

State of Karnataka Vs. M. Siddappa and Another

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Court : Karnataka

Decided On : Nov-04-1996

Reported in : 1997CriLJ1610; ILR1997KAR585; 1997(1)KarLJ102

Judge : Chidananda Ullal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 357

Appeal No. : Criminal Appeal No. 609 of 1991

Appellant : State of Karnataka

Respondent : M. Siddappa and Another

Advocate for Def. : R. Gururajan and ;M.L.N. Reddy, Advs.

Advocate for Pet/Ap. : B.H. Satish, Govt. Pleader

Judgement :

1. The instant appeal is filed by the State having been aggrieved by the judgment dt. 17-9-91, passed by the Additional Munsiff and JMFC, Srirangapatna, in C.C. No. 704/88, acquitting the respondents-accused for the offences charged under Section 92 of the Factories Act.

2. The brief facts of the case are as follows :

That the Respondent-Accused No. 1 is the occupier and the Respondent-Accused No. 2 is the Manager of the Factory - M/s. Pandavapura Sahakara Sakkare Karkhana Ltd., Pandavapura. On 14-3-88, one Casual Worker by name N. Swamygowda bearing Card No. 860 while on duty was instructed by Karigowda, Deputy Chief Engineer to do the grinding work at baggas elevator While he was doing the work with the assistance of the grinding machine, the said Swamygowda received electrical shock and as a result, he collapsed on the spot. That one Ramachandra wireman standing near the plug point was instructed by the deceased Swamygowda to insert two bare wires to the plug point without any safety plug. He was not provided with rubber shoes and gloves; let apart, the earthing lead wire of the elevator was cut at the terminal and only two bare wires viz., phase and neutral were connected to the plug point without safety plug. With the switch put on by the wireman Ramchandra, the deceased Swamygowda suffered electrical shock and died on the spot due to the same.

3. That the P.W. 1 being the Inspector of Factories had launched prosecution against the respondents-accused for contravention of Rule 86 of the Karnataka Factories Rules, punishable under Section 92 of the Factories Act. The Respondents having pleaded not guilty before the said Magistrate, the prosecution had examined 3 witnesses and also got marked 18 documents in support of their case. After hearing the parties and on appreciation of the evidence both oral and documentary, the learned Magistrate passed the impugned Judgment, whereby he had acquitted the respondents-accused and it is the said order of acquittal now under challenge by the State before this Court.

4. I heard the learned High Court Government Pleader Shri B. H. Satish for the appellant-State and the learned counsel Shri Gururajan appearing for the respondents-accused. 1 have also perused the case records.

5. The learned Government Pleader while urging the grounds in the Appeal argued that the impugned judgment passed by the learned Magistrate acquitting the respondents-accused is contrary to the facts, law and the evidence on record and that the reasons assigned by the learned Magistrate for the conclusions arrived at by him are erroneous. He further argued that the learned Magistrate

ought to have evaluated the clinching evidence, both oral and documentary, and ought to have held that the prosecution had proved the guilt of the respondents accused in a conclusive way and therefore naturally ought to have convicted and sentenced the respondents-accused in consonance with law. He therefore prayed that the impugned judgment passed by the learned Magistrate be set aside and the respondents-accused be convicted and sentenced.

6. The learned counsel for the respondents-accused Shri Gururajan however had argued that the respondents-accused were in no way responsible for the accident causing the death of the deceased Swamygowda for the reason that he himself was at fault in not wearing the rubber gloves and further the safety rubber shoes at the relevant point of time when he was doing the grinding work at baggas elevator. He further argued that P.W. 1 had not made proper enquiry before launching the prosecution as against the respondents-accused and therefore he submitted that the impugned judgment passed by the learned Magistrate was just and proper under the facts and circumstances of the case and not called for to be interfered with by this Court.

5. Now the question before me is whether the acquittal of the respondents-accused by the learned Magistrate in passing the impugned judgment is just and proper. My considered view is in the negative for the following reasons :

It is not in dispute that the Respondent-Accused No. 1 was the occupier and the Respondent accused No. 2 was the Manager of M/s. Pandavapura Sahakara Sakkare Karkhane Ltd. It was also not in dispute that N. Swamygowda, the casual worker working in the factory of the respondents-accused died of electrical shock. However, their plea before the learned Magistrate was one of 'not guilty' of the charge. The charge against the respondents-accused is that, the electrical installations in the baggas elevator and the switch boards provided thereto at the relevant place in the factory were not properly and safely maintained, inasmuch as on 14-3-88, when the deceased N. Swamygowda was working on the elevator with the grinding machine in his hand, he died of electrical shock due to the fact that the wire which was used for connecting the grinding machine to the plug point had no safety plug and only two bare wires were inserted to the plug point without any

safety plug and that the wire used for the electrical connection had three leads (three wires) namely one for phase, one for neutral and one for earthing and that the earthing lead wire was cut at the terminal and only two bare wires i.e. phase and neutral were connected to the plug point without the safety plug and that the deceased was not wearing rubber gloves and safety rubber shoes at the relevant time.

6. Rule 86 of the Karnataka Factories Rules, 1969, reads as follows :

'Electricity - (1) No electric installation shall be provided in a factory, so as to be dangerous to human life or safety in the opinion of the Inspector. Provided that the Inspector may issue an order in writing, specifying the arrangement necessary for adequate safety, in addition to what is provided under the provisions of Indian Electricity Act or Rules thereunder.

(2) In the main switch board or switch boards of factories, there shall be provided earth leakage and over load relays. The earth leakage relay shall be so provided that the leakage current shall not cause electrocution or other hazard.)'

7. From the above, it is clear that the respondents-accused had a statutory duty to keep the electrical installations as that of the baggas elevator and the switch boards thereto with earthing lead wires properly connected at the terminal and connecting the wires with the safety plugs at plug points. As a matter of fact, the P.W. 1 on receipt of the notice of 'Accident for Dangerous Occurrence' in Form No. 17 as contemplated under Rule 130 of the Factories Rules, sent by the Management of the respondents-accused, issued a detailed show cause notice dt. 8-4-88, to the respondents-accused calling upon both of them individually to show cause notice within seven days of receipt of the notices as to why they should not be prosecuted under Section 92 of the Factories Act, 1969 as per Ex. P. 6. Having received the same, the Respondent accused No. 1 sought for time upto 5-5-88, as per his letter dt. 20-4-88, whereas the Respondent-accused No. 2 did not respond to the notice at all. It does not appear from the records of the trial Court that the respondents-accused had even replied to the said show cause notice till P.W. 1 filed a complaint on 9-6-88.

8. The prosecution had examined P.W. 1 - the Inspector of Factories and he had deposed that on 14-3-88, at about 9.00 a.m. he had received information that one N. Swamygowda died due to electric shock at the factory premises of the respondents-accused and that on account of fatal accident he visited the factory and made enquiries. On such a visit, he found that three phases in the wire connected the grinding machine to the plug points; there were only two wires - natural and phase and the grounding wire was cut at the end. It was also found in the enquiry that the deceased Swamygowda was not wearing any gloves and rubber shoes and with the switch put on by the co-worker, because of the flow of the electricity on the body of the grinding machine, with the failure of the insulation within the grinding machine, and further with the third lead wire for earthing was cut, he was electrocuted and he died because of the electric shock. It is also in the evidence of P.W. 1 that the respondents have not provided for the rubber gloves and safety rubber shoes and further that because of the above, the accident had taken place.

9. The following 13 documents were marked in the evidence of P.W. 1.

- 1) Telegram dt. 14-3-88, regarding the accident.
- 2) Confirmation letter dt. 14-1-88, having sent the telegram.
- 3) Accident Report dt. 15-3-88.
- 4) Inspection remarks of the undersigned dt. 14-3-88.
- 5) Inspection remarks of the undersigned dt. 16-3-88.
- 6) Statement of Shri M. C. Nanjegowda dt. 16-3-88.
- 7) Statement of Shri T. A. Ramachandra dt. 16-3-88.
- 8) Detailed inspection report and show cause notice dt. 11-4-88.
- 9) Acknowledgment cards for having received the detailed inspection report and show cause notice (two numbers).

10) Management letter dt. 20-4-88.

11) Form No. 2 for renewal of licence for the year 1988.

12) Post mortem report in respect of the deceased Shri N. Swamygowda.

13) Photographs (Three numbers along with negatives).

10. The respondents chose to cross examine P.W. 1 before the trial Court. The cross examination by the respondent-accused was to the effect that the P.W. 1 did not find out what work was allotted to the deceased, that he had authority to inspect the godown of the respondents, that he did not go and see in the godown with regard to availability of the gloves and that he did not receive any complaint from the workers with regard to non-supply of safety apparatus.

11. If we read the examination in chief of P.W. 1 and the cross examination by the respondents-accused, it is clear that the evidence of P.W. 1 to the effect that the respondents-accused did not provide for the gloves and the rubber shoes to the deceased Swamygowda and further that the electrical installations referred to more fully as above in para 8 were not properly maintained by the respondents-accused before the trial Court had gone totally unchallenged; least of it, there was not even a suggestion by the respondents-accused in their cross-examination of P.W. 1 that the respondents-accused have maintained the electrical installations properly and safely and that they have supplied the gloves and the rubber shoes to Swamygowda and that the deceased Swamygowda died because of his own negligence in not wearing the same. It is relevant to point out here that the rules of evidence and prudence needed the opposite side to put it's case in the cross examination of the opposite side witness. This is exactly what the respondents-accused did not do while they cross-examined the P.W. 1 before the trial Court, further more they have not adduced any evidence in their defence. It is not their case either that they claim exemption from liability under Section 101 of the Factories Act on the ground that some other person/persons was/were answerable to the offence.

12. If above was the clinching evidence adduced by the prosecution to prove the guilt of the respondents-accused before the trial Court, I am at a loss to understand why the learned Magistrate held in the impugned judgment that the evidence available on record was not sufficient to prove that the respondents-accused have contravened Rule 86 of the Karnataka Factories Rules, 1969 and that the prosecution failed to prove the guilt of the respondents-accused.

13. Therefore in my considered view, there are sufficient and clinching evidence both oral and documentary on the record of the learned Magistrate to hold that the respondents-accused were guilty of contravention of Rule 86 of Karnataka Factories Rules, 1969, and that therefore there was no justification on the part of the learned Magistrate to hold the respondents-accused not guilty of the offence charged against them. The same appears to be based on surmises and unfounded assumptions.

14. In the result, the impugned Judgment dt. 17-9-91, of the Additional Munsiff and JMFC, Srirangapatna is set aside; by accepting the evidence on record, I hold that the respondents-accused are guilty of contravention of Rule 86 of the Factories Rules, 1969 and are liable to be punished under Section 92 of the Factories Act, 1948, and accordingly, the respondents-accused are convicted and sentenced to pay a fine of Rs. 50,000/- each and in default to undergo simple Imprisonment for three months.

15. The respondents-accused are given time of two months from this day to pay and deposit the above said sum of Rs. 50,000/- each before the trial Court. In case of non-compliance, the default clause to sustain.

16. In the event of payment and deposit of fine amount as above by the respondents-accused to Court, out of the sum, the trial Court shall pay a sum of Rs. 50,000/- to the L. Rs. of the deceased N. Swamygowda, if necessary by holding an enquiry thereto. In the event of any dispute in between the L.Rs. inter se, he may disburse the sum on production of Succession Certificate from the competent Court.

17. The above sum is directed to be paid as compensation to the L. Rs. of the deceased under the powers vested in this Court under sub-section (4) of Section 357 of the Code of Criminal Procedure.

18. The appeal is allowed, but with the above direction.

19. The office is directed to send a copy of this judgment to the Additional Munsiff and JMFC, Srirangapatna, for compliance.

20. Appeal allowed.

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