

CASE DETAILS

SAJEEV

v.

STATE OF KERALA

(Criminal Appeal No. 1134 of 2011)

NOVEMBER 09, 2023

[ABHAY S. OKA AND SANJAY KAROL, JJ.]

HEADNOTES

**Issue for consideration:** Whether the conviction and sentence of the accused-A10 and A11 u/ss. 302, 307, and 326/120B IPC and s.55(a), (h), (i) and s. 57 (A)(1)(ii) of the Abkari Act by the courts below is sustainable in law.

**Penal Code, 1860 – ss. 302, 307 and 326/120B – Akbari Act – ss. 57(A)(1)(ii) and 55 – Conspiracy of alcohol poisoning – A1, kingpin of the illicit liquor business alongwith A3, A10, and A11 hatched a conspiracy to mix methyl alcohol with spirit to sell the same for an unlawful gain through the outlet operated by A1, and the consumption of the same resulted in the death of 7 innocent people, blindness in 11 people, and injuries to 40 people – Conviction qua A1 upheld right up to this Court – Conviction of the accused-A10 and A11 u/ss. 302, 307 and 326/120 B and s. 55(a), (h), (i) and s. 57 (A)(1)(ii) of the Abkari Act and sentenced to imprisonment for life for the offence u/s. 302 and s. 57(A)(1)(ii), along with other sentences, by the courts below – Interference with:**

**Held:** Not called for – Relationship between A10 and A11, and their relationship with A1; and the role played by each one of them in hatching a conspiracy, if any, supply of Biosole and subsequent malice in the supply and sale of illicit liquor established – Cause of death of the deceased persons was poisoning caused by methyl alcohol, so also the persons suffered injuries on their body parts as a result of such consumption – Prosecution succeeded in establishing the offence of criminal conspiracy of A10 and A11 with A1 – Accused failed to justify the incriminating

circumstances appearing against them – Offence u/s. 57(A)(1)(ii) of mixing noxious substance likely to endanger human life, attributable to them – Also, in res gestae ss. 6 and 8 of the Evidence Act applicable – Furthermore, there is evidence relating to the transport, bottling and sale of methyl alcohol – Accused persons have been established to be in conspiracy for common objectives throughout – Conviction of A10 and A11 u/s. 55(a), (h) and (i) upheld – Thus, the involvement of the accused persons in the sale and mixing of methyl alcohol with spirit as part of the conspiracy, resulting in deaths and injuries to many innocent persons proved – Conviction of A10 and A11 u/ss. 302, 307, 326 and 120B IPC and 57(A)(1)(ii) of the Abkari Act, by the courts below upheld. [Para 16, 37, 41, 42, 45, 46, 48-50]

**Criminal Law – Concurrent convictions – Interference – When warranted:**

**Held:** It is when the finding is perverse; finding is based or built on inadmissible evidence; and the courts below have not considered or wrongly discarded vital pieces of evidence that would tilt the balance in favor of the accused. [Para 51]

**Penal Code, 1860 – s. 120B – Criminal conspiracy – Necessary ingredients to constitute a criminal conspiracy – Elucidated. [Para 35]**

**Supreme Court Rules, 2013 – Order XX, r. 5, sub rules 2 and 3 – Criminal Appeals – Suggestion for amendment of sub-rule 3:**

**Held:** Perusal of sub-Rules 2 & 3 of r. 5 shows that physical copies of the original records are to be called for, in criminal appeals involving sentence of life or the death penalty – It is suggested that sub-rule 3 be amended to insert the words ‘soft copy’ before the words ‘original records’, resulting in e-copies of the Original Records being requisitioned – This would facilitate a much quicker availability of such records to the court as also further a more environmentally conscious approach – Such requisition of the soft copy of the record be extended to cases where leave is granted against an order of acquittal or conviction – Also, soft copy of the records, once received be provided to the counsel appearing for the parties. [Para 58]

**Judicial deprecation – Practice of depositions of material witnesses not being placed on record – Effect:**

**Held:** Such practice often cause repeated adjournments, which goes to the root of pendency and delay in disposing of appeals – Thus, a suggestion to amend sub rule 3 of rule 5 of Order XX of the Supreme Court Rules, 2013 by inserting the words ‘soft copy’ before the words original records resulting in e-copies of the original records being requisitioned, at a quicker pace – Supreme Court Rules, 2013 – Order XX, r. 5, sub rules 2 and 3. [Para 56]

**LIST OF CITATIONS AND OTHER REFERENCES**

*Ramanarayan Popli v. CBI* (2003) SCC (CrL.) 869; *P.K. Narayanan v. State of Kerala* (1995) 1 SCC 142; *Mohd. Naushad v. State (NCT of Delhi)* 2023 SCC Online SC 784; *Hari and Anr. v. State of UP*. 2021 SCC Online SC 1131; *Koli Lakhmanbhai Chanabhai v. State of Gujarat* (1999) 8 SCC 624; *State through Superintendent of Police v. Nalini & Ors.* (1999) 5 SCC 253; 1999 ( 3 ) SC 1; *Yakub Abdul Razak Memon v. State of Maharashtra* (2013) 13 SCC 1; 2013 (15 ) SCR 1; *Arvind Singh v. State of Maharashtra* (2021) 11 SCC 1; *State of Haryana v. Krishan* (2017) 8 SCC 204; [2017] 7 SCR 251; *Phula Singh v. State of Himachal Pradesh* AIR 2014 SC 1256; [2014] 3 SCR 551; *Indrakunwar v. State of Chhattisgarh* 2023 SCC Online 1364; *Chandran v. State of Kerala* (2011) 5 SCC 161; [2011] 8 SCR 273; *P.N. Krishna Lal v. Govt. of Kerala* 1995 Supp (2) SCC 187; [1994] 5 Suppl. SCR 526; *Mekala Sivaiah v. State of A.P.* (2022) 8 SCC 253; *Ravasaheb and Ors. v. State of Karnataka* (2023) 5 SCC 391 – referred to.

**OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1134 of 2011.

From the Judgment and Order dated 23.07.2010 of the High Court of Kerala at Ernakulam in CRLA No.792 of 2004.

With

Criminal Appeal No.567 of 2015.

**Appearances:**

R Basant, Sr. Adv., Renjith B. Marar, Ms. Lakshmi N. Kaimal, Santhosh M. J., Harsh Vardhan Shah Shyam, Arun Poomulli, Daves Kumar Sharma, Vishnu Pazhanganat, Ms. Ashu Jain, M Gireesh Kumar, Ankur Kulkarni, Sharath S Janarathanan, Vijay Kumar, Gaurav Agrawal, Advs. for the Appellant.

Jayanth Muth Raj, Sr. Adv., Harshad V. Hameed, Dileep Poolakkot, Subhash Chandran K.R., Mrs. Ashly Harshad, Advs. for the Respondent.

**JUDGMENT / ORDER OF THE SUPREME COURT****JUDGMENT**

**SANJAY KAROL, J.**

1. The present appeals arise from the final judgment and order dated 23.07.2010 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.72 of 2004, which confirmed the judgment and order dated 02.04.2004 passed by Sessions Judge, Kollam in Sessions Case No.1308 of 2003 vide which the present Appellants, two in number, namely, (i) Sajeev (Accused No. 10) and (ii) Roy (Accused No.11) were convicted under Sections 302, 307 and 326 read with Section 120B of the Indian Penal Code (hereinafter 'IPC'), Section 55(a), (h), (i) and Section 57 (A) (1) (ii) of the Abkari Act. They were awarded imprisonment for life for the offence under Section 302 and Section 57(A)(1)(ii), along with other sentences, ordered to run concurrently.

2. The incident in question relates to alcohol poisoning, resulting in the death of 7 innocent people, blindness in 11 people, and more than 40 people sustaining injuries.

3. The prosecution case emerging from the record, as also set out by the Courts below, is as follows:

- i. On 04.04.2003, at about 7 PM, A1, A3, A10, and A11 hatched a conspiracy to mix methyl alcohol with spirit to sell the same for an unlawful gain through the outlet operated by A1. In furtherance of this conspiracy, A10 and A11 brought 21 cans (each of 5L) containing methyl alcohol labeled as 'Biosole' in

the Maruti car owned by A10 to the residence of A1 and A3 on 05.04.2003.

- ii. Thereafter, A2, A7, and A8 brought spirit to the residence of A1 and A3 in the Ambassador car owned by A2. Methyl Alcohol supplied by A10 and A11 was mixed with this spirit by A1 and A3 and sold through A1's outlet. A4, A5, A6, A9 and A12 assisted A1 in this sale.
- iii. Seven persons, including A4 and A12, died after consuming the spurious liquor on 09.04.2003 – 10.04.2003. PWs 1 – 9 and 11-12 also fell ill after consuming the said liquor. PW70, DYSP, received information about the incident and commenced the investigation with PW67, Addl. Sub-Inspector, Anchalummode Police Station. After recording statements, PW67 registered FIR (Ex.P186) under Sections 302, 307 read with Section 34 of IPC and Section 57A of the Abkari Act.
- iv. The prosecution examined 76 witnesses and marked Exhibits P1 to P259 along with material objects (hereinafter 'MO') MO 1 to MO 29. The defence did not adduce oral evidence. After carefully considering the evidence produced, the Trial Court convicted the accused persons in the manner discussed above.

4. The Trial Court, after elaborate consideration, vide common judgment dated 02.04.2004, convicted the accused persons facing trial for different offences and awarded sentences therefor. Accused No.1, 2, 5-9, 10 and 11 preferred appeals from the Trial Court to the High Court. The High Court confirmed the judgment of the Trial Court against these accused persons. The picture emerging is depicted in the chart below:

No.	Name	Trial Court		High Court
		Crime	Punishment Awarded	-
1.	A1 – Thampi	IPC – S.302 and 120B	Imprisonment for life (302) and RI for 10 years (120B); Rs.50,000 fine	Conviction affirmed for all offences
		IPC - S.307	RI for 7 years; Rs. 50,000 fine	
		IPC – S.326	RI for 7 years; Rs. 50,000 fine	

		<i>Abkari Act – S.57 (A) (1) (ii)</i>	<i>Imprisonment for life; Rs. 50,000 fine</i>	
		<i>Abkari Act – S.55(a), (h) and (i)</i>	<i>R.I. for 7 years; Rs. 7,00,000 fine</i>	
2.	<i>A2 – Saji @ Parippally Saji</i>	<i>Abkari Act – S.55(a)(i)</i>	<i>R.I. for 10 years; Rs. 2,00,000 fine</i>	<i>Conviction affirmed for all offences</i>
3.	<i>A3 – Shobhana @ Maya</i>	<i>Abkari Act – S.55(a)</i>	<i>R.I. for 1 year; Rs. 1,00,000 fine</i>	<i>No appeal preferred</i>
4.	<i>A4 – Shaji @ Jinu Shaji</i>	<i>Died</i>		
5.	<i>A5 – Rajesh @ Bai</i>	<i>Abkari Act – S.55(a)(i)</i>	<i>R.I. for 10 years; Rs. 2,00,000 fine</i>	<i>Conviction affirmed for all offences</i>
6.	<i>A6 – Hussain</i>			
7.	<i>A7 – Sony</i>			
8.	<i>A8 – Vipin B. Nair</i>			
9.	<i>A9 – Santhosh</i>			
10.	<i>A10 – Sajeew A11 – Roy</i>	<i>IPC – S.302 and 120B</i>	<i>Imprisonment for life (302) and RI for 5 years (120B); Rs. 25,000 fine</i>	<i>Conviction affirmed for all offences</i>
		<i>IPC – S.307</i>	<i>RI for 5 years; Rs. 25,000 fine</i>	
		<i>IPC – S.326</i>	<i>RI for 5 years; Rs. 25,000 fine</i>	
		<i>Abkari Act – S.57 (A) (1) (ii)</i>	<i>Imprisonment for life; Rs. 25,000 fine</i>	
		<i>Abkari Act – S.55(a), (h) and (i)</i>	<i>R.I. for 5 years; Rs. 5,00,000 fine</i>	
11.				
12.	<i>A12 – Prasanthan</i>	<i>Died during Trial</i>		

5. Accused No.1 had filed SLP (Crl.)mDiary No.2018/2016 against the order of the High Court, which came to be dismissed by this Court vide

order dated 29.01.2016. Therefore, the conviction qua A1 stands affirmed. No other accused preferred appeal to this Court.

6. Accused Nos.10 and 11 have filed instant separate appeals by special leave against the final judgment and order of the High Court of Kerala, upholding their conviction, which were registered as Criminal Appeal No.1154 of 2011 and Criminal Appeal No.567 of 2015.

7. The question which arises for consideration before this Court is whether the conviction and sentence imposed by the Trial Court and High Court on A10 and A11 are sustainable in law or not.

#### **Trial Court and High Court Findings**

8. The Trial Court in Sessions Case No.1308 of 2003, after a detailed consideration of the voluminous evidence, gave the following findings while convicting A10 and A11:

- i. Given the testimonies of the injured persons and family members of the deceased and the doctors who proved the post-mortem reports, the Trial Court held the prosecution to have proved beyond all reasonable doubt that the cause of death and the persons suffering injuries (except PW21) were only due to the consumption of spurious liquor mixed with methyl alcohol.
- ii. There is overwhelming evidence on record that A1 ran an illicit liquor business.
- iii. Reliance was placed on **Ramanarayan Popli v. CBI**<sup>1</sup> and **P.K. Narayanan v. State of Kerala**<sup>2</sup> to bring home the charge of conspiracy and from the material testimonies of PW23, PW24, PW11 and PW18, it is evident that on 04.04.2003, all three, i.e., A1, A10 and A11, hatched a conspiracy and in furtherance thereof, 21 cans containing methyl alcohol (Biosole) were delivered at the house of A1. Further, on consideration of witnesses, PW25 to 35 and PW76, the Trial Court adduced that it can be safely held that 21 cans of Biosole transported to the house of A1 and

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1 (2003) SCC (CrL.) 869

2 (1995) 1 SCC 142

A3 contained methyl alcohol. It was also observed that A11 was running the firm RR Distributors which supplied the methyl alcohol, on behalf of his brother. Reliance was also placed on the forensic examination conducted by PW44 in which it was opined that the 21 cans recovered by PW76 (IO) from the residence of A1, MO15 series and MO31 series (Biosole cans produced by PW27) are cast from the same mould.

- iv. The recovery of burnt plastic materials from the paramba (lawn) of the house of A11, wherein methyl alcohol was detected, cannot be connected with the occurrence.

9. The High Court observed that the testimony of PW11 establishes A10 and A11 having delivered Biosole at the residence of A1 in 21 cans in a maruti car in furtherance of the conspiracy hatched with A1. Also, records of RR Distributors, an enterprise of A11, were falsified by making specific entries with an endeavor to conceal the delivery of 21 cans of Biosole to A1. Further, the Court found that on an overall perusal of the materials on record, it cannot be said that there was any serious infirmity or illegality in the investigation. In view of the above findings, vide the impugned judgment, the conviction and sentence handed down to A10 and A11 were confirmed.

#### **Submissions on behalf of accused persons**

10. Learned senior counsel and learned counsel for both these convicts (Appellants) submit that by no stretch of imagination can the act of conspiracy be attributable towards them.

11. Assuming hypothetically, these convicts can be said to have supplied spirit, which is ethanol, as an independent business transaction. Even then, the factum of mixing and illegally selling the end product is not attributable to them, more so, in the absence of any element of conspiracy established beyond a reasonable doubt; hence, there is no question of conviction under the penal laws of the land.

12. In so far as Section 57(1)(a) of the Abkari Act is concerned, it was submitted the same is not applicable, for they have neither sold nor mixed the banned product.



**Submissions on behalf of the State of Kerala**

13. On behalf of the State of Kerala, learned senior counsel has submitted that the prosecution has placed sufficient evidence on record to bring home the charge of conspiracy against A10 and A11. A10 is a close associate of A11 and together, in a conspiracy, they sold methyl alcohol to A1, with full knowledge of the material being sold illegally and the purpose of its purchase.

**Submissions on behalf of Amicus Curiae**

14. Learned Counsel, Mr. Gaurav Aggarwal, was appointed by this Court as an Amicus Curiae vide order dated 20.07.2023 to assist the Court. The Amicus Curiae has submitted his submissions in four parts, placing on record: (a) the relevant testimonies; (b) the relevant exhibits; (c) the relevant portion of the testimonies; and (d) a chart indicating the role played by A10 and A11.

**Our View**

15. The Courts below have held A1 to be the kingpin of the illicit liquor business. The conviction qua A1 has come to be confirmed right up to this Court. Hence, the issues requiring consideration are: (a) the relationship between A10 & A11, and their relationship with A1; and (b) the role played by each one of them in hatching a conspiracy, if any, supply of Biosole and subsequent malice in the supply and sale of illicit liquor.

16. Undisputedly, the cause of death of the deceased is poisoning caused by methyl alcohol. So also the persons suffering injuries on their body parts as a result of such consumption.

17. Against this backdrop, we now proceed to examine the case of the prosecution with respect to A10 and A11, as has unfurled through the testimonies of the prosecution witnesses.

18. PW11, Rajesh in his testimony, has deposed that he knew A1 for having worked with him as a mason. On 05.04.2003, he was present at the residence of A1, for doing such work. At that time, A10 (whom he had also seen earlier) and A11 arrived at the residence at around 7 PM in an ash-coloured maruti car. From the car, 3-4 cardboard boxes were taken out. Also, A3 and A4 brought 3 cans of 35L each, which were filled up with

the contents of the cans taken out from the cardboard boxes taken out by A3 and A4 from the car. After this process was over, PW11 assisted A4, in carrying the cans to the property of Kamalamma. Further, A10 and A11 received cash from the residence of A1 and left. Pertinently, PW11 was one of the injured as a result of the incident and has identified A10 and A11 in Court. He correctly identifies the big vessel in which the cans were emptied, marked as MO14 series; the cans from the cardboard box, marked as MO15 series (21 in number) and the maruti car of A10, marked as MO16. Nothing material or significant is brought out in the cross-examination part of his testimony, rendering his version to be doubtful in any manner.

19. PW18, Vincent is a neighbor of A1. Even though this witness turned hostile, for not remembering having seen A10 and A11, yet, pertinently, he identified the car (MO16) of A10 in which the methyl alcohol was brought at the residence of A1 by the appellants. It is the settled law that the testimony of a hostile witness can be accepted to the extent that the version is found to be dependable on careful scrutiny thereof. Testimony of such a witness can be relied upon and cannot be treated as being washed off the record. [Refer: **Mohd. Naushad v. State (NCT of Delhi)**<sup>3</sup> (3-Judge Bench); **Hari and Anr. v. State of UP.**<sup>4</sup> (3-Judge Bench) and **Koli Lakhmanbhai Chanabhai v. State of Gujarat**<sup>5</sup> (2-Judge Bench)]

20. PW23, Vinod is an acquaintance of A1. He testified being privy to the process of procuring the spirit and converting it into arrack and seeing A10 and A11 at the residence of A1 multiple times. Further, he corroborates the version of PW11 to the effect that both A10 and A11 brought cardboard boxes at the residence of A1 on 05.04.2003. Also, out of these cardboard boxes, cans containing spirit, resembling the MO15 series were emptied into huge cans. Also, he correctly identified all the accused present in the Court.

21. PW24, Saros, a friend of A1, fully corroborates the version of PW11 and PW23, with respect to the visit of A10 and A11 to the residence of A1 and delivery of M015 series cans, which were poured into 3 larger cans containing methanol, measuring 35L each.

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3 2023 SCC Online SC 784

4 2021 SCC Online SC 1131

5 (1999) 8 SCC 624

22. From a conjoint reading of the testimonies of the above witnesses, what comes to be established is that: (a) A10 and A11 were known to A1; (b) A10 and A11 visited the residence of A1 on 05.04.2003, in the presence of other accused persons/independent persons; and (c) some material which is alleged to be methyl alcohol was supplied in 21 cans, which were emptied into 3 cans of 35L each and stored at the residence of A1. Keeping this in mind, we proceed to examine the next set of witnesses.

23. PW25 Sheeja, in her testimony, states that she provided her pharmacy license to A11, which enabled him to start his firm RR Distributors.

24. PW26, Violet worked as a receptionist in the firm of A11 by the name of, RR Distributors at Attingal. As per her version, though A11 is running this firm but the license is in the name of his brother Roni (PW35). In Court, he correctly identifies A11, who is in the business of distribution of surgical spirit, chemicals, needles and lab equipment for which a stock register was maintained. The firm had purchased 24 cans, being 5L each of Biosole from another firm in Veli. She testifies to the order book (Ex.P4), the stock register (Ex.P5) and the bill book (Ex.P6) and to the following transactions being recorded in the bill book concerning Biosole (21 cans in total):

- i. Medical Lab purchased 5 cans on 01.03.2003, Ex.P6(a).
- ii. Southern Lab purchased 2 cans on 06.03.2003, Ex.P6(b).
- iii. Saj Hospital purchased 1 can on 08.03.2003, Ex.P6(c).
- iv. KV Hospital purchased 2 cans on 12.03.2003, Ex.P6(d).
- v. Holy Cross purchased 1 can on 14.03.2003, Ex.P6(e).
- vi. Parvathy Lab purchased 4 cans on 15.03.2003, Ex.P6(f).
- vii. Koshy Dental Clinic purchased 1 can on 22.03.2003, Ex.P6(g).
- viii. City Hospital purchased 2 cans on 26.03.2003, Ex.P6(h).
- ix. Metro Lab purchased 1 can on 31.03.2003, Ex.P6(i).
- x. Cosmos Lab purchased 1 can on 02.04.2003, Ex.P6(j).
- xi. Modern Lab purchased 1 can on 04.04.2003, Ex.P6(k).

25. PW27 Ramesan is the owner of the firm that sold Biosole to RR Distributors firm as deposed by PW26. He testifies the factum of placing the order of and delivery of 24 cans of 5L each to the said firm, vide bill (Ex.P12). He unrefutedly identified A11 in Court and pertinently, testified that the Biosole delivered by him was in the cans similar to MO15 series, which were marked as MO31 series, being the sample jar containing Biosole containing 100% methyl alcohol.

26. With the transaction of purchase and delivery of Biosole having been established beyond reasonable doubt, what needs to be examined further is also whether the record maintained by the firm of A11 was fabricated or not. In doing so, we examine the testimonies of the alleged purchasers, as depicted in the record.

27. PW28, Dr. Neelananda Sarma, running Ansar Hospital, denies having purchased Biosole from RR Distributors. On similar lines, PW29 Dr. A.M. Abdul Kuthoor, running City Hospital; PW30, Dr. Vijaya Chandran Nair, running KV Hospital; PW31 Sunil, running Cosmos Lab; PW32 Biji B, assistant at Koshy Dental Clinic and PW33 Dr. Roy George deny having made any purchase of Biosole from RR Distributors and denied the bill receipts marked by PW26. Thus, belying the defence set up by the appellants of having supplied the goods to these persons, rendering such entries being fictitious.

28. PW35, Roni is the elder brother of A11. He deposed that he is running a firm called RR Distributors, for which he has obtained a license. PW26 is the receptionist. This witness denies having made an earlier statement to the police and is declared hostile. Hence, in the cross-examination part of his testimony, it is revealed that the stamp paper of the Rent Deed (Ex.P14) was purchased in the name of A11.

29. The above witnesses bring to light the fact that actually it is A11, who is running and managing the firm RR Distributors. Further, Biosole, which contains 100% methyl alcohol was procured by A11 through his firm, RR Distributors. This methyl alcohol is shown to be sold to several different entities. However, PW28 to PW33, the alleged buyers, have denied making any such transactions or taking delivery of the alleged cans containing methyl alcohol.

30. Therefore, it is entirely clear that the transactions reflected in the register of RR distributors (Ex.P6) were fictitious and the record prepared was only to show sales ostensibly to genuine customers, as per the process of law. The natural **corally**, thereto, being that A11, through his firm purchased Biosole but failed to provide any valid source to whom it was supplied or where it was used, which fact he failed to rebut.

31. We now discuss the forensic evidence against these accused persons at this stage.

32. PW44, James Philipose is the Joint Director (General) at FSL, Trivandrum. He verified having prepared the FSL Report (Ex.P30), which bears his signature. His examination of the plastic cans of MO15 and MO31 series revealed the same to have been cast from the same mould. Significantly, this fact remains unrebutted on record. Also, from this testimony, it is seen that the cans of MO15 series [recovered from the residence of A1 by PW76], which, as discussed above, stand proved to have been supplied by A10 and A11 to the residence of A1 and the cans of MO31 series, which is the sample of the cans provided by PW27 in the sale of Biosole, are of the same make and mould.

33. The next witness to be discussed is PW51, Sindhu. In his testimony, he states that he conducted the FSL examination of MO33 series cans (35L each). Out of the 5 cans tested, ethyl + methyl alcohol was found in 2 cans and methyl alcohol was found in 3 cans.

34. These witnesses reveal two pertinent facts: (a) The cans supplied by A11 to A1 are from the same mould of cans that were supplied by PW27 to A11, on purchase of methyl alcohol; and (b) 3 out of 5 cans recovered from the residence of A1 tested positive for methyl alcohol.

35. After consideration of these depositions, we must decide whether the evidence on record is sufficient to establish a conspiracy under Section 120B, IPC. The ingredients to constitute a criminal conspiracy were summarised by this Court in **State through Superintendent of Police v. Nalini & Ors.**<sup>6</sup> (3-Judge Bench). They are as follows:

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6 (1999) 5 SCC 253

- i. Conspiracy is when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means.
- ii. The offence of criminal conspiracy is an exception to the general law, where intent alone does not constitute crime. It is the intention to commit a crime and join hands with persons having the same intention.
- iii. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
- iv. Where in pursuance of the agreement, the conspirators commit offenses individually or adopt illegal means to do a legal act that has a nexus to the object of the conspiracy, all of them will be liable for such offenses even if some of them have not actively participated in the commission of those offenses.

36. These principles were followed in **Yakub Abdul Razak Memon v. State of Maharashtra**<sup>7</sup> (2-Judge Bench), wherein this Court reiterated that to establish conspiracy it is necessary to establish an agreement between the parties. Further, the offence of criminal conspiracy is of joint responsibility, all conspirators are liable for the acts of each of the crimes which have been committed as a result of the conspiracy. [See also: **Arvind Singh v. State of Maharashtra**<sup>8</sup> (3-Judge Bench); **Mohd. Naushad** (supra)]

37. Applying these principles to the case at hand, as discussed above, it is established that (a) A10 and A11 were known to A1; (b) A10 and A11 visited the residence of A1 on 05.04.2003, in the presence of other accused persons; (c) Methyl alcohol was supplied to and stored at the residence of A1, with the knowledge that the substance being sold was harmful; (d) A11 was running the affairs of the firm RR distributors which procured methyl alcohol at the first instance and fabricated record of its sale to different entities; (e) There is no dispute about the causation of deaths and injuries. Hence, the argument on behalf of the present appellants that they did not know A1 and

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7 (2013) 13 SCC 1

8 (2021) 11 SCC 1

were nowhere connected with the present crime is untenable and cannot be accepted. Therefore, the prosecution has succeeded in establishing the offence of criminal conspiracy of A10 and A11 with A1 (conviction of whom stands affirmed).

38. Another aspect to be considered is the destruction of evidence by A11, as submitted by both the learned Amicus Curiae and the State of Kerala.

39. K.J. Devasia (PW76), the Investigating Officer, has deposed that in his presence, PW51 collected materials/samples from land at the southern side of the residence of A11 which was marked as MO49 to MO53. This was in furtherance of information given by A11.

40. PW51, FSL Assistant Director tested these samples, who in his deposition stated that except for MO52, these samples consisted of burnt plastic and soil, which all pertinently tested positive for methyl alcohol. This supplements the prosecution story that A11 attempted to destroy evidence at his residence by burning the incriminating material connecting him to the crime. In similar circumstances, this Court in **State of Haryana v. Krishan**<sup>9</sup> (2-Judge Bench) while convicting the respondents therein placed reliance on the conduct of those accused in attempting to destroy evidence to connect them to the larger conspiracy. Applying this reasoning to the evidence at hand, we disagree with the Trial Court observation that A11's firm had a license for methyl alcohol and there is no connection between this piece of evidence and the occurrence of the incident. Per contra, there is no reason for the soil sample drawn from the residence of A11 to test positive for burnt plastic residue and methyl alcohol, connecting this material to the incident in question.

41. Notably, no less than 627 questions/circumstances were put to A10 and A11 each under Section 313 of the Code of Criminal Procedure, 1973. This Court has clarified on numerous occasions that in law, the accused has a duty to furnish some explanation of an incriminating circumstance, with the prosecution crossing the threshold of proving its case beyond reasonable doubt. However, no explanation, much less, a plausible one, is put forth. In the event of complete denial or silence, the Court is entitled

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9 (2017) 8 SCC 204

to draw an adverse inference against the accused. [Ref: **Phula Singh v. State of Himachal Pradesh**<sup>10</sup> (2-Judge Bench); **Indrakunwar v. State of Chhattisgarh**<sup>11</sup> (2-Judge Bench)] Applying this to the case at hand, in the statements under Section 313, the accused persons failed to justify the incriminating circumstances appearing against them.

42. Apart from the offences under the Penal Code, the accused stand convicted under provisions of the Abkari Act. Thus, it is pertinent to discuss the relevant Sections of the Abkari Act under which these accused persons have been convicted. The relevant portion of Section 57A of the Abkari Act reads as follows:

“**S.57A** - For adulteration of liquor or intoxicating drug with noxious substances, etc. -

(1)Whoever mixes or permits to be mixed any noxious substance or any substance which is likely to endanger human life or to cause grievous hurt to human beings, with any liquor or intoxicating drug shall, on conviction, be punishable-

(i) if, as a result of such act, grievous hurt is caused to any person, with imprisonment for a term which shall not be less than two years but which may extend to imprisonment for life, and with a fine which may extend to fifty thousand rupees;

(ii) If, as a result of such act, death is caused to any person, with death or imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees;

.....

**(5)** Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872),- (a) where a person is prosecuted for an offense under sub-section (1) or sub-section (2), the burden of proving that he has not mixed or permitted to be mixed or, as the case may be, omitted to take reasonable precautions to prevent the mixing of, any

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substance referred to in that sub-section with any liquor or intoxicating drug shall be on him”

(Emphasis supplied)

43. This Court extensively dealt with Section 57(A)(1) of the Abkari Act in **Chandran v. State of Kerala**<sup>12</sup> (2-Judge Bench). It is observed that the offence under Section 57A is not limited to the holders of the license under the Act, but refers to anybody who mixes or permits to be mixed any noxious substance, likely to endanger human life with any liquor. The burden of proof on the accused person under sub-Section 5 of Section 57A stands constitutionality upheld of which has been upheld by this Court in **P.N. Krishna Lal v. Govt. of Kerala**<sup>13</sup> (2-Judge Bench).

44. This Court in **Chandran** (supra) also dealt with the question of conspiracy and mens rea for a conviction under Section 57A of the Abkari Act. While confirming the conviction of one of the co-accused persons along with the main accused, it was held that the conviction under Section 57(A)(1)(ii) of the Abkari Act is independently affirmed, as he was not only part of the business of mixing methanol but had actively taken part in it. Such taking part was held to be sufficient to infer the knowledge about the mixing of the spirit. We find it pertinent to reiterate one of the observations therein, relevant to the case at hand:

“117. There can be no question about the absence of conspiracy. The whole business itself was a conspiracy. It may not be the conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business which itself was a conspiracy they mixed or allowed to be mixed methanol and used it so freely that ultimately 31 persons lost their lives. We are not at all impressed by the argument regarding knowledge.”

(Emphasis supplied)

45. Therefore, the argument on behalf of the appellants that the offence under Section 57(A)(1)(ii) of the Abkari Act is not attributable to them has to be rejected.

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<sup>12</sup> (2011) 5 SCC 161

<sup>13</sup> 1995 Supp (2) SCC 187

46. Keeping in view the above conspectus and position of law, in res gestae Section 6 and Section 8 of the Evidence Act applies, inasmuch as: (a) testimonies of the witnesses highlighted by the Amicus Curiae indicate the presence of the accused/convicts on the spot at least few days prior to the occurrence of the incident; (b) the accused/convicts being present on the spot in relation to the supply of the spirit; (c) the accused/convicts knowing that they were being in full knowledge of the substance supplied by them to be of poisonous/prohibited in nature and permitted the noxious substance to be mixed with liquor, likely to endanger human life (d) the convict A11 having forged the record concerning the supply of the poisonous/prohibited substance.

47. Lastly, the relevant portion of Section 55 of the Abkari Act reads:

**“55. For illegal import, etc. -** Whoever in contravention of this Act or of any rule or order made under this Act:

(a) imports, exports, [transports, transits or possesses] liquor or any intoxicating drug; or

××

××

××

(h) bottles any liquor for purposes of sale; or

(i) Sells or stores for sales liquor] or any intoxicating drug.”

48. For the sake of brevity, we need not reiterate the evidence relating to the transport, bottling and sale of methyl alcohol. Alcohol as mentioned in Section 55, has been defined under Section 3(10) as any liquid consisting of or made of alcohol. Therefore, there can be no dispute that Section 55 applies to the transmission of methyl alcohol. It has been established that the methyl alcohol was first purchased by A11, then shown to be sold to different entities, however, it was provided to A1. These accused persons have been established to be in conspiracy for common objectives throughout. Therefore, the conviction of A10 and A11 has to be upheld under Section 55(a)(h) and (i) of the Abkari Act.

49. There can be no doubt left about the involvement of the accused persons before us, in the sale and mixing of methyl alcohol with spirit as part of the conspiracy, resulting in deaths and injuries to many innocent

persons. The conviction of A10 and A11 under Sections 302, 307, 326 and 120B IPC and 57(A)(1)(ii) of the Abkari Act has to be upheld.

50. We therefore find that the conclusion and conviction arrived concurrently by the High Court and Trial Court regarding the role played by these accused persons in this tragedy does not suffer from any infirmity and does not warrant interference of this Court.

51. Independent of the above discussion, this Court has time and again reiterated that interference in concurrent convictions is only warranted when:

- i. The finding is perverse.
- ii. The finding is based or built on inadmissible evidence.
- iii. The Courts below have not considered or wrongly discarded vital pieces of evidence that would tilt the balance in favor of the accused.

[Ref: **Mekala Sivaiah v. State of A.P.**<sup>14</sup> (2-Judge Bench); **Ravasaheb and Ors. v. State of Karnataka**<sup>15</sup> (3-Judge Bench)]

On a perusal of the High Court and Trial Court judgments, it is our view that the present appellants have made out none of the above circumstances warranting interference of this Court.

52. We place on record with appreciation for the assistance rendered by the Learned Amicus Curiae.

53. In view of the above, the Appellants' challenge to the impugned judgment fails.

54. After the judgment was dictated, we have been informed vide letter dated 31.10.2023, that one of the appellants, namely, Sajeev (A10 - Criminal Appeal No.1134 of 2011), has passed away on 24.09.2023. In that view of the matter, the appeal qua his conviction stands abated.

55. Criminal Appeal No.567/2015, preferred by A11 (Roy) is dismissed. The bail granted to A11 by this Court vide Order dated 30.06.2016

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14 (2022) 8 SCC 253

15 (2023) 5 SCC 391

stands cancelled and the appellant is directed to surrender before the Court concerned forthwith.

56. Before parting with the present appeals, we deem it appropriate to deprecate the practice of depositions of material witnesses not being placed on record, as recorded in our order dated 20.07.2023. We have observed that such practices often cause repeated adjournments, which goes to the root of pendency and delay in disposing of appeals. Therefore, it is incumbent upon us to provide suggestions, in tackling this issue.

57. In this backdrop we must refer to Order XX of the Supreme Court Rules, 2013 (referred to as ‘the Rules’), which concerns criminal appeals. A perusal of sub-Rules 2 & 3 of Rule 5 thereof shows that physical copies of the original records are to be called for, in criminal appeals involving sentence of life or the death penalty. In all other cases, the calling of such records is subject to specific orders of a Bench of this Court.

58. We suggest the following:

- i. Sub-Rule 3 be amended to insert the words ‘soft copy’ before the words ‘original records’, resulting in e-copies of the Original Records being requisitioned. This would facilitate a much quicker availability of such records to the court as also further a more environmentally conscious approach.
- ii. Further, vide necessary amendment to the Rules such requisition of the soft copy of the record be extended to cases where leave is granted against an order of acquittal or conviction.
- iii. Such soft copy of the records, once received be provided to the learned counsel appearing for the parties.

59. We direct the Registry to place a copy of this judgment before Hon’ble the Chief Justice of India for his kind consideration and appropriate directions, should he deem fit.

60. Interlocutory applications, if any, shall stand disposed of.