

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

CRL.A.No. 502 of 2005 (C)

**AGAINST THE JUDGMENT IN SC 454/2003 of THE ADDL.SESIONS COURT
(ADHOC) FAST TRACT COURT- II, PATHANAMTHITTA DATED 18-02-2005**

APPELLANT/1ST ACCUSED:

**VIJAYAPPAN, S/O. SREEDHARAN,
KALLUPARAMBIL VEEDU,
THIKKAPPUZHA,
PARUMALA MURI,
KADAPRA VILLAGE.**

**BY ADVS.SRI.JOHN BRITTO
SRI.C.A.RAJEEV**

RESPONDENT /COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
PULIKEEZHU POLICE STATION, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY ADV. PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl. Appeal No.502 of 2005

Dated this the 20th day of May, 2015

JUDGMENT

This appeal is preferred against the conviction and sentence in S.C. No.454/2003 of Additional Sessions Judge (Adhoc) Fast Track Court-II, Pathanamthitta for offence under Section 8(1) and 8(2) of the Kerala Abkari Act. The trial court convicted the appellant and sentenced to undergo simple imprisonment for two years and pay a fine of Rupees one lakh and in default of payment, to undergo imprisonment for one more year.

2. The prosecution allegation is that on 27.08.2001 at 5.30 p.m., Appellant and another person were found in the sale of arrack in the property of Rajesh of Kochuthoppil, Thikkapuzha, Parumala muri in Kadapra Village. The Sub Inspector of Police conducting law and order duty received reliable information about the sale and arrived at the place of occurrence, intercepted them and seized the arrack and the vessels. After completing investigation, the Sub Inspector of Police laid charge before court.

3. To prove the allegation, prosecution examined PW1 to PW5 and admitted Exts.P1 to P8 in evidence. MO1 and MO2

were also admitted in evidence. The incriminating circumstance brought out in evidence were denied by him when questioning under Section 313 Cr.P.C. and heard under Section 232 Cr.P.C. The Appellant did not adduce the evidence. The trial court after analysing the evidence convicted him.

4. The learned counsel appearing for the appellant contended that there is delay of one day in producing the seized articles before court, which was also admitted by the trial court. The sentence imposed by the trial court is too harsh. He relied on the decision in Crl. Appeal No.56/2006 of this Court.

5. The learned Public Prosecutor contended that the delay was properly explained in the trial court, the prejudice caused to the appellant was not highlighted either in the trial court or in the appellate court.

6. The structure of the prosecution allegation was based on the oral testimony of PW5, who was the Sub Inspector of Police, Pulikeezhu Police Station. According to him, on 27.08.2001 at 5.30 p.m. he was conducting the patrolling duty within his jurisdiction, at that time he received information that appellants were conducted sale of arrack in the property of one Rajesh of Kochuthoppil. On that information, PW5 arrived at

the place of occurrence with police party and detected the offence. The accused abandoned the can and glass tumbler in the property and ran away. PW5 chased them and finally arrested. They seized MO1 and MO2 after preparing Ext.P1 Mahazar. Reaching at Police Station, he registered Ext.P4 FIR. MO1 and MO2 were produced before court as per Ext.P6 property list on 29.08.2001. Ext.P2 and P3 are the arrest memos prepared by PW5. PW1 and PW2 were police constables accompanied PW5 at the time of seizure of MO1 and MO2. The oral testimony of these two witnesses were supporting the evidence of PW1. There are some minor discrepancies found in their evidence during cross-examination, that itself is not a ground to discard the oral testimony of PW5.

7. The independent witness present at the place of occurrence at the time of seizure of MO1 admitted his signature in Ext.P1. Ext.P1 is the mahazar prepared by PW5 which was attested by PW3. The independent witness present there categorically identified Ext.P1 and admitted the content in Ext.P1. The trial court observed that the evidence of PW4 is not material. The sample was also taken by the detecting officer, which was forwarded to chemical examination. Ext.P7 is the copy of the requisition and Ext.P8 is the chemical

analysis report. The report shows that sample contained 39.31% of ethyl alcohol. On the basis of the report, the trial court came to a conclusion that PW5 seized the arrack as stated in the prosecution case and no reason to disbelieve the evidence of the prosecution witnesses. No reasons are highlighted during the cross-examination to disbelieve the above witnesses. Therefore, the trial court observed that the evidence of PW1 to PW5 is believable and the offence under Section 8 of the Abkari Act was proved beyond reasonable doubt, thereby the accused were convicted. I find no illegality in the conviction of the trial court.

8. The quantity seized in this case was three liters and Appellant's counsel submitted that the sentence imposed by the trial court was excessive. In considering the adequacy of sentence it should be neither too severe nor too lenient. The magnitude of the offence, the circumstances in which it was committed, the age and character including the antecedents are relevant. No criminal antecedents reported against the Appellant. This court in Crl. Appeal No.80/2008 and Crl. Appeal No.56/2006 took a lenient view in sentence relying on the decision of the Apex Court reported in ***Sasikumar v. State of Kerala 2012 (4) KLT 867 (SC)***. Hence, the

appellant is sentenced as follows:

- a)He is sentenced to undergo imprisonment for three months and to pay a fine of rupees one lakh under section 8(2) of the Kerala Abkari Act.
- b)In default of payment of fine amount, another imprisonment for three months. The Appellant is directed to appear in the trial court for receiving modified sentence.
- c)The period of detention if any, undergone by him during the investigation, inquiry or trial shall be set-off against the term of imprisonment.

This appeal is partly allowed.

**P.D. RAJAN,
JUDGE**

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P.A. TO JUDGE

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