KURBAN HUSSEIN MOHAMMEDALI RANGWALLA

v.

STATE OF MAHARASHTRA

December 15, 1964

[K. N. WANCHOO AND J. R. MUDHOLKAR, JJ.]

Rash and negligent act—To be punishable it must be proximate cause of death—Lighting fire and storage of combustible material against conditions of license—Danger to human life caused thereby whether 'probable'—Indian Penal Code, 1860 (*Act* 45 *of* 1860), *ss.* 304*A and* 285.

The appellant was the manager and working partner of a firm which manufactured paints and varnish. The factory was licensed by the Bombay Municipality on certain conditions to manufacture paints involving a cold process and to store certain specified quantities of turpentine, varnish and paint. The factory did not have a license for manufacturing wet paints but nevertheless manufactured them. Four burners were used in the factory 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 unlicensed 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, as a result of which seven workmen died. The appellant was prosecuted and convicted under ss. 304A and 285 of the Indian Penal Code. His appeal before the High Court having been summarily dismissed he came to the Supreme Court by special leave.

HELD : (i) The appellant was not guilty under s. 304A. The mere fact that he allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it would be a negligent act, would not be enough to make the appellant responsible for the fire which broke out. The cause of the fire was not merely the presence of the burners within the room in which varnish and turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out. What s. 304A requires is causing of death by doing any rash or negligent act and this means that death must be the direct or proximate result of the rash or negligent act. From the facts of the present case it appeared that the direct and proximate cause of the fire which resulted in seven deaths was the act of one of the workmen in pouring the turpentine too early and not the appellant's act in allowing the burners to burn in the particular room. [626 E-G]

Emperor v. *Omkar Rampratap,* (1902) IV Bom. L.R. 679, relied on.

(ii) The appellant was however guilty under s. 285 of the Penal Code inasmuch he knowingly and negligently omitted to take such order with the fire and combustible matter in his possession as was sufficient to guard against any probable danger to human life from such fire and combustible matter. His manufacture of wet paints was without the required licence; the fire in question was not authorised as required by the general conditions of his licence, and it was lighted in the proximity of turpentine and varnish against the special conditions of his licence. The mere fact that a similar accident had never taken place before in the same conditions did not prove that the danger to human life caused thereby was not 'probable'. [629 D-F]

A CIVIL APPELLATE JURISDICTION : Criminal Appeal No. 67 of 1963.

Appeal by special leave from the judgment and order dated April 8, 1963 of the Bombay High Court in Criminal Appeal No. 433 of 1963.

B *S. T. Desai, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain*, for the appellant.

S. G. Patwardhan, B. R. G. K. Achar, for *R. H. Dhebar*, for the respondent.

The Judgment of the Court was delivered by

C **Wanchoo, J.** This appeal by special leave against the judgment of the Bombay High Court raises questions regarding the interpretation of s. 304-A and s. 285 of the Indian Penal Code. The facts are not now in dispute and may be briefly set out as found by the courts below. The appellant along with three partners is the owner of a factory styled as Carbon Dry Colour Works which D manufactures paints and varnish. The factory was licensed by the Bombay Municipality in the year 1953 to manufacture paints involving a cold process and was located at 79/81 Jail Road, Dongri. The factory was also licensed to store 455 litres of turpentine, 455 litres of varnish and 14000 gallons of paint. The E licence was issued subject to certain conditions to which we shall refer later. The appellant is the manager and working partner. He converted the factory from the cold process of manufacturing dry paints to a process of manufacturing wet paints by heating. For that purpose four burners were used for the purpose of melting rosin or bitumen by heating them in barrels over the burners and F adding turpentine thereto after the temperature cooled down to a certain degree. On April 20, 1962, this process was going on in the factory which had no licence for manufacturing wet paints through heating. Hatim Tasduq was the person looking after the operation. According to him the rosin was melted on one burner and lime was added and the whole thing was boiled for half an hour. G Thereafter the burner was extinguished and the barrel in which the rosin was melted was allowed to cool. This began at about 4 P.M. The barrel in which the rosin is melted is about 4½ feet high and after the temperature comes down to a certain level turpentine is added in the barrel to prepare Black Japan. Hatim Tasduq takes a drum X of 5 gallons of turpentine which is poured into the H barrel. As turpentine is poured, the mixture begins frothing and in order to keep down the froth the whole thing is stirred all the time. One man helps Hatim Tasduq in this operation. On April

20, 1962, rosin was melted and the barrel was allowed to cool down from 4 P.M. At about 5 P.M. Hatim started pouring turpentine into the barrel. It may be mentioned that 5 P.M. is the closing time and the process of pouring turpentine started just about that. As soon as Hatim started pouring turpentine the mixture began to froth. Hatim was unable to stir as according to him his assistant had gone some distance and he could not give the drum of turpentine to him so that he might stir the mixture. The result was that forth overflowed out of the barrel and because of heat, varnish and turpentine, which were stored at a short distance, caught fire. Seven men were working in a loft which is reached by a ladder and where manufactured paint is stored. The material in the premises being of combustible nature, the fire spread rapidly. Those who were working on the ground-floor managed to get out with burns only but those who were working in the loft could not get out in time with the result that all seven of them were burnt to death. The fire-brigade was sent for, but in view of the combustible nature of the material stored it took 2½ hours to bring the fire under control. After the fire was controlled, bodies of four workmen were recovered the same night. Next morning two more bodies were recovered and in the afternoon one more body was found. Thus seven of the workmen lost their lives while seven other workmen suffered burns and were sent to hospital where they were treated as indoor patients. It may be mentioned that the appellant was not present on the premises when the fire took place, though he came there as soon as the information about it reached him.

These facts have been found by courts below to be proved. Originally the other three partners were also prosecuted but the Magistrate acquitted them as the appellant was the managing partner and was directly in-charge of work in the factory. On these facts the appellant was convicted under s. 304-A and s. 285 of the Indian Penal Code and it is the correctness of that conviction which is being assailed in the present appeal. The appellant appealed to the High Court but his appeal was summarily dismissed. His application for leave to appeal to this Court having been refused, he came to this Court and was granted special leave.

We shall first take up s. 304-A which runs thus :—

> "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

A The main contention of the appellant is that he was not present when the fire broke out resulting in the death of seven workmen by burning and it cannot therefore be said that he caused the death of these seven persons by doing any rash or negligent act. The view taken by the Magistrate on the other hand which appears to have been accepted by the High Court was that as the appellant B allowed the manufacture of wet paints in the same room where varnish and turpentine were stored and the fire resulted because of the proximity of the burners to the stored varnish and turpentine, he must be held responsible for the death of the seven workmen who were burnt in the fire. We are however of opinion that this view of the Magistrate is not correct. The mere fact that the C appellant allowed the burners 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 responsible for the fire which broke out. The cause of the fire was not merely the presence of burners in the room in which varnish and D turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out. But what s. 304-A requires is causing of death by doing any rash or negligent act, and this means that death must be the direct or proximate result of the rash or negligent act. It appears that the direct or proximate cause of the fire which resulted in seven deaths was the act of E Hatim. It seems to us clear that Hatim was apparently in a hurry and therefore he did not perhaps allow the rosin to cool down sufficiently and poured turpentine too quickly. The evidence of the expert is that the process of adding turpentine to melted rosin is a hazardous process and the proportion of froth would depend upon the quantity of turpentine added. The expert also stated F that if turpentine is not slowly added to bitumen and rosin before it is cooled down to a certain temperature, such fire is likely to break out. It seems therefore that as turpentine was being added at about closing time, Hatim was not as careful as he should have been and probably did not wait sufficiently for bitumen or rosin to cool down and added turpentine too quickly. The expert has stated G that bitumen or rosin melts at 300 degree F and if turpentine is added at that temperature, it will catch fire. The flash point of turpentine varies from 76 to 110 degree F. Therefore the cooling must be brought down, according to the expert, to below 76 degree F to avoid fire. In any case even if that is not done, turpentine has to be added slowly so that there may not be too much frothing. H Clearly therefore the fire broke out because bitumen or rosin was not allowed to cool down sufficiently and turpentine was added too quickly in view of the fact that the process was performed at closing

time. It is clearly the negligence of Hatim which was the direct or proximate cause of the fire breaking out, though the fact that burners were kept in the same room in which turpentine, and varnish were stored was indirectly responsible for the fire breaking out and spreading so quickly. Even so in order that a person may be guilty under s. 304-A, the rash or negligent act should be the direct or proximate cause of the death. In the present case it was Hatim's act which was the direct and proximate cause of the fire breaking out with the consequence that seven persons were burnt to death; the act of the appellant in allowing turpentine and varnish being stored at a short distance was only an indirect factor in the breaking out of fire.

We may in this connection refer to *Emperor* v. *Omkar Rampratap*(1) where Sir Lawrence Jenkins had to interpret s. 304-A and observed as follows :—

> "To impose criminal liability under s. 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *cause causans;* it is not enough that it may have been the *cause sine qua non.*"

This view has been generally followed by High Courts in India and is in our opinion the right view to take of the meaning of s. 304-A. It is not necessary to refer to other decisions, for as we have already said this view has been generally accepted. Therefore the mere fact that the fire would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would not be enough to make him liable under s. 304-A, for the fire would not have taken place, with the result that seven persons were burnt to death, without the negligence of Hatim. The death in this case was therefore in our opinion not directly the result of a rash or negligent act on the part of the appellant and was not the proximate and efficient cause without the intervention of another's negligence. The appellant must therefore be acquitted of the offence under s. 304-A.

This brings us to s. 285 which runs as follows :—

> "Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human

(1) (1902) IV Bom. L.R.679

A life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to
B human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

C We are in the present case concerned with the second part of s. 285 which runs thus :

"Whoever knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable
D danger to human life from such fire or combustible matter, shall be punished....."

The question is whether the appellant on the facts which have been proved knowingly or negligently omitted to take such order with fire or combustible matter in his possession as was sufficient
E to guard against probable danger to human life from such fire or combustible matter. In this connection we may refer to the fact that the appellant did not have a licence for manufacturing wet paints and therefore when he allowed wet paints to be manufactured in the circumstances which have been proved, he must be held to have knowingly acted in a manner in which he should
F not have done. There is a map on the record which shows that four burners were in one corner while turpentine and varnish were in another corner of the same room, and the distance between the burners and the stores was about 8 or 10 feet. The licence for storage given to the appellant contained general and special conditions. One of the general conditions was that "the licence shall not
G use or permit to be used any portion of the licensed premises for dwelling or cooking purposes and no fire shall be lighted therein other than what is authorised." The articles stored being combustible, this general condition was imposed on the appellant and he had no business to light any fire in the room where stores were kept unless he was authorised to do so. There is no proof that
H he was authorised to light any fire in that room; and therefore he acted in breach of the general condition of the licence which forbade him from lighting any fire in the room where varnish and

turpentine were stored. We take it that when the general condition says that no fire would be lighted except what is authorised, the intention must have been that the municipal committee will take necessary steps to see that the fire would be sufficiently guarded, if lighted in the same room, so that there may not be any outbreak of fire. The appellant clearly acted against this general condition of the licence and must be held to have knowingly, or at any rate negligently, omitted to take such order with any fire or any combustible matter in his possession as was required. Further the special conditions for keeping turpentine and varnish and paints require that "no smoking, light or fire in any form shall be permitted at any time" in the room in which paints, turpentine and varnish are kept or even in any premises licensed for storage unless in the case of a light, such light be duly protected and on no account be naked. The appellant clearly committed breach of this special condition also in allowing the lighting of four burners in the same room without taking any precaution for duly protecting the fire and even allowed it to be naked. It must therefore be held that the appellant negligently or knowingly omitted to take proper order with the fire or combustible matter in his possession. The contention on behalf of the appellant however is that even if he may have negligently or knowingly omitted to take proper order with the fire or combustible matter in his possession it cannot be said that his omission to take proper order was such as was insufficient to guard against any probable danger to human life. What is urged is that his not taking precautions may result in possible danger to human life but it cannot be said that this omission was such as would result in probable danger to human life. In particular it is urged that this method of work had been going on for some years and no fire had broken out and this shows that though there may have been possible danger to human life from such fire or combustible matter there was no probable danger. We are unable to accept this contention. The fact that there was no fire earlier in X this room even though the process had been going on for some years is not a criterion for determining whether the omission was such as would result in probable danger to human life. We have already pointed out that four burners were in one corner of the room and the combustible matter was in another corner of the same room and there was only a distance of 8 or 10 feet between the two. The burners were lighted against the general as well as the special conditions of the licence for storage granted to the appellant. The proximity of naked fire to the stores of turpentine and varnish is in our opinion always a matter of prob-

A able danger to human life, namely, the life of the persons working in the room. This was particularly so with respect to turpentine which has a low flash point, *i.e.*, 76 decree F to 110 degree F. The use of naked fire could in conceivable circumstances even raise the temperature of the room itself above the flash point of turpentine and if the turpentine ever happened to be exposed it might B easily catch fire. There was in our opinion therefore always a probable danger to human life by the appellant negligently or knowingly omitting to take proper care in the matter of the four burners and turpentine and varnish. His action in allowing burners to be lighted in the room without any safeguard did in our opinion amount to omission to take such order with fire and combustible C matter as would be sufficient to guard against probable danger to human life. We can only say that it was lucky that fire had not broken out earlier. But there can be no doubt that the omission of the appellant to take proper care with burners in particular when such combustible matter as turpentine in large quantity was stored at a distance of 8 to 10 feet from the burners was such omission D as amounted to insufficient guard against probable danger to human life. Finally when we remember that all this was done in breach of the general and special conditions of the licence given to the appellant for storage of turpentine, varnish and paints, we have no doubt that the appellant knowingly, or at least negligently, failed E to take such order with fire and the combustible matter as would be sufficient to guard against any probable danger to human life. In the circumstances we are of opinion that the appellant has been rightly convicted under s. 285 of the Indian Penal Code. Considering that seven lives have been lost on account of the negligence of the appellant in this connection, the sentence of six months' F rigorous imprisonment which is the maximum provided under s. 285, cannot be said to be harsh.

We therefore partially allow the appeal and set aside the conviction and sentence of the appellant under s. 304-A of the Indian Penal Code. The appeal is dismissed so far as his conviction under G s. 285 of the Indian Penal Code is concerned. The appellant will surrender to his bail to serve the remaining sentence under s. 285 of the Indian Penal Code.

Appeal partly allowed.