

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA,
1937

CRL.A.No. 158 of 2006

AGAINST THE JUDGMENT IN SC 363/2004 of ADDL. DISTRICT &
SESSIONS COURT (ADHOC)-II, MANJERI.

APPELLANT(S)/ACCUSED(A-1):

VIJAYAN @ THOMAS,
S/O.KODUMTHARA THOMAS, NILAMBUR AMSOM,
POTHIPARA DESOM,
POTHIPPARA DESOM, NILAMBUR TALUK.

BY ADV. SRI.K.ANAND

RESPONDENT(S)/COMPLAINANT:

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1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.
 2. EXCISE INSPECTOR,
KALIKAVU EXCISE RANGE OFFICE.

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 158 of 2006

Dated this the 21st day of December, 2015.

JUDGMENT

The accused in this case was tried for the offence punishable under Sections 8(1) and (2) of the Abkari Act and he was found guilty of the same. Therefore, he was convicted and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.1,00,000/–, in default, to undergo rigorous imprisonment for one year.

2. The incident which gave rise to this case occurred on 7.7.1999. P.W.1 was the Excise Inspector of Nilambur at the relevant time. He, on the date of incident, set out on patrol duty along with other officers. As they were going through Mampulli junction, Paruthippara road, they happened to see the accused coming along the way with a black can. Seeing the excise officers, he became nervous and tried to hide himself in the rubber plantation. Feeling

suspicious, he was apprehended and the can was seized. The can had a capacity of 5 litres and it contained 3 litres of some sort of liquid. By taste and smell, the liquid was identified as arrack. Sample was taken in a bottle having capacity of 375 ml, and both sample as well as the balance contraband article were sealed and labelled. The label contained the signature of the accused, witnesses and P.W.1. The articles, the accused and the documents were entrusted to the Excise Inspector at Nilambur.

3. The accused, the documents and the articles were taken possession of by P.W.4 and he registered Crime No. 23 of 1999 as per Ext.P3 occurrence report. He had the accused produced before court. He prepared the forwarding note as per Ext.P4. Chemical analysis report obtained is Ext.P5. P.W.5 completed investigation and laid charge before court.

4. The court, before which final report was laid, took cognizance of the offences. Finding that the offences are exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Manjeri. The said court made over the case to Additional District and Sessions Court (Adhoc) II, Manjeri for trial and disposal.

5. The latter court, on receipt of records and on appearance of the accused framed charge for the offences punishable under Sections 8(1) and (2) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws.1 to 5 examined and had Exts.P1 to P5 marked. M.O.1 was got identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Finding that he could not be acquitted under Section 232 Cr.P.C., he was

asked to enter on his defence. He chose to adduce no evidence.

6. The court below presumably influenced by the evidence of P.Ws. 1 and 2 and also the contemporaneous document and also the prompt production of the accused before the court came to the conclusion that the offence has been established beyond reasonable doubt and conviction and sentence as already mentioned followed.

7. Learned counsel appearing for the appellant contended that P.W.3 was the independent witness and his evidence has not been appreciated. He has not supported the prosecution version. According to the learned counsel, there has not been a proper evaluation of the evidence in the case.

8. Countering the above arguments, learned Public Prosecutor pointed out that a reading of the evidence of P.Ws. 1 and 2 clearly revealed that the incident as alleged by the prosecution has taken place and the accused was in

possession of arrack. The court below has chosen to accept the evidence furnished by the prosecution and there is no reason why the same should not be accepted.

9. The evidence regarding detection remains confined to the oral testimony of P.Ws. 1 and 2 among whom P.W.1 is the Excise Inspector and P.W.2 is the Guard of the same department. They say that while they were on patrol duty, they happened to see the accused coming along with a black can. Feeling suspicious, he was intercepted and the can was seized and examined. The can having a capacity of 5 liters found to contain 3 litres of arrack. P.W.1 says about sampling, labelling etc. P.W.1's version gets sufficient corroboration from the evidence of P.W.2. Even though they were cross-examined at length, nothing could be brought out to impeach their evidence. The result is that the evidence of P.Ws. 1 and 2 stand scrutiny.

10. It is true that the only independent witness has chosen to betray the prosecution version. That does not mean that the accused cannot be found guilty.

11. It is not the law that the evidence of official witnesses has to be corroborated by independent witness. If the evidence of police officers or excise officers are found to be convincing, cogent and trustworthy, there is no reason to look for corroboration.

12. In the case on hand, it is not correct to say that except the evidence of P.Ws. 1 and 2, there is no other evidence. Ext.P1 mahazar was drawn up by P.W.1. It is a contemporaneous document containing all the details and it is promptly produced before court. Therefore, there is no possibility of any fabrication. Further, the chemical analysis report also shows the presence of ethyl alcohol.

13. There is no suggestion to P.W.1 that they had any ill-motive to falsely implicate the accused. There is

nothing to show that they had any axe to grind against the accused. Therefore, it follows that the finding of the court below that the offence has been made out does not call for any interference.

14. Faced with the above situation, learned counsel for the appellant contended that 16 years have elapsed since the commission of the offence and the sentence imposed is very harsh. It is pointed out by the learned counsel that the accused had no criminal antecedents and there is no case for the prosecution that subsequent to the release on bail, the accused had indulged in criminal activities.

15. After having heard learned counsel for the appellant and the learned Public Prosecutor, there seems to be some substance in the grievance voiced that the sentence imposed is too harsh and not warranted in the facts of the case. Of course, that is not to say that the act of the accused has to be viewed lightly. It must be noticed that almost a

decade and a half has elapsed since the proceedings has been initiated.

16. After having given anxious consideration to the various aspects, it is felt that some leniency can be shown to the accused with regard to the sentence.

Therefore, while confirming the conviction of the accused by the court below, the sentence awarded is set aside and instead it is ordered that the sentence shall remain confined to the period already undergone by the accused and he is directed to pay fine of Rs.1,00,000/- and in default of payment of the same, he shall suffer simple imprisonment for one month.

P. BHAVADASAN,
JUDGE

sb.