HIGH COURT OF CALCUTTA

Bench : The Hon'ble Justice Shampa Dutt (Paul)

Date of Decision: April 29, 2024

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

CRA 393 of 2017

Prasad Ray @ Roy

Vs

The State of West Bengal

Legislation:

Section 304(Part II), 328 of the Indian Penal Code (IPC)

Subject: Criminal appeal against conviction for administering poisoned alcohol resulting in one death and multiple hospitalizations under Sections 304(Part II) and 328 of the IPC.

Headnotes:

Origin and Prosecution of Case – Appeal from conviction by Sessions Court, Malda, where appellant Prasad Ray was convicted for causing death by administering poisoned alcohol and for causing hurt using poison – Sessions Case No. 228/2010 and Sessions Trial No. 06/2010 – Both sentences to run concurrently – [Para 1].

Evidence Presented – Testimonies from 17 witnesses, including medical officers and surviving victims, established consumption of poisoned alcohol ('Tari') at appellant's invitation – Medical evidence confirmed symptoms consistent with poisoning, corroborating eyewitness accounts of the event [Paras 6-18].

Legal Analysis by High Court – Review of evidence and application of legal principles regarding non-requirement of motive when poisonous substance knowingly administered – Reliance on precedents about proof requirements in poisoning cases [Paras 23-26].

Appellate Judgment – Conviction upheld based on the evidence showing the administration of poisonous 'Tari' leading to death and hospitalizations – Sentence modified to reduce imprisonment to five years for both charges, maintaining concurrent running [Paras 27-31].

Final Orders and Compliance – Detailed directives for surrender of appellant, cancellation of bail bonds, and disposal of connected applications – Immediate enforcement of judgment [Paras 32-39].

Referred Cases:

- Sharad Birdhichand Sarda vs State of Maharashtra, (1984) 4 SCC 116
- Jaipal vs State of Haryana, (2003) 1 SCC 169
- State of Bihar vs Ramnath Prasad & Ors, AIR 1998 SC 466

Representing Advocates:

For Appellant: Mr. Dipanjan Chatterjee, Mr. Sagar Saha, Ms. Rima Adhikari, Ms. Kakan Das.

For Respondent: Mr. Debashis Roy, Ld. P.P., Mr. Saryati Datta.

Shampa Dutt (Paul), J.:

The Appeal:-

1. The appeal has been preferred against the Judgment and Order dated 03.05.2017 and 04.05.2017 passed by the Learned Additional Sessions Judge, 1st Court, Malda, convicting the appellant under Section 304 (Part II) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven (7) years and to pay fine of Rs. 5,000/- (Five thousand) in default to suffer further rigorous imprisonment for one (1) year, and also convicting the appellant under Section 328 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for six (6) years and to pay fine of Rs. 3,000/- (Three Thousand) in default to suffer further rigorous imprisonment for one (1) year and also directed that both the punishment for the appellant shall run concurrently in Sessions Case No. 228/2010 and Sessions Trial No. 06/2010.

The Prosecution:-

2. That the prosecution case, inter alia is as follows:-

It is alleged that:-

"On 22.11.2004 at about 9 P.M. the above named alleged accused called the elder brother of the complainant namely Jagadish Mandal and gave him some poisonous tari to drink without taking any money. As a result the brother of the complainant started vomiting and oozing out blood from his mouth. Immediately the complainant along with others took his brother namely Jagadish Mandal to Chanchal Hospital, but he died in front of the gate of the hospital. Immediate thereafter some persons of the same village and some persons of other village namely Jatin Roy, Rakim Ali, Bijoy Pramanik, Haren Pramanik and Jagannath Roy were admitted in the Chanchal Hospital. Thereafter the doctor came and declared Jagadish Mondal as dead."

3. On the basis of aforesaid complaint Chanchal Police Station started a case being Chanchal Police Station Case No. 172/04 dated 23.11.2004 under Sections 328/304/34 of the Indian Penal Code.

4. After conclusion of investigation charge sheet was submitted being Charge Sheet No. 82/2007 dated 31.05.2007 under Sections 328/304 of the Indian Penal Code against the above named appellant.

5. On completion of trial the Appellant was convicted and sentenced as above.

The Evidence:-

6. During trial, the prosecution examined 17 witnesses and documents were marked as exhibits.

7. Prosecution Witness No. 1 Swapan Das (P.W. 1) is the scribe of the Written Complaint.

8. P.W.-2 Binay Mondal is the Complainant and younger brother of the deceased. He has deposed as follows:-

"On 22.11.2004 at about 8 p.m. my said elder brother died after drinking „Tari". On that occasion, he drunk „Tari" in the house of this accused, namely Prasad Roy at Khari Battala. This accused invited my said elder brother to come to his house for taking „Tari" free of cost. After drinking „Tari", he returned to our house at Diara Chayanpur and started blood vomiting. On being asked he stated to me and others that he drunk „Tari" in the house of this accused and thereafter, he started vomiting. We removed him to Chanchal Hospital by rickshaw van. No sooner had we entered the hospital gate, my said elder brother died. In the said hospital, on that occasion we noticed few other persons were also admitted there with the symptom that they were also blood vomiting. Those persons also took „Tari" in the house of this accused with my said elder brother.

Haren Praminik, Bijay Pramanik, Jatin Roy, Rakib Ali and one man of Dangi were admitted in the hospital with that symptom. Those persons did not die on that occasion. I lodged one written complaint which was scribed by Swapan Das as per my narration. It was read over to me and thereafter I signed the same……..."

9. P.W. -3 Rakim Sk. is also a victim, who was hospitalized after consuming Tari in the house of the Appellant when he started vomiting blood. He has identified the accused on dock and corroborated the case of the complainant that the Appellant had invited for having 'Tari'. The 'Tari' caused the vomiting of blood. This 'Tari' also caused the death of the victim.

10. P.W. 4, Haren Pramanik and P.W. 5, Jatin Roy though victims, turned hostile during trial.

11. These witnesses denied having made any statement to the police that they had taken 'Tari' in the house of the Appellant and had become sick on consuming 'Tari' given by the Appellant.

12. P.W. 6 Dr. Satyajit Saha, is the Medical Officer who had examined both P.W.4 Haren Pramanik and P.W.5 Jatin Roy on 23.11.2004. He has proved the injury reports dated 06.11.06 (Exhibit 3+4).

13. This witness has categorically stated that both Haren and Jatin had been admitted with history of unknown poisoning due to alcohol consumption.

14. This evidence supports the case of the complainant. P.W. 7 is also a Medical Officer. This witness examined P.W. 3, Rakim Sk. on 23.11.2004 when he was admitted with history of alcohol intake followed by haemeteneis (Exhibit 5).

15. This witness has also proved the injury/**medical** reports of the other victims, being Bijay Pramanik (Exhibit 6) Jagannath Roy (Exhibit 7).

16. P.W.8 is Jagannath Roy. This witness has corroborated the prosecution case and that of P.W.3 and the complainant.

17. P.W.9 is the Medical Officer who held the post mortem of the deceased Jagadish Mondal.

18. This witness on examination found:–

"On examination rigor mortis was found present, the body was cyanosed, no external injury mark was found. On detection all internal organs were congested. Mucus membrane of stomach was congested and contains brownish colour fluid. Probable time of death was within 36 hours of examination. Opinion was kept pending till the chemical examination report. Viscera was preserved. After going through the chemical examination report of viscera I gave my final opinion and to my opinion his death was caused due to endosulfan (insecticides and poisonous in nature) poisoning. This is the chemical examination report and It is marked as Ext.8 (with objection) and this is my opinion and it was written and signed by me and it is marked as Ext.8/1. This is the P.M. report. It was written and signed by me and it is marked as Ext.9."

19. P.W.11 has stated about the incident. He has stated as follows:-

"I know the defacto complainant Binoy Mondal and accused Prosad Roy. Prosad Roy is standing on dock. The incident occurred 9 years back. Jagadish, Jatin, Rakib consumed Tari from Prosad Roy at the house of Prasad at village Deyarachayenpur under P.S. Chanchal. After consuming Tari they were vomiting. Jagadish was being taken at Chanchal Hospital. On the way to hospital he died. The incident occurred at 9 P.M."

Analysis of Evidence:-

20. From the Injury/**Medical** Reports marked Exhibit 3 to 7 of the victims, it is evident that on that day these persons along with the deceased Jagadish Mondal has consumed 'Tari' which was poisoned leading to the hospitalization of the 5 (five) injured and death of Jagadish Mondal. **All the injury reports note that the injured were admitted after alcohol consumption.**

21. This along with the oral evidence proves that the injured and the deceased had taken 'Tari' given by the Appellant, which led to the death of the victim and the injured needed hospitalization.

22. Written Argument has been filed by both sides.

23. The Appellant has relied upon the following Judgments:-

i) Sharad Birdhichand Sarda vs State of Maharashtra, (1984) 4 SCC 116, decided on July 19, 1984. The Supreme Court held:-

"I. MURDER BY POISONING OR A SUICIDE

A. Penal Code, 1860 - Section 302 - Murder by poisoning - Proof of - Four important circumstances to be established restated - Failure to prove possession of the poison by the accused fatal to the prosecution case - Such possession could not be presumed - Clear motive also not established

Held:

Per Fazal Ali, J.

In cases of death by poisoning the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

(1) there is a clear motive for the accused to administer poison to the deceased,
(2) that the deceased died of poison said to have been administered,
(3) that the accused had the poison in his possession, (4) that he had an opportunity to administer the poison to the deceased."

ii) Jaipal vs State of Haryana, (2003) 1 SCC 169, decided on October1, 2002.

24. The Doctor's report and opinion in the post mortem report has clearly proved the cause of death of the victim beyond all reasonable doubt.

25. Charge in this case was framed under Sections 328/304 of I.P.C.

26. The Learned trial court on finding that there was no evidence as to the 'motive' rightly relied upon the Judgment in ***State of Bihar Vs Ramnath Prasad & Ors reported in AIR 1998 S.C. 466,*** wherein the Supreme Court was pleased to hold that the accuseds having knowledge, although they had no motive, that they administered poisonous substance which was likely to cause grievous hurt and death, convicted the accused persons u/s-304 part-II and also u/s 326 for causing grievous hurt to other effected persons.

Conclusion:-

27. The trial Court in the present case rightly held that:-

"Even if the accused Prasad Roy had apparently no motive or intention to cause death of Jagadish Mandal or to cause hurt to the five others, but he has knowledge that 'tari' is injurious to health and even cause

death. Moreover, in the present case, Endosulfan is found present in the viscera of the deceased
Jagadish Mandal."

28. The trial Court also rightly convicted the Appellant on finding the Appellant guilty of the offences under Sections 304 II and 328 of I.P.C.

29. The order of conviction thus requires no interference. But considering the nature of the present case, the **sentence under appeal** is required to be modified and **is thus modified to the following extent.**

30. The substantive sentence for offence under Section 304 (Part II) IPC is reduced to a period of 5 (Five years).

31. The substantive sentence for the offence under Section 328 IPC is also reduced to 5 (five years). Both sentences to run concurrently.

32. Rest of the sentence and also as to fine remains unchanged.

33. CRA 393 of 2017 is accordingly disposed of.

34. The appellant's bail bonds stand cancelled.

35. The Appellant/Convict is directed to surrender before the trial Court within 30 days from the date of communication of this Judgment to serve out his sentence, in default the trial Court shall proceed in accordance with law.

36. All connected applications, if any, stand disposed of.

37. Interim order, if any, stands vacated.

38. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

39. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.