SOMAN

v

STATE OF KERALA

(Criminal Appeal Nos.1533-1534 of 2005)

DECEMBER 14, 2012.

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

[KERALA] ABKARI ACT:

ss.55(a) and (i), 57A(2)(ii) and 58 – Sale by accused, a retail vendor, of spurious liquor adulterated with methyl alcohol – Death of one person while others developed serious sickness – High Court taking into account the consequences of the culpable act, enhanced the sentence from two years RI, as awarded by trial court, to 5 years RI – Held: High Court was fully justified in taking into account the death of a person, as a result of consuming the illicit liquor, sold by the appellant as a ground for enhancing his sentence from two years to five years RI – There was absolutely no illegality or lack of jurisdiction in the order of High Court – However, in view of the fact that in the case of the supplier co-accused, sentence of life imprisonment has been reduced to 10 years RI, sentence of appellant also reduced to 3 years RI being minimum u/s.57A(2)(ii) – Sentence / Sentencing.

SENTENCE / SENTENCING:

Awarding of appropriate punishment – Taking into consideration the consequences of culpable act and its impact on other people – Principles from judicial pronouncements, culled out.

The appellant, a retail vendor, was one of the accused in the case of supply of spurious liquor, contaminated with methyl alcohol, consumption whereof

A took the lives of 31 people and more than 500 developed serious sickness out of which six lost their vision completely. The medical evidence and the chemical analysis established that by consuming the liquor adulterated with methyl alcohol, sold by the appellant, B one person died and several others became seriously sick. The trial court convicted the appellant u/ss 55(a) and (i), 57A and 58 of the [Kerala] Abkari Act and sentenced him to undergo rigorous imprisonment for two years on each count and a fine of Rs. 1 lakh on ach count except C u/s 57A. He was also convicted u/s 201 IPC and sentenced to rigorous imprisonment for six months and fine of Rs.5,000/- . The accused as well as the State filed appeals. The High Court dismissed the appeals of the accused including the one filed by the appellant, and D dealing with question of sentence on the basis of the State's appeal, enhanced appellant's sentence of imprisonment from 2 years to 5 years.

In the instant appeal filed by the accused, it was contended for the appellant that the death of a person as E a result of sale of spurious liquor could not have been a ground for imposition of a heavier sentence; and that his conviction was not maintainable u/s.57(2)(ii).

The question before the Court was: whether or not F the consequences of a culpable act and its impact on other people can be a relevant consideration for imposing a heavier punishment, of course, within the limits fixed by the law.

Dismissing the appeals, the Court

G

HELD: 1.1. Punishment should acknowledge the sanctity of human life. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the H administration of criminal justice. There are no legislative

or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc. [para 12-13 and 21] [1169-C-D-H; 1170-A; 1174-C-D]

State of Punjab v. Prem Sagar **2008 (8) SCR 574 = 2008 (7) SCC 550;** *Ramashraya Chakravarti v. State of Madhya Pradesh* **1976 (2) SCR 703 = 1976 (1) SCC 281,** *Dhananjoy Chatterjee alias Dhana v. State of W.B.* **1994 (1) SCR 37 = 1994 (2) SCC 220;** *State of Madhya Pradesh v. Ghanshyam Singh* **2003 (3) Suppl. SCR 618 = 2003 (8) SCC 13,** *State of Karnataka v. Puttaraja* **2003 (6) Suppl. SCR 274 = 2004 (1) SCC 475,** *Union of India v. Kuldeep Singh* **2003 (6) Suppl. SCR 526 = 2004 (2) SCC 590,** *Shailesh Jasvantbhai and another v. State of Gujarat and others* **2006 (1) SCR 477 = 2006 (2) SCC 359;** *Siddarama and others v. State of Karnataka* **2006 (6) Suppl. SCR 276 = 2006 (10) SCC 673,** *State of Madhya Pradesh v. Babulal* **2007 (12) SCR 795 =2008 (1) SCC 234;** *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* **2009 (9) SCR 90 = 2009 (6) SCC 498 – referred to**

S Nyathi and The State **[2005] ZASCA 134 (23 May 2005) – referred to.**

1.2. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. To understand the relevance of consequences of criminal conduct from a sentencing standpoint, one must examine: (1) whether such consequences enhanced the

A **harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence. [para 14] [1170-C-F]**

B *Sentencing and Criminal Justice by* Andrew Ashworth, **5th Edition, Cambridge University Press, 2010 – referred to**

1.3. From the judicial pronouncements, one may conclude that:

C

i. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

D

ii. The question of consequences of criminal action can be relevant from both: proportionality and deterrence standpoint.

iii. Insofar as proportionality is concerned, the
E **sentence must be commensurate with the seriousness or gravity of the offence.**

iv. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

F

v. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the
G **chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended,**
H **some aggravated culpability must attach if the**

consumer suffers some grievous hurt or dies as result of consuming the spurious liquor. [para 22] [1174-D-H; 1175-A-B]

1.4. In the instant case, it may be seen that all the three provisions as contained u/s. 55, 57A and 58 of the [Kerala] Abkari Act, provide for long periods of imprisonment, leaving it to the discretion of the court to fix the exact sentence having regard to the facts and circumstances of a particular case. In regard to taking into consideration the consequences of an offence for determining the appropriate punishment, a complete answer is to be found in s. 57A itself. Under s.57A, adulteration of liquor or omission to take reasonable precaution to prevent mixing of any noxious substance with any liquor are made offences. And then different sentences are provided in clauses (i), (ii) and (iii), depending upon the different consequences resulting from the offence. In case of grievous hurt, the minimum sentence is two years' imprisonment, in case of death, three years and, in any other case, one year's imprisonment. There is no reason why the same basis may not be adopted for sentencing under the other provisions of the Act, e.g., ss. 8, 55 (a) and (i) and 58. [para 10-11] [1168-D; 1169-A-C]

1.5. Therefore, this Court is clearly of the view, that the High Court was fully justified in taking into account the death of a person, as a result of consuming the illicit liquor, sold by the appellant as a ground for enhancing his sentence from two years to five years rigorous imprisonment. There was absolutely no illegality or lack of jurisdiction in the order of the High Court. [para 23] [1175-B-D]

1.6. No good reason has been given to hold that the appellant's conviction u/s. 57 (2) (ii) is not sustainable. [Para 11] [1168-G-H]

A **1.7. In the case of a co-accused, namely, accused no. 25, who was the supplier of the illicit liquor to the appellant, this Court, while maintaining the conviction of accused no.25 under the various provisions as recorded by the trial court and affirmed by the High Court, deemed**
B **it fit to reduce his sentence of life term u/s 57A(2)(ii) of the Act to ten years rigorous imprisonment*. It will, therefore, not be fair not to give the same concession to the appellant, who was the last and weakest link in the chain. Accordingly, his sentence from five years rigorous**
C **imprisonment is reduced to three years rigorous imprisonment, being the minimum u/ss 57A (2) (ii) of the Act. The fines imposed by the courts below for the different offences remain unaltered. [para 23] [1175-B-E-G-H; 1176-A-C]**

D **Chandran v. State of Kerala* **2011 (8) SCR 273 = 2011 (5) SCC 161 - referred to**

Case Law Reference:

E	2011 (8) SCR 273	referred to	para 23
	2008 (8) SCR 574	referred to	para 13
	1976 (2) SCR 703	referred to	para 13
	1994 (1) SCR 37	referred to	para 13
F	2003 (3) Suppl. SCR 618	referred to	para 13
	2003 (6) Suppl. SCR 274	referred to	para 13
	2003 (6) Suppl. SCR 526	referred to	para 13
G	2006 (1) SCR 477	referred to	para 13
	2006 (6) Suppl. SCR 276	referred to	para 13
	2007 (12) SCR 795	referred to	para 13
H	2009 (9) SCR 90	referred to	para 13

[2005] ZASCA 134 **referred to** **para 20** A

2011 (8) SCR 273 **referred to** **para 23**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1533-1534 of 2005.

From the Judgment & Order dated 08.10.2004 of the High Court of Kerala at Ernakulam in Criminal Appeal No. 711 of 2002 (C) and Criminal Appeal No. 1285 of 2004. B

T.V. George, Dushyant Kumar, Maurya Sarkar for the Appellant. C

M.T. George for the Respondent.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. The short question that arises for consideration in these appeals is whether or not the social consequences of a culpable act and its impact on other people can be a relevant consideration for giving a heavier punishment, of course, within the limits fixed by the law. The facts and circumstances in which the question arises may be briefly stated thus. In October 2000, 31 people died, and more than 500 developed serious sicknesses, of which six lost their vision completely as a result of consuming spurious liquor, contaminated with methyl alcohol at different places in Kollam district, Kerala. Cases were initially registered at different police stations, but, later on, all the cases were consolidated into a single case and on the basis of investigations made by the police, 48 accused in all were put on trial. The accused were broadly classified into three groups: one, the maker and manufacturers of the spurious liquor; two, the distributors and suppliers of the killer brew; and third the retail vendors who sold the stuff to the consumers. The appellant who was accused No.41 before the trial court fell in the third category. The prosecution case, insofar as the appellant is concerned, was that he was engaged in the sale of liquor and he received his supplies from accused Nos. 25 & 26. D E F G H

A 2. Before the trial court the prosecution was able to successfully establish that on October 21, 2000, two days prior to the tragic occurrence, fresh supply was brought to the appellant on a motor cycle. The arrack received by him on that date was sold to various persons and on consuming it, they B became very ill and one of them, namely, Yohannan died. The post-mortem report of Yohannan showed that he died of methanol poisoning. At the time of post-mortem his blood and urine samples were taken for chemical analysis and the report (Ext.P1059) showed presence of methyl alcohol in the samples. C Further, on the basis of a disclosure statement made by the appellant [Ext.P413(a)] a plastic can (M.O.98) containing the residue of the spirit sold by him was recovered and seized from his shop. On chemical analysis, the contents of the can were found adulterated with methyl alcohol. On the basis of the D evidences led before it, the trial court found and held, and quite rightly, that the spirit sold by the appellant that caused the death of Yohannan and sickness to several other persons was spurious, being contaminated with highly injurious and poisonous substances and held him guilty of Sections 55(a) & E (i), 57A and 58 of the (Kerala) Abkari Act (hereinafter 'the Act'). The trial court sentenced the appellant to undergo rigorous imprisonment for two years on each count and a fine of Rs.One Lakh on each count except under Section 57A and in default to undergo simple imprisonment for one year on each count. F The trial court also found the appellant guilty under Section 201 of the Penal Code and on that count sentenced him to rigorous imprisonment for six months and a fine of Rs.5,000/- with the default sentence of simple imprisonment for one month. The trial court directed that the sentences of imprisonment shall run G concurrently.

3. Against the judgment and order passed by the trial court, appeals were preferred both by the accused, including the present appellant and the State. The State in its appeal

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questioned the acquittal of some of the accused and also demanded enhancement of sentence in respect of those who were convicted and sentenced by the trial court. The High Court by its judgment and order dated October 8, 2004 dismissed the appeals of the accused, including the one by the appellant. However, dealing with the question of sentence on the basis of the State's appeal deemed it fit to enhance the appellant's sentence of imprisonment from two years to five years. In this connection, the High Court made the following observations:-

> "....Evidence adduced in this case clearly establishes that A 41 sold illicit arrack on 21.10.2000 and 22.10.2000 and Yohannan died due to methanol poisoning of taking liquor from him and several persons were sustained injuries also. His conviction for offences under Section 55(a) and (i) and under Section 58 are confirmed. Even though he was only a small retail seller, who got liquor from A 25, one person died and several persons were injured. But, he is punished only for two years under Section 55(a) and (i) and punishment should commensurate with the offence. Hence, his conviction and sentence under Section 57A (2) (ii) is confirmed. Under Section 55 maximum punishment is ten years. We are of the opinion that the sentence imposed on him should be enhanced. He is sentenced to undergo rigorous imprisonment for five years (instead of two years as imposed by the Sessions Judge) and to pay a fine of Rs. one Lakh in default to undergo simple imprisonment for six months on each count under Sections 55(a) and (i). His conviction and sentence for other offence are also confirmed. Sentences shall run concurrently."

4. Against the judgment and order passed by the High Court, the accused came to this Court in different batches. In some Special Leave Petitions filed by different accused leave was granted but the Special Leave Petition Nos.237-238 filed by one Sudhakaran @ Sudha and the present appellant was initially dismissed by order dated January 24, 2005. Later on,

A the appellant filed Review Petition (Crl.) Nos.613-614 of 2005, which were allowed by order dated November 14, 2005 and leave was granted. By the same order, the appellant was also enlarged on bail.

B 5. Learned counsel appearing for the appellant did not at all question the conviction of the appellant under the different provisions of the Act. He has, however, vehemently contended that the High Court was completely wrong in enhancing the appellant's sentence and imprisonment from two years to five C years. Learned counsel submitted that the only ground on which the High Court has enhanced the appellant's sentence was that the spirit sold by the appellant led to the death of one person. According to the learned counsel, this could not have been the valid ground for giving a heavier punishment.

D 6. Before considering this submission made by the learned counsel, it will be apposite to take a look at the relevant provisions of the Act, including those under which the appellant has been held guilty. Section 8 of the Act prohibits manufacture, import, export, transport, transit, possession, storage, sales, E etc., of arrack and it is in the following terms:-

"8.(1) Prohibition of manufacture, import, export, transport, transit, possession, storage, sales etc., of arrack.- No person shall manufacture, import, export, transport, [without F permit transit], possess, store, distribute, bottle or sell arrack in any form.

(2) If any person contravenes any provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to ten years and with fine which shall not G be less than rupees one lakh."

7. Section 55 of the Act insofar as relevant for the present, is as under:-

"55. For illegal import, etc.-Whoever in contravention of this H

Act or of any rule or order made under this Act: A

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

(b) xxxx B

(c) xxxx

(d) xxxx

(e) xxxx; or C

(f) xxxx; or

(g) xxxx; or

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

(i) [sells or stores for sale liquor] or any intoxicating drug;][shall be punishable]

(1) for any offence, other than an offence falling under clause (d) or clause (e), with imprisonment for a term which may extend to [ten years and with fine which shall not be less than rupees one lakh and] E

(2) for an offence falling under clause (d) or clause (e), with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both." F

8. Section 57A reads as under:-

"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- G

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A (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 fine which may extend to fifty thousand rupees;

B (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;

C (iii) in any other case, with imprisonment for a term which shall not be less than one year, but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

D Explanation.- For the purpose of this Section and Section 57B, the expression "grievous hurt" shall have the same meaning as in Section 320 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

E (2) Whoever omits to take reasonable precautions to prevent the mixing of 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,-

F (i)if as a result of such omission, 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 lie, and with fine which may extend to fifty thousand rupees;

G (ii)if as a result of such omission, death is caused to any person, with 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;

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(iii) in any other case, with imprisonment for a term which shall not be less than one year but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

(3) Whoever possesses any liquor or intoxicating drug in which any substance referred to in sub-section (1) is mixed, knowing that such substance is mixed with such liquor or intoxicating drug shall, on conviction, be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) no person accused or convicted of an offence under sub-section (1) or sub-section (3) shall, if in custody, be released on bail or on his own bond, unless-

(a) the prosecution has been given an opportunity to oppose the application for such release, and

(b) where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872)-

(a) where a person is prosecuted for an offence 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 substance referred to in that sub-section with any liquor or intoxicating drug shall be on him;

(b) where a person is prosecuted for an offence under sub-section (3) for being in possession of any liquor or

A intoxicating drug in which any substance referred to in sub-section (1) is mixed, the burden of proving that he did not know that such substance was mixed with such liquor or intoxicating drug shall be on him"

B 9. Section 58 reads as under:-

"58. For possession of illicit liquor.- Whoever, without lawful authority, has in his possession any quantity of liquor or of any intoxicating drug, knowing the same to have been unlawfully imported, transported or manufactured, or C knowing [the duty, tax or rental payable under this Act] not to have been paid therefor, [shall be punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than rupees one lakh]."

D 10. It may be seen that all the three provisions as contained under Sections 55, 57A and 58 provide for long periods of imprisonment, leaving it to the discretion of the court to fix the exact sentence having regard to the facts and circumstances of a particular case. Section 57A which is one of the Sections E under which the appellant is convicted provides for a minimum sentence of three years' imprisonment. When it was pointed out to the learned counsel that under the relevant provisions the sentence of imprisonment could vary from one day to ten years (under Section 55) and from three years to a life term (under Section 57A(2)(ii)) and from one day to ten years under Section F 58, he replied that the appellant's conviction was not maintainable under Section 57A(2)(ii) and so far as Sections 55 and 58 are concerned, the relevant considerations for giving a life sentence of imprisonment would be the amount of spirit stored for sale. According to him, the death of a person as a G result of sale of the spurious liquor could not have been a ground for imposition of a heavier sentence.

11. We find no substance in the submissions. First, no good reason is given to hold that the appellant's conviction H under Section 57 (2) (ii) is not sustainable; secondly, in regard

to the main issue in the case, i.e., whether the consequences of an offence can be taken into consideration for determining the appropriate punishment, a complete answer is to be found in Section 57A itself. Under Section 57A, the adulteration of liquor or the omission to take reasonable precaution to prevent the mixing of any noxious substance with any liquor are made offences. And then different sentences are provided in clauses (i), (ii) and (iii), depending upon the different consequences resulting from the offence. In case of grievous hurt, the minimum sentence is two years' imprisonment, in case of death, three years and in any other case, one year's imprisonment. There is no reason why the same basis may not be adopted for sentencing under the other provisions of the Act, e.g., Sections 8, 55 (a) & (i) and 58.

12. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In *State of Punjab v. Prem Sagar*[1] this Court acknowledged as much and observed as under –

> "2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines."

13. Nonetheless, if one goes through the decisions of this

1. (2008) 7 SCC 550.

A Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc. (See: *Ramashraya Chakravarti v. State of Madhya Pradesh*[2], *Dhananjoy Chatterjee alias Dhana v.* B *State of W.B.*[3], *State of Madhya Pradesh v. Ghanshyam Singh*[4], *State of Karnataka v. Puttaraja*[5], *Union of India v. Kuldeep Singh*[6], *Shailesh Jasvantbhai and another v. State of Gujarat and others*[7], *Siddarama and others v. State of Karnataka*[8], *State of Madhya Pradesh v. Babulal*[9], *Santosh* C *Kumar Satishbhushan Bariyar v. State of Maharashtra*[10])

14. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its D harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness? In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while E awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account F by the courts while deciding on the sentence.

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2. (2008) 7 SCC 550.
3. (1976) 1 SCC 281.
4. (2003) 8 SCC 13.
G 5. (2004) 1 SCC 475.
6. (2004) 1 SCC 475.
7. (2006) 2 SCC 359.
8. (2006) 10 SCC 673.
9. (2008) 1 SCC 234.
H 10. (2009) 6 SCC 498.

15. In *Sentencing and Criminal Justice*, 5th Edition, Cambridge University Press, 2010, Andrew Ashworth cites the four main stages in the process of assessing the seriousness of an offence, as identified in a previous work by Andrew Von Hirsch and Nils Jareborg. (See Pages 108 – 112)

1. Determining the interest that is violated (i.e. physical integrity, material support, freedom from humiliation or privacy/autonomy)

2. Quantification of the effect on the victim's living standard.

3. Culpability of the offender.

4. Remoteness of the actual harm.

16. Ashworth then examines various specific offences to ascertain how seriousness is typically gauged. The most relevant example is that of drug trafficking, where the author notes the problem that the offence lies fairly remote from causing people's deaths. Ashworth further notes that harsh sentences for drug trafficking offences is justified more by deterrent rationales than proportionality concerns, although even the deterrent rationales are beset with problems. (See Pages 128 – 130)

17. Here, it needs to be noted that one major difference between production/sale of spurious liquor and drug trafficking is that in the case of spurious liquor, the consumer does not know what he is consuming, whereas in the case of drugs, the consumer, at least in the initial stages, knowingly and voluntarily chooses to consume the drugs.

18. Ashworth also examines the impact of unintended consequences on sentencing. He notes that there is a tendency to take those into account in manslaughter and for causing death by bad driving. The extent to which unintended consequences may be taken into account would depend, for

A instance, on the extent to which the offender was put on notice of the risk of death. Thus, where it is known that driving dangerously or under the influence of alcohol creates risk for the safety of others, there would be a greater emphasis on resulting death while determining the sentence. (See Pages
B 153 – 154).

19. Arguably, one might surmise that manufacturers of spurious liquor must be able to reasonably foresee that consumption of spurious liquor would affect the health (and possibly life) of others. Thus, there may be some basis for
C taking into account the unintended consequences while determining sentence. The remoteness of harm would be a factor when a person, by consuming drugs, dies after a period of sustained use. Where a person consuming spurious liquor dies as a result of such consumption, the harm is much more
D direct and immediate, and remoteness of harm may not be as much of an issue.

20. Germane to the issue under consideration is a decision of the Supreme Court of Appeal of South Africa in *S Nyathi*
E *and The State*[11] and we may usefully refer to it. The case relates to the death of six people resulting from the road accident in which a sedan driven by the appellant in that case collided with a minibus taxi. The impact caused the minibus to overturn, killing six of its occupants. Some other passengers
F were injured.

The appellant was convicted of culpable homicide.

The court found that the collision between the two vehicles had taken place on a blind rise where a double barrier line
G prohibited overtaking by vehicles coming from either direction. It was the admitted position at the trial that forward visibility was restricted. The court observed that overtaking on a barrier line, and specially on a double barrier line, where a motorist should

H 11. [2005] ZASCA 134 (23 May 2005)

realise that his inability to observe approaching traffic is compounded by the inability of the traffic in the opposite direction to see him is probably the most inexcusably dangerous thing a road user can do. Coming to the question of sentence, the Court observed:

> "[13] Road accidents with calamitous consequences are frequently caused by inadvertence, often momentary. [Dube v. S [2002] JOL (Judgments on Line) 9645 (T), a case mentioned by the regional magistrate, is an example. The appellant was the driver of a bus involved in an accident on a mountain pass which killed twenty eight passengers. On appeal a suspended sentence of two years' imprisonment was substituted for one of six years' imprisonment imposed by the trial court on the footing that the appellant's negligence had been slight.] Overtaking on a double barrier line is not inadvertence. It is a conscious decision to execute a manoeuvre that involves taking a fearfully high risk.

Referring then to some earlier decisions of the Court in paragraph 14 of the judgment it observed as under:-

> "[14] In *S v. Nxumalo* 1982 (3) SA 856 (SCA) the court approved a passage from *R v. Barnardo* 1960 (3) SA 552 (A) (at 557D-E) where the court held that **although no greater moral blameworthiness arises from the fact that a negligent act caused death, the punishment should acknowledge the sanctity of human life.** It affirmed the *dicta* of Miller J who twenty years earlier in *S v Ngcobo* 1962 (2) SA 333 (N) at 336H-337B had set out the approach to road death cases. At 861H Corbett JA said:
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> 'It seems to me that in determining an appropriate sentence in such cases the basic criterion to which the Court must have regard is the degree of culpability or blameworthiness exhibited by the accused in committing

A the negligent act. Relevant to such culpability or blameworthiness would be the extent of the accused's deviation from the norm of reasonable conduct in the circumstances and the foreseeability of the consequences of the accused's negligence. At the same time the actual B consequences of the accused's negligence cannot be disregarded. **If they have been serious and particularly if the accused's negligence has resulted in serious injury to others or loss of life, such consequences will almost inevitably constitute an** C **aggravating factor, warranting a more severe sentence than might otherwise have been imposed.'**

(Emphasis Added)

21. Punishment should acknowledge the sanctity of human D life. We fully agree.

22. From the above, one may conclude that:

1. Courts ought to base sentencing decisions on various different rationales – most prominent E amongst which would be proportionality and deterrence.

2. The question of consequences of criminal action can be relevant from both a proportionality and F deterrence standpoint.

3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

G 4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

5. Unintended consequences/harm may still be H properly attributed to the offender if they were

reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.

23. In light of the discussion made above, we are clearly of the view, that the High Court was fully justified in taking into account the death of a person, as a result of consuming the illicit liquor, sold by the appellant as a ground for enhancing his sentence from two years to five years rigorous imprisonment. There was absolutely no illegality or lack of jurisdiction in the order of the High Court and we would have unhesitatingly upheld the order of the High Court but for another reason. It is noted above that a number of appeals against the judgment and order by the High Court came before this Court at the instance of a number of accused. One of them happened to be accused No.25 who was the supplier of the illicit liquor to the appellant and from him the appellant had received the fatal supply that led to the death of Yohannan and sickness of a number of others. The trial court had convicted accused no.25 under Section 57A(2)(ii) of the Act and sentenced him to imprisonment for life and a fine of Rs. fifty thousand with the default sentence of simple imprisonment for six months. He was convicted and sentenced to undergo rigorous imprisonment for five years and a fine of rupees fifty thousand with the default sentence of imprisonment for six months under Section 57A(2)(i) of the Act. He was also convicted under Sections 57A(2)(iii), 55(a)(i) and 58 of the Act. The High Court had maintained the conviction and sentence passed by the trial court. This Court, however, by its judgment and order dated April 4, 2011 in *Chandran v. State of Kerala*[12], maintained the

12. (2011) 5 SCC 161.

A conviction of accused no.25 under the various provisions as recorded by the trial court and affirmed by the High Court. However, it accepted the plea made on behalf of accused no.25 to reduce his sentence from a life term to ten years imprisonment. Since this Court has deemed fit to reduce the B sentence given to accused no.25 from a life term to ten years rigorous imprisonment, we feel that it will not be fair not to give the same concession to the appellant (accused no.41) who was the last and weakest link in the chain. We, accordingly, reduce his sentence from five years rigorous imprisonment to three C years rigorous imprisonment, being the minimum under Section 57A (2) (ii) of the Act. The fines imposed by the courts below for the different offences remain unaltered.

24. In the result, the appeals are dismissed, subject to modification and reduction in sentence, as noted above.

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25. The bail bonds of the appellant are cancelled. He will be taken into custody to serve his remainder sentence.

R.P. Appeals dismissed.