E.K. Chandrasenan vs State Of Kerala on 17 January, 1995

Equivalent citations: 1995 AIR 1066, 1995 SCC (2) 99

Author: B.L Hansaria

Bench: B.L Hansaria, Kuldip Singh

```
           PETITIONER:
E.K. CHANDRASENAN

        Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT17/01/1995

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
 1995 AIR 1066            1995 SCC  (2)  99
 JT 1995 (1)   496        1995 SCALE  (1)159


ACT:



HEADNOTE:



JUDGMENT:
```

The Judgment of the Court was delivered by HANSARIA, J.- Hooch tragedies have been taking heavy toll of human lives throughout the length and breadth of the country. This has been so for a h sufficiently long period by now; and it could be well said that practically every year the liquor barons, in some part or the other of this vast country -

Bihar is a recent example - earn easy money by ruining many houses and making many persons destitute. Many ladies have become widows and many children orphans.

2. Here is a case in which the festive day of Onam 1982 brought disaster to many families inasmuch as the prosecution case is that 70 persons died after having consumed liquor from the shops and sub-shops which were catered by the firm named "Bee Vee Liquors" and 24 lost eyesight permanently, not to speak of many others who became prey to lesser injuries. The joyous day of Onam (1-9-1982) thus became a day of disaster for hundreds of families. The magnitude of the calamity swung police into action who, after close of investigation, charge-sheeted 10 persons for offences punishable under Sections 120-B, 302, 272 and 328 read with Sections 107 and 109 of the Indian Penal Code, as well as some sections of the Kerala Abkari Act. At one stage, the Sessions Judge at Ernakulam discharged the 4th accused and framed charges against others excluding one under Section 302. This was challenged before the Kerala High Court which confirmed the discharge of the 4th accused but directed the Sessions Judge to frame charge under Section 302 also. In the trial which proceeded thereafter the prosecution examined 324 witnesses and proved 433 documents. At the close of the trial, the Sessions Judge acquitted Accused 5 to 8 and 10 of all the charges. Insofar as Accused 1 to 3 and 9 are concerned, they were also acquitted of the offences under Section 302 of the Penal Code as well as under the Abkari Act, but were convicted under Sections 120-B and 328 as well as Sections 107, 109 and 272 read with Section 34 of the Penal Code. Various sentences were awarded for these offences.

3. The convicted accused filed appeals before the Kerala High Court and the State challenged the acquittal of all the accused for the offence under Section 302 and the acquittal of Accused 5 to 8 and 10 for all the offences. The High Court heard all the appeals together and after a very detailed examination of the materials on record dismissed the appeals of Accused 1 to 3 and 9. Insofar as the State's appeal is concerned, the same was partly allowed by convicting Accused 1 to 3, 9 and 10 under Section 326 read with Sections 120-B, 107 and 109 and each of them was sentenced to undergo rigorous imprisonment for seven years. The 10th accused was further convicted under Sections 120-B and 328 read with Sections 107 and 109 as well as Section 272 read with Sections 34, 107 and 109. For the offence under Section 328, rigorous imprisonment for six years and a fine of Rs 10,000 and for the offence under Section 272 rigorous imprisonment for six months and a fine of Rs 1000 were awarded, with the rider that the substantive terms of imprisonment would run concurrently.

4. Accused 1 to 3 and 10 have filed these appeals with the aid of Article 136. These appeals were earlier heard by a Bench of Kuldip Singh and late Yogeshwar Dayal, JJ., and after hearing them at great length the Bench felt that the case of enhancement exists; and so, rules of enhancement were ordered on 5-1-1994. Learned counsel for the appellants addressed us on the question of enhancement as well. Insofar as Accused 9 is concerned, he had filed SLP (Crl) No. 1190 of 1990 which was dismissed on 31-7-1990. Review petition was also dismissed on 28-8-1991. By an order dated 10-11-1994, he was, however, noticed by us to show cause as to why sentence awarded to him by the High Court should not be enhanced, having noted that the maximum sentence awarded to him was rigorous imprisonment for seven years and all the sentences were ordered to run concurrently. Pursuant to the notice issued to this accused, he filed his written submission and we heard Senior Advocate Shri Jain also on the question of his acquittal as well, as mentioned in our notice; so also on the question whether sentence awarded to him merits enhancement.

5. Let it first be seen whether the conviction as awarded by the High Court is sustainable. To decide this, what we shall have to primarily see is whether the five accused before us had acted in concert in committing the offences for which they have been held guilty by the High Court. Before examining this aspect, it may be stated as the High Court also had not convicted any of the appellants under Section 302 of the Penal Code and as there is no appeal to this Court against the acquittal under Section 302, we are not addressing ourselves, as it is not open to do so, to the question whether the appellants were guilty under Section

302. We, therefore, propose to confine our discussion to the conviction as awarded by the High Court.

6. The licence to vend liquor being in the name of the aforesaid firm (Bee Vee Liquors), it is apposite to mention that in this firm, which was started on 13-3-1980, initially Accused 2 and 10 were partners, in which partnership eight persons including Accused 1 and 3 were inducted subsequently. In the relevant year (1982-83) the liquor licence had been obtained by the firm in the name of Accused 1 and 2 along with wife of the first accused. Insofar as Accused 9 is concerned, he is an outsider and a chemist who had, according to the prosecution, entered into a conspiracy, inter alia, with the aforesaid accused, which conspiracy ultimately culminated in the aforesaid tragedy. For the sake of completeness, it may be pointed out that though Accused 10 withdrew from this partnership sometime before the tragic occurrence, there is a finding based on materials on record that he continued his relationship with the firm.

7. The liquor having been supplied by the aforesaid firm, the principal argument of the learned counsel appearing for the appellants is that the aforesaid accused cannot be held guilty of any criminal offence for the misdeed, even if there be any, of the firm inasmuch as there cannot be any vicarious liability in a case of the present nature. Shri Nambiar appearing for the State has fairly stated that he is not pressing, as he cannot, the principle of vicarious liability to fasten the guilt on the appellants. According to the learned counsel there is plethora of material on record to show that the five accused named above had acted in concert in adulterating the liquor, consumption of which was responsible for the deaths and loss of eyesight, apart from causing other injuries. Shri Nambiar's submission is that the aforesaid partners of the firm were those who were in charge of the management and Accused 9 had entered into conspiracy either individually or collectively with them; and as such, all the five accused before us are guilty of the offences for which they have been convicted by the High Court. This result follows, according to Shri Nambiar, either because of the conspiracy of the partners or because of the common intention on the part of the partners. According to the counsel appearing for the appellants, however, the mere fact that Accused 1, 2, 3 and 10 were in active management of the firm (which they dispute) would not be sufficient, in the absence of any evidence relating to conspiracy, to hold them guilty of the offences in question.

8. Let it first be seen whether from the evidence as led in the case the conclusion arrived at by the High Court that the four aforesaid accused were in active management of the firm suffers from any infirmity.

9. This aspect of the case presents no problem insofar as Accused 1, 2 and 3 are concerned inasmuch as even licence to vend liquor by the firm stands in the name of Accused 1 and 2 and as to Accused 3 there is enough evidence to show that he was taking active part in the management. This question is really relevant qua Accused 10. As regards him, the High Court has mentioned about the following circumstances to show that despite his withdrawal from the firm of Bee Vee Liquors before the occurrence, he continued to take active part in the management:

(i) operation of bank account up to 31-9- 1982 (paras 105 and 110 of the judgment);

(ii) the continued user of the jeep belonging to this accused by the firm of Bee Vee Liquors (para 109);

(iii) dealing with all labour problems and service conditions of the employees of the firm (para 111);

(iv) joint management of the firm at hand and Vypeen Liquor, in which this accused was admittedly taking leading part, treating them as sister concerns (para 111);

(v) continuous money transactions between Bee Vee Liquors and Cochin Wines, another firm of this accused (para 112); and

(vi) overdraft applications made by this accused along with accused 2 on behalf Bee Vee Liquors in May 1982 (para 114).

10. The aforesaid circumstances do not leave any manner of doubt in our mind that Accused 10 was taking active part in the management. The submission of Shri Sanyal that this accused was a financier only and was looking after financial matters cannot be accepted inasmuch as he was even taking care of labour problems and service conditions of the employees of the firm.

11. In the aforesaid premises, we have no hesitation in agreeing with the conclusion arrived at by the High Court that all the four appellants were taking active part in the management of the firm. Shri Sanyal contends that this by itself is not sufficient to hold this accused guilty of the offences in question in the absence of any satisfactory proof relating to conspiracy, as observed by the High Court itself in paragraph 122 of the judgment. The perusal of the judgment shows that after taking this view, the High Court analysed the evidence (direct or circumstantial) to find out whether there was conspiracy between the parties and it ultimately concluded in paragraph 145 that there was a conspiracy.

12.In coming to this conclusion, the High Court principally relied on the evidence of PWs 38, 39, 42, 278 and 281. Shri Sanyal has strenuously contended that evidence of these witnesses does not support the conclusion arrived at by the High Court. We shall advert to this submission later. Let it be first stated that according to us no proof of conspiracy as such between the four appellants was strictly necessary inasmuch as they being partners had clear motive to derive wrongful gain from adulteration which was undertaken on behalf of the firm - to commit the offences. The High Court

has dealt with this aspect in paragraph 102. The venture undertaken has been described as "huge profit making" by the High Court and it has rightly said that without the knowledge, consent and connivance of the persons in the management of the firm such a venture would not have materialised.

13.We may give some idea about the magnitude of the illegal act which was undertaken. The brain behind this sordid drama was Accused 9. He was doing business at Thrippunithura under the name of "Atlas Chemicals" and was dealing in varnish and paints. He purchased 23 barrels of methyl alcohol from Rekha Chemicals at Bangalore under fictitious name "Synthetic Poly Hydride Thinner". Prosecution case is that he entered in conspiracy with other appellants on or about 18-8-1982 for the supply of 23 barrels of methyl alcohol to be mixed with arrack and water for distribution to the consumers. He gave formula as per Exh. P-359. It would be of some interest to note the contents of this exhibit read as below:

"Item	Sprt		Water		Arrack		Total	%
1	20	+	40	+	140	=	200	10%
2	25	+	50	+	125	=	200	12.5%
3	30	+	60	+	110	=	200	15%

No. 1 can usually be used daily. Taste and kick will be alright.

No. 2 may be used only if necessary.

No. 3 may be used only if essential. Its taste has to be tested specially. It shall not exceed 15% for any reason. Sprt- 25 lit. In this proportion pour in a drum, Water- 50 lit. mix and pack after one hour. Taste, Arrack- 125/200 lit.kick etc., will be alright."

14.Though the aforesaid exhibit speaks about "Sprt" because of which a contention has been advanced on behalf of the appellants that what was ultimately mixed with arrack was spirit (to be more particular, rectified spirit), the same is belied by the several vouchers which were seized by the Investigating Officer, PW 324, from the office of the firm. These vouchers contain the name of 'SP'. What was indeed supplied was not spirit but methyl alcohol as would appear from the report of the Chemical Examiner brought on record. Samples which were sent for examination revealed that some of the barrels contained methyl alcohol ranging from 67.83% up to 96.4%. In the house of Accused 9, three loaded barrels were found which contained methyl alcohol from 88.36% up to 95.5%. It is not disputed that methyl alcohol is virtually poison. The quantity supplied by Accused 9 was about 20,000 litres, the price of which per litre was 50 naye paise. As per the aforenoted formula, in total quantity of 200 litres of liquor, spirit was to be 25 litres, water 50 litres and arrack 125 litres as per Item 2. (The combination would be different if the preparation was to be prepared according to Item 1 or Item 3.) This shows the magnitude of the illegal gain aimed at inasmuch as 50 naye paise stuff was passed on as liquor which must have been sold at a price many times more. The greed for huge money is thus writ large in the abominable planning.

15.Another aspect of the case makes the criminality apparent. The firm had lifted only 3200 litres of arrack from 1-8-1992 up to 2-9-1982 as against the sanctioned quantity of 5000 litres, but during

this period it distributed 19,492.05 litres through various shops and sub- shops. The additional quantity of more than 16,000 litres constituted either water or methyl alcohol. If the firm was only keen to supply more arrack during the festival season for which permission was sought, it would have at least lifted the full quantity of arrack sanctioned to it but it did not; instead, it went for adulteration, and that too with such a poisonous material which ultimately resulted in 70 consumers dying, 24 losing eyesight permanently and many others suffering minor injuries.

16.Nothing more than the above is required to hold that the liquor barons were out to earn profit at the cost of human lives. The magnitude of profit aimed at fully satisfies us that there was meeting of mind insofar as the persons in the management of the firm are concerned to undertake the highly illegal act. As, however, the High Court has gone into the question of conspiracy and has relied on evidence of aforesaid PWs to conclude that there was a conspiracy between the aforesaid persons, let the contention of Shri Sanyal noted above be dealt with now.

17.The High Court having dealt with the evidence of these witnesses at some length from paras 138 to 144, we do not propose to note what these witnesses had stated. Instead, we would deal with the criticism advanced by Shri Sanyal. The main attack of Shri Sanyal is about omission of the name of Accused 10 by these witnesses when they were questioned during investigation. Not that all the witnesses had omitted to name this accused, because PW 39, who was an employee of a shop for 12 years, had named this accused, so had PW 278. As regards those witnesses who had omitted to name, the High Court has given cogent reason as to why despite omission found in their statements as recorded by PW 324 (the Investigating Officer) their evidence should be accepted. Not only this the High Court has dealt with the reasons given by the trial court for disbelieving these witnesses and has adequately met the reasons. We do not propose to traverse this ground over again as we are fully satisfied about this part of High Court's judgment.

18.As, however, Shri Sanyal has taken pains to highlight the omission by someof the witnesses in naming Accused 10 during investigation, we proposeto say a few words regarding this submission. A perusal of the judgmentof the High Court leaves no manner of doubt that the investigating agency had made all efforts to shield Accused 10; may be because of the political clout or any other reason. This would be apparent front the fact that though this accused was being shown as absconding by the police, he was in constant touch with the police and was having meetings with the police who advised him not to surrender because if he did so he ran the risk of his anticipatory bail being rejected. Not only this, the High Court has stated in paragraph 190 that the police was giving secret information to this accused and ultimately they went in for a "thrilling arrest" at the cost of huge expenditure to the State, as after giving out that this accused is absconding, his photos were published in newspapers offering reward, which drama ultimately ended at Delhi. It would be a fitting finale that the last act of the judicial exercise as regards of this accused also ends at Delhi.

19.It is because of the aforesaid that the High Court did not feel inclined to place much reliance on the omissions, because where the investigation is partisan and wants to shield somebody, the statements of witnesses examined during investigation involving the person concerned would be manipulated. The High Court, therefore, in some cases even perused the police diary and was satisfied that the allegation of the omission was not correct. May we point out that Section 172(2) of

the Code of Criminal Procedure permits any criminal court to send for police diaries and to use them to aid it in any enquiry or trial. Much cannot, therefore, be allowed to be made about omission of the name of this accused in the statement of some of the aforesaid PWs as recorded by the Investigating Officer.

20.The aforesaid is all that is required to be said to deal with the contentions advanced by Shri Sanyal on behalf of Accused 10 when appeal was being heard in court, In the written submissions filed subsequently, what has been done is primarily to reiterate the points urged in open court by citing some decisions to support the contentions. The cases referred relate to legal propositions as to when conviction can be founded on circumstantial evidence, when can vicarious liability be fastened in a criminal matter, when can order of acquittal be set aside by an appellate court and when can conspiracy be held as established. We do not think it necessary to deal with the referred decisions, as the view we have taken is based on facts before us and the conclusions arrived at by us do not militate against any legal proposition propounded in the decisions. May we state that the doctrine of vicarious liability was not pressed into service by Shri Nambiar himself; and so, we have placed no reliance on the same to uphold the conviction of this appellant or, for that matter, any other appellant. As to the High Court setting aside the order of acquittal of Accused 10, the above-noted discussion shows that it had done so for good and cogent reasons; and what is more, it did so after apprising itself of the reasons given by the trial court in disbelieving the witnesses in question, and it duly met the flaws pointed out. As regards circumstantial evidence, it is clear that those brought on record have duly and sufficiently linked this accused with the offence in question. The chain is complete to fasten him. As to when conspiracy can be taken as established, it has been accepted in the decisions relied on by Shri Sanyal, that there can hardly be direct evidence on this, for the simple reason that conspiracies are not hatched in open; by their very nature they are secretly planned; and so, lack of direct evidence relating to conspiracy by this accused has no significance.

21. Insofar as other appellants are concerned, not much is required to be said by us in view of the concurrent findings of the trial court and the High Court about their involvement. As, however, Shri Lalit appearing for Accused 1 made efforts, and sincere efforts at that, to persuade us to disagree with the finding relating to this accused being hand in glove with others, let us deal with the submissions of Shri Lalit. He contends that there is nothing to show about this accused being a conspirator inasmuch as in the meeting which had been taken place on or about 18-8-1982 with Accused 9 this accused was not present. This is not material because conspiracy can be proved even by circumstantial evidence; and it is really this type of evidence which is normally available to prove conspiracy. The further submission of Shri Lalit is that the only work entrusted to this accused relating to the partnership business was to look after matters with the Government. The financial control was with Accused 2 and 10 and all the recoveries were made at the instance of Accused 3, states Shri Lalit. These facts do not militate against the conclusion arrived at by the courts below that this accused was thick and thin with others. The High Court has summed up its views qua him in paragraph 185 of the judgment. Among the facts mentioned is that it was he who was one of the bidders for 1982-83 and it was he who had applied for permission for keeping arrack shops open till night in the festival season from 3-8-1982 to 16-8-1982 and from 13-8- 1982 to 5-9-1982.

22. As regards Accused 2, Shri Nair refers us to the grounds taken in Criminal Appeals Nos. 563-64 of 1990 filed by him which are from pages 127 to 132. We have gone through these grounds and these are on the question as to when on the basis of circumstantial evidence a person can be found guilty. These grounds also say that there can be no vicarious liability in a case of the present nature. Something has been said about the evidence of PWs 260 and 322, who had done the chemical examination. These have nothing to do with criminality or involvement of this accused. Qua Accused 3, Shri Anam has only urged that what had been purchased by him was rectified spirit and not methyl alcohol. The least said the better about this submission, as it is wholly misconceived, which is apparent from what we have noted above about recoveries made and their composition as found on chemical analysis.

23.We, therefore, conclude by stating that we find no infirmity in the conclusion arrived at by the High Court regarding the active participation of the four appellants in the despicable act undertaken by them.

24.What is required to be seen further is whether the conviction of these appellants under Sections 326, 328 and 272 is tenable or not. So far as Section 272 is concerned, there is no dispute because apparently there was Iteration. The learned counsel for the appellants have taken pains to convince us that no offence under Section 326 specially was committed. Though some submissions had been advanced about non-applicability of Section 328 also, it is apparent that if we would be satisfied about applicability of Section 326, Section 328 would apply proprio vigore.

25.According to Shri Sanyal, mischief of Section 326 would not be attracted for two reasons. First, the appellants had not caused any hurt ,voluntarily'. Secondly the hurt caused, in any case, was not 'grievous'.

26.To sustain the first submission, Shri Sanyal refers us to the definition of 'voluntarily' as given in Section 39 of the Penal Code which, inter alia, says that a person is said to cause an effect voluntarily when he knew or had reason to believe to be likely to cause it. Learned counsel contends that the accused persons had no knowledge that the effect of the consumption of the adulterated liquor would be so injurious as it proved to be. This submission cannot be accepted because the aforesaid knowledge can well be imputed for two reasons. First, under the Kerala Abkari Act no mixture at all with the liquor as supplied to the firm was permissible. This legal position is not disputed before us. In view of this, the acceptance of the formula given by A-9 in mixing 'spirit' or water with arrack was itself an illegal act. Secondly, in the present case what was mixed was not 'spirit' but, as already noted, poisonous substance, as is methyl alcohol. The percentage of methyl found in the liquor supplied by the firm being what was found to be, it has to be held that the persons responsible for mixing had the knowledge that consumption of the liquor was likely to cause very serious adverse effects. The contention that all the consumers were not adversely affected cannot water down the mens rea required to bring home the guilt under Section

326.

27.The next submission of Shri Sanyal for non-applicability of Section 326 is that the hurt caused was not grievous. To satisfy us in this regard, our attention is invited to the definition of "grievous hurt" as given in Section 320, according to which the following kinds of hurt only are designated as grievous:

> First: Emasculation.
>
> Secondly: Permanent privation of the sight of either eye.
>
> Thirdly: Permanent privation of the hearing of either ear.
>
> Fourthly: Privation of any member or joint. Fifthly: Destruction or permanent impairing of the powers of any member or joint.
>
> Sixthly: Permanent disfiguration of the head or face.
>
> Seventhly: Fracture or dislocation of a bone or tooth.
>
> Eighthly: Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

28. Shri Sanyal urges that for a hurt to be 'grievous' the same must be one which endangers life. The background of making this submission is that the High Court took the view that the accused had no knowledge that the adulteration caused by them would endanger life because of which the accused persons were not convicted under Section 302. According to us, the High Court was not correct in arriving at this finding; but as there is no appeal by the State against acquittal of the appellants under Section 302, we would, instead of reversing this finding of the High Court, proceed to examine the submission of Shri Sanyal that the brew in question did not endanger life.

29. This submission does not stand a moment's scrutiny inasmuch as the requirement of endangering life mentioned in clause Eighthly cannot be read in other clauses. To us, this is so apparent that we really did not expect a submission of this nature from a senior counsel. Shri Sanyal, however, persisted and sought to press into service the observation made by a Full Bench of the Bombay High Court in Govt. of Bombay v. Abdul Wahab1. That observation is:

> "The line between culpable homicide not amounting to murder and grievous hurt is a very thin and subtle one. In the one case the injuries must be such as are likely to cause death; in the other, the injuries must be such as endanger life.....
>
> This has to be read in the context in which it was made; and the same was that the jury in that case had returned a unanimous verdict of the accused not being guilty of culpable homicide not amounting to murder, but only of grievous hurt. A contention was advanced by the State before the High Court that as injuries in question were such which endangered life, the guilt of culpable homicide not amounting to murder

was brought home. As, for this offence the injuries must be such as are "likely to cause death", the Full Bench drew attention to the difference in between the two. The same cannot, therefore, be read to mean that for a hurt to be designated as 'grievous' the same must be such which endangers life. In the present case, as many as 24 persons having lost their eyesight permanently, the hurt in question has to be regarded as 'grievous' because of what has been stated in clause Secondly of Section 320.

30. The two submissions advanced by Shri Sanyal for non- applicability of Section 326 to the facts of the present case being not tenable, we uphold the conviction of the five accused before us under Section 326. This being the position, nothing further is required to be stated regarding the guilt under Section 328, because it cannot be urged, as was faintly sought to be done, that the present was not a case where the accused persons had 'caused' liquor 1 (1945) 47 Bom LR 998, 1003: AIR 1946 Bom 38 to be taken by the affected persons. We have said so as it was the liquor supplied by the firm to the shops and sub- shops which was consumed; and so, it has to be held that the consumers were made to take the liquor supplied by the firm. Other requirements of Section 328 being present, the conviction under Section 328 too was rightful. COMPETENCY TO ISSUE THE RULE OF ENHANCEMENT

31. Having come to the conclusion that the High Court was right in convicting the appellants under various sections of law noted above, it is required to be seen whether the sentences as awarded are appropriate on the facts of the case. When these appeals were being heard earlier, it was felt that the sentence as awarded needs to be enhanced. Being of this tentative view, by an order dated 5-1-1994 a suo motu notice was issued asking to appellants for show- cause as to why the sentence should not be enhanced. Similar notice was issued to A-9 on 10-11-1994.

32. As a point has been taken that this Court lacked competence to issue the notices, the same needs to be examined first; and we propose to do so in some detail as there does not appear to be any direct decision of this Court on this point.

33. Shri Lalit has mainly addressed us on this aspect. Though at one stage the learned counsel took a stand that an appellate court seized with appeal against conviction has no power to suo motu issue rule of enhancement under the provisions of the new Code of Criminal Procedure, as distinguished from the provisions which found place under the old Code, this point was not pursued, after the attention of the learned counsel was drawn to the judgment rendered in Rengta Majhi v. State of Assam2 in which one of us (Hansaria, J.) speaking for a Bench of the Gauhati High Court held that even under the new Code of Criminal Procedure the power for issuing a suo motu rule of enhancement exits. That decision is based on certain judgments of this Court noted therein. Shri Lalit conceded that in view of what has been stated in Rengta Majhi case2, the High Courts do have this power even under the new Code of Criminal Procedure. Learned counsel, however, urges that the same power would not be available to this Court as this Court is not exercising any power conferred or available under the Code, but under Article 136, which, according to Shri Lalit, has conferred a limited jurisdiction and is confined to the examination of legality or otherwise of the judgment under appeal.

34. Shri Nambiar does not agree with this submission. According to him the power conferred on this Court by Article 136 is of wide amplitude and is plenary. Learned counsel also submits that the power of an appellate court is normally coextensive with that of the lower court; and so, if the High Court in a case of the present nature could have issued the rule of enhancement, such a power would be available to this Court, when it hears appeal from the judgment of the High Court. The final contention in this regard is that, in any case, Article 142 of the Constitution would be available for the purpose 2 (1988) 1 Gau LR 481 at hand, if this Court were to be of the view that to do complete justice the sentence needs to be enhanced.

35. As Shri Lalit has conceded, and rightly, that despite lack of appeal by the State relating to the quantum of the sentence, a High Court is competent, while hearing appeal against conviction, to issue rule of enhancement even under the new Code, we would have thought that to deny such a power to this Court, which is higher in hierarchy, would be incompatible with the well-accepted judicial principle, as normally it should be within the competence of an appellate court to do what the subordinate court could do. We may mention here that though Shri Lalit took the right stand that nonfiling of appeal by the State on the question of sentence is not material, a contention has been advanced in the written submission filed on 22-11-1994 on behalf of A- IO that this Court will not (meaning cannot) interfere with the question of sentence in the absence of appeal by the State Government. (See page 21.) In support of this submission reference has been made to two decisions: Satbir v. State of Haryana3 and State of Mysore v. C.N. Vijendra Rao4. A perusal of these decisions shows that they have not dealt with this aspect at all.

36. The aforesaid view of ours on the question of power of an appellate court receives some support from what was stated by a Constitution Bench in Nagendra Nath Bora v. Commr of Hills Division5. It was held there that the powers which were available to appellate authorities under the Eastern Bengal and Assam Excise Act were coextensive with the powers of the primary authorities. In coming to this conclusion, what was observed by another Constitution Bench in Ebrahim Aboobakar v. Custodian General of Evacuee Property6 was also noted. In that case this Court was concerned with the extent of the power of the tribunal which had been constituted to hear the appeals; and after noting the terms of constitution of tribunal it was observed that like all courts of appeal exercising general jurisdiction in civil cases, the tribunal had been constituted as appellate court in words of widest amplitude and the legislature had not limited its jurisdiction by providing that such exercise will depend on the existence of any particular state of facts.

37. What was held in the aforesaid two Constitution Bench decisions would indicate that where an appellate authority is conferred with power, without hedging the same with any restriction, the same has to be regarded as one of widest amplitude and the power of such an appellate authority would be coextensive with that of the lower authority. It is apparent that the appellate power available to this Court under Article 136 is not circumscribed by any limitation. We are, therefore, inclined to think that being a court to whom appeals lie from the judgments of the High Court, it 3 (1981) 4 SCC 508: 1981 SCC (Cri) 860 4 (1976) 1 SCC 286: 1976 SCC (L&S) 49: (1976) 2 SCR 321 5 AIR 1958 SC 398: 1958 SCR 1240 6 AIR 1952 SC 319: 1952 SCR 696 would have the same power which is available to a High Court; and in exercise of such a power the rule of enhancement could have been issued.

38. We do not, however, propose to uphold the legality of the rule issued on the aforesaid ground inasmuch as there can be really no dispute that the power given by Article 136 is plenary in nature. This has been the view of this Court for about four decades by now inasmuch as such a vista was first opened by a Constitution Bench in Durga Shankar Mehta v. Thakur Raghuraj Singh7 by stating that power given by Article 136 is worded in the widest terms possible and it vests in the Supreme Court "a plenary jurisdiction" and is in the nature of special or residuary power exercisable outside the purview of the ordinary law in cases where the needs of justice demand interference. Durga Shankar case7 was relied by a Division Bench in Arunachalam v. P.S.R. Sadhanantham8 in which a doubt having been raised about the competence of a private party, as distinguished from the State, to invoke jurisdiction under Article 136 against a judgment of acquittal by the High Court, it was observed that there was no substance in the doubt inasmuch as the appellate power vested under Article 136 is not to be confused with ordinary appellate power exercised by appellate courts and the same is plenary.

39. Shri Nambiar has also brought to our notice the Constitution Bench decision in Union Carbide Corpn. v. Union of India9 in which it was observed in para 58 that Article 136 vests in this Court a plenary jurisdiction and the power so conferred can be exercised in spite of the limitations under the specific provisions for appeal contained in the Constitution or other laws, which power could be exercised in cases where the needs of justice demand interference. The Constitution Bench further stated in paragraph 62 that the plenitude of the powers of the Apex Court is intended to be coextensive in each case with the needs of justice and to meeting any exigency. The submission of Shri Lalit that the power conferred by Article 136 is one of limited jurisdiction is, therefore, untenable; it has no merit.

40. What is contained in Article 142 would in any case provide sufficient power to this Court to pass an order like one at hand, if this Court were to be of the view that the same is necessary for doing complete justice. The contention of Shri Lalit, however, is that despite what is stated in Article 142 issuance of a suo motu rule for enhancement would not be permissible because that would be violative of Article 21 inasmuch as it would be unfair to the appellant who, having come to this Court for seeking relief, would face peril in case the sentence comes to be enhanced after upholding the conviction. The learned counsel urges that Article 21 would not permit this as that would be a procedure not mandated by law. In support of this contention, some assistance is sought to be derived from what was stated by 7 (1955) 1 SCR 267: AIR 1954 SC 520 8 (1979) 2 SCC 297 : 1979 SCC (Cri) 454 9 (1991) 4 SCC 584 a seven-Judge Bench in A.R. Antulay v. R.S. Nayak1O in which the direction given by a five-Judge Bench in its first judgment in A.R. Antulay v. R.S. Nayak1O transferring the cases to High Court was held to be violative of Article 21 as the larger Bench felt that because of the order in question the appellant would be tried by a procedure not mandated by law. What was stated by the seven-Judge Bench has no relevance, because if a High Court can issue a rule of enhancement, as fairly conceded by Shri Lalit, the power of issuing rule of enhancement cannot be said to be one not mandated by law.

41.The further submission that power to enhance the sentence has to be specifically conferred in case of the present nature has no legs to stand inasmuch as the Code of Criminal Procedure has not conferred such a power on High Court when it is seized with an appeal against conviction. This is

apparent from Section 386 of the Code, which has been referred by Shri Lalit in this context, as the same gets attracted when a High Court exercises its revisional power under Section 401, which power enables a High Court, as per Rengta Majhi2, to issue a rule of enhancement. In an appeal from conviction, the appellate court may do any of the following as per Section 386 (b)-

> (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or
>
> (ii) alter the finding, maintaining the sentence, or
>
> (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same.

(emphasis ours) So, the submission that power to enhance sentence has to be specifically conferred before such a rule can be issued cannot be accepted.

42. This being the position, we entertain no doubt that this Court has power in an appropriate case to issue suo motu rule of enhancement. A contention has, however, been advanced by Shri Lalit that this Court had denied such a power to it in some of the decisions. Learned counsel first refers in this context to Naresh v. State of U.P 11 and brings to our notice what was stated in para 2. In that case what had happened was that the High Court altered the conviction of the appellant from under Section 302 IPC to Section 304 (Part 1). The convicted accused appealed to this Court, but there was no appeal by the State from acquittal under Section 302. It was, therefore, observed in para 2 that nothing could be done about the acquittal under Section 302, though this Court felt greatly concerned about the grievous error committed by the High Court. This judgment had thus not dealt with the power of enhancement of sentence.

10 (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531 11 (1981) 3 SCC 74: 1981 SCC (Cri) 631 : AIR 1981 SC 1385

43. The next decision to be pressed in service was rendered in Suraj Bhan v. Om Prakash12. In that case the injured came to this Court who had approached the High Court in revision for enhancement of the sentence. The High Court had been approached by the accused also against his conviction and sentence. The High Court reduced the sentence to the period already undergone against which the State did not prefer any appeal. The injured, however, made an application to the High Court for a certificate which having been refused he obtained special leave from this Court. On these facts it was observed in para 10 that in the absence of an appeal against the judgment of the High Court in the criminal appeal filed by the accused that judgment had become final and the sentence could not be enhanced. The passing observation in para 11 that nothing could be done as regards the sentence cannot be taken to be a decision that power of enhancement is not available to this Court. The judgment in State of Mysore v. C.N. Vijendra Rao4 which is the last to be referred by Shri Lalit to support this contention has no relevance, as it dealt with a different point altogether.

44. If passing observation has to be borne in mind, what was recently stated in Narayanamma (Kum) v. State of Karnataka13 is more to the point inasmuch as it was stated in para 6 that though the sentence of 3 years' rigorous imprisonment for the crime of rape was inadequate, it did not wish to enhance the same "at this point of time".

45. On the basis of what has been stated above, we entertain no doubt that it was within the competence of this Court to have issued the rules of enhancement. Let it now be examined whether the sentences as awarded merit to be enhanced.

46. Let it now be seen whether the sentences on the appellants merit need to be enhanced. On this aspect, according to us, there cannot be two opinions, as the appellants by their nefarious activity, prompted only by lust for money, sold such a brew which contained even a poisonous substance. And see the enormity of consequences:

> 70 deaths and 24 losing their eyesight permanently. What can be more shocking to the conscience? If greed for money makes people so unconscionable, so unconcerned with human happiness and makes them behave like devils and to destroy human lives, they have to be dealt with appropriately, sternly and with a steel heart not yielding to any plea of softness on any ground, not relenting to discharge the onerous duty which falls on a court in such cases. The need to rise to the occasion becomes great and imperative when it is noted that liquor barons have long been playing with destinies of many with impunity for one reason or the other, which has encouraged them to indulge in such an activity without fear of law haunting them. This is abundantly clear from deaths due to consumption of spurious liquor in different parts of the country. This has become almost a regular feature and hooch tragedy has been taking heavy toll of human lives almost every year in one part or the other of this vast 12 (1976) 1 SCC 886: 1976 SCC (Cri) 208 13 (1994) 5 SCC 728 : 1994 SCC (Cri) 1573 country. To mention about such recent tragedies, it was Gujarat which saw this disaster in 1991 in a big way; it fell on Cuttack in 1992 to see loss of more than 100 lives;

and very recently this tragic drama was enacted in Patna, where too about 100 persons became victims.

47. So, retribution itself demands enhancement. Deterrence lends further support to the demand. Let us all strive to check such atrocious acts. We would be indeed failing in our duty if we were not to do so. And the least we can do in the cases at hand is to see that the maximum sentence visualised by our law-makers is awarded to all the appellants before us. There can hardly be more appropriate occasion than the one at hand to award the maximum sentence.

48. So far as the A-9 is concerned, we have on record his written submission stating that he had been released from the Central Prison, Trivandrum on 15-6-1994 after having undergone the whole term of punishment. He has further stated that he being an old man aged 72 years and absolutely deaf and being also financially very weak-, his punishment may not be enhanced. Being not

represented by any counsel, we thought it appropriate to provide him legal aid, to which effect we requested the Supreme Court Legal Aid Society to appoint a counsel for him. Shri R.K. Jain, Senior Advocate appeared accordingly. We have heard him.

49. We acquainted Shri Jain with what had been stated by us while issuing enhancement notice and the same being that it would be open to this accused even to urge that he is entitled to acquittal. Shri Jain submitted that on the face of dismissal of the special leave petition filed by this accused, followed by dismissal of the review petition, he is not in a position to urge that the conviction of this accused was not justified. The learned counsel, however, urged that keeping in view the old age of this accused and his financially weak position, because of which even before the trial court as well as in the High Court he was given legal aid, we may not enhance the sentence. His deafness is also brought to our notice.

50. We have duly considered the aforesaid submissions of Shri Jain. As to the advanced age we would say though this is a mitigating circumstance, there exists an aggravating circumstance as well the same being that it was this accused who was the prime mover, as would be apparent from the facts noted above and as pointed out by the High Court in para 157 of the judgment. Thus the age factor has been neutralised by the active role played by this accused in the conspiracy. As regards financial weakness of the accused which required providing of legal aid in the courts below, the same cannot be said to have in any way prejudiced him inasmuch as his case was adequately taken care of by the other accused who were well defended by eminent lawyers. Further, the accused has now got assistance of Senior Counsel like Shri Jain who is known for his legal acumen. Insofar as deafness is concerned, that is not relevant for the purpose at hand.

51. Because of the above, we have not felt inclined to treat this accused differently from others. Indeed, treating him differently would result in a sort of discrimination, which was one of the submissions advanced by Shri Sanyal appearing for Accused 10. This submission does have merit inasmuch as the role played by Accused 9 was in no way less, really it was more, than other accused qua whom we are satisfied that a case of enhancement has been made out.

52. For the aforesaid reasons, we are of the view that the sentence of this accused also has to be enhanced. We, therefore, enhance the sentence of all the appellants and Accused 9, named, Ramavarma Thirumulpad, for their offence under Section 326 to imprisonment for life. In view of this, we are not interfering with sentences awarded to them for other offences.

53. For the reasons aforesaid, all the appeals stand dismissed and rules of enhancement stand disposed of by enhancing sentences as ordered above. The appellants shall surrender the bail bonds and undergo the sentence as awarded by us. The trial court is directed to issue warrants to arrest all the appellants and Accused 9, Ramavarma Thirumulpad. The District Magistrate and Superintendent of Police concerned are directed to execute the warrants.