted in displacement of the balance of the launch and breaking away of the ropes and capsizing of the launch. We are, therefore, of opinion that the conviction under Section 282 of the Indian Penal Code cannot be sustained.

16. The next question is whether the appellants are liable under Section 58 of the Inland Steam Vessels Act. Accused Nos. 1 and 2 have been found to be the partners and accused No. 4 is the owner of the vessel. The courts found No. 5 was the master. The liability under Section 58 is penalty for carrying excessive number of passengers on board. If an inland stem vessel has on board or in any part thereof a number of passengers which is great than the number set forth in the certificate of survey a the number of passengers which the vessel or the part thereof is, in the judgment of the surveyor, fit to carry, the owner and the master shall each be punishable with fine which may extend to Rs. 10/- for every passenger over and above that number. The evidence is that the launch was permitted to carry 46 passengers. That was the limit of passengers. It is true that the licence at the relevant date was not in evidence. In the Trial Court as also in the High Court the case proceeded on that basis. It is also in evidence that the number of passengers on the launch at the relevant date was 125. The number of passengers in excess was 79. The liability is at the rate of Rs. 10/- per passenger. Therefore accused Nos. 1 and 2 the partners and accused No. 4 the owner of the launch and accused No. 5, the master are each liable. A fine of Rs. 790/- is imposed on each of the accused Nos. 1, 2, 4 and 5. The conviction of the appellants under Section 282 of the Indian Penal Code set aside. The conviction of the appellants under Section 58 of the Inland Steam Vessels Act is upheld about the imposition of fine is altered.

17. The appeal is allowed as far as conviction under Section 282 of the Indian Penal Code is concerned and the conviction under Section 58 of the Inland Steam Vessels Act is confirmed with the modification of the imposition of the fine.

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