

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRL.A.No. 991 of 2006 ()

AGAINST THE JUDGMENT IN SC 465/2003 of ADDL.SESIONS COURT
(ADHOC)-III, KASARAGODE.

APPELLANT(S)/ACCUSED 1 TO 3:

1. KUTHIRUMMEL JANARDANAN,
S/O.AMBU, AGED 51 YEARS, RESIDING AT
KUTHIRUMMEL VEEDU,
ADEYADUKKAM, PALAVAYAL VILLAGE,
KASARGOD DISTRICT.
2. RAJESH, S/O.JANARDANAN,
AGED 23 YEARS, RESIDING AT KUTHIRUMMEL VEEDU,
ADEYADUKKAM, PALAVAYAL VILLAGE,
KASARAGOD DISTRICT.
3. RAMAKRISHNAN, AGED 42 YEARS,
S/O.AMBU, RESIDING AT KUTHIRUMMEL VEEDU,
ADEYADUKKAM
PALAVAYAL VILLAGE, KASARAGOD DISTRICT.

BY ADVS. SRI.T.MADHU
SMT.C.R.SARADAMANI

RESPONDENT(S)/RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. THE STATION HOUSE OFFICER,
VELLARIKUNDU POLICE STATION, HOSDURG TALUK,
KASARGOD DISTRICT.

BY PUBLIC PROSECUTOR SMT. S. HYMA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 991 of 2006

Dated this the 4th day of December, 2015.

JUDGMENT

Three persons were prosecuted for the offences punishable under Sections 55(a) and (g) of the Abkari Act. All of them were found guilty and therefore, they were convicted and sentenced to undergo simple imprisonment for two years each and to pay fine of Rs.1,00,000/- each, in default, to undergo simple imprisonment for six months.

2. The prosecution case is that on 28.8.2001 P.W.1 along with P.W.4 and others set out to the place, where according to the information received by them, the first accused and others were engaged in distillation of arrack. They parked their vehicle a kilometer away from the forest area and then walked to the place of occurrence. When they reached about 200 meters away from the place of occurrence, they saw a shed covered with blue colour plastic sheet and beneath that a person was seen burning firewood, another

person was seen holding a can of 200 litres capacity and stirring the contents in the same and another person was seen bringing water in an aluminium vessel. Seeing the police party, all the three of them tried to run away from the place, however, the third one was apprehended and the other two escaped. The person who was apprehended was the person who was burning the wood at the relevant time. The persons who had run away as per the information given by the witness, who had gone along with P.W.1, were the son of the first accused and the brother of the first accused by name Rajesh and Ramakrishnan respectively. When the contents were examined, the can was found to contain wash. Apart from the aluminium vessel found at the place, they also laid their hands on a plastic can of 5 liter capacity which contained 3 litres of arrack. The first accused was arrested at the spot and Ext.P1 is the arrest memo. Mahazar prepared is Ext.P2. From the wash content, two samples of 600 ml each in bottles having

capacity of 750 ml were taken. From the arrack, two samples of 300 ml each in bottles having the capacity of 375 ml were taken. They were sealed and lagelled and on the label P.W.1, the accused and the witnesses were affixed their signatures. Balance quantity was drained away at the place. P.W.1 returned to the station and registered Crime No. 136 of 2001 under Sections 55(a) and (g) of the Abkari Act as per Ext. P3 FIR.

3. Investigation was taken over by P.W.3. He prepared the scene mahazar Ext.P4 and recorded statements of witnesses. Rest of the investigation was conducted by P.W.4. He prepared the property list and forwarding note Exts.P5 and P6 respectively and obtained Ext.P7 certificate. He also obtained from the Village Officer certificate showing that the place of occurrence is within the forest area of Kerala State. After completing investigation, he laid charge before court.

4. The court, before which final report was laid took cognizance of the offences. Finding that the 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 Sessions Court (Adhoc) III, Kasaragode for trial and disposal.

5. The latter court, on receipt of records and on appearance of the accused framed charge for the offences punishable under Sections 55(a) and (g) of the Abkari Act. To which 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 P8 marked. After the close of the prosecution evidence, the accused were questioned under Section 313 Cr.P.C. They denied all the incriminating circumstances brought out in evidence against them and maintained that they are innocent. The first accused also stated that he was taken to the police station informing that the Circle Inspector

wanted to see him and then he has been falsely implicated. The second accused submitted that he has been falsely implicated and the third accused stated that he is a casual worker and he has been falsely implicated. Finding that the accused could not be acquitted under Section 232 Cr.P.C., they were asked to enter on their defence. They chose to adduce no evidence.

6. On an analysis of the materials before court, probably influenced by the evidence of P.Ws. 1 and 4 taken along with contemporaneous document Ext.P2, the court below was inclined to take the view that the offence has been established as against the accused. Conviction and sentence followed.

7. Assailing the conviction and sentence, one of the main grounds urged by the learned counsel for the appellants is that a reading of the evidence of P.Ws. 4 and 5 would show that they were not sure as to the place of

occurrence and whether it falls within Kerala State or Karnataka State. In that case, benefit of doubt should go to the accused and they are liable to be acquitted. There is no evidence of arrest of accused Nos. 2 and 3 because the arrest memos relating to those accused were not produced. None of the witnesses speak about the arrest of accused Nos. 2 and 3. It is therefore contended that no charge against accused Nos. 2 and 3 are made out by the prosecution.

8. Learned Public Prosecutor on the other hand contended that evidence of P.Ws. 1 and 4 would clearly show that the articles were seized as claimed by them. Merely because P.W.5 in cross-examination has stated that he was not sure whether the area falls within Kerala State or Karnataka State, it cannot be given undue importance and significance to acquit the accused. P.W.5 had issued a certificate to show that the area falls within Kerala State. There is no suggestion to him by the defence that Ext.P8 certificate issued by him is

contrary to facts. Under these circumstances, the contention of the learned counsel for the appellant is misconceived. As far as accused Nos. 2 and 3 are concerned, their details were given by P.W.2.

9. Learned Public Prosecutor pointed out that the lower court was inclined to accept the evidence of P.Ws. 1 and 4 and there is no reason as to why this Court should not accept their evidence. The court below has appreciated the evidence in the proper perspective and has reached the right conclusion.

10. There seems to be considerable force in the submission made by the learned Public Prosecutor. The evidence of P.Ws. 1 and 4 are uniform and consistent regarding the detection, sampling, sealing and labelling. They gave uniform version regarding the place of occurrence, i.e., going through the forest area and locating distillation place run by the accused. Seeing the police officers, they took

to their heels, but the first accused was apprehended. They gave a uniform version regarding the preparation of arrest memo, arrest of first accused and also regarding sampling and labelling of the samples as well as the contraband article. Even though they were cross-examined at length, nothing could be brought out from their evidence to show that they had an ill-motive to falsely implicate the accused. If there is any infirmity in their evidence, that is cured by Ext.P2 mahazar which gives a narration of the entire incident. No objection was taken regarding the marking of that document nor the contents of the mahazar disputed regarding what all had transpired. There is no suggestion that any of the statements contained in Ext.P2 is erroneous. Further, the documents, the articles and the first accused were promptly produced before court.

11. Much is made out of the statements made by P.Ws. 4 and 5 regarding the place of incident. The portion of

the statement of P.W.1 that there is no such forest land in Kerala. This is ballooned up by the learned counsel for the appellants and contended that he has no idea of the place of occurrence. P.W.5 in cross-examination says that he is unable to say whether the incident had occurred within Kerala State or outside Kerala State.

12. As far as P.W.4 is concerned , he has stated that the incident had occurred in a forest area within Kerala. The evidence of P.W.1 is very clear to the effect that it was through the forest they walked and located the place of incident.

13. As far as P.W.5 is concerned, he had issued Ext.P8 certificate based on the records. The statement that he is not sure whether the area falls within Kerala or Karnataka cannot be taken out of context and given undue importance. Obviously Ext.P8 has been issued on the basis of the records and there is no suggestion to P.W.5 that the entries in Ext.P8 are erroneous or not in accordance with the records kept in his

office.

14. Both P.Ws.1 and 4 had identified the articles seized on the date of incident itself. As already stated, there is prompt production of the accused and the articles before court.

15. However, the case against accused Nos.2 and 3 stands on a different footing. It may be remembered that the first accused was arrested from the place. Even though accused Nos. 2 and 3 were identified as per the information given by P.W.2 whom the police had taken along with them, he turned hostile to the prosecution at the time of trial and his evidence is not trustworthy. There is absolutely no evidence as to who had arrested accused Nos. 2 and 3 and under which circumstance they were arrested. Their arrest memos are not even produced. No one speaks about their arrest. As to who identified them is also a matter to be proved. Neither P.W.4 nor P.W.3, the investigating officer says about the arrest of

accused Nos. 2 and 3. Therefore, their identity is in dispute and it is not proper for the court below to simply convict them on the basis of a narration given by P.W.2.

16. It therefore follows that the prosecution has succeeded in establishing the case as against the first accused and the benefit of doubt should go to accused Nos. 2 and 3. The conviction of the first accused is only to be confirmed.

17. Then, learned counsel for the appellants contended that the sentence imposed is very harsh and it is disproportionate to the offence. Moreover, it is pointed out that the first accused is advanced in age and several changes took place at this distance of time. If at all the accused had committed the offence, a lenient view needs to be taken in this case.

18. After having given anxious consideration to the arguments advanced by the learned counsel for the appellants, it is felt that there is some substance in the grievance of the

first appellant. Eleven years have elapsed after the incident and things might have changed.

19. Considering all the aspects, it is felt that a lenient view can be taken with regard to the sentence.

In the result, while setting aside the conviction and sentence imposed on accused Nos. 2 and 3, the conviction of the first accused is confirmed, but the sentence awarded against him is set aside and instead he is sentenced to undergo simple imprisonment for three months and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment of one month. Set off as per law is allowed.

P. BHAVADASAN,
JUDGE

sb.