

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

CRL.A.No. 236 of 2006 ()

AGAINST THE JUDGMENT IN SC 201/2002 of ADDL. SESSIONS COURT (ADHOC)-II,
KALPETTA DATED 31.12.2005

APPELLANT/ACCUSED:

ASHARAF, S/O.MUHAMMED,
PADINJARECHALIL, PUTHUPADI.P.O, THAMARASSERY
KOZHIKODE DISTRICT.

BY ADV. SRI.LALJI P.THOMAS

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SMT.LILLY LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AV

P.BHAVADASAN, J.

Crl.Appeal No.236 of 2006

Dated this the 8th day of December, 2015

JUDGMENT

The accused was prosecuted for the offence punishable under sections 55(a), 65 and 16 of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to undergo simple imprisonment for 3 years and to pay a fine of ₹1,00,000/- with a default clause of simple imprisonment for a further period of six months.

2. The prosecution case is that, on 13.04.1999, while PW1 was functioning as the Sub Inspector of Police, Thirunelli Police Station and was engaged in patrol duty along with PW6 and others, he received reliable information that a vehicle carrying contraband article is coming along the way. The team of officers waited in front of St.Peter's church. As the vehicle carrying the contraband article came on road, they signalled the vehicle to be stopped. Bonnet of the jeep was opened and above the engine of the vehicle, a sack was seen. When it was untied and examined, it was found that the same contained 465 packets of 100 ml liquor each. Nine of the packets were opened and 3 packets each were poured in three 375 ml bottles and they were sealed and labelled the same. After taking the samples, the balance contraband article and the vehicle were seized. Ext.P1 is the mahazar prepared for detection and seizure.

They returned to the station and on the basis of Ext.P2 FIR, registered Crime No.129 of 2000. He prepared Ext.P3 forwarding note and obtained Ext.P4 chemical analysis report. PW1 also asserted that, till the contraband articles were produced before the court, it was in his safe custody. PW7 took over the investigation, examined the witnesses, completed the investigation and laid charge before the court.

3. The court, before which the final report was laid, took cognizance of the offence and on finding that, the offence is exclusively triable by a court of Sessions, committed the case to Sessions Court, Kalpetta under Section 209 Cr.P.C., after following the necessary procedures. The said court made over the case to the Additional Sessions Court (Adhoc),II, Kalpetta for trial and disposal.

4. The latter court on receipt of records and appearance of the accused, framed charge for the offence already made mention of, to which the accused pleaded not guilty and claimed to be tried.

5. The prosecution examined PWs.1 to 8 and Exts.P1 to P7 marked. MOs. 1 to 3 were identified and marked. From the defence side Ext.D1 marked.

6. After the close of the prosecution evidence, the accused was questioned under Section 313 of Cr.P.C.. He denied all the incriminating circumstances put to him and maintained that, he is

innocent. Finding that the accused could not be acquitted under Section 232 of Cr.P.C., he was asked to enter on his defence. The accused chose to adduce no evidence.

7. On appreciation of the materials on record, especially the evidence of PWs.1 and 6 and also the contemporaneous document Ext.P1, the court below came to a conclusion that, the offence has been made out by the accused and the conviction and sentence followed.

8. The main attack against the conviction is that, there is no independent evidence and in the absence of independent corroborative evidence, the conviction cannot stand. It will be hazardous to enter into a finding of guilt based on the evidence of PWs.1 and 6 and it is contended that corroboration is absolutely necessary in the case on hand. It is also contended that the sampling was not properly done and so also, the requirement of law has not been met by the detecting officers. It is therefore contended that, the conviction has to be set aside.

9. The learned Public Prosecutor on the other hand pointed out that, all legal requirements have been complied with and that, the evidence of PWs.1 and 6 are sufficient to show that the incident has occurred as alleged by the prosecution. Their uniform versions are sufficient to warrant a conviction. If any additional materials are required, that is furnished by Ext.P1 mahazar. The learned Public

Prosecutor contended that there is no error in the conviction entered by the court below.

10. After hearing the learned counsel for the appellant and the learned Government Pleader, it appears that the Public Prosecutor is right in her submission that there is no scope for interference.

11. PW1 is the detecting officer along with PW6. Both of them said that, while they were on patrol duty along with other officers, they received reliable information that a vehicle carrying the contraband article is coming along the way. They waited near a church and intercepted the Jeep. From the Jeep, they discovered 475 packets of 100 ml each containing Karnataka made liquor which was seized as per Ext.P1 mahazar. PWs.1 and 6, out of 9 packets 3 samples were drawn. The samples were sealed and labelled on which the signature of the accused and PW1 was affixed. Further, as done by PW1, it is also spoken to by PW6 and there is no contradiction or inconsistency in the evidence of PWs.1 and 6.

12. True, the independent witnesses turned hostile to the prosecution. But that is not a ground to disbelieve the evidence of PWs.1 and 6. The evidence of PWs.1 and 6 taken along with the other documents in the case, inspires confidence in the mind of the court and in such cases the court need not look for corroboration.

13. It is not as if there is no corroboration in the strict sense of the term. Ext.P1 mahazar prepared by PW1, which is a

contemporaneous document, contains all the essential details. The accused and the documents were produced before the court promptly. Therefore, the evidence of PWs.1 and 6, contents of Ext.P1 and also the fact that the chemical analysis report shows ethyl alcohol in the contents of the sample sent for chemical analysis, lead to the irresistible conclusion that the offence levelled against the accused has been committed by him. There is nothing to show that the court below has erred in any manner in accepting the evidence of PWs.1 and 6. In the light of the above findings, the conviction has to be sustained.

14. Faced with the above situation, the learned counsel for the appellant submitted that, the sentence imposed by the court below is very harsh and is not warranted by the nature of offence alleged to have been committed by the accused and also considering the passage of time. It is prayed that, some leniency may be shown with regard to the sentence.

15. After having given anxious consideration to the above submissions and considering the quantity of article seized and the further fact that, there is no criminal antecedents to the accused and also the fact that the accused having not arraigned in any similar activities, this Court feels that it is necessary to show some leniency regarding the sentence.

Thus, while upholding the conviction passed by the court

below for the offence made mentioned above, the sentence awarded is set aside and the accused is sentenced to undergo simple imprisonment for a period of three months and to pay a fine of ₹1 lakh and in default, he shall undergo simple imprisonment for a further period of two months. Set off as per law is allowed.

Sd/-
P.BHAVADASAN, JUDGE

AV

/True Copy/

P.A to Judge