

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. 849 of 2006

AGAINST THE JUDGMENT IN SC 44/2002 of ADDL.SESSN.COURT
(ADHOC-II), KASARAGODE.

APPELLANT(S)/ACCUSED:

JAYAN @ SODA JAYAN,
S/O.RAMAN, NEAR OVER BRIDGE, NELLIKUNNU,
KASARAGODE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANT AND STATE:

1. THE STATION HOUSE OFFICER,
KASARAGODE POLICE STATION.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. 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. 849 of 2006

Dated this the 15th day of December, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Section 55(a) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for three months.

2. The prosecution case is that on 23.3.2001, P.Ws. 1 and 2, police officers attached to Kasaragod Police Station were on patrol duty. By about 4 p.m., when they reached near Geetha Talkies, they got reliable information about a person engaged in sale of arrack near the over bridge at Nellikunnu. When they reached the over bridge junction, they found a person walking away holding a black can. Seeing the excise officers, he began to run. He was followed and intercepted.

The can was seized and its contents were examined. P.Ws. 1 and 2 were convinced that it was arrack. The accused was arrested. Ext.P1 is the arrest memo. From the contents in the can, sample was taken in a bottle having capacity of 375 ml. Sample was sealed and the label containing the signature of the accused, witnesses and P.W.1 was affixed. 10 litre can contained about 9 litres of arrack. The accused had also a glass with him. The seizure mahazar prepared by P.W.1 is Ext.P2. P.W.1 then returned to the police station and registered case against the accused as per Ext.P3 FIR. On the next day, the accused and the articles were entrusted to C.W.11.

3. P.W.5 would say that he took over investigation of the case on 24.3.2001. He prepared the scene mahazar Ext.P4. He had produced the accused before the court and got him remanded. He had produced the articles before the court on 30.3.2001 and the explanation for the delay was that he

was engaged in other duties. Property list prepared by him is Ext.P5. He had prepared Ext.P6 forwarding note and produced it before court for sending the sample for chemical examination. P.W.5 obtained Ext.P7 chemical analysis report. Investigation was completed and final report was laid before court.

4. The court, before which final report was laid took cognizance of the offence. Finding that the case is one 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 Sessions Court (Ad Hoc) II, Kasaragod for trial and disposal.

5. 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 5 examined and had

Exts.P1 to P7 marked. M.O. 1 was got identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C., in which 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.

6. The court below found the evidence of P.Ws. 1 and 2 taken along with the contemporaneous document Ext.P2 seizure mahazar to be convincing enough and found the accused guilty. Conviction and sentence as already mentioned followed.

7. Shri.T.G. Rajendran, learned counsel appearing for the appellant assailed the finding of the court below. Learned counsel pointed out that there is considerable delay in producing the articles before court and no satisfactory

explanation is given by P.W.5. Of course, P.W.5 would say that he was busy with work and therefore he could not produce the articles immediately. It was he who had produced the accused before court and got him remanded. He had also produced several documents before court promptly. If that be so, according to the learned counsel, nothing prevented him from producing the articles before court on the same day. It is also contended that the delay is unexplained. Learned counsel relied on the decision reported in Ramankutty v. Excise Inspector, Chelannur Range (2013(3) KHC 308) and contended that delay in this case is fatal and conviction cannot stand.

8. Learned Public Prosecutor on the other hand contended that evidence of P.Ws. 1 and 2 are convincing and cogent and that is sufficient to convict the accused.

9. The only point that needs to be determined is the question of delay in producing the articles before court. In the decision reported in Ramankutty v. Excise Inspector,

Chelannur Range (2013(3) KHC 308) this Court had occasion to hold that even a day's delay may be crucial and that unexplained delay in producing the contraband before the Court after seizure is fatal to the prosecution case. This Court is not forgetting the fact that a Division Bench of this Court has held that the word 'forthwith' occurring in Section 102 of Cr.P.C. means within a reasonable time. In this case, the articles were produced after seven days of the incident. The claim of P.W.5 is that he was busy with work can be taken only with a pinch of salt. It is true that P.W.5 says that the articles were in his custody. It is seen that two samples were taken and one sample was sent for chemical analysis. What happened to the other sample is not discernible from the evidence. There is no satisfactory explanation offered for the same. In the light of the decision cited above, it is felt that the accused is entitled to succeed.

For the above reasons, this appeal is allowed, the conviction and sentence passed by the trial court are set aside and the accused stands acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,
JUDGE

sb.