

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

CRL.A.No. 299 of 2006

AGAINST THE JUDGMENT IN SC 118/2004 of ADDL.SESIONS COURT
(ADHOC)-II, THODUPUZZHA.

APPELLANT(S)/ACCUSED:

VINOD, S/O.RAGHAVAN,
CHITTAKKADU VEEDU, PATHINIPPARA KARA,
PAMPADUMPARA VILLAGE, IDUKKI DISTRICT.

BY ADV. SRI.PAULY MATHEW MURICKEN

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. S. HYMA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 299 of 2006

Dated this the 8th day of October, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Sections 55(a) and 8 (i) and (2) of the Abkari Act. He was found guilty and therefore convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,00,000/–, in default, to undergo rigorous imprisonment for three months for the offence under Section 55(a) of the Abkari Act. No separate sentence was passed for the offence under Section 8(2) of the Abkari Act.

2. The incident is alleged to have taken place on 23.4.2001. P.W.7 was the Sub Inspector of Police of Nedumkandam Police Station. On that day, at about 5 p.m. P.W.7 along with the police party had gone on patrol duty and when they reached near Kallar, he received reliable information that the accused is keeping illicit arrack in his room. He prepared search memo and sent to court. Thereafter

he reached the place. He examined Room No. 598 of Ward No.14 of Nedumkandam Panchayat and the accused was present there at the relevant time. On the table, a glass bottle was found having 185 ml. arrack. There was a can kept below the table which contained 1 litre of arrack. A total quantity of 1.180 litre arrack was seized from the possession of the accused. The accused was arrested and the arrest memo prepared is Ext.P4. He speaks about having taken samples from the bottles and sealed and labelled the same. The label contains the signature of himself, witnesses and the accused. He returned to the station and registered Crime No. 101 of 2001 as per Ext.P6 FIR. He prepared the forwarding note and produced the seized articles in court on 31.5.2001. He recorded statements of witnesses, completed investigation and laid charge before court.

3. The court, before which final report was laid took cognizance of the offences. Finding that the case is one

exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Thodupuzha under Section 209 Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court (Adhoc)-II, Thodupuzha for trial and disposal.

4. The latter court, on receipt of records and on appearance of the accused framed charge for the offences punishable under Sections 55(a) and 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 7 examined and had Exts.P1 to P10 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. In which he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Finding that the accused could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his

defence. He examined D.Ws. 1 and 2.

5. The court below, greatly impressed by the evidence of P.W.7 taken along with the seizure mahazar found the accused guilty and conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

6. Learned counsel for the appellant contended that it is surprising that the court below accepted the evidence of P.W.7 to convict the accused. It is pointed out that detection of the offence was on 23.4.2001 and the thondi articles alleged to have been seized from the possession of the accused were produced before court only on 31.5.2001, i.e. almost 35 days of the incident. No explanation whatsoever is offered for the delay and in the light of the decision reported in *Ramankutty v. Excise Inspector, Chelannur Range* (2013(3) KHC 308) the prosecution has to give explanation for the delay. Learned counsel also drew the attention of this Court

to the fact that going by the evidence of P.W.7, there are other persons in the patrolling team who must have witnessed the incident. But for reasons best known to the prosecution, no other officer has been examined and the independent witnesses examined turned hostile. Under these circumstances, the court below was not justified in finding the accused guilty.

7. Learned Public Prosecutor on the other hand attempted to sustain the conviction on the ground that there is no reason as to why the evidence of P.W.7 is to be disbelieved especially when he produced the accused and the records before the court below on the next day itself. At any rate, the court below has chosen to accept the evidence of P.W.7. Unless it is shown that the appreciation is perverse and not justified by the materials on record, interference may not be justified.

8. As rightly pointed out by the learned counsel for the appellant, the sole basis on which conviction was entered was the testimony of P.W.7. He was the investigating officer who laid charge before court. It is not in dispute that there are other persons along with P.W.7 while conducting search and seizure. None of the other officers who were along with him were examined to support his version. True, seizure mahazar prepared makes mention of the acts done by him. But omission on the part of the prosecution to examine the other witnesses to prove detection, seizure etc. creates suspicion in the mind of the court.

9. Defence has an alternate case that there was an altercation between the accused and one Komalan and a complaint was laid in the police station and also that the accused has been falsely implicated.

10. Apart from the above fact, it is rather shocking to note that the forwarding list was prepared on 24.4.2001

while the contraband articles were produced only on 31.5.2001. P.W.7 had no explanation for the undue delay in producing the articles before court. It may be apposite here to refer to the decision relied on by the learned counsel for the appellant, i.e., Ramankutty v. Excise Inspector, Chelannur Range (2013(3) KHC 308) wherein it was held that unexplained delay in producing the contraband before the court after seizure is fatal to the prosecution case.

11. Even assuming that the contraband article is seized from the possession of the accused, the long delay in producing the same before court seems to be fatal to the prosecution case especially when there is no evidence as to in whose custody and where the articles were kept. No acceptable reason has been given for the delay. Apart from the above, there is want of corroborative evidence and also unexplained delay in producing the article before court. Therefore, this court is unable to accept the finding of the

court below that the accused is guilty of the offences.

For the above reasons, this appeal is allowed, the conviction and sentence passed by the trial court are set aside and it is held that the prosecution has not succeeded in proving the guilt of the accused beyond reasonable doubt. The accused is acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,
JUDGE

sb.