

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

CRL.A.No. 633 of 2005 ()

(AGAINST THE ORDER/JUDGMENT IN SC 378/2003 of ADDL.DISTRICT & SESSIONS
COURT FAST TRACK (ADHOC-I), KOZHIKODE)

APPELLANT(S)/ACCUSED:

BALAN, S/O. KANARAN, VELLAPPALANKANDY,
KAYANNA AMSOM, CHERUKAD DESOM, KOYILANDY TALUK.

BY ADV. SRI.SANTHARAM.P

RESPONDENT(S)/COMPLAINANT:

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

R1 BY ADV. PUBLIC PROSECUTOR SMT.T.Y.LALIZA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-07-2015,
THE COURT ON 10/8/2015 DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.Appeal. No. 633 of 2005

Dated this the 10th day of August, 2015

JUDGMENT

The sole accused, who stands convicted in Session Case No.378/2003 of the Additional District and Sessions Court, Fast Track (Adhoc - I), Kozhikode for offences punishable under Section 55(a) of the Abkari Act, is the appellant herein.

2. The allegation of the prosecution is that on 12/11/2000, the Preventive Officer of Perambra Excise Circle Office, on getting secret information about the sale of arrack at the place of incident, proceeded to that place at about 6.25 p.m., along with his party. There, they came across the accused, who was standing on the road side, carrying a five liter can. He was intercepted and found that the Can contained one liter of arrack. After the initial formalities of sampling, preparation of mahazar, sealing and labeling, he was arrested. Thereafter, he was taken to the Excise Range office and the crime was registered. Investigation was completed by the Excise Inspector, Perambra who laid charge against the accused. Thereafter, the accused faced trial before the

Sessions Court. To establish the case of the prosecution, PWs 1 to 6 were examined and Exhibits P1 to P9 were marked. MO-1 was identified. The court below, on an appreciation of the evidence, found the accused guilty, convicted and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs. 1,00,000/- and in default to undergo simple imprisonment for six months.

3. Aggrieved by the above conviction and sentence, the accused has preferred this appeal. Heard the learned counsel for the appellant and the learned Public Prosecutor.

4. The prosecution, to establish the case against the accused, essentially relied on the oral testimonies of PWs1 and 2 along with the contemporaneous documents of Exhibits 1 and P3. PW1 in his evidence deposed that he had proceeded to the place of incident on getting the information regarding the sale of arrack. He deposed in detail about the interception, detection of arrack and preparation of the contemporaneous documents followed by the arrest of the accused. His version was essentially supported by PW2, who was the Excise Guard and also a member of the patrol party. PW5 was the Excise Range Inspector, Balussery, who registered Ext.P5 crime. It was also

deposed that at the time of the incident, the wife of the accused came to the spot, who was served with Ext.P3, notice of arrest. Ext.P1 is the arrest memo allegedly prepared at the spot itself.

5. Exhibits P1 to P3 are the contemporaneous documents, which along with the oral testimonies of PW1 and PW2 were pressed into service to contend that the accused has committed the offence. Ext.P4 is the sketch of the place of the incident. The official witnesses PW1 and PW2 generally deposed in terms of the prosecution case. PW3 is the independent witness who admitted his signature in Ext.P2. However, he denied his signature in MO1. Hence, the prosecution could not rely on the testimony of PW3 in any manner. The version spoken to by PW1 and PW2 is generally in accordance with Ext.P2, seizure mahazar.

6. Investigation was conducted by PW6 and PW4, the village officer, had prepared Ext.P4, sketch. The crime was registered by PW5.

7. The learned counsel for the accused vehemently contended that her client is absolutely innocent and has been roped in on a false allegation. According to the learned counsel, even from the available materials, it is clear that the prosecution

could not prove the allegation against the accused to the hilt. The learned counsel contended that even the version of PWs1 and 2 regarding the search and seizure were highly doubtful. It was admitted by the witnesses that the incident happened at about 6.25 p.m.. Even the version of the witnesses show that the accused was seen in the head light of the jeep. Evidently, there was darkness in the area. It is even on record that Ext.P2 seizure mahazar was prepared by keeping it on the bonnet of the jeep and in candle light. A perusal of Ext.P2 shows that it meticulously narrates the entire sequence of interception, search, sampling, sealing, labeling and the arrest of the accused. Essentially, it has to be presumed, if the prosecution case is believed, that the entire incident happened in the candle light. This makes the entire prosecution case of interception and seizure at the spot doubtful.

8. It is true that there was no delay in taking the accused, contraband and the supporting documents to the Court. As per the materials available, he was arrested on 12/11/2000, taken to the Excise Office and produced before the Magistrate on the next day by PW5, the Excise Range Inspector. Ext.P6 is

the property list which supports this. The sample was forwarded by Ext.P7 forwarding note. Ext.P8 is the chemical analysis report, which favours the prosecution case.

9. As mentioned earlier, PW3, an independent witness, did not support the prosecution case. He admitted his signature in Ext.P2, but denied the signature in MO1. It has to be noted that even at the time of cross examination of PW1, he admitted that the signature of the independent witness on the label of MO1 is different from his signature on Ext.P2. This has to be evaluated on the basis of the fact that PW3 had specifically denied the entire incident.

10. The version of PW1 and PW2 varies on certain points. According to PW1, he got a prior information regarding the sale of arrack in the locality. According to him, it appeared to be a general information. On the other hand, Ext.P2 mahazar shows that PW1 got specific information that the accused was selling arrack. It appears that he also got definite information regarding the place where the person was selling the arrack. However, this aspect was not spoken to by PW1 in his evidence. Further, according to PW1 on getting specific information about the offence, he went straight to the locality and apprehended the

accused. The version of PW2 was also that they had gone straight to the spot. However, in cross examination, he admitted that he had informed the Investigating Officer that they intercepted the accused while on patrol duty. PW6, the Investigating Officer also deposed that PWs1 and 2 had informed that the incident happened while they were on patrol duty. Further PW1 in his evidence admitted that he did not tell the Investigating Officer that, on seeing the police party, the accused tried to cover the Can with his dothi. On the other hand, PW2 had specifically stated that he saw the accused covering the contraband item with his dothi.

11. Though the above contradictory may appear to be not very serious and minor in nature, it has to be evaluated in the background of the entire case of the prosecution that he was intercepted while there was no light. On an appreciation of the entire evidence, it appears that the evidence let in by the prosecution do not inspire confidence to convict the accused. In the above circumstances, the accused is entitled to the benefit of doubt. Hence, the conviction is liable to be set aside.

In the result, the appeal is allowed, conviction and sentence are set aside and the accused is acquitted. The bail

bond executed by him shall stand discharged.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.