

Tofail Ahammad Mia Vs. Emperor

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Court : Kolkata

Decided On : Nov-24-1933

Reported in : AIR1934Cal490

Appellant : Tofail Ahammad Mia

Respondent : Emperor

Judgement :

Nasim Ali, J.

1. This Rule is directed against the conviction of the petitioner under Section 282, I. P. C. The ground on which the present Rule was issued is that in view of the fact that there is no evidence to show that the disaster was due to any act, omission and negligence for which the petitioner is responsible but that on the contrary he has been acquitted of the charge under Section 25, Bengal Ferries Act, for breach of the Rules regarding the safety of the vessel and the passengers the Court below ought to have held that the petitioner is not criminally liable for the acts or omission or negligence of the Majhi.

2. There can be no doubt that there had been negligence of the part of the Majhis. The whole question is whether the lessee of the Ferry, that is, the master, is liable for this offence. The learned Magistrate has found that from the circumstances it can be gathered that overloading far from being an exception is a rule and surely the lessee who profits by the earnings must have known about the facts of

overloading. The Judge on appeal has found that the petitioner did not take proper precaution to ensure that his Majhis did not overload the boats. The question therefore is whether on these findings it can be said that the petitioner negligently caused to be conveyed for hire any person by water in any vessel so loaded as to endanger the life of that person: criminal negligence is gross and culpable neglect or failure to exercise that reasonable and proper care to guard against injury either to the public in general or to the individual in particular which having regard to the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

3. In order therefore to decide whether there had been criminal negligence in a particular case, it is to be found out whether the person charged took such precaution as a prudent and reasonable man would consider to be sufficient upon all the circumstances of the case. The petitioner is the lessee of public ferry and has the exclusive right to carry passengers across the turbulent Meghna river into the mouth of Bay of Bengal. It was therefore his incumbent duty particularly in the middle of the monsoon to see that the safety of the passengers is not in any way endangered by overloading. It appears to me that the petitioner did not take any precaution to ensure that his Majhis did not overload. There was gross negligence on his part inasmuch as he allowed the Majhis to load the boats in any way they liked. The accused certainly knew that overloading particularly in the middle of monsoon would be dangerous and as a prudent man he should have given definite instructions to that effect in view of the carrying capacity of the boat. He should have also taken steps to see that the Majhis carry out the instructions relating to the loading of the boats. It was culpable negligence on his part to leave the whole thing in the hands of the boatman and thus to leave the passengers to their fate. In view of these facts and circumstances I am of opinion that the petitioner has been rightly convicted under Section 282, I. P. C. The rule is accordingly discharged.