

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

CRL.A.No. 768 of 2006

AGAINST THE JUDGMENT IN SC 139/2003 of ADDL. SESSIONS COURT
(ADHOC)-III, KASARAGODE DATED 09-03-2006

APPELLANT/ACCUSED:

THEKKEDATH PUTHIYA ILLATH T.P.NARAYANAN,
S/O.KUNHAMBU, PALAKKATT, PEROLE VILLAGE.

BY ADVS.SRI.M.THAMBAN
SMT.T.SUDHAMANI

RESPONDENT/COMPLAINANT:

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

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 768 of 2006

Dated this the 12th day of November, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Section 55(a) of the Abkari Act. He was found guilty on both counts. Hence he was convicted and sentenced to suffer simple imprisonment for one year and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment for six months.

2. The incident in this case is said to have occurred on 1.1.2000. P.W.1 was then functioning as Preventive Officer of Neeleshwaram Excise Range. On that day, he along with P.W.2 and other officers set out on patrol duty. When they reached near the house of Lakshmi Amma at Palakkatt, they happened to see the accused coming along the road carrying an orange colour plastic cover. He became panicky

on seeing the excise officers. He dropped the cover and took to his heels. Though chased, he could not be apprehended. The excise officers returned and examined the plastic cover left behind by the accused. It was found to contain 63 packets each containing 100 ml of liquid. Three of them were opened and by taste and smell the liquid was identified as arrack. Contents of the three packets which were opened transferred to a bottle having the capacity of 375 ml and it was taken as sample. It was sealed and labelled. The arrack contained in the other packets were poured into a can which the officers were carrying. That was also sealed and labelled. The empty packets were also packed and sealed. P.W.1 prepared Ext.P1 mahazar.

3. P.W.3 was functioning as the Excise Inspector at the relevant time. On 3.1.2000 P.W.1 produced the records and the articles seized and P.W.3 registered crime as per Ext.P2 occurrence report. He prepared the property list and

forwarding note and sent it to court along with the articles seized. The chemical analysis report obtained is Ext.P5. He also collected the specimen seal of P.W.1 which is marked as Ext.P6.

4. P.W.6, the successor-in-office of P.W.5, recorded statements of witnesses, completed investigation and laid charge before court.

5. The court, before which final report was laid, took cognizance of the offences. On finding that the offence is exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Kasaragode. The said court made over the case to Additional Sessions Court (Adhoc) III, Kasaragod for trial and disposal.

6. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 55(a) 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 6 examined and had Exts.P1 to P7 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. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. He also pleaded that he has been falsely implicated at the instance of K.J. Varkey, an abkari contractor. He, however, chose to adduce no evidence.

7. The evidence of P.Ws. 1 and 2 and the contemporaneous document Ext.P1 and the fact that the articles seized were promptly produced before court seem to have considerably weighed with the court below in finding that the prosecution has succeeded in establishing the case against the accused. The court below found that the accused is guilty and conviction and sentence as already mentioned followed.

8. Learned counsel appearing for the appellant, assailing the conviction, contended that a reading of the evidence of P.W.1 would show that Ext.P1 mahazar was prepared at the station and not at the place of incident. This illegality has been omitted to be noticed by the court below. Attention was drawn to Ext.P7 plan prepared by P.W.4, the Village Officer and contended that there is no kayyala or by-lane shown in the plan and therefore the version given in Ext.P1 as spoken to by P.W.1 to the effect that seeing the excise officers the accused dropped the cover and took to his heels and while P.W.1 and others followed him in the vehicle, he jumped over the kayyala and ran through the by-lane cannot be true. This shows, according to the learned counsel, that the incident has not occurred as alleged by the prosecution. Learned counsel contended that at any rate, considering the quantity of article seized, sentence imposed appears to be on the high side.

9. Learned Public Prosecutor on the other hand contended that the evidence of P.Ws. 1 and 2 stands scrutiny and there is no reason to disbelieve them. They get corroboration from the contemporaneous document, namely, Ext. P1, and it is pointed out by the learned Public Prosecutor that the claim made by the accused that Ext.P1 was drawn up at the police station is belied by Ext.P1 itself wherein it has been stated that it was prepared at the spot. The contention based on Ext.P7 plan is too brittle, according to the learned Public Prosecutor, to suspect the prosecution version of the incident. That he had escaped, apprehended etc are irrelevant as far as the detection is concerned. Therefore, the accused cannot make any gain out of those aspects. Learned Public Prosecutor emphasized that the court below has found the evidence sufficient enough and has come to the conclusion that the offence is established against the accused beyond reasonable doubt. Unless that finding is shown to be

perverse, this court may not be justified in interfering with the finding of the court below. In short, the contention is that the appeal is without merits and it is liable to be dismissed.

10. After having heard learned counsel for the appellant and the learned Public Prosecutor, there seems to be considerable force in the submission made by the learned Public Prosecutor. The evidence of P.Ws. 1 and 2 are uniform, consistent and cogent. Both of them say that they were on patrol duty along with other officers and on the way they happened to come across the accused. Both of them gave similar version regarding the escape of the accused, seizure, preparation of sample etc. P.W.1 also stated that he had prepared Ext.P1 mahazar. Even though P.Ws. 1 and 2 were cross-examined at length nothing could be brought out to discard their version. There is no evidence to show that they had any axe to grind against the accused.

11. One cannot omit to note that on a reading of Ext.P1, it becomes clear that it was prepared at the spot. It contains the entire narration of all that had been done by P.W.1, including detection, seizure, sampling etc. Further, the prompt production of the contraband article before the court gives further credence to the prosecution story.

12. It is always possible to find inconsistencies and contradictions in the evidence of witnesses. But such inconsistencies and contradictions cannot be given undue weight. Viewed from that angle, it could not be said that reasonable doubt is created regarding the involvement of the accused.

13. The court below has analysed the evidence meticulously and has come to the conclusion that there is no reason to disbelieve the prosecution version. This Court finds no reason to disagree. The conviction has only to stand.

14. Faced with the above situation, learned counsel pointed out that almost 15 years have been elapsed since the detection and this passage of time has to be taken note of while imposing sentence. Learned counsel also complains that the court below has not applied its mind in imposing sentence and the sentence imposed is disproportionate to the offence committed by the accused.

15. After having given anxious consideration to the above submission, it is felt that there is some basis for the submission of the learned counsel for the appellant. The quantity seized is only 6.30 litres and almost 15 years have elapsed since the detection. Considering the above facts, it is felt that a lenient view needs to be taken.

In the result, while confirming the conviction of the accused for the offence under Section 55(a) of the Abkari Act, the sentence imposed by the court below is set aside and instead the accused is sentenced to suffer simple

imprisonment for one month and to pay fine of Rs.1,00,000/–,
in default, to suffer simple imprisonment for one month. Set
off as per law will be allowed.

P. BHAVADASAN,
JUDGE

sb.