

OSHI v Omnicane Milling Operations Limited & Anor.

2022 IND 50

Cause Number 226/13

**In the Industrial Court of Mauritius
(Criminal side)**

In the matter of:

OSHI

v.

- 1. Omnicane Milling Operations Limited**
- 2. Serge Casse**

Judgment

Accused Nos.1&2 are respectively charged under Sections 5(2)(e) & 5(1) and Section 94(1) (i) (vi) of the Occupational Safety and Health Act 2005 – Act No.28 of 2005 coupled with Section 44(2) of the Interpretation and General Clauses Act with unlawfully failing on or about the 12th day of November 2009 to ensure so far as is reasonably practicable that any person not in its employment is not exposed to any risk to his safety namely one Louis Pedie Jean Pierre employed by Serge Casse sustained burns injuries and subsequently “passed” as a result of those injuries, when he was laying formwork for the construction of a drain near the Steam Transformer (evaporator station no 1) at its place of work at Omnicane Milling Operations Limited, La Barraque, L’Escalier when a hot water discharge pipe together with its valve snatched from its threaded connection from the said steam transformer and a jet of hot water splashed on him and

Accused No.2 with unlawfully failing on or about the 12th day of November 2009 to ensure so far as is reasonably practicable, the safety, and health at work of one of his employees namely one Louis Pedie Jean Pierre sustained burns injuries and subsequently “passed” as a result of those injuries, when he was laying formwork for the construction of a drain near the Steam Transformer (evaporator station no 1) at its place of work at Omnicane Milling Operations Limited, La Barraque, L’Escalier when a hot water discharge pipe together with its valve snatched from its threaded connection from the said steam transformer and a jet of hot water splashed on him. I amend the information *proprio motu* pursuant to Section 73 of the District and Intermediate Courts (Criminal Jurisdiction) Act given that both the Prosecution and the Defence were all throughout the trial aware that the said Louis Pedie Jean Pierre has “passed away” so that the word “passed” meant “passed away” and which is reflected by the evidence borne out by the record and as such both accused parties have not been misled in any way or prejudiced in the preparation of their Defence and such defect in the information is simply being cured so that it can tally either with a conviction or an acquittal (see – **Venkiah v R** [\[1984 MR 621\]](#)).

Accused No. 1 through its representative has pleaded not guilty to count 1 and was assisted by Counsel and Accused No.2 has pleaded not guilty to count 2 to the information and remained *inops consilii*.

The particulars of the Charge as regards Count 1 for Accused No.1 are as follows:

Omnicane Milling Operations Limited, owner of premises, has failed to ensure that any person not in its employment is not exposed to any risk to his safety and health at work by failing to provide a physical barrier near the steam transformer as it was aware:

- (i) of the presence of hot water pipes on the steam transformer.
- (ii) that stone breaking work had been carried out near the steam transformer one week before the proposed casting of drain.

The case for the Prosecution unfolded as follows:

An accident at work occurred on 12 November 2009 at Omnicane Milling Operations Limited near a Steam Transformer (evaporator station no 1) at La

Barraque, L'Escalier where one Louis Pedie Jean Pierre, employed by Accused No.2, sustained burns injuries and subsequently passed away as a result.

An enquiry was carried out by a Health and Safety Officer namely Mrs. Asha Devi Motur. It revealed that at the time of the accident, the deceased person was giving his back to the steam evaporator meaning transformer and talking to his supervisor within one metre from the evaporator. She went to the locus of the accident at Accused No.1 on 16 and 24 of November 2009 and took photographs respectively as per Docs. D1 to D7. No damage was found as she went there 4 and 12 days after the accident took place. She recorded 3 statements from the representative of Accused No.1 and 2 statements from Accused No.2 under warning.

The original drain was already enlarged by means of a breaker so that the sides were broken by another contractor Mr. Raboude. Accused No.2 came into the picture about a week later to lay the formwork and to do the concrete masonry work for the enlarged drain.

Before doing the concrete masonry work, in order to allow room for the laying of the formwork, a PVC pipe was fitted to one of the discharge pipes for hot water to be diverted away from the area, a few metres away into another drain on the side.

Now, before laying the formwork, concrete had to be cast first. The deceased was employed to do that job by Accused No.2. The accident happened at the level of the casting of the concrete only so that the formwork could be done afterwards. The deceased was within one metre from the Steam Evaporator which was in operation and he was laying a casting concrete. The deceased was the only one doing that job and he was provided with all protective equipment.

The steam evaporator was brought from Riche en Eau sugar factory to Accused No.1 in June 2009. It was converted into a steam transformer because previously it was used as an evaporator for the manufacture of sugar. It was in operation since September 2009. All the transfer, the installation and the commissioning of it at Accused No.1 was done by Eminéo company. Thus, as part of the commissioning, a hydraulic test was performed on the steam transformer up to 3 bars which it could resist as per a statement given by the Eminéo company. According to her, when it operated, it was less than 3 bars and she thought that the maximum was 2 bars.

The steam transformer was a unique equipment containing two discharge pipes connected to a threaded type valve on both sides. One discharge pipe did a curb of 90 degrees so that water could be diverted away and at some place, it was connected to the valve. That whole pipe got detached together with that valve and hot water was splashed while the deceased was giving his back to the evaporator and was talking to his supervisor. That valve was part of the evaporator and it was the same as it was in the previous factory. At the time of the accident, the water was not being discharged directly into the enlarged drain and there was a diversion for the water.

In her experience as Health and Safety Officer, she stated the following:

1. The worker was required to work near a steam transformer where it was in operation and there was hot water being discharged on the side and it represented a risk for the worker of getting splashed or getting in contact with the hot water. There was a risk of burn injuries. The temperature was at 80 degrees Celsius.
2. Accused No.1 is a factory and the evaporator was found outside it. There was a duty on the employer to carry out a risk assessment before employing someone. She meant that there was a joint responsibility on both the owner (Accused No.1) and the contractor (Accused No.2) to carry out a risk assessment to see what were the risks and hazards involved so that necessary precautions could be taken before the worker started to work.
3. As regards Accused No.2, the purpose of a risk assessment was to identify the risk associated with the work so that how the worker could carry out his work safely without getting injured.
4. Had a risk assessment been carried out by Accused No.1 to identify the risk, it would have been observed that the worker could not work in the area where the evaporator was in operation, either the activity of the steam transformer was stopped or there should have been a barrier between the worker and the evaporator so that the work could safely be carried out and which was not done. By barrier, she meant a boarding that was to be put in construction works to prevent contact of a person with the steam transformer to protect the employee. The board should have been placed just between the pipe and the

worker as the place was very restrained. It should have been immediately after the evaporator between the evaporator and the worker.

5. No instructions or guidelines were given by Accused No.2 to the deceased as to the precautions to be taken in view of the presence of the hot water pipe. As per the statement given by Accused No.2 himself, he agreed to the fact that he did not identify any hazard or any risk with respect to that area and the work being carried out. He did not give any safety instruction to his workers.

Thus, according to her, either the equipment should have stopped operation which would as she understood would have affected the production line. But then, given that the place was restrained, the design of the discharge pipe ought to have been altered to allow for the placing of a boarding meaning a barrier which would have prevented the accident. However, that aspect of changing the design of the discharge pipe was not put to the Accused No.1 so that although 3 statements were recorded from Accused No.1 under warning, she did not inform the Accused No.1 by extension of the nature of the offence that the company was suspected to have committed. She meant that the protective barrier should have been put before the work carried out by Mr. Raboude by means of a pneumatic breaker because the steam transformer was in operation.

A mechanical engineer posted at the Occupational Safety and Health Inspectorate, Mr. Shah Ismet Abdool Rohaman, gave evidence in Court. He went on the locus at Accused No.1 twelve days after the accident occurred. Hence, he could not see actually what were the fittings which were involved at the time of the accident as they were not available for examination. Whenever there was an equipment which was installed, after the installation, it had to be tested and commissioned. But he was not the one who conducted the hydraulic test on the steam transformer and he was not given a report certificate or a calibration certificate that a hydraulic test of a pressure of 3 bars was carried out on the equipment during the commissioning. He could not come to a conclusive opinion as he could not get a clear picture of what happened on that day because visually, there was no damage on those fittings that were shown to him.

Mr. Jean Claude Arlanda, a plumber and pipe fitter, employed by Accused No.1 gave evidence in Court. He stated that there was a drain just below the steam transformer and there was a PVC pipe that was added to the discharge pipe

emanating from that equipment by him about two days before the accident around 10.11.2009 so that the water fell into another drain.

Mr. Jean Noel Casse in his capacity as mason gave evidence in Court. Accused No.2 was his father who undertook masonry work on the site of the accident at Accused No.1 in November 2009. Accused No.2 had employed Mr. Louis Pedie Jean Pierre who was working at Accused No.1 on the day of the accident namely on 12.11.2009. The son of Accused No.2 was together with the deceased meaning Pedie and he started working at 7.00 hours on that day. He was beating concrete after receiving instructions from his father who left. The deceased was standing and laying concrete when the discharge pipe got detached from the steam transformer which was in operation and hot water splashed on Pedie and there was no PVC pipe added at the time of the accident. When the accident happened, they were both standing and talking as he was giving him instructions as to how to do the drain when all of a sudden, a valve got detached from the evaporator and came in his direction and missed him and hit Pedie. They did nothing to that valve. The following day the valve was changed. Accused No.2 gave them protective equipment when they worked on site meaning, helmet, boots, gloves and uniform. He agreed that what happened was outside their control as they were equipped when working on site as they were standing and suddenly the valve got detached and came in his direction.

The last Prosecution witness, Mr. Simon Sylvestre Nadal, in his capacity as mason employed by Accused No.2 gave evidence in Court. On 12.11.2009, he working at Accused No.1 for Accused No.2 on the treatment of a roof slab of a building. The deceased was working for Accused No.2 as mason and was doing some masonry work near the steam evaporator and he did not notice a drain near the evaporator. On site, he was given protective equipment like boots and gloves so that all precautions were being taken.

The case for Accused No.1 rested solely on the testimony of Mr. Vikash Minnuth in his capacity as mechanical engineer which is to the following effect. As regards the steam transformer, it was brought from Riche en Eau. It was being used as an evaporator for the production of sugar. But when it was brought to the sugar factory of Accused No.1, it was used as a heat exchanger. The steam evaporator was an old equipment. He was not present when a hydraulic test of a pressure of up to 3 bars was done on the equipment to see if it could sustain pressure during operation although there was a report from Eminéo company that it was done. Maintenance

continued after commissioning. There was a manhole used to drain the equipment. The tap/valve was used to exit water from the evaporator. The water from the evaporator was very hot, that is, 80 degrees Celsius and even higher. The equipment operated with the threaded valve at Riche en Eau and it was replaced by a new valve which was welded and was more resistant than the threaded one.

No evidence was adduced by Accused No.2.

I have given due consideration to all the evidence put forward before me and the submissions of all learned Counsel for the Defence and for the Prosecution.

The charge proffered against both accused parties was the failure to ensure the safety and health at work of Louis Pedie Jean Pierre (hereinafter referred to as Pedie). The relevant work is the laying of formwork for the construction of a drain near the steam transformer. The failure to ensure the safety and health of Pedie at work viz. when he was laying formwork so that he is not exposed to any risk to his safety.

Therefore, the relevant exposed risk to his safety was in relation to the relevant work of laying of formwork which both Accused Nos.1 &2 had purportedly failed to ensure. Thus, the particulars of the charge provided by the Prosecution in relation to Accused No.1 as owner of premises, having failed to ensure that any person not in its employment is not exposed to any risk to his safety and health at work *by failing to provide a physical barrier near the steam transformer as it was aware – (a) of the presence of hot water pipes on the steam transformer and (b) that stone breaking work had been carried out near the steam transformer one week before the proposed casting of drain* were in relation to the work of laying of formwork.

Now, no evidence has been adduced by the Prosecution that Pedie was doing the work of laying the formwork for the construction of a drain near the steam transformer on the material day namely on 12.11.2009.

A contrario, the following remained uncontested:

1. Before the laying of the formwork could be done, concrete had to be cast first and that Pedie was employed to do that work by Accused No.2. The accident happened at the level of the casting of the concrete only.
2. It was only after the work of casting of concrete was completed that the addition of a PVC pipe to the discharge pipe from the Steam Transformer would become relevant in order to allow room for the laying of the formwork

so that hot water could be diverted a few metres away into another drain on the side.

It is apposite to note that the two Prosecution witnesses namely Mr. J.C. Arlanda and Mr. J. N. Casse, contradicted themselves as to the absence of the PVC pipe on the material day while a third Prosecution witness namely Mr. S. S. Nadal, conceded that his attention was not drawn in relation to the drain. Needless to say, that I believe the eyewitness, Mr. J. N. Casse, that at the material time there was no PVC pipe added and which is more plausible as the stage of laying of formwork was not reached yet.

Thus, it is clear enough that the valve was closed so that no hot water emptied into the drain otherwise Pedie would not have been able to do the casting of concrete being within one metre away. In the same breath, both expert witnesses namely both mechanical engineers be it on behalf of the Prosecution viz. Mr. Rohaman and on behalf of Accused No.1 viz. Mr. Vikash Minnuth, were of no help to the Court as they did not witness any hydraulic test done on the steam transformer as regards the pressure it could sustain and nor did they have a calibration certificate to that effect from the Eminéo company or from any other source produced in Court. Mr. Rohaman who went to the locus of the accident 12 days after it occurred and by that time all the fittings involved in the accident were changed already and the photographs taken by the enquiring officer, Mrs. Motur. was done only 4 and 12 days after the accident so that the extent of work done and the state of the fittings of the steam transformer bearing in mind it was not a new equipment including its threaded valve could not be ascertained and as such their conclusions as regards the cause or probable cause of the accident cannot be relied upon.

As per the unrebutted testimony of the eyewitness, the accident happened when the valve and the discharge pipe got detached from the steam transformer and the valve came in his direction and missed him and hit Pedie who was splashed with hot water while they were both standing and talking as he was giving him instructions as to how to do the drain. Such an occurrence shows that the old threaded valve could not sustain the steam pressure inside the equipment although the maintenance was done because the valve was closed when the steam transformer was in operation. Obviously, it was not reasonably practicable for the accused parties to have foreseen such an occurrence as the breaking of the drain was already done by Mr. Raboude about a week ago without any problem and no laying of formwork for the enlarged

drain was done yet. Furthermore, it remained uncontested that the place was restrained within one metre from the drain and steam transformer and that the employees of Accused Nos.1 & 2 were provided with protective equipment including Pedie and the eyewitness such as helmet, boots, gloves and uniform.

For all the reasons given above and which are compatible to some extent with the unsworn statements of both accused parties, the case for the Prosecution should fail. I, accordingly dismiss the information in relation to both accused parties in relation to their respective counts.

S.D. Bonomally (Mrs.) (*Vice President*)

16.9.22