

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.187 OF 2008

-

ORDER:

-

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 11.02.2008, passed by the I Additional Sessions Judge, Mahabubnagar, in Criminal Appeal No.59 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 37-A of A.P. Excise Act, 1968 (for short, 'the Act') vide the judgment dated 13.04.2007 in C.C.No.621 of 2006 by the Special Judicial Magistrate of I Class for trial of cases under Prohibition and Excise Acts, Mahabubnagar, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the State in C.C.No.621 of 2006 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that on 30.09.2004 at about 9.30 a.m. PW1 lodged a complaint to the police, Addakal stating that on 29.09.2004 at about 10 a.m., his wife Urmila and his sister-in-law Shivamma and some others went to cut paddy crop in the fields of PW8 Pedda Kondanna and attended the labour work till evening. PW8 paid each of them Rs.20/- and gave one toddy bottle. At about 7.00 p.m., PW8 took the said Urmila and Shivamma to the toddy shop of the accused, who supplied one toddy bottle to them on the instructions of PW8. After having toddy, while they were returning to their respective homes, PW1's wife Urmila fell down on the ground near the house of one Avula Kondanna. At that time, PW1's brother

Shankaraiah shifted Urmila from the road, found her dead and informed the same to PW1. PW1 suspects that his wife might have died due to consumption of toddy, as such he requested for necessary action in the matter. PW9 received the complaint and registered as a case in Crime No.107 of 2004 for the offence punishable under Section 174 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.) and took up investigation. During the course of investigation, PW9 recorded the statements of witnesses and after receiving the post-mortem examination certificate, F.S.L. report and inquest report, he altered the section of law and filed the Charge sheet for an offence punishable under Section 272, 304-II of the Indian Penal Code, 1860 and under Section 34(a) of the Act.

4. The learned Special Judicial Magistrate of I Class took cognizance of the case for the offence punishable under Section 37-A of the Act and framed charge against the accused for the said offence. During trial, on behalf of the prosecution, PWs.1 to 11 were examined and Exs.P.1 to P.13 were got marked. The Court has summoned the Assistant Director of Forensic Science Laboratory, Hyderabad and examined him as CW1 and got marked Exs.C.1 and C.2 and MO1.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting the incriminatory material deposited against her. The Accused denied the incriminatory material, but examined DW1 and got marked Ex.D.1. After hearing the arguments and after perusing the record, the learned Magistrate convicted the accused for the offence punishable under Section 37-A of the Act and sentenced her to undergo simple imprisonment for a period of three years and to pay a fine of Rs.5000/-, in default to suffer simple imprisonment for six months.

6. Aggrieved by the conviction and sentence passed by the trial

Court, the accused preferred Criminal Appeal No.59 of 2007 before the I Additional Sessions Judge, Mahabubnagar, where the appellate Court after hearing the arguments and considering the evidence on record, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

7. Being aggrieved by the judgment of the appellate Court passed in Criminal Appeal No.59 of 2007, the accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/accused argued that except the evidence of PW2, there is no independent witness; that both the Courts below by placing reliance on the testimony of PWs 1 to 3 which is highly interested, convicted the petitioner without any basis; that both the Courts below also not considered the evidence of DW1 which established that the petitioner is innocent; that the Courts below also failed to see that the liquor was supplied to the deceased by her employer; that the panch witness for seizure of toddy i.e. PW5 did not support the case of prosecution; that the Courts below also failed to notice that a legal notice was issued on behalf of PW2 which shows that they claimed compensation from one Chandrakala; that the prosecution also failed to prove that the shed from where toddy was seized is not belong to the accused; that the prosecution failed to explain the delay in lodging the complaint as the wife of PW1 died on 29.09.2004 and complaint was given on 30.09.2004; that the husband of Chandrakala is a Sarpanch of the village, as such the police has not filed the complaint against the said Chandrakala; that the Investigating Officer was not examined in this case and that the evidence of PW2 cannot be relied upon as he gave two different statements, but believing the first version, the Courts below convicted the petitioner.

The learned counsel further argued that the evidence of PW2 is

wholly unreliable and relied upon a case-law reported in *Vadivelu Thevar Vs. The State of Madras*^[1], wherein the Hon'ble Supreme Court held at Para 11 and 12 as follows:

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly, unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way – it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. ...”

and finally prayed the court to allow the revision and to acquit the revision petitioner.

9. On the other hand, the learned Public Prosecutor argued that by examining PWs 1 to 11, the prosecution established that the accused has supplied toddy adulterated by Chloral hydrate without any licence on 29.09.2004 at Thunkinipoor Village of Addakal Mandal, as a result the wife of PW1 by name Urmila died; that PW2 who was present along with the deceased corroborated the evidence of prosecution in all aspects that the accused has supplied the adulterated toddy to the deceased; that the evidence of PWs 3 and 4 coupled with the evidence of the doctor who conducted the post-mortem on the dead body of Urmila gave final opinion that

she died due to Chloral hydrate with

Ethyl alcohol poison leads to cardio respiratory failure and the evidence of PW10 is also corroborated by the evidence of Assistant Director, Forensic Science Laboratory, Hyderabad, who issued Ex.C.2 report, dated 31.12.2004, wherein he clearly stated that Items 1 and 2 contained 1300 Mgs. of Chloral hydrate a hypnotic substance along with Ethyl alcohol; that the prosecution is able to prove that the accused committed the offence, as such both the Courts below gave concurrent finding that the accused committed the offence punishable under Section 37-A of the Act and prayed the Court to dismiss the revision case.

10. Now, the point for determination is --

Whether the revision petitioner is entitled to set aside the concurrent judgments passed by the trial Court and the appellate Court for the offence punishable under Section 37-A of the Act?

11. **Point:**

As per the evidence produced by the prosecution, PW1, who is the *de facto* complainant, lodged a complaint Ex.P.1 with the police on 30.09.2004 at 9.30 a.m. stating that on the previous day i.e. on 29.09.2004, his wife along with PW2 and others went to cut the paddy crop of PW8 and attended labour work till evening, for that each of them received wage of Rs.20/- and one toddy bottle. It is also mentioned that on the same day at about 7.00 p.m., PW8 took the wife of PW1 and PW2 to the toddy shop of the accused who supplied one toddy bottle each to the deceased and PW2 on the instructions of PW8 and after consuming the same, both fell down and later on the wife of PW1 died.

12. PW1 deposed that his wife might have died due to consumption of toddy. After receiving the complaint on 30.09.2004, PW9 Head Constable registered the same as a case in Crime No.107 of 2004

under Section 174 Cr.P.C. Admittedly, PW1 is not the eyewitness and he came to know the facts mentioned in Ex.P.1.

13. PW2 is the solitary eyewitness to the case of prosecution. PW2 in her chief-examination stated about consuming the toddy at the shop of accused and the wife of PW1 died and she was survived due to providing medicines.

14. After registering the complaint and after recording the statements of the witnesses, PW9 conducted the inquest panchanama, scene of offence panchanama and seizure panchanama in the presence of PW5 and PW6. PWs 5 and 6 did not support the case of prosecution. The evidence of PW9 shows that he along with PWs 5 and 6 went to the toddy shop bearing House No.1-36 of Thunkinipoor village belonging to the accused. As per the seizure report, PW9 along with PWs 5 and 6 went to the toddy shop of the husband of the accused and at that time accused was present and admitted about the selling of toddy to the deceased and PW2. As per the seizure report, the accused is manufacturing toddy and selling the same at her house. PW9 seized two crates of bottles which were found at a distance of 22 feet from the house of the accused in the cattle shed, out of which four bottles of toddy were taken as samples and seized the same.

15. A perusal of Ex.P.10 shows that the seizure of toddy was not from the house of accused but from cattle shed. The evidence of PW9 in this regard is relevant. In the cross-examination, PW9 admitted that the cattle shed belongs to some other person and he does not know the name of the owner of the cattle shed and he did not obtain the ownership certificate of the said cattle shed. PW9 further admitted that he seized MO1 sample bottle from the cattle shed. PW9 also admitted that the cattle shed is situated about 22 feet from the house of the accused. The evidence of PW9 is not corroborated

by independent witnesses PWs 5 and 6.

16. The other witnesses of the prosecution i.e. PWs 4, 7 and 8 turned hostile. The evidence of PW4 shows that on the date of incident, she also went to the fields along with the deceased and PW2 and after completion of work, PW8 gave them toddy and after consuming the same, they went to their houses. PW4 stated that she does not know from where the toddy was brought. PW7 stated that he did not enquire any person about the case of the death of the deceased. PW8, who called the deceased and PW4 to do agricultural work, did not support the case of prosecution. PW8 stated that he did not give any toddy to the deceased or other labourers on the date of incident. Therefore, the evidence of PWs 4, 7 and 8 is not helpful to the prosecution to prove its case.

17. The learned counsel for the revision petitioner vehemently contended that the prosecution failed to prove that the cattle shed belongs to the accused and PW9 failed to obtain the ownership certificate of cattle shed and further the samples were drawn from the toddy available in a cattle shed which is situated 22 feet away from the house of the accused, therefore the prosecution failed to prove that the accused mixed the intoxicant drug or noxious substance which is likely to cause death of the human being i.e. wife of PW1 in this case. There is no dispute that wife of PW1 was died and post-mortem was conducted by PW10 wherein she opined that the cause of death was due to Chloral hydrate and Ethyl alcohol poison leading to cardio respiratory failure. The prosecution also examined CW1 – Assistant Director of Forensic Science Laboratory, who analysed and found hypnotic substance along with Ethyl alcohol in stomach, liver and kidney. Even the samples sent to FSL proved the above said fact.

18. In this case, the Investigating Officer – N.Shankar (LW12) was

not examined, whereas PW11 deposed that he verified the investigation done by LW12 and filed the Charge sheet into the Court.

19. The learned counsel for the revision petitioner/accused argued that the prosecution relied upon the evidence of PW2 and the Courts below believed the evidence of PW2 and convicted the accused for the offence punishable under Section 37-A of the Act. Admittedly, PW2 is a solitary eyewitness relied on by the prosecution. According to PW2, on the date of incident, herself and deceased consumed toddy in the shop of accused, thereafter wife of PW1 by name Urmila died and she fell down on the ground and recovered after taking medicines. PWs 1 and 3 in their evidence have not stated that they provided medicines to PW2 and due to which she survived. In the cross-examination, PW2 admitted that on the date of incident along with them other persons also have the toddy and they are alive and in good health. PW2 further admitted that one Buchanna also sells the toddy and he is the Sarpanch of the village and after the death of wife of PW1, herself and PW1 gave a legal notice to Chandrakala – wife of Buchanna and also to the accused claiming compensation. PW2 also stated that they consumed toddy at the agricultural fields. In the re-examination by the Assistant Public Prosecutor, PW2 changed her version and stated that she does not know from whom the toddy was brought to the fields and they did not consume the toddy in any shop.

20. Basing on the earlier version of PW2, the trial Court as well as the appellate Court held that the accused committed the offence under Section 37-A of the Act. The learned counsel for the accused argued that the evidence of PW2 is wholly unreliable and she changed her version from time to time. PW2 in her chief-examination stated that on the date of incident, herself and the deceased went to the house of accused and consumed toddy and while returning they fell down due to adulteration in toddy. The Investigating Officer ought to have searched the house of the accused, but in this case two crates

of toddy were found in a cattle shed situated 20 to 22 feet away from the house of accused. The cattle shed does not have any house number or the Investigating Officer has not taken any steps to prove that the cattle shed stands in the name of accused and the accused is mixing the toddy with intoxicated drugs or noxious substance.

21. Further, nothing has been seized from the house of accused to prove that the deceased died after consuming the adulterated toddy. As per the evidence of PW2, not only the accused but also one Chandrakala – wife of Buchanna (Sarpanch of the village) is doing the toddy business and the Investigating Officer failed to gather the evidence on this aspect.

22. To prove the ingredients of Section 37-A of the Act, the prosecution has to establish that the accused mixes or permits to be mixed with any liquor or intoxicating drug any noxious substance or any substance which is likely to cause disability or grievous hurt or death to human beings (or) omits to take reasonable precautions to prevent the mixing of any noxious substance or any substance which is likely to cause disability or grievous hurt or death to human beings, with any liquor or intoxicating drug (or) possessing of any liquor or intoxicating drug in which any substance referred aforesaid is mixed knowing that such substance is mixed with such liquor or intoxicating drug. But, both the Courts below have not given any finding that the accused mixed the poisonous substance in the toddy consumed by the deceased. Therefore, the prosecution failed to prove the link in the chain of circumstances which leads to the death of the deceased. Accordingly, the benefit of doubt is to be given to the accused and thereby the point is answered in favour of the revision petitioner.

23. Accordingly, the Criminal Revision Case is allowed. Conviction and sentence passed in Criminal Appeal No.59 of 2007 on the file of the I Additional Sessions Judge, Mahabubnagar, is set aside against

the revision petitioner/accused and thereby, his bail bond shall stand cancelled. The revision petitioner/accused is also entitled for the refund of the fine amount.

24. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 19.03.2015

Anr

[\[1\]](#) AIR 1957 S.C. 614(1)