

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

CRL.A.No. 1294 of 2004 (A)

**AGAINST THE JUDGMENT IN SC 1217/2002 OF ADDITIONAL SESSIONS COURT
(FAST TRACK COURT-I), THIRUVANANTHAPURAM DATED 04-08-2004**

APPELLANT/ACCUSED:

**SWARNAMMA @ BABY, D/O.MARY,
ADUPPUKOOTTANPARA, ROADARIKATHU VEEDU
PEROORKADA DESOM, PEROORKADA VILLAGE, TRIVANDRUM.**

BY ADV. SRI.V.R.GOPU

RESPONDENT/COMPLAINANT:

**STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, TRIVANDRUM RANGE
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.GITHESH R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A. No.1294 of 2004

Dated this the 2nd day of March, 2015

J U D G M E N T

This appeal arises from the judgment passed by the Additional Sessions Judge (Fast Track Court-I), Thiruvananthapuram by which he convicted the appellant of the offence under Section 55(a) of Abkari Act r/w. 8(1) Abkari Amendment Act and sentenced her to undergo simple imprisonment for 1½ years and to pay a fine of Rs.1 lakh with a default clause. The allegation was that at 11 a.m. on 7.2.1998 the appellant was found walking along a public road carrying a can, the contents of which was 2½ ltrs. of arrack. The trial court accepted the prosecution case and found the appellant guilty.

2. Heard.

3. PW1 Sudarsanan was Preventive Officer and PW2 Unnikrishnan Excise Guard attached to the Excise Control Room, Thiruvananthapuram during the relevant period. They deposed that on 7.2.1998 at about 11 a.m. they were

on patrol duty when they found the appellant going along a public road carrying MO1 can; they restrained her and inspected the can; its contents was found to be arrack; she was arrested on the spot and the contraband was seized and sealed; Ext.P1 is the mahazar prepared for the seizure.

4. There is no doubt that the substance that was sent for chemical analysis was arrack. Ext.P4 is the chemical analysis certificate.

5. The only independent witness examined by the prosecution is PW3. He was a carpenter by occupation. He denied the incident; he even denied that he signed Ext.P1 mahazar.

6. The evidence of PW1 Preventive Officer is to the effect that on seeing the excise personnel the appellant became frightened and attempted to go back; at this moment the excise officers restrained her and inspected the contents of the can. But PW2 Guard has a different version. He has no case that the appellant was frightened and she attempted to go back. His testimony is that as she was

found walking along the road carrying MO1 can, the excise officers got suspicion, which was why they restrained her. In the nature of the case this is a material contradiction.

7. PW1 deposed that the contents of MO1 jar was given to two independent witnesses to smell and taste. This is not believable.

8. The evidence adduced by the prosecution appears to be very artificial. It does not inspire confidence. The appellant is entitled to benefit of doubt.

In the result, this appeal is allowed. The order of conviction of the appellant is set aside. She shall be released forthwith unless her detention in some other case is necessary.

**K. ABRAHAM MATHEW
JUDGE**

shg/