

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. 285 of 2006 ()

AGAINST THE JUDGMENT IN SC 298/2004 of ADDL.SESIONS COURT, THODUPUZHA
DATED 31-01-2006

APPELLANT/ACCUSED:

RAJAN, S/O.KUNJUKOCHU,
PURAYIDATHIL HOUSE, KALKOONTHAL VILLAGE
ERATTAYAR KARA.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

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.285 of 2006

Dated this the 8th day of December, 2015

JUDGMENT

Having been prosecuted for the offences punishable under Sections 55(a), (i) and 8(1)(2) of the Kerala Abkari Act, the accused was found guilty of the offences and he was therefore convicted and sentenced to undergo simple imprisonment for 2 years and to pay a fine of ₹1,00,000/- with a default clause of simple imprisonment for a further period of one year for the offences under Section 55(a) and Section 8(1)(2) of the Abkari Act. He was acquitted of the offence under Section 55(i) of the said Act.

2. The incident which gave rise to this case occurred on 14.12.2002. On that day, while PW5, who was the S.I. of the Kattappana Police Station, along with PW4 and other officers were on patrol duty, they received reliable information that near the Erattayar tunnel portion, Rajan, the accused was engaged in sale of illicit liquor. He and the other officers went along to that place. Two of the police officers were deputed to find out the actual state of affairs. They were given necessary instructions by PW5. PW5 watched their movements from a distance away. The police men so deputed found the information to be true. Sensing that he was in trouble, the accused tried to escape, but he was apprehended. A can of 10 litres of capacity having 8 litres of liquor was seized from

the place. The content of the can was found to be arrack. Two samples of 180 ml were taken. The samples were sealed and labelled. The labels contained the signature of the accused and PW5. Glass found nearby was also seized. Thereafter, he returned to the station along with the accused, the contraband articles and the documents and as per Ext.P7 FIR registered a case against the accused. Arrest memo is Ext.P8. He prepared Ext.P9 property list and produced the articles seized before the court. PW5 carried on the investigation of the case, recorded statements of the witnesses, obtained chemical analysis report, 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, Thodupuzha. The said Court made over the case to the Additional Sessions Judge (Special Judge for NDPS cases), Thodupuzha for trial and disposal.

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

5. The prosecution therefore had PWs.1 to 5 examined and Exts.P1 to P11 marked. MOs.1 to 3 were got identified and 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 brought out in evidence 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. He chose to adduce no evidence.

7. On consideration of the materials before it, the court below came to the conclusion that the offences had been made out and accordingly convicted and sentenced the accused as already mentioned.

8. Assailing the conviction and sentence, the learned counsel appearing for the accused pointed out that, merely because the accused was standing at a distance away from the contraband articles, conscious possession cannot be imputed to him and if that be so, the prosecution has to fail. The conviction is based on the uncorroborated testimony of PWs.4 and 5 and that is not permissible under law. Further it is contended that as per the requirement of law, when PW5 received the information, he should have communicated it to his superior officer and not doing so amounts to illegality. According to the learned counsel, the above grounds are sufficient for setting aside the conviction.

9. The learned Public Prosecutor on the other hand referred to

the evidence of PWs.4 & 5 and contended that their evidence is uniform and consistent and it is without blemish. There is no reason as to why the same should not be accepted. Their evidence taken along with the mahazar, samples and the documents prepared at the site, shows all the details to corroborate the version given by PWs.4 & 5. It was the above facts which made the court below to hold that the accused was guilty and according to the learned Public Prosecutor, no other view is possible.

10. After having heard the learned counsel for the appellant and the learned Public Prosecutor at length and having perused the records, precisely there is considerable force in the submissions made by the learned Public Prosecutor.

11. So far as the evidence regarding the detection is concerned, it remains confined to the oral testimony of PWs.4 and 5 who were police officers attached to the Kattappana Police Station. The prosecution case as put by PWs.4 and 5 is that, while they were in patrol duty they received reliable information about the involvement of the accused in the illegal activity. PW5 would say that, he had deputed two police men in civilian cloths to find out the truth. Those two constables asked the accused some contraband article. PWs.4 and 5 would say that they were within a short distance from the accused. PW5 made mention of preparation of

the scene mahazar and seizure of the articles found in the place of incident. There is no inconsistency or contradiction in the evidence of PWs.4 and 5 in giving a consistent version of what was mentioned in the records. In their cross examination also, nothing was brought out to discredit the same.

12. The prosecution draws considerable support from Ext.P1 mahazar which is a contemporaneous document which narrates the details of what had transpired at the spot. Having brought in evidence and producing the accused before the court at the earliest, any manipulation or fabrication of the documents or articles seized is virtually not possible.

13. The court below has appreciated the evidence in considerable detail and came to the conclusion that, there is nothing to doubt the version given by PWs.4 and 5.

14. The contention that the uncorroborated testimony of PWs.4 and 5 will not be sufficient in law to convict the accused, cannot be countenanced. It is not the number of witnesses examined that matters, but the quality of the evidence that determines the issue. Unless there are compelling reasons, it may not be prudent on the part of the court to simply start with a presumption that the police officers cannot be believed and their evidence needs to be corroborated. That is not the law. If the

evidence of the police officers or the excise officers, as the case may be, inspires confidence in the minds of the court, there is no harm in relying on their evidence.

15. In the case on hand the evidence of PWs.4 and 5 stand scrutiny and so also the significance is the prompt preparation of the mahazar.

16. There is no merit in the contention that the prosecution should fail for want of information to superior officers. Reliance was placed on Section 30. A reading of the above section does not mandate any such requirement. Even otherwise, PW5 is a competent officer.

17. The report of the chemical analyst shows that the contraband article sent for chemical analysis contains ethyl alcohol. The learned counsel may be right in his submission that the conviction for the offence under Section 55(a) would not be justified. That contemplates possession for import, export, etc. and there is no evidence in this case that the accused was in possession of the article during the time of such illegal activity. However, the fact that arrack was seized in the presence of the accused and the fact that he was found to possess arrack, the offence under Section 8(1) (2) is squarely attracted. Therefore, even assuming that the accused is entitled to be acquitted for the offences under Section 55

(a), his conviction under Section 8(1)(2) is only to be confirmed.

18. Faced with the above situation, the learned counsel for the appellant pointed out that, the sentence now awarded is too harsh and is disproportionate to the offences charged against the appellant. There is no justification for awarding such a harsh sentence and the appellant ought to have been given a chance to reform. The learned counsel further contended that the sentence now imposed is not warranted considering the quantity of article seized and the antecedents of the appellant. Further the learned counsel pointed that, 14 years have lapsed and the passage of time needs to be taken note of while considering the sentence.

19. After having heard the learned counsel appearing for the appellant and the learned Public Prosecutor on the question of sentence, it is felt that there is ample justification in the complaint that the sentence awarded is on the harsh side. The quantity of contraband seized is not huge quantity, which required a severe treatment at the hands of the court. At any rate, no criminal antecedents are reported against the accused. Taking note of the quantity of the articles seized and also the passage of time, it is felt that some leniency can be shown with regard to the sentence.

20. Thus, while setting aside the conviction of the accused for the offence under Section 55(a) and confirming the conviction under

Section 8(1)(2) of the Abkari Act, the sentence imposed is set aside and the accused is sentenced to undergo simple imprisonment for a period of three months and to pay a fine of ₹1,00,000/- and in default of payment of fine, he shall undergo simple imprisonment for a further period of one month. Set off as per law is allowed.

With the above modification, this appeal is disposed of.

Sd/-
P.BHAVADASAN, JUDGE

AV

/True Copy/

P.A to Judge