

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA,
1937

CRL.A.No. 361 of 2006 ()

AGAINST THE JUDGMENT IN SC 145/2003 of ADDL. DIST. & SESSIONS
COURT (ADHOC) FAST TRACK III, PATHANAMTHITTA.

APPELLANT(S)/ACCUSED:

JAMAL, S/O.SHEIK MYTHEEN,
NALLEKALEEKAL VADAKKETHIL, PADINJAREKARA,
POLICKAL VILLAGE, ADOOR TALUK.

BY ADVS.SRI.K.A.HASSAN
SRI.G.GOPALAKRISHNAN NAIR (EDAPPALLY)
SMT.P.SHYNI

RESPONDENT(S)/COMPLAINANT:

STATE, REPRESENTED BY THE EXCISE
INSPECTOR, PATHANAMTHITTA, IN CRIME NO.26/00.

BY PUBLIC PROSECUTOR SMT. S. HYMA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 361 of 2006

Dated this the 1st day of December, 2015.

JUDGMENT

This appeal is directed against the judgment dated 1.2.2006 whereby the accused was found guilty of offence punishable under Sections 8(1) and (2) of the Abkari Act. He was convicted and sentenced to undergo simple imprisonment for two years and to pay fine of Rs.1,00,000/-, in default, to undergo simple imprisonment for three months.

2. The incident which gave rise to this case is said to have occurred on 5.2.2000. On that day, P.W.2, the Excise Inspector attached to Adoor Excise Range, was on patrol duty, and when he reached near the Milk Production Co-operative Society, he got reliable information that the accused was possessing arrack. He prepared Ext.P2 search memo and sent it to court. He then proceeded to the place and searched the house of the accused. P.W.2 says about having seen a person pouring liquid from a bottle to a glass. Another person, who

was present there, on seeing the excise party, ran away. The excise party examined the bottle found at the place and they were convinced that it was arrack. The excise party examined the other rooms and two bottles containing arrack were also discovered. Samples were taken from the liquid so seized. Ext.P3 is the arrest memo. He also prepared Ext.P6 mahazar. P.W.2 would say that he had sealed and labelled the sample as well as the balance contraband article. He then returned to the station and registered Crime No. 26 of 2000 as per Ext.P7 occurrence report. He prepared the property list, and had the materials produced before court. Ext.P8 is the said property list. He also filed Ext.P10 requisition for sending the sample for chemical analysis and obtained Ext.P11 report.

3. Investigation was taken over by P.W.5. He recorded statements of witnesses, 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, Pathanamthitta. The said court made over the case to Additional District and Sessions Court (Adhoc) Fast Track-III, Pathanamthitta 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 P11 marked. M.Os. 1 to 3 were identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C., wherein 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 chose to adduce no evidence.

6. On appreciation of the evidence of P.Ws. 2 and 3 and also the contemporaneous document, the court below came to the conclusion that the offence has been established and therefore convicted and sentenced the accused as already mentioned. The said conviction and sentence are assailed in this appeal.

7. It is reported that during the pendency of the appeal the appellant died.

8. Section 394 of Cr.P.C. reads as follows:

“394. Abatement of appeals.– (1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant :

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation.–In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister."

Since the sentence imposed includes fine, it could not be said that the appeal abates. None of the legal heirs have come forward to prosecute the appeal.

9. Going by the evidence in the case, the patrolling party had occasion to seize the contraband article from the possession of the accused in this case. Among them, P.W.2 was the Excise Range Inspector and P.W.3 was the Excise Inspector. Both speak about having recovered contraband article from the possession of the accused, and about having sealed and labelled the same. P.W.2 in his evidence speaks about the various steps regarding seizure of the contraband article and also speaks about having prepared occurrence report etc. He says that the articles were kept in his custody till produced in court.

10. P.W.1 is an independent witness who is alleged

to have witnessed the recovery. He, however, denied his signature on the document prepared by P.W.2. Even assuming that independent witnesses turned hostile, there is nothing to doubt the version given by P.Ws. 2, 3 and 4. The court below has analysed the evidence in considerable detail and has come to the conclusion that the offence is made out. There is no reason to interfere with the conviction.

Since appellant is no more, the sentence of imprisonment abates while sentence of fine remains. Therefore, confirming the sentence of fine, this appeal is dismissed.

P. BHAVADASAN,
JUDGE

sb.