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2023 SCeJ 421, (2023-4)212 PLR 001 (SC)

SupremeCourtOnline 432604

SUPREME COURT OF INDIA

Before: Justice Abhay S. Oka and Justice Sanjay Karol, JJ.

Sajeev v. State of Kerala

Criminal Appeal No. 1134 of 2011 With Criminal Appeal No. 567 Of 2015.

09.11.2023.

(i) CrPC S. 313 - Complete denial or silence, Court is entitled to draw an adverse inference - 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 - Held, No less than 627 questions/circumstances were put each under section 313 of the Code of Criminal Procedure, 1973 - However, no explanation, much less, a plausible one, is put forth. In the event of complete denial or silence, the Court is entitled to draw an adverse inference against the accused - Accused persons failed to justify the incriminating circumstances appearing against them. [Phula Singh v. State of Himachal Pradesh AIR 2014 SC 1256 (2-Judge Bench); Indrakunwar v. State of Chhattisgarh 2023 SCCOnline 1364 (2-Judge Bench)] [Para 41]

(ii) Supreme Court Rules, 2013, Order XX - 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. 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. [Para 57]

(iii) Criminal trial - 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 - Practice and Procedure. [Ref: *Mekala Sivaiah v. State of A.P. (2022) 8 SCC 253* (2-Judge Bench); *Ravasaheb and Ors. v. State of Karnataka (2023) 5 SCC 391* (3-Judge Bench)] [Para 51]

(iv) **Abkari Act, Section 57A** - (a) testimonies of the witnesses 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. - Conviction upheld. [Para 46]

(v) **Abkari Act, Section 57(A)(1)** - 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. 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. *"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."* [*Chandran v. State of Kerala (2011) 5 SCC 161* (2-Judge Bench).] 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 1995 Supp (2) SCC 187* (2-Judge Bench).

(vii) **Abkari Act, Section 55** - Illegal import, sale etc. - Alcohol as mentioned in Section 55, has been defined under Section 3(10) as any liquid consisting of or made of alcohol - 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**. *Held*, 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. [Para 47 to 50]

Cases Referred :-

1. *Arvind Singh v. State of Maharashtra* (2021) 11 SCC 1.
2. *Chandran v. State of Kerala* (2011) 5 SCC 161.
3. *Hari v. State of UP*. 2021 SCC Online SC 1131.
4. *Indrakunwar v. State of Chhattisgarh* 2023 SCC Online 1364.
5. *Koli Lakhmanbhai Chanabhai v. State of Gujarat* (1999) 8 SCC 624.
6. *Mekala Sivaiah v. State of A.P.* (2022) 8 SCC 253.
7. *Mohd. Naushad v. State (NCT of Delhi)* 2023 SCC Online SC 784.
8. *P.K. Narayanan v. State of Kerala* (1995) 1 SCC 142.
9. *P.N. Krishna Lal v. Govt. of Kerala* 1995 Supp (2) SCC 187.
10. *Phula Singh v. State of Himachal Pradesh* AIR 2014 SC 1256.
11. *Ramanarayan Popli v. CBI* (2003) SCC (Cr.) 869.
12. *Ravasaheb v. State of Karnataka* (2023) 5 SCC 391.
13. *State of Haryana v. Krishan* (2017) 8 SCC 204 .
14. *State through Superintendent of Police v. Nalini* (1999) 5 SCC 253.
15. *Yakub Abdul Razak Memon v. State of Maharashtra* (2013) 13 SCC 1.