

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.566 of 2011**

1. Usha Bai Aged about 41 years, W/o Narad Lahre
2. Narad Lahre, Aged about 46 years S/o Barsan Lahre.

Both R/o Village Muktaraja, Ward No.11, Thana, Baradwar, Distt.
Janjgir Champa (CG).

----- Appellants

Versus

The State of Chhattisgarh through Police Station Baradwar, Distt.
Janjgir Champa (CG).

---- Respondent

For Appellant	:	Shri Rajesh Jain, Advocate.
For respondent	:	Shri UKS Chandel, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

27/09/2016

1. This appeal is directed against the judgment and order dated 19.07.2011 passed by the Additional Sessions Judge, Sakti, in Sessions Trial No.68 of 2011 convicting the accused/appellants for the offence punishable under Sections 304 (Part-II) IPC and under Section 49-A(1)(iii) of the CG Excise Act, sentencing them to undergo rigorous imprisonment for ten years with fine of Rs.1000/- for each offences with default stipulation with a direction to run both the sentences concurrently.
2. Case of the prosecution in brief is that on 04.03.2010 it is stated that the appellants were illegally carrying on business of preparing and selling liquor at their residence in violation of provisions of the

Chhattisgarh Excise Act. It is stated that in the said liquor, there was some poisonous substance. On the fateful day i.e. 04.03.2010, Anil, Vijay @ Birju, Bheem @ Pankaj and Jugri Bai came to the house of the appellants for purchasing/consuming alcohol. After consuming liquor, they left the house of the appellants. After some time all of them were found unconscious and while they were being taken to the Hospital, they died on the way.

3. Merg intimation was registered at Police Station Janjgir, District Jangir Champa in respect of death of above four persons. FIR, Ex. P/12, was lodged by one Omprakash Kurre, PW-8. The dead bodies of the deceased were sent for postmortem. Dr. R.K. Singh and Dr. K.P. Rathore conducted postmortem of the deceased. Death was opined due to failure of cardio respiratory as a result of taking poisonous substances.
4. So as to hold the appellants guilty, the prosecution has examined 24 witnesses in support of its case whereas, the defence did not examine any witness. Statement of the appellants were also recorded under Section 313 CrPC in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.
5. The court below on the basis of circumstantial evidence which the investigating agency had collected, found the appellants to be guilty and convicted and sentenced them as mentioned in the paragraph-1 of this judgment.
6. Learned counsel for the appellants at this juncture submits that the appellants do not want to contest the appeal on merits, but pray for an

interference with the sentence awarded and pray that it may be reduced to the period already undergone as the appellants have already undergone sentence period of more than 6 ½ years imprisonment without remission and if the remission period is calculated, then the period of custody would be much more.

7. On the other hand learned counsel for the State supports the impugned judgment and submits that the court below has already taken a lenient view in convicting the accused/appellants under Section 304 (Part-II) IPC instead of Section 304 (Part-I) IPC.
8. After hearing counsel for the appellants, since the appellants are not contesting the appeal on merits, considering the request for interference with the sentence awarded, if we look into the facts and circumstances of the case, indisputably, the appellants who are Husband and Wife were carrying on business of making illicit liquor at their house and selling the same to the villagers in violation of the provisions of the Excise Act.
9. It is also not in dispute that on account of consumption of illicit liquor prepared by the appellants, on 04.03.2010 four persons died after consuming the same. It has also been established from the report of chemical examination that the illicit liquor contained pesticide in it which had resulted into death of four persons, but what cannot be brushed aside is the fact that from the evidence which have come on record, it does not reveal that the appellants had invited those victims to their residence and had voluntarily offered spurious liquor containing pesticide. On the contrary, what is reflected from the evidence of the

prosecution witnesses is that, the deceased persons were alcoholic and used to visit the house of the appellants for consuming liquor frequently. If we look into the facts and circumstances of the case, what is reflected is that, the appellants had been carrying said business for quite some time. There was no agitation or protest whatsoever from the villagers. They were availing the facilities and there is no iota of evidence which have come on prosecution case that the appellants had called upon those persons to visit their house for consuming liquor. On the contrary, the victims themselves had voluntarily gone to the house of the appellants to purchase/consume liquor.

10. True it is that neither preparation of liquor at residence nor selling of the same was proper, legal and justified, but, when we visualize the background from where the appellants come, the place to which the appellants belong to and also in the village customs and atmosphere, preparation of liquor in the residence is a common feature particularly in the tribal dominated areas and the people assembling and having liquor in group also is a common feature.
11. We should not brush aside the fact that there is no evidence on record to show that there was any sort of enmity between the appellants and the persons who had come to their residence for consuming liquor. Unfortunately four persons succumbed to death after consuming spurious liquor. In the given factual background of the case, if we take into consideration the sentence which has been awarded by the court below, we find that it is the maximum sentence which had been

imposed by the court below to the appellants for the offence under Section 304 (Part-II) IPC.

12. Thus, taking into consideration the overall facts and circumstances of the case, particularly the peculiar background, the place of incident and also the fact that the appellants are both Husband and Wife who are in jail for a period of almost 6 ½ years together, both of them are in their middle age having family responsibilities, they have already undergone the mental agony and the punishment of being in the custody for a period of 6 ½ years without remission, this court thinks it fit that ends of justice would meet in the event if the sentence imposed upon the appellants is reduced from the maximum sentence of ten years which has been imposed by the court below to RI for 8 years inclusive of all remissions, if any.
13. It is ordered accordingly.
14. Consequently, the appeal is partly allowed. Conviction of the accused/appellants under Section 304 (Part-II) IPC is maintained. However, sentence of rigorous imprisonment for 10 years awarded by the court below is reduced to that of 8 years.

Sd/-
(P. Sam Koshy)
Judge