

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA,
1937

CRL.A.No. 355 of 2007

AGAINST THE JUDGMENT IN SC 1243/2005 of ADDL. SESSIONS COURT
FAST TRACK-II, PALAKKAD.

APPELLANT(S)/ACCUSED:

MUTHUSWAMY GOUNDER,
S/O.KALIYAPPA GOUNDER, VANNAMADA,
VALIYAVALLAMPATHY,
CHITTUR.

BY ADVS.SRI.K.R.RAJKUMAR
SRI.A.R.GANGADAS

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 355 of 2007

Dated this the 15th day of December, 2015.

JUDGMENT

The accused faced prosecution for the offence punishable under Section 55(a) read with Section 8(2) of the Abkari Act. He was found guilty. Consequently, he was convicted and sentenced to undergo simple imprisonment for one year and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment for three months. Set off as per law was allowed.

2. The incident which gave rise to this case is said to have occurred on 10.8.2003. On that day, P.Ws.3 and 4, who were Preventive Officer and Excise Guard respectively, along with few other officers had gone on routine patrol duty. When they reached a place called Vellaramkallu, they saw a person coming along carrying a bag. No sooner than he saw the Excise Officers, he tried to place the bag in a nearby bush.

It was seen by the Excise Officers and the bag was retrieved in the presence of independent witnesses. From the bag, they recovered a can having capacity of 10 litres and it contained two litres of liquid. By taste and smell, they identified the liquid as arrack. Ext.P2 arrest memo was prepared and he was arrested. P.W.3 took a sample of 300 ml in a bottle having capacity of 375 ml and sealed and labeled both the sample as well as the balance contraband article. The label contained the signatures of P.W.3 and the accused. P.W.3 claims to have prepared the mahazar which is marked as Ext.P1. P.W.3 then went to the Range Office and handed over the accused, seized article and the documents.

3. P.W.5, who was in charge of the Excise Office received the accused, the documents and the articles produced by P.W.3 before him, and as per Ext.P3 occurrence report registered crime as Crime No.26 of 2003. The Excise Inspector, who is no more, prepared property list which is

marked as Ext.P4. He preferred the forwarding note to the court to have the sample sent for chemical examination and that is Ext.P5.

4. P.W.6 took over investigation and recorded statements of witnesses. He obtained Ext.P6 sketch and received the chemical analysis report Ext.P7. He completed investigation and laid charge before court.

5. The court, before which final report was laid, took cognizance of the offence. Finding that the offence is exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Palakkad. The said court made over the case to Additional Sessions Court Fast Track-II, Palakkad for trial and disposal.

6. The latter court, on receipt of records and on appearance of the accused framed charge for the offences punishable under Section 55(a) read with Section 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 6 examined and had Exts.P1 to P7 marked. M.Os.1 and 2 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.

7. The court below mainly depending upon the evidence of P.Ws. 3 and 4 and also the contemporaneous document Ext.P1 mahazar and also prompt production of the accused, articles and the documents on the very next day of the incident found the evidence to be convincing enough to hold the accused guilty. Conviction and sentence as already mentioned followed.

8. Assailing the conviction and sentence, learned counsel for the appellant contended that there was no proper appreciation of the evidence in the case and that has resulted in miscarriage of justice. Inviting attention to the evidence of P.W.3, it is contended that P.W.3 had stated that on the label affixed on the sample bottle as well as on the balance contraband article, the accused had put his signature. However, the court below has looked into the sample and found that there was no signature on the label and that is sufficient to warrant an acquittal. It was further contended that P.Ws. 3 and 4 did not get any support from the independent witnesses and that is also fatal to the prosecution.

9. Learned Public Prosecutor on the other hand pointed out that evidence of P.Ws. 3 and 4 stand scrutiny and they gave consistent and uniform version of the incident. The mere fact that no signature is found on the label on the

sample and the balance contraband article seized does not lead to a conclusion that the case is false. The contemporaneous document Ext.P1 and the arrest memo were produced before the court on the very next day of the incident. There is nothing to show that P.Ws. 3 and 4 had any axe to grind against the accused. Learned Public Prosecutor pointed out that the court below has appreciated the evidence in the proper perspective and the appeal is only to be dismissed.

10. After having heard learned counsel for the appellant and learned Public Prosecutor, and perused the records, it seems to be that the contention of the learned Public Prosecutor will have to be upheld. Both P.Ws. 3 and 4 were on routine patrol duty along with other officers and while they reached a place called Vellaramkallu, they happened to see the accused coming along the road carrying a bag and on seeing the excise officers he tried to hide the bag and that was

noticed by the excise officers. They seized the bag and on examining the same it was found to contain a can having capacity of 10 litres containing two litres of arrack. Both of them say that sampling was done at the spot and Ext.P1 mahazar was prepared at the spot.

11. Even though these witnesses were cross-examined at length, there is nothing to indicate that their version is not correct. The court below found that their evidence is cogent and convincing.

12. It is true that the independent witnesses have not chosen to support P.Ws. 3 and 4. They, however, admitted their signature. They have denied having seen the seizure of contraband article from the possession of the accused. It is not the rule of law that the evidence of Excise Officers and police officers should receive corroboration from independent sources. When the evidence of Excise Officers is found to be cogent and convincing and without blemish, there is no

justification for rejecting that evidence on the ground that there is no corroborative evidence. In the case on hand even though P.Ws. 1 and 2 have not supported the prosecution case, they admitted their signature on Exts.P1 and P2.

13. The infirmity pointed out regarding the absence of signature of the accused on the label is not of much significance. The mahazar Ext.P1, arrest memo Ext.P2, occurrence report Ext.P3 etc were produced before the court on the next day so also the accused. So the prompt production of the accused and these documents before court rules out any fabrication or manipulation. It is true that P.W.3 had stated that the label contains the signature of accused, while the court examined the same, it was not there. It is not discernible from the judgment as to what the court meant by saying that the signature is not seen on the label. One should remember that the parties were examined three years after the incident and it is possible that the signature might have

fade away. Merely because the label does not contain the signature of the accused, it is not that the prosecution should fail.

14. Ext.P1 is the contemporaneous document which in detail narrates what had transpired at the place and that lend credence to the prosecution version of the incident.

15. It could thus be seen that the court below has analysed the evidence properly and has come to the right conclusion. Evidence of P.Ws.3 and 4, the detecting officers and the accompanying officer is consistent as already stated and there is nothing brought out in cross examination to discard their evidence. There is nothing to show that they had any oblique motive to falsely implicate the accused. In the light of the above facts, the court below was justified in holding the accused guilty and the conviction is only to be sustained. I do so.

16. Learned counsel for the appellant then prayed that some leniency be shown with regard to the sentence mainly for the reason that the accused is now 90 years of age. It is also pointed out that the quantity seized is only 2 litres and he had no criminal antecedents.

17. Having given anxious consideration to the various aspects, it is felt that some leniency can be shown to the accused considering the fact that the accused was 77 years of age and 13 years have elapsed since then. Passage of time must have some effect on the sentence. Now he is almost 90. These aspects cannot be ignored at the time of confirming the sentence. As rightly pointed out by the learned counsel for the appellant, the appellant is entitled to some leniency with regard to the sentence.

In the result, while sustaining the conviction of the accused for the offence punishable under Section 55(a) of the Abkari Act, the sentence imposed is set aside and the accused

is sentenced to undergo simple imprisonment for one month and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment for one month. Set off as per law will be allowed. This appeal is disposed of as above.

P. BHAVADASAN,
JUDGE

sb.