

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

CRL.A.No. 700 of 2006 (F)

AGAINST THE JUDGMENT IN SC 164/2001 of ADDITIONAL SESSIONS
COURT (ADHOC)- II, KASARAGODE.

APPELLANT(S)/ACCUSED:

KOMATTA KRISHNAN @ P.V. KRISHNAN,
S/O. UNDA, KODAVALLAM, PULLUR VILLAGE,
HOSDURG TALUK, KASARAGOD.

BY ADVS. SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 700 of 2006

Dated this the 30th day of September, 2015.

JUDGMENT

The accused was prosecuted for the offences punishable under Sections 8(1) and 8(2) of the Abkari Act. He was found guilty. He was 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.

2. The incident is said to have taken place on 4.12.1999 on which day C.W.1, who is no more, along with P.W.1 and other officers had gone on patrol duty. On their way, they found the accused coming along opposite side carrying a 5 litre can with him. He was intercepted and the can was seized and on tasting and smelling the contents, it was found to be arrack. The accused was arrested and Ext.P1 arrest memo was prepared. C.W.1 took sample from the can

and had it sealed and labelled as required under law. The label contained his signature as well as the signature of the accused. Ext.P2 mahazar was also prepared at the spot. Later on C.W.1 along with the contraband article and accused returned to the police station and registered crime as per Ext.P3 occurrence report. He prepared property list and forwarding note and produced the articles before court on the very same day itself. The forensic report received is Ext.P6. He completed investigation and laid charge before court.

3. The court before which the final report was laid took cognizance of the offences and finding that offences are exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Kasaragod. The said court made over the case to Additional District and Sessions Court (Adhoc) II, Kasaragod 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 8(1) and 8(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 3 examined and had Exts.P1 to P7 marked. M.O.1 was identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

5. Relying on the evidence of P.Ws.1 and 2 and contemporaneous document Ext.P2, the court below came to the conclusion that the offence has been established and found the accused guilty of the offences 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 the court below was not justified in placing reliance on Ext.P2 as a corroborative item of evidence with reference to the evidence of P.W.1 who accompanied C.W.1 during patrol duty and at the time when the crime was detected. The version given by P.Ws. 1 and 2 regarding the incident and entirely different. Though P.W.2 in her chief examination had stated that the seizure was made in the road and in cross-examination she deviated and had given a different story and therefore her evidence is totally unreliable. It is unfortunate, according to the learned counsel that C.W.1 the detecting officer is no more. But that does not absolve the prosecution from establishing the case against the accused. Evidence of P.W.1 is also not above board. A reading of his evidence as a whole would make it clear that he was not present at the place where the incident had occurred. There is

want of evidence to show that the incident has occurred as alleged by the prosecution.

7. Learned Public Prosecutor sought to sustain the conviction and sentence on the ground that there is no ground to reject the evidence of P.W.2. P.W.2 stood by the prosecution case and has given convincing evidence regarding the incident. May be there are minor inconsistencies in the evidence of P.Ws. 1 and 2 but that did not affect the substratum of the prosecution case. Their evidence is further strengthened by the recital in Ext.P2 mahazar which is a contemporaneous document and the chemical analysis report shows that the article carried by the accused is arrack. Whatever it may be, the lower court has chosen to accept the evidence of P.Ws. 1 and 2 and there is no reason as to why this Court should take a different view.

8. According to the learned Public Prosecutor though there are slight inconsistencies in the evidence of

P.Ws.1 and 2, they go a long way in establishing the prosecution case. In chief examination the version given by P.W.2 is almost the same as the version given by P.W.1. Admittedly P.W.1 had accompanied C.W.1, the detecting officer, who is no more.

8. P.W.1 would say that they had intercepted the accused while he was on the road and the can was seized. The contents was examined and it was realized that it was arrack. He speaks about having taken sample by C.W.1 and speaks about having labelled the samples. It has come out in evidence that he had drawn up Ext.P1 as per the direction of C.W.1.

9. P.W.2 on the other hand would say in chief examination that she had occasion to see the article being seized from the possession of the accused. But in cross examination she says that first she saw the excise party going along the road and she along with few others followed them.

According to her, when she reached the place of incident, i.e. the compound of the accused, she found the police standing along with the accused and a can with them. She then says about P.W.1 having taken sample from the same. She is definite that the can was dug out from the compound of the accused.

10. P.W.1 in his examination at one point of time said that it was very near the house of the accused that the incident had occurred. At a later stage, he says that he does not know the house of the accused.

11. It is quite unfortunate that the detecting officer C.W.1 is no more. That does not mean that the prosecution is absolved of the responsibility of proving the case beyond doubt. Even though chief examination P.W.2 may be found to be formidable enough in the sense that it supports the case of the prosecution, but her version in cross examination makes her evidence unreliable.

12. It is also interesting to note that P.W.1 says that arrest of the accused was informed to the wife of the accused. Interestingly enough, in the arrest memo one of the witnesses is the wife of the accused herself. So there was no question of informing her again.

13. It could not be said that the evidence of P.Ws.1 and 2 could be taken as convincing enough and corroborative to each other so as to warrant a conviction that the prosecution has succeeded in establishing the case against the accused. Evidence of P.Ws. 1 and 2 could not go together especially after going through the cross examination of P.W.2. The place of occurrence is open to serious doubt. While P.W.2 is definite that it was inside the compound of the accused, P.W.1 would say that it was on the road side. It is true that in cross-examination P.W.2 says that the compound of the accused is on the side of the road. Her evidence also shows that she has stated that the can which was found near the

house was dug out from the compound of the accused. That is a case which even the prosecution did not have.

14. These glaring infirmities have been overlooked by the trial court. True, there is a contemporaneous document Ext.P2. Even though it narrated in detail regarding the label that as affixed on the sample and also indicated that the label contains the signature of the accused alone, that may not be sufficient.

15. The court below thought it fit to overlook these glaring inconsistencies in the evidence of P.W.2 and by labelling her as a rustic witness and that due allowance should be given to her regarding the vital follies committed by her during examination and stating that it was an inadvertent submission made by P.W.2 in her examination. She is definite in her answers and apart from the contradictions, the chief examination goes against the evidence of P.W.1 also. In that circumstance, it is hazardous to say that on the basis of the

evidence of P.Ws. 1 and 2 the prosecution has succeeded in establishing the case against the accused.

For the above reason, this appeal is allowed. The conviction and sentence passed by the court below are set aside and 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.