

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 246 OF 2017

BINOY KUMAR MISHRA

.....APPELLANT(S)

VERSUS

STATE OF JHARKHAND AND ANOTHER

.....RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 247 OF 2017

CRIMINAL APPEAL NO. 248 OF 2017

AND

CRIMINAL APPEAL NO. 249 OF 2017

J U D G M E N T

A.K. SIKRI, J.

An unfortunate incident occurred in PK-1 Unit of Kusunda Colliery, Dhanbad (Jharkhand) on 05.01.1996 at about 06:40 AM when a gang of seventeen loaders was engaged in loading coal at Junction 9, East Level of Two Dip, Bottom Section. Combined Seam of the aforesaid unit of the

Colliery, coal roof measuring about 7.6 m x 6.1 m x 0.20 m fell from a height of 2.8 m on the aforesaid seventeen loaders. This mishap resulted in the death of four persons and serious bodily injuries to five persons whereas remaining eight loaders escaped unhurt. On reporting of this accident, Director of Mines Safety, Dhanbad (Jharkhand) (respondent No.2 herein) commenced inquiry/investigation on 06.01.1996 under Section 23(2) of the Mines Act, 1952 (hereinafter referred to as the 'Act'). Based on the inquiry report dated 12.02.1996 submitted by respondent No.2, a complaint was filed by him before the learned Chief Judicial Magistrate, Dhanbad against the following employees of Kusunda Colliery:

- (i) Mahendra Prasad Gupta, General Manager
 - (ii) Nageshwar Sharma, Additional General Manager
 - (iii) Madhusudan Banerjee, Agent
 - (iv) Binoy Kumar Mishra, Manager
 - (v) Shankar Prasad Mukherjee, Underman
 - (vi) Saheed Akhtar Khan, Overman
 - (vii) Ambika Singh, Mining Sirdar
2. Out of the aforesaid seven accused persons, first four are the public servants. In the complaint, prosecution for non-cognizable offences punishable under Sections 72A, 72C(1)(a) and 72C(1)(b) of the Act was sought. The trial court took cognizance of this complaint. Trial started with the examination of prosecution witnesses. In conclusion of their depositions, statements of the accused persons under Section 313 of

the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')

were recorded. This trial culminated into judgment dated 09.03.2007 passed by the trial court convicting all the accused persons under the aforesaid provisions. Each of these accused persons was ordered to undergo rigorous imprisonment for a period of six months with a fine of Rs.2,000/- for offences under Section 72A; rigorous imprisonment for two years with a fine of Rs.5,000/- for offence under Section 72(C)(1)(a); and rigorous imprisonment for one year with a fine of Rs.3,000/- for the offence under Section 72C(1) (b) coupled with the direction that all the sentences would run concurrently. For default of payment of fine, additional rigorous imprisonment for six months was also imposed.

3. The accused persons filed criminal appeals against the aforesaid conviction and sentence before the sessions court. These appeals were dismissed vide judgment dated 03.09.2014. Mahendra Prasad Gupta, Nageshwar Sharma, Madhusudan Banerjee and Binoy Kumar Mishra preferred separate criminal revisions challenging the judgment of the sessions court which were taken up together by the High Court and the High Court has maintained the conviction and sentence by dismissing the said criminal revision petitions vide common judgment dated 29.07.2016. It is this judgment which is challenged by means of these four appeals preferred by the aforesaid four accused persons.

4. It may be stated at the outset that there is no dispute on facts about the happening of the aforesaid serious accident in which four persons received fatal injuries and five others also suffered serious bodily injuries. In the complaint that was filed by the complainant, Director of Mines Safety, Dhanbad Region No.1, it was alleged that during the inspection and inquiry by the complainant, following violations were found, which caused the accident:

(i) In contravention of Systematic Support Rules (for short 'SSR') framed and enforced under the provision of Regulation 108 of Central Mines Rules, 1957 read with Section 18(4) of the Act, the accused persons namely Mahendra Prasad Gupta, Nageshwar Sharma, Binoy Kumar Mishra and Madhusudan Banerjee failed to support the place of occurrence as per the said SSR.

(ii) In contravention of the above SSR, the accused No.5 i.e. Shankar Prasad Mukherjee, Under Manager, Kusunda Colliery could not take steps for making inspection of place of occurrence nor gave specific direction pertaining to support the place of occurrence although condition of bad roof was reported to him by Sri Chand Babu-Overman of Shift.

(iii) The accused-Overman Sri Chand Babu engaged the loaders at the place of occurrence, which was not supported as per the terms of the SSR even when the condition of bad roof was reported to him by the

Overman of the previous shift.

(iv) One of the accused Mining Sirdar Ambika Singh of the said Colliery deployed the loaders without supporting the roof in terms of SSR.

5. It may also be recorded that the prosecution produced ample evidence in support of its case that at the time of working in the said mine, some of the workers found that the condition of the roof was bad and Mining Sirdar Ambika Singh was even informed about the same expressing the apprehension that roof may fall on them. Ambika Singh directed to call the dresser, who came and reported that the condition of the roof was precarious. However, Mining Sirdar dismissed the apprehensions by sharply reacting that he had experience of twenty years in mining and nothing was going to happen. He directed the loaders to continue the excavation. The workers even protested and requested to give support to the place of occurrence but the Mining Sirdar refused to listen to them. Immediately thereafter, the occurrence took place. These findings arrived at by the trial court are upheld by the first appellate court and the High Court has also affirmed the same. As a consequence, violation of SSR has been established. The case of the appellants, however, is that keeping in view their position, no such criminal liability can be fastened upon them as they were not responsible for the mishap either factually or in law.

6. Insofar as appellant Binoy Kumar Mishra (appellant in Criminal Appeal No. 246 of 2017) is concerned, he was holding the post of Manager at the relevant time. Mr. Saurabh Kirpal, learned advocate arguing for him, submitted that the courts below ignored that there were many exculpatory facts of the case and legal error is committed in wishing them away and basing the judgment only on the ground that burden of proof, as per the provisions of the Act, was upon the appellants. According to him, following important and material facts are sufficient to prove the innocence of the appellant Binoy Kumar Mishra:

(i) The SSR under Regulation 108 were framed in the year 1993, which was duly approved by the Directorate General of Mines Safety. This was prior to the appointment of the appellant as a Manager.

(ii) The departmental inquiry, while holding the Mining Sirdar and the Overman guilty, exonerated the appellant. The report also concluded that the colliery had adequate arrangements.

(iii) The Director of Mines Safety (PW-1) in its deposition has attributed specific role only to Ambika Singh. He had admitted that as a part of his statutory duty, he had inspected the said mine on 27.12.1995.

(v) The prosecution has failed to show the specific provision under Regulation 108 which the appellant had violated.

(vi) In the statement under Section 313 Cr.P.C., the appellant made a categorical statement to the effect that full support of the roof was given

and that he was innocent.

(vii) There was no specific allegation or role attributable to the appellant, much less evidence of neglect or omission on the part of the appellant.

(viii) The appellant as a 'Manager' of the Colliery, had taken all due diligence within his authority and control, without any culpable negligence or omission for maintaining the safety in the mines.

7. Mr. Kirpal conceded that, no doubt, as per the provisions of Section 18(5) of the Act, the burden of proof is upon the appellant. Notwithstanding, his submission was that even when the principle of reverse burden of proof is applied in a particular case, the obligation on the part of the prosecution to prove the basic foundational facts very much remains, which has not been discharged by the prosecution in the present case insofar as culpability of the 'Manager' is concerned. In support of his aforesaid proposition, he referred to the judgment of this Court in **Noor Aga v. State of Punjab & Anr.**¹ wherein the primary obligation of the prosecution is stated in the following words:

"58. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial

1 (2008) 16 SCC 417

burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.”

8. He also cited the following judgments on the same proposition:

(i) ***Bhola Singh v. State of Punjab***²:

“11. Applying the facts of the present case to the cited one, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lay on the prosecution, as would be clear from the word “knowingly”, and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidence which the prosecution seeks to rely on is the appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana while registering the offending truck cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others.”

(ii) ***Babu v. State of Kerala***³:

“27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this

2 (2011) 11 SCC 653

3 (2010) 9 SCC 189

purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like the Negotiable Instruments Act, 1881; the Prevention of Corruption Act, 1988; and the Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.”

(iii) ***Krishna Janardhan Bhat v. Dattatraya G. Hegde***⁴:

“44. The presumption of innocence is a human right. (See *Narendra Singh v. State of M.P.* [(2004) 10 SCC 699:2004 SCC (Cri) 1893], *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [(2005) 5 SCC 294:2005 SCC (Cri) 1057] and *Rajesh Ranjan Yadav v. CBI* [(2007) 1 SCC 70: (2007) 1 SCC (Cri) 254]. Article 6(2) of the European Convention on Human Rights provides: ‘Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.’ Although India is not bound by the aforementioned Convention and as such it may not be necessary like the countries forming European countries to bring common law into land with the Convention, a balancing of the accused's rights and the interest of the society is required to be taken into consideration. In India, however, subject to the statutory interdicts, the said principle forms the basis of criminal jurisprudence. For the aforementioned purpose the nature of the offence, seriousness as also gravity thereof may be taken into consideration. The courts must be on guard to see that merely on the application of presumption as contemplated under Section 139 of the Negotiable Instruments Act, the same may not lead to injustice or mistaken conviction. It is for the aforementioned reasons that we have taken into consideration the decisions operating in the field where the difficulty of proving a negative has been emphasised. It is not suggested that a negative can never be proved but there are cases where such difficulties are faced by the accused e.g. honest and reasonable mistake of fact...”

4 (2008) 4 SCC 54

9. It was also the submission of Mr. Kirpal that departmental inquiry was held into this incident wherein culpability of only two persons, namely, Ambika Singh and Sahid Akhtar Khan, was found and insofar as the appellant Binoy Kumar Mishra is concerned, he was exonerated. Riding on these findings, he submitted that Binoy Kumar Mishra had duly discharged the burden as envisaged. Without prejudice to the above submissions, Mr. Saurabh Kirpal pointed out that the unfortunate accident happened in the year 1996 and that the appellant had been going through the ordeal for the past more than twenty years. Furthermore, the provisions under which the appellant has been convicted attracts a substantive sentence or fine. The appellant holds a government post and custody for a period of over 24 hours would lead to his suspension as per the rules. This would be completely disproportionate to the role allegedly played by the appellant. He, therefore, pleaded that a lenient view be taken.

10. Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellant Nageshwar Sharma (appellant in Criminal Appeal No. 247 of 2017), also made his submission on the same lines. In addition, he referred to the provisions of Section 2(c) of the Act which defines 'agent', in relation to a mine. As per this definition, every person who takes part in the

management, control, supervision or direction of the mine or of any part thereof is treated as 'agent', whether appointed as such or not. He submitted that Nageshwar Sharma was not taking part in the management, control, supervision or direction of the mine and, therefore, he was not liable for the aforesaid accident. Mr. Dwivedi also submitted that a mere perusal of the complaint would show that there is no specific allegation against his client and only designation of the appellant Nageshwar Sharma was mentioned therein with bald averment that he was exercising supervision, management and control of the mine. According to him, that is not sufficient to rope in the said appellant, having regard to the legal position explained by this Court in **G.N. Verma v. State of Jharkhand & Anr.**⁵, in the following manner:

“20. Insofar as the criminal complaint is concerned, it does not contain any allegation against G.N. Verma. The only statement concerning him is that he was the Chief General Manager/deemed agent of the mine and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the Rules, Regulations, Orders made thereunder. In the face of such a general statement, which does not contain any allegation, specific or otherwise, it is difficult to hold that the Chief Judicial Magistrate rightly took cognizance of the complaint and issued summons to G.N. Verma. The law laid down by this Court in *Harmeet Singh Paintal [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113]* (though in another context) would be squarely applicable. Under the circumstances, we are of the opinion that on the facts of this case and given the absence of any allegation in the complaint filed against him no case for

5 (2014) 4 SCC 282

proceeding against G.N. Verma has been made out.

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24. The law is well settled by a series of decisions beginning with the Constitution Bench decision in *W.H. King v. Republic of India* [AIR 1952 SC 156 : 1952 Cri LJ 836 : 1952 SCR 418] that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject. This view has been consistently adopted by this Court over the last, more than sixty years.”

11. He also submitted that no evidence was produced to show any culpable negligence or omission on the part of Nageshwar Sharma. Further, none of the courts below discussed his role specifically or the evidence against him and convicted the appellant on unfounded presumptions. It was also submitted that while recording the statement of the appellant under Section 313 of the Cr.P.C., only four questions were put to him and there was inadequate opportunity to respond to the evidence which, in any case, does not establish criminality and, therefore, it has resulted in failure of justice.
12. Mr. Parijat Kishore, advocate who appeared for the appellant Mahendra Prasad Gupta (appellant in Criminal Appeal No. 248 of 2017), made his submission on the same lines.
13. Ms. Amrita Sharma, advocate assisted by Ms. Hetu Arora Sethi, appeared for the appellant Madhusudan Banerjee (appellant in Criminal Appeal No. 249 of 2017). It was submitted that the accident report

prepared by the Director after inquiry did not attribute any lapse on the part of her client as it found only Mining Sirdar Ambika Singh, Sahid Akhtar Khan and Shankar Prasad Mukherjee liable for the accident. She further submitted that there was only blanket and bald allegation against this appellant with no specifications. She further argued that Mr. Banerjee had retired from service fifteen years back and presently he is seventy five years of age and is shrouded with lot of ailments including serious cardiac issues. He recently, in October 2016, had an accident and fractured his hip bone. Despite a surgery, he has been confined to the bed and cannot even go to the toilet without help. Therefore, a fervent plea was made to take a lenient view insofar as sentence is concerned, even if the contentions on merits are not accepted.

14. Mr. Sinha, learned senior counsel, appearing for the respondent State, submitted that all the four appellants were squarely covered by the definition of 'agent' as contained in Section 2(c) of the Act as by the very nature of their designation and duties, it was clear that they were taking part in the management, control and supervision of the mine as well as direction of the mine in question. He referred to the provisions of Section 17 of the Act which deals with 'Managers' and, *inter alia*, lays down that every mine shall be under a sole manager who shall have prescribed qualifications and the owner or agent of every mine is supposed to appoint a person having such qualifications to have the

Manager. He, thus, argued that Manager is the only person who is responsible for the overall management, control, supervision and direction of the mine. Mr. Sinha also relied upon the provisions of sub-sections (4) and (5) of Section 18 of the Act. Section 18 of the Act pertains to duties and responsibilities of owners, agents and managers. Sub-section (4) thereof provides that the owner, agent and manager of every mine would be responsible to see that all the operations carried on in connection with the mine are conducted in accordance with the provisions of the Act, the regulations, rules, bye-laws and orders made thereunder. Sub-section (5) makes owner, agent or manager responsible for contravention of any of the provisions of the Act or the regulations, rules, bye-laws or orders made thereunder. He, thus, argued that a conjoint reading of the aforesaid provisions makes the appellants liable in the absence of any evidence led by them to show that the presumptions contained in the aforesaid provisions were not applicable.

15. Mr. Rana Mukherjee, learned senior counsel who appeared for respondent No.2, has supported Mr. Sinha and referred to the evidence which, according to him, proves the culpability of the appellants as well.
16. In order to appreciate the respective contentions of the learned counsel for the parties appearing on either side, it would be apposite to take note

of the relevant provisions of the Act as well as Regulations framed thereunder which are pressed into service by the counsel for the parties.

These provisions are as under:

“ 2(c) "agent", when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof;

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2(l) “owner”, when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver 11[***] but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but 12[any contractor or sub-lessee] for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

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2(o) “regulations”, “rules” and “bye-laws” means respectively regulations, rules and bye-laws made under this Act;

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17. Managers.— (1) Save as may be otherwise prescribed, every mine shall be under a sole manager who shall have the prescribed qualifications and the owner or agent of every mine shall appoint a person having such qualifications to be the manager:

Provided that the owner or agent may appoint himself as manager if he possesses the prescribed qualifications.

(2) Subject to any instructions given to him by or on behalf of the owner or agent of the mine, the manager shall be

responsible for the overall management, control, supervision and direction of the mine and all such instructions when given by the owner or agent shall be confirmed in writing forthwith.

(3) Except in case of an emergency, the owner or agent of a mine or anyone on his behalf shall not give, otherwise than through the manager, instructions affecting the fulfilment of his statutory duties, to a person, employed in a mine, who is responsible to the manager.]

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18. Duties and responsibilities of owners, agents and managers.— (1) The owner and agent of every mine shall each be responsible for making financial and other provisions and for taking such other steps as may be necessary for compliance with the provisions of this Act and the regulations, rules, bye-laws and orders made thereunder.

(2) The responsibility in respect of matters provided for in the rules made under clauses (d), (e) and (p) of section 58 shall be exclusively carried out by the owner and agent of the mine and by such person (other than the manager) whom the owner or agent may appoint for securing compliance with the aforesaid provisions.

(3) If the carrying out of any instructions given under sub-section (2) or given otherwise than through the manager under sub-section (3) of section 17, results in the contravention of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder, every person giving such instructions shall also be liable for the contravention of the provisions concerned.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the owner, agent and manager of every mine shall each be responsible to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of this Act and of the regulations, rules, bye-laws and orders made thereunder.

(5) In the event of any contravention by any person whosoever of any of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder except those which specifically require any person to do any act or thing or prohibit any person from doing an act or thing,

besides the person who contravenes, each of the following persons shall also be deemed to be guilty of such contravention unless he proves that he had used due diligence to secure compliance with the provisions and had taken reasonable means to prevent such contravention:—

- (i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened;
- (ii) the manager of the mine;
- (iii) the owner and agent of the mine;
- (iv) the person appointed, if any, to carry out the responsibility under sub-section (2):

Provided that any of the persons aforesaid may not be proceeded against if it appears on inquiry and investigation, that he is not prima facie liable.

(6) It shall not be a defence in any proceedings brought against the owner or agent of a mine under this section that the manager and other officials have been appointed in accordance with the provisions of this Act or that a person to carry the responsibility under sub-section (2) has been appointed.]”

17. We further notice that Chapter V comprising of Sections 19 to 27 of the Act contains provisions as to health and safety. Section 23 thereof casts an obligation on the owner, agent or manager of the mine to give notice of accidents of the nature mentioned therein. Section 24 of the Act empowers the Government to appoint court of inquiry in case of accidents. Section 57 of the Act confers power on the Central Government to make Regulations for all or any of the purposes stipulated therein by notification in the official gazette. Under Section 58 of the Act, the Central Government is empowered to make Rules for all

or any of the purposes mentioned in that Section. Under section 60 of the Act, the Central Government is empowered to make Regulations by dispensing with the publication under certain circumstances. Section 61 of the Act authorises owner, agent or manager of mine to draft such bye-laws, not being inconsistent with the Act or any Regulations or Rules for the time being in force, governing the use of any particular machinery or the adoption of any particular method in the mine. However, when called upon to do so by the Chief Inspector or Inspector, framing of such draft bye-laws becomes obligatory. Chapter IX provides for penalties and procedure and it covers Sections 63 to 81 of the Act. As the appellants herein along with other accused persons were charged for offences under Sections 72A, 72C(1)(a) and 72C(1)(b), these provisions are reproduced hereunder:

“72A. Special provision for contravention of certain regulations.— Whoever contravenes any provision of any regulation or of any bye-law or of any order made thereunder, relating to matters specified in clauses (d), (i), (m), (n), (o), (p), (r), (s), and (u) of section 57 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.]

72C. Special provision for contravention of law with dangerous results.—(1) Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder [other than an order made under sub-section (1A) or sub-section (2) or sub-section (3) of section 22] 2[or under sub-section (2) of section 22A], shall be punishable—

(a) if such contravention results in loss of life, with

imprisonment which may extend to two years, or with fine which may extend to five thousand rupees, or with both; or

(b) if such contravention results in serious bodily injury, with imprisonment which may extend to one year, or with fine which may extend to three thousand rupees, or with both; or

(c) if such contravention otherwise causes injury or danger to persons employed in the mine or other persons in or about the mine, with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both:

[Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgment of the court, such fine, in the case of a contravention referred to in clause (a), shall not be less than three thousand rupees.]

(2) Where a person having been convicted under this section is again convicted thereunder, he shall be punishable with double the punishment provided by sub-section (1).

(3) Any court imposing or confirming in appeal, revision or otherwise a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured or, in the case of his death, to his legal representative:

Provided that if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if any appeal has been presented, before the decision of the appeal.]”

18. As already noted above, the accident was a result of fall of roof, which was under dilapidated condition, thereby crushing to death four persons and causing serious bodily injuries to five workers. When the accident was reported and the inquiry conducted, respondent No.2 submitted the

report as per which it was found during inspection that entire junction that fell down was practically without support. A steel cog had been provided at east level. This report also analysed the evidence which was collected during inquiry and made observations thereupon in para 9 with clear findings that the accident had resulted due to the negligence and bad maintenance. Some of the observations in this behalf are reproduced below:

“9.0 ANALYSIS OF EVIDENCE AND OBSERVATIONS MADE

9.1 The Manager had framed SSR based on experience and other guidelines but not on scientific studies including RMR needed to evaluate the support requirement.

9.2 The roof that fell was kept supported barely by nine roof bolts in the face and no support was provided at the junction. The area of fall was about 28 sq. m and according to the SSR enforced this area should have been supported by about 22 bolts against which only nine were provided. Obviously the support provided was inadequate.

9.3 The SSR required roof bolts at junction to be reinforced by W straps which are basically steel channels. No such W strap was used in the junction where the fall took place. Infact W strap was not used in any junction of the district.

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9.6 That the roof at the place of accident could be bad was identified by the Overman of second shift Shri Chand Babu. He accordingly informed his relieving Overman Shri Saheed Akhtar Khan and also the Under Manager Shri S.P. Mukherjee while handing over charge at the end of the second shift. He also recorded his observations in his statutory record book maintained under regulation 43(9) of CMR'57. Similarly the Sirdar Shri Ambika Singh was informed by his relieving Sirdar of second shift Shri Rajendra Kumar that the roof at the place of accident was bad and required dressing. Thus that the roof at the place of

accident could be bad was known to the Sirdar, Overman and Under Manager of third shift. After shotfiring in those faces the dressers Shri Sukhalu Bhor as well as the loaders engaged there told the Sirdar Shri Ambika Singh that the roof was bad and needed support. Yet the Sirdar deployed the loaders without providing any support which finally led to the accident.

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9.15 Thus it can be concluded that the fall had taken place due to association with geological disturbances and not providing support as per the requirement of SSR.”

19. In this report, responsibilities of various persons is also fixed, in the following manner:

“11.0 RESPONSIBILITY

11.1 The Sirdar Shri Ambika Singh deployed the loaders in the faces without supporting the roof with roof bolting and a steel cog in spite of learning from the previous shift that the roof could be bad and even after the affected loaders had expressed apprehension about the stability of the roof and requested him to support the same. He therefore knowingly contravened the provision of Regulation of 44(1)(b) and 44(3)(c) read with the SSR framed under Regulation 108 of the Coal Mines Regulation, 1957 and is thus primarily responsible for the accident.

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11.4 The manager Shri Vinay Kumar Mishra could not ensure the part of the mine where the accident took place was not worked without support in contravention of the SSR enforced and in contravention of Regulation of 108(5) of CMR'57. He is also responsible for the accident.

11.5 Shri Madhu Sudan Banerjee who was the Agent of that particular mine only took part in the management, control, supervision and direction of the mine in a regular manner could not ensure that the part of the mine where the accident took place was not worked without support in contravention of SSR enforced under Regulation 108 of CMR'57 read with Section 18(4) of the Mines Act, 1952. He

is also therefore responsible for the accident.

11.6 Shri N Sharma, Additional General Manager and Shri M K Gupta, General Manager, Kusunda Area though not appointed as such took part in management, control, supervision and direction of the mine through regular interaction and therefore they were also agents. They had six mines under them and they exercised management control, supervision of the mine but they failed to ensure that the place where the accident took place was not worked without support in contravention of SSR enforced under Regulation 108 of CMR'57 read with Section 18(4) of the Mines Act, 1952 and are therefore responsible for the accident.

11.7 The Systematic Support Rules enforced under regulation 108(1)(bb) required freshly exposed roof to be supported by 3 bolts at distance of 1.2 m. all the junctions within 10 m of the face was required to be supported by W strap on bolts. It also required that before loading coal, roof bolting shall be done so that freshly roof is supported. In this case none of the junctions including the one where the accident took place was supported by W straps. The roof bolts were also installed haphazardly and not in a systematic manner. The distance between the bolts was also more than 1.2 m at many places. Therefore the Manager and Agents including the Addl. General Manager and General Manager were aware that the Systematic Support Rules was not being fully enforced, the violation of which lead to the accident. Therefore they are also responsible for the accident.”

JUDGMENT

20. In other paras, Ambika Singh, Sahid Akhtar Khan and Shankar Prasad Mukherjee are also fastened with the responsibility. They have also been convicted and as they have not laid further challenge to their conviction after the dismissal of their appeals. Therefore, we have not reproduced the findings *qua* them.
21. We may mention that the evidence which was led by the prosecution in support of its case *qua* all the accused persons is on the same lines on

which liability is fastened on these persons in the aforesaid report. With these preliminary remarks, we advert to the case of each of the appellants.

22. Insofar as appellant Binoy Kumar Mishra is concerned, as pointed out above, it was argued that report dated 09.01.1996 of the aforesaid fatal accident was submitted wherein only Mining Sirdar Ambika Singh and Overman Sahid Akhtar Khan were held responsible. From this, it was sought to project that Binoy Kumar Mishra was found innocent. That, however, is only a report of the accident which is required to be submitted under Section 23 of the Act. When the notice of accident is received, it is thereafter that the Government appoints a commission of inquiry as per the provisions of Section 24 of the Act. Such a commission of inquiry was appointed, which submitted its report dated 28.06.1996, relevant portions whereof have already been extracted above. As per this report, failure on the part of Mr. Mishra is attributed in not able to enforce SSR and also contravening Regulation 108(5) of CMR, 1957 and on that basis he is held responsible for the accident. It was submitted by the learned counsel appearing for Mr. Mishra that these SSR were framed in the year 1993, i.e. prior to the appointment of Mr. Mishra as a Manager, and were duly approved by the Director General of Mines Safety. It was further argued that insofar as alleged violation of Regulation 108 is concerned, no specific provision under the

said Regulation was shown to have been violated by him. However, the charge against Mr. Mishra is not that he was instrumental in faulty drafting of SSR. The charge, in fact, pertains to the contravention of the SSR with imputation that a part of mine where the accident took place was not working without support and that was in violation of the SSR. However, what was the specific act of contravention is not stated by the prosecution witnesses. There is omnibus allegation about the contravention.

23. On perusal of the judgment of the trial court, it can be discerned that the trial court formulated the following points which needed determination:
- (i) Whether there was any mining operation going on at the relevant time and place of occurrence and whether at that time all the above-named accused persons bear a reasonable post for conducting the same?
 - (ii) Whether during the operation of the said mining work, is there any occurrence that took place on the said Kusunda Colliery which resulted in the death of four workers and serious bodily injuries to five other?
 - (iii) Whether the said incident, if any, taken place and caused serious injury and bodily pain to the workers of the said coal mine happened on the willful neglect and omission of any provision of law, rules, regulation and orders of the Mines Act for which the above named accused persons are liable or not?

24. The findings on the first two points were in the affirmative which have been established on the basis of evidence and is not required to be gone into. This has already been stated by us. Insofar as third point is concerned, the trial court found that the accident in which certain persons lost their lives and certain other persons suffered serious injury and bodily pain was the result of neglect and omission of the provisions of Orders under the Act. These findings were upheld by the first appellate court. The High Court has rightly pointed out that while exercising revisionary jurisdiction, powers of the High Court were limited and it was not supposed to go into the correctness of the aforesaid findings unless the same are perverse. That is not even argued in this Court as well by the appellants. The question is, as mentioned above, whether these appellants are also responsible for the aforesaid mishap? Section 18 of the Act deals with duties and responsibilities of owners, agents and managers and sub-section (4) thereof casts upon the owner, agent and manager responsibility to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of the Act and of the regulations, rules, bye-laws and orders made thereunder. Sub-section (5) contains the provisions of strict liability by making persons specified therein as 'deemed guilty' for contravention of the provisions of the Act or of the regulations, rules, bye-laws or orders made thereunder. It excludes only those of the

aforesaid provisions where responsibility is cast specifically on a particular person to do any act or thing or prohibit any person from doing an act or thing. Apart from those who actually contravene such provisions, following persons are deemed to be guilty of such contravention unless that person proves that he had used due diligence to secure compliance with the provisions and have to prevent contravention:

“(i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened;

(ii) the manager of the mine;

(iii) the owner and agent of the mine;

(iv) the person appointed, if any, to carry out the responsibility under sub-section (2):

Provided that any of the persons aforesaid may not be proceeded against if it appears on inquiry and investigation, that he is not prima facie liable.”

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25. Further, sub-section (5) of Regulation 108 which relates to SSR cast specific responsibility upon the manager in the following manner:

“(5) The Manager and such supervising officials shall be responsible for securing effective compliance with the provisions of the Systematic Support Rules, and no mine or part of a mine shall be worked in contravention thereof.”

26. Specific responsibility is, therefore, laid upon the manager to ensure that no mine or part of a mine shall be worked in contravention of SSR and the provisions of SSR are to be effectively complied with. A cumulative

reading of the aforesaid provisions, coupled with the provision of strict liability, would reveal that it was for Mr. Mishra to show as to how he had discharged his responsibility under the aforesaid provisions and was not responsible for the occurrence in any manner. In the report dated 12.02.1996 submitted after conducting the inquiry, as per the mandate of Section 24 of the Act, it was specifically found that he had contravened the provisions of sub-regulation (5) of Regulation 108. This material placed by the prosecution was sufficient to discharge the initial burden that exists upon the prosecution, as per the law laid down in the cases of **Noor Aga, Bhola Singh, Babu** and **Krishna Janardhan Bhat** and had been duly discharged by the prosecution. Legal burden, thereby, stood shifted upon him to prove his innocence. However, in his defence not even an iota of evidence was produced by him. Therefore, no fault can be found in the approach of the courts below in convicting him.

27. Coming to the case of Madhusudan Banerjee, he was nominated as 'agent' of that very mine where the accident had occurred. In respect of Mr. Banerjee, evidence was produced to show that he took part in the management, control, supervision and direction of the mine in a regular manner and could not ensure that the mine was worked in accordance with SSR and falls under Regulation 108 and had contravened Section 18(4) of the Act. Thus, in his case also, initial burden stood discharged by the prosecution by placing adequate material against him. However,

he failed to discharge his onus as per Section 18(4) of the Act. It was for him to show that he did not take part in the management, control, supervision or direction of the mine, which he failed to do.

28. Mahendra Prasad Gupta and Nageshwar Sharma were working as General Manager and Additional General Manager respectively. In respect of these two persons, following responsibilities are fastened as per the report:

“11.6 Shri N Sharma, Additional General Manager and Shri M K Gupta, General Manager, Kusunda Area though not appointed as such took part in management, control, supervision and direction of the mine through regular interaction and therefore they were also agents. They had six mines under them and they exercised management control, supervision of the mine but they failed to ensure that the place where the accident took place was not worked without support in contravention of SSR enforced under Regulation 108 of CMR'57 read with Section 18(4) of the Mines Act, 1952 and are therefore responsible for the accident.”

29. The aforesaid part of the report accepts that they were neither appointed as agent nor manager. They were not the managers of the mines either. Therefore, they are not covered by sub-section (4) of Section 18 of the Act. Though, it is alleged that they took part in management, control, supervision and direction of the mine, and on that basis, they are treated as 'agents'. The prosecution did not produce any material to substantiate the aforesaid or mention the basis for this conclusion. In

order to make them liable, it was necessary to show that they had contravened the provisions of the Act or of Regulations, Rules, Bye-Laws made thereunder. They are also not covered under the categories of those persons which are specified in sub-section (5) of Section 18 of the Act. We are, therefore, of the opinion that it was not appropriate to convict these two appellants and their conviction is accordingly set aside.

30. With this we advert to the question of sentence that is given by the courts below to Binoy Kumar Mishra and Madhusudan Banerjee. It was argued by the learned counsel for these two appellants that having regard to certain extenuating factors, even if the conviction is maintained, they may be fastened with the sentence of fine only.

We are inclined to accept this submission of the counsel for these two appellants.

31. No doubt, the incident was unfortunate, but it is an old incident which occurred more than 20 years ago. No doubt, Binoy Kumar Mishra was holding the post of Manager and in that capacity he was supposed to exercise due diligence. At the same time, mine was under the direct control of other three persons who stand convicted and in respect of whom the conviction and sentence has become final. The only role attributed to him was that he acted in violation of SSR. The fault on his part was

more in the nature of negligence in performance of his duties and that he could have exercised little more diligence.

32. Insofar as Madhusudan Banerjee is concerned, no doubt, he was an 'agent' and, therefore, was directly responsible to ensure that safety measures are taken. However, we find that he retired from service 15 years ago. He is 75 years of age and is suffering from various ailments, including heart disease. He met with an accident in October 2016 and fractured his hip bone because of which he is confined to bed and cannot even go to toilet without help.
33. Keeping in view the aforesaid circumstances in respect of these two appellants, we are of the opinion that the interest of justice would be subserved by imposing the sentence of fine only.
34. Conviction under Section 72A of the Act entails maximum imprisonment of six months or with fine which may extend to Rs.2,000/-, or with both. Likewise, Section 72C(1)(a) stipulates imprisonment which may extend to two years or with fine which may extend to Rs.5,000/- or with both. Section 72C(1)(b), likewise, prescribes maximum imprisonment of one year or with fine which may extend to Rs.3,000/-, or with both. The sentences imposed by the trial court are modified in respect of these two appellants by substituting the sentence of maximum fine prescribed under

the aforesaid provisions, which would be Rs.2,000/-, Rs.5,000/- and Rs.3,000/- respectively.

35. In the result, appeals filed by Binoy Kumar Mishra (Criminal Appeal No. 246 of 2017) and Madhusudan Banerjee (Criminal Appeal No. 249 of 2017) are partly allowed to the extent of sentence only, as mentioned above. The appeals of Mahendra Prasad Gupta (Criminal Appeal No. 248 of 2017) and Nageshwar Sharma (Criminal Appeal No. 247 of 2017) are allowed thereby setting aside their conviction and sentence.

No costs.



.....J.
(A.K. SIKRI)

.....J.
(R.K. AGRAWAL)

**NEW DELHI;
MARCH 31, 2017.**

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