

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.535 of 1996

Smt.Shevantabai R. Raut & Anr .. Appellants
Versus
The State of Maharashtra .. Respondent

Mr.Abhishek Yende i/b Mr.A.P. Mundargi, Advocate for the appellants.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 13th JULY, 2015

ORAL JUDGMENT :-

1 The appellants who are the accused nos.1 and 2 respectively in Sessions case No.36 of 1990 tried by the Addl. Sessions Judge, Kolhapur were found guilty of various offences and were sentenced as follows by the learned Addl. Sessions Judge.

<u>Offence punishable under</u>	<u>Punishment</u>
i) sec.304 IPC r/w sec.34 of the IPC	10 years
ii) sec.328 IPC r/w sec.34 of the IPC	5 years
iii) sec.324 IPC r/w sec.34 of the IPC	1 year
iv) sec.273 IPC r/w sec.34 of the IPC	2 months
v) sec.67(C) of the Bombay Prohibition Act	2 months

2 Being aggrieved by their conviction and sentences imposed by the learned Addl. Sessions Judge, the appellants have approached this Court by filing the present Appeal, praying that the impugned judgment be set aside and appellants be acquitted.

3 It was submitted by Mr.Abhishek Yende, the learned counsel for the appellants that both the appellants have passed away during the pendency of the Appeal. Nevertheless, the sentences being of fine also, the Appeal would not abate, and therefore, was heard on merits.

3 The case arose out of a tragedy in which 13 persons died. The appellants were allegedly selling illicit liquor. A number of persons consumed illicit liquor sold by the appellants, and as a result of the consumption of the illicit liquor which was poisonous, 13 persons died during the period from 20th May 1989 to 23rd May 1989. On receipt of information to the effect that a number of persons had died due to consumption of 'volum' (french polish) from the appellants, a case came to be registered, investigation commenced and totally five persons came to be prosecuted in respect of the offences mentioned above. The other three were however, acquitted.

4 That, indeed 13 persons died due to consumption of poisonous substance i.e. liquor, cannot be and has not been disputed. Though there is some difference in expression of the cause of death as opined by different doctors, all these persons

have died due to the consumption of poisonous substance, was satisfactorily established before the trial court.

5 The question is whether that poisonous substance said to be '*voltum*' (french polish) had been purchased by the persons concerned i.e. the victims from the appellants.

6 The learned counsel for the appellants contended that the conclusion in that regard i.e. that those who died, had purchased illicit liquor from the appellants, and that due to the consumption of such liquor, they died, as arrived by the learned trial Judge, is not sound. It is pointed out that a number of witnesses i.e. PW Nos.12 to 22 were examined to establish this aspect of the matter, but only a few of them have said about the deceased persons having consumed *voltum liquor* brought from the appellants. I have gone through the evidence in that regard, and I find that there is substance in the contention advanced by the learned counsel for the appellants. Only a few of these witnesses have stated about the concerned victim being in the habit of purchasing liquor from the appellant. Some of them have named only the appellant no.1 and have not named the appellant no.2 at all. Atleast one witness has said about the appellants having two different shops when, as per the prosecution case, the sale of such liquor used to take place from the house of appellant no.1, and the appellant no.2 also used to assist her in manufacturing the illicit liquor at the same place.

7 Nevertheless, in the ultimate analysis, the conclusion arrived at by the learned trial Judge does not seem to be suffering

from any error or illegality. There was certainly evidence to connect the appellants with the sale of illicit liquor. There was undoubted evidence that the deaths have been caused due to the consumption of illicit liquor.

8 The question, however, is of the propriety, legality and correctness of the conclusion arrived at by the learned trial Judge that the appellants are guilty of an offence punishable under section 304 of the IPC. Section 304 of the IPC is in two parts. The learned Judge has not specified as to in which part of section 304 the offence allegedly committed by the appellant, falls. However, given the facts of the case and since there is no allegation that the appellants had done the act of selling poisonous liquor to a number of persons with an intention of causing death of such persons, or of causing such bodily injury as was likely to cause death, the offence allegedly committed by the appellants could at best be punishable under Part-II of section 304 of the IPC.

9 Section 304 of the IPC provides punishment for culpable homicide not amounting to murder. Culpable homicide is defined in section 299 of the IPC. It is clear that if death is caused by doing an act

- (i) with the intention of causing death
- or
- (ii) with the intention of causing such bodily injury as is likely to cause death
- or
- (iii) with the knowledge that death is likely to be caused

then the act would amount to the offence of culpable homicide defined in section 299 of the IPC, and made punishable under section 304 thereof. Now, in the instant case, the only theory could be that the appellants had sold the poisonous liquor with the knowledge that by their act i.e. of selling the liquor they were likely to cause death. Given that one is right in assuming that the appellants knew that the liquor purchased from them would be consumed by customers, the question is whether the *knowledge* that such consumption by the customers and other persons was *likely to* cause their death, could be attributed to the appellants, or any of them. There does not appear to be any evidence attributing such knowledge to the appellants or any of them. I have examined the impugned judgment in order to ascertain as to on what basis such a conclusion has been arrived at by the learned trial Judge. I find that the learned Judge has only emphasized that the appellants had indeed sold poisonous liquor to a number of persons, some of whom had died after consuming the same. The learned Judge has not at all addressed himself to the question as to *whether the appellant had sold the liquor with such intention and/or knowledge so as to hold them guilty of the offence punishable under section 304 of the IPC in the event of death being caused by consumption of such liquor.* The learned Judge has concentrated only on whether the poisonous liquor had been sold by the appellants to a number of persons and that a number of persons who had consumed such liquor had died as a result thereof.

10 In the instant case, it is clear that the appellants regularly manufactured and purchased illicit liquor. Some of the persons who died, were regular consumers of the illicit liquor

which they used to purchase from the house of the appellants. Therefore, in the absence of any material, it would not be possible to attribute to the appellants or any of them the knowledge as would be requisite to make them liable to be punished in respect of an offence punishable under section 304 of the IPC.

11 The conviction of the appellants with respect to the charge of an offence punishable under section 304 of the IPC, does not appear to be sound, proper or legal. There was no evidence warranting such an inference. In fact, as aforesaid, the learned Judge did not discuss at all whether the mental element necessary to constitute an offence punishable under section 304 of the IPC could be attributed to the appellants or any of them. The learned Judge appears to have been carried away by the enormity of the tragedy in which a large number of persons had died.

12 The appellants are already dead, but since their conviction with respect to the offence punishable under section 304 of the IPC, appears to have been arrived at, without any evidence and without proper consideration of the ingredients of the said offence, the same is liable to be interfered with.

As regards the conviction of the appellants with respect to the other offences, the same appears to be proper and legal in the ultimate analysis, warranting no interference.

13 The Appeal is partly allowed.

14 The order of conviction of the appellants in respect of an offence punishable under section 304 of the IPC and sentences imposed upon them on that count are set aside.

15 The appellants are acquitted of the offence punishable under section 304 of the IPC read with section 34 of the IPC. Fine, if paid by them with respect to the said offence, be refunded to their heirs and legal representatives.

16 The conviction of the appellants with respect to the other offences as recorded by the trial court, and the sentences imposed upon the appellants therefor, are maintained. The appeal, so far as it relates to the conviction of the offences punishable under Section 328 IPC r/w Section 34 of the IPC Section 324 IPC r/w Section 34 of the IPC Section 273 IPC r/w Section 34 of the IPC Section 67(C) of the Bombay Prohibition Act and the sentences imposed therefor, is dismissed.

17 Appeal is disposed of in the aforesaid terms.

(ABHAY M.THIPSAY, J)