

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.902 OF 2010

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973, is filed by the appellants/accused Nos.1 and 2 aggrieved by the judgment, dated 15.07.2010, rendered in S.C.No.12 of 2008 on the file of I Additional District and Sessions Judge, Ranga Reddy District – cum – Metropolitan Sessions Judge, Cyberabad at L.B. Nagar, Hyderabad, whereby and whereunder, the appellants/accused Nos.1 and 2 were convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.2,000/- each, in default to suffer simple imprisonment for one month for the offence punishable under Section 8 (c) read with 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

2. Heard learned counsel for the appellants/accused Nos.1 and 2 and the learned Additional Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellants/accused Nos.1 and 2 would contend that nothing was seized from the shop of the appellants/accused Nos.1 and 2; that the appellant/accused No.2 has licence to run toddy shop till 30.09.2007; that there are omissions and commissions in the evidence of prosecution witnesses; that PWs.1 and 2 did not support the case of the prosecution, which is fatal; that the prosecution failed to prove the guilt of the appellants/accused Nos.1 and 2 beyond all reasonable doubt and ultimately, prayed to set aside the conviction and

sentence recorded against the appellants/accused Nos.1 and 2 by the trial Court.

4. The learned Additional Public Prosecutor would contend that the contents in Ex.P3 – Forensic Science Laboratory (F.S.L.) Report would disclose that the toddy seized was adulterated with Diazepam, a sedative substance; that presence of the said substance in the toddy constitutes an offence punishable under Section 8 (c) read with 22 of the Act; that the prosecution witnesses have supported the case of the prosecution; that there are no material contradictions; that the trial Court rightly convicted and sentenced the appellants/accused Nos.1 and 2 for the offence punishable under Section 8 (c) read with 22 of the Act and ultimately, prayed to sustain the conviction and sentence recorded against the appellants/accused Nos.1 and 2 by the trial Court.

5. In view of the submissions made by the learned counsel for both sides, the following points have come up for determination:

- “1. Whether the appellants/accused Nos.1 and 2 were found selling toddy in plot No.14 on 18.08.2007?
2. Whether the toddy seized on 18.08.2007 was adulterated with Diazepam, a sedative substance?
3. Whether the prosecution proved the guilt of the appellants/accused Nos.1 and 2 beyond all reasonable doubt for the offence punishable under Section 8 (c) read with 22 of the Act?”

Points 1 to 3:

6. To prove the guilt of the appellants/accused Nos.1 and 2, the prosecution examined PWs.1 to 5 and got marked Ex.P1-

panchanama, Ex.P2 – F.I.R. and Ex.P3 – F.S.L. Report, besides MO.1-sample bottle and MO.2 – cash of Rs.2,115/-. No evidence, either oral or documentary, was adduced on behalf of the appellants/accused Nos.1 and 2.

7. The specific case of the prosecution is that on 18.08.2007, the excise officials conducted raid on a shop being run by the appellant/accused No.1 at plot No.14 of Khanamet, where they found selling of adulterated toddy (toddy mixed with Diazepam, a sedative substance). Appellant/accused No.2 is the President of Khanamet Toddy Tappers Association. The excise officials seized the stocks, drawn samples and sent the same for chemical analysis. On chemical analysis, it was found that Diazepam, a sedative substance, was mixed with Ethyl Alcohol.

8. PW.1 - L. Suresh, is an independent witness in this case. His evidence reveals that he is a resident of Khanamet Village. He is an employee in Ketan Fan Company. He knew both the appellants/accused Nos.1 and 2. About three or four years back during evening hours, the Sub-Inspector of Police, Madhapur, took his signatures stating that they have caught adulterated toddy. He stated that he did not read the contents of panchanama. He further stated that he was not present at the time of seizure of adulterated toddy from the possession of the appellants/accused Nos.1 and 2. This witness was declared as hostile.

9. PW.2 - K. Upender, deposed that he was a Driver, resident of Khanamet Village. He knew the appellants/accused Nos.1 and 2. The appellants/accused Nos.1 and 2 used to sell toddy in plot

No.23 of Khanamet Village, but now, they shifted the toddy shop to plot No.14. Police recorded his statement.

10. PW.3 - U. Srinivas, Police Constable of Madhapur Police Station, deposed that on 18.08.2007 at 04:45 PM, he accompanied the A.S.I. from the Police Station to Khanamet Village. After they reached plot No.14 of Khanamet Village, they noticed two persons i.e., appellants/accused Nos.1 and 2 selling toddy to others. They noticed eight plastic crates, each containing 12 bottles of toddy, out of which, six crates are filled with toddy and the remaining empty. They also noticed cash of Rs.2,115/- realized from the sale of toddy. In his presence, the A.S.I. seized all the toddy bottles and cash of Rs.2,115/- and drawn four samples from the seized bottles under a cover of panchanama. Later, they have taken the appellants/accused Nos.1 and 2 to the Madhapur Police Station. He reiterated the same in his cross-examination.

11. PW.4 - M. Maipal Reddy, A.S.I. of Madhapur Police Station during the relevant time, deposed that on 18.08.2007, he received credible information that some persons are selling toddy without licence at plot No.14, Khanamet. On that information, he secured two mediators (PW.2 and LW.5 - B. Raju) and proceeded to the scene of offence along with his staff, where he found appellant/accused No.1 selling toddy. He asked the appellant/accused No.1 to show licence to run the toddy shop. But, the appellant/accused No.1 did not produce the same. Further, his investigation has revealed that the appellant/accused No.1 was permitted to sell toddy at plot No.23, but not in plot No.14. Then, he searched the premises and found eight crates, each containing

12 bottles, out of which, two crates are containing empty bottles, and cash of Rs.2,115/-, realized from the sale of toddy. He took samples from the toddy bottles under a cover of panchanama. Ex.P1 is the panchanama. MO.1 is the sample and MO.2 is the cash of Rs.2,115/-. He brought MOs.1 and 2 along with the appellant/accused No.1 to the police station. The Station House Officer registered a case. Ex.P2 is the F.I.R. Thereafter, he examined the witnesses. He forwarded the samples collected to Forensic Science Laboratory for chemical analysis and report. Further, on the confession of the appellant/accused No.1 that the appellant/accused No.2 is the President of Toddy Tappers Association and under his direction, he was selling toddy at the scene of offence, the appellant/accused No.2 was arrayed as accused No.2. Thereafter, he arrested the appellants/accused Nos.1 and 2 and sent them to the concerned Court. After receiving the F.S.L. report, he filed an alteration memo and handed over the CD file to LW.9, M.A. Quader, for further investigation. He reiterated the same in his cross-examination.

12. A perusal of Ex.P3 – F.S.L. Report, reveals that it was marked in the evidence of PW.3. The contents of Ex.P3 disclose that the samples sent were analyzed and Diazepam, a sedative substance, was found along with Ethyl Alcohol.

13. PWs.2 and 3 are the direct witnesses to the sale being made by the appellant/accused No.1. Appellant/accused No.2, who is the President of Toddy Tappers Association, was also present at the scene of offence and under his supervision, the sale of toddy was made by the appellant/accused No.1. Furthermore, the sale is

conducted at plot No.14, Khanamet Village, but the appellant/accused No.2 was having licence to sell the toddy at plot No.23 of Khanamet Village. Furthermore, when the samples were analyzed, Diazepam, a Narcotic substance, was found mixed with Ethyl Alcohol. The appellants/accused Nos.1 and 2 are not authorized to mix the said substance in the toddy and sell. The cash marked as MO.2 establishes the sale of toddy adulterated with narcotic substance. There is no reason for the police to fabricate a false case against the appellants/accused Nos.1 and 2. There is also evidence of PW.2 with regard to shifting of toddy shop from plot No.23 to plot No.14 by the appellants/accused Nos.1 and 2. There is no dispute with regard to the identity of the appellants/accused Nos.1 and 2, as they were found in shop No.14 selling adulterated toddy. Therefore, all the requirements under Section 8 (c) read with 22 of the Act are proved against the appellants/accused Nos.1 and 2. The prosecution proved the guilt of the appellants/accused Nos.1 and 2 beyond all reasonable doubt for the above offence. The trial Court, taking into consideration all the relevant circumstances and having elaborately dealt with the matter, imposed just and reasonable sentence of imprisonment on the appellants/accused Nos.1 and 2 for the offence punishable under Section 8 (c) read with 22 of the Act. There is no infirmity in the impugned judgment. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

14. In the result, the Criminal Appeal is dismissed confirming the judgment, dated 15.07.2010, rendered in S.C.No.12 of 2008 on

the file of I Additional District and Sessions Judge, Ranga Reddy District – cum – Metropolitan Sessions Judge, Cyberabad at L.B. Nagar, Hyderabad.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

February 04, 2019.
MD

