

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

CRL.A.No. 1071 of 2005 ()

AGAINST THE JUDGMENT IN SC 634/2002 of ADDLSESSIONS COURT (ADHOC),
ALAPPUZHA DATED 18-05-2005

AGAINST THE ORDER IN CP 19/2002 of J.M.F.C., KAYAMKULAM

APPELLANT/ACCUSED:

HARIDASAN, S/O. GOPI PILLAI,
CHITTOOR PADEETTATHIL (LAKSHAMVEEDU COLONY)
MUTTAM MURIYIL, CHEPPAD VILLAGE.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENT/COMPLAINANT:

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

R1 BY PUBLIC PROSECUTOR JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.A.No.1071 of 2005
.....

Dated this the 17th day of September, 2015.

JUDGMENT

The accused in SC.No.634/2002 on the file of the Additional Sessions Court, Fast Track-I, Alappuzha is the appellant herein. The appellant was charge sheeted by the Excise Inspector, Karthikappally excise range in Crime No.12/1999 of that excise range under sections 8(1) and (2) and 55 (a) of the Abkari Act.

2. The case of the prosecution in nutshell was that on 4.3.1999 at about 6 p.m on the side of a road in front of the house of Bhanukuttan Achari at Muttam muri in Cheppad village, the accused was found to be in possession of 1.300 litres of arrack in a bottle with a glass and a cash of Rs.40/- for the purpose of sale in violation of the provisions of the Abakri Act and thereby he had committed the offence punishable under section 55 (a) of the Abkari Act, (it ought to be under sections 8(1), 8(2) and not 55(a) of the Abkari Act).

3. After investigation, final report was filed before the Judicial First Class Magistrate Court, Kayamkulam and it was

taken on file as C.P.No.19/2002 and thereafter the case was committed to the Sessions Court, Alappuzha by the magistrate under section 209 of the Code of Criminal Procedure(hereinafter referred to as 'the Code') where it was taken on file as SC.No.634/2002 and originally made over to the Principal Assistant Sessions Court, Alappuzh for disposal . Thereafter the case was withdrawn and made over to the Additional Sessions Court Adhoc-I, Alappuzha for disposal by the Sessions Judge,

4. When the accused appeared before the court below, after hearing both sides, charge under section 55(a) of the Abkari Act was framed which ought to be under sections 8(1) read with section 8(2) of the Abkari Act and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 6 were examined and Exts.P1 to P4 and MOs1 and 2 were marked on their side. After closure of the prosecution evidence, accused was questioned under section 313 of the Code and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had

not committed any offence and he has been falsely implicated in the case. Since evidence in this case did not warrant an acquittal under section 232 of the Code, the Additional Sessions Judge directed the accused to enter on his defence but no defence evidence was adduced on his side. After considering the evidence on record, the court below found the appellant guilty under section 55(a) of the Abkari Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of Rs.One lakh, in default to undergo simple imprisonment for six months. Set off was allowed for the period of detention already undergone under section 428 of the Code. Aggrieved by the same, the present appeal has been preferred by the appellant/accused before the court below.

5. Heard Smt.Bhavana Velayudhan, counsel representing Sri. Sanal Kuamr, counsel appearing for the appellant and Sri. Jibu P. Thomas, Pubic Prosecutor appearing for the State.

6. Counsel for the appellant argued that according to the prosecution the incident occurred on the side of a road in front of the house of one Bhanukuttan Achary and it is improbable

or dis believable as a person will stand with a glass and bottle on the side of the road for the purpose of sale of arrack in such a place and that probablises the case of the accused that he was not arrested from the place where he was said to have been arrested as stated by the prosecution, Further, there was no proper sampling and there is no explanation for not sending the article forthwith as well. So, under the circumstances, the court below was not justified in convicting the accused for the offences alleged. The learned counsel also submitted that the sentence imposed is harsh considering the age of the accused.

7. On the other hand, learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved the guilt of the accused beyond reasonable doubt and there is no interference called for in the matter.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On 4.3.1999 PW3, the Preventive Officer along with PW4, the Excise Guard and others were doing patrol duty and at about 6 p.m when they reached near the house of Bhanukuttan Achari, they saw the accused standing with MO1

bottle and MO2 glass in his hand and on seeing the excise party, the accused tried to run away towards the house of Bhanukuttan Achari and immediately they chased and stopped him and on examination of the bottle having capacity of 1.5 litres, it contained 1.300 litres of some liquid, which when examined by smelling and tasting, they were convinced that it was arrack. So he arrested the accused and gave arrest intimation. He had taken sample from the liquid seen in MO1 bottle and sealed the same and affixed label containing signature of Pws 1 and 2 himself and the accused and he also sealed and labelled MO1 bottle in the same fashion and thereafter seized MO1 bottle, MO2 glass and sample bottle as per Ext.P1 mahazar. Thereafter they came back to the excise office and entrusted the same to the person in charge of the excise office. On the next day, PW5 the Excise Inspector verified the article produced and prepared Ext.P2 crime and occurrence report as Crime No.12/1999 of Karthikapally excise range against the accused under section 55 (a) of the Abkari Act and prepared Ext.P3 thondy list and produced the accused before court along with the remand report and

produced the contraband article before court along with Ext.P3 thondy list, forwarding note and request for sending the a sample for analysis. The sample was sent from court and Ext.P4 chemical analysis report obtained. Investigation in this case was conducted by PW6. He questioned the witnesses, recorded their statement, collected chemical analysis report and produced the same before court and completed the investigation and submitted final report before court.

9. Pws1 and 2 are the alleged eye witness to the seizure and also attestors of Ext.P1 mahazar. Both Pws 1 and 2 stated that they knew the accused. PW1 though denied the signature in Ext.P1 When his signature in the summons was confronted to him and asked as to whether the signature in Ext.P1 and the summons were identical, he affirmed the same. So he had really signed Ext.P1 mahazar and now trying to retreat from the same to help the accused. PW2 also admitted the signature in Ext.P1 though denied having seen the seizure of the contraband article from the accused. Since they were known to the accused, it can be safely concluded that they were now trying to support the accused and that was the

reason why they were not supporting the case of the prosecution.

10. Then the evidence is that of Pws 3 and 4 detecting officer and the excise guard who accompanied the excise officer to prove the seizure. PW3 categorically stated that he was doing patrol duty along with Pws 4 and others and when they reached the place of occurrence namely the road in front of Banukuttan Achary's house, they saw the accused standing there with MO1 bottle and MO2 glass in his hand and on seeing the excise party, he ran away from the place. So they chased him and stopped him and after verification of the contents in MO1, they found that it contained 1.300 litres of liquor said to be arrack. He arrested the accused, took sample, sealed and labelled the same and then sealed and labelled the bottle and seized the same as per Ext.P1 mahazar. The evidence of PW3 was corroborated by PW4. Though they were cross examined at length, nothing was brought out to discredit their evidence on this aspect. The suggestion given to them that due to influence of the local people, he has been falsely implicated in the case was denied by them. Except the

suggestion given, there is no other evidence adduced also to prove the false implication as claimed by the accused.

11. It is settled law that merely because the independent witnesses to the seizure did not support the seizure alone is not sufficient to disbelieve the case of the prosecution. If the court is satisfied with the evidence given by the official witnesses, then there is nothing wrong for the court to base the same for conviction of the accused for the offence alleged. In this case there is nothing brought out to discredit the evidence of Pws 3 and 4 regarding the aspect namely seizure of contraband article from the possession of the accused and his arrest, sampling etc and there is no illegality committed by them in seizing the liquor as well. From the circumstances, the court below was perfectly justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the accused was arrested by Pw3 along with Mos 1 and 2 said to be containing arrack.

12. PW3 had stated that after the incident, he came to the office along with the accused and the contraband article seized and entrusted them to the officer in charge of the excise

office during night. PW4 had stated that it was Bose who was on night duty at that time. PW5 Excise Inspector who registered crime on the next day categorically stated that on the next day he came to duty, Boss who was on night duty, entrusted the accused, articles and the documents prepared to him and on that basis he had registered Ext.P2 crime and occurrence report. He produced the articles along with Ext.P3 thondy list on that date itself. The accused had no case that he was not produced before court on the next day of his arrest. The thondy list Ext.P3 will go to show that articles reached the court on 5.3.1999 itself. There was no delay in producing the article and possession of the article from the time of seizure till it was produced before court has been properly explained. Further Ext.P4 chemical analysis report shows that it contained 13.72% by volume of ethyl alcohol. The accused had no case that the article seized was not arrack. So, the court below was perfectly justified in coming to the conclusion that prosecution has proved beyond reasonable doubt that the accused was found to be in possession of arrack which is an offence under section 8(1) read with section 8(2) of

the Abkari Act and rightly convicted him for the said offence which did not call for any interference (instead of section 55(a) of the Act).

13. As regards the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of Rs.One lakh, in default to undergo simple imprisonment for six months. Set off was allowed for the period of detention already undergone. As regards abkari offences are concerned, the persons who are committing the offences are committing the same knowing fully well that what they are doing is an offence ignoring the impact of their act persons consuming the same as well and it was done by them only for the purpose of getting unlawful monetary gain. So under such circumstances, persons who have committed such an offence affecting the society have to be dealt with severely. But at the same time while fixing the period of detention, age of the accused, his antecedent and quantity seized also can be taken note of by the court for imposing sentence. In this case it is seen that accused is aged only 28 years at the time when the offence was committed

and prosecution has no case that he had involved in any crime of similar nature. The quantity seized is only 1.300 litres of arrack. The court below imposed minimum sentence of fine of Rs. One lakh. Considering the circumstances, this court feels that reducing the substantive sentence to 6 months rigorous imprisonment and default sentence to three months simple imprisonment will be sufficient while retaining fine and that will meet the ends of justice. So the substantive sentence and default sentence are set aside and the same are modified as follows:

The appellant is sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs. One lakh, in default to undergo simple imprisonment for three months. Set off is allowed for the period of detention already undergone by him under section 428 of the Code.

So the appeal is allowed in part. The order of conviction made by the court below against the appellant under section 55(a) of the Abkari Act is converted to one under section 8(1) read with section 8(2) of the Abkari Act and fine of Rs. One lakh imposed by the court below is hereby confirmed. The

substantive sentence and default sentence are set aside and sentence is modified as follows:

The appellant is sentenced to undergo rigorous imprisonment for 6 months and also to pay a fine of Rs. One lakh, in default to undergo simple imprisonment for three months. Set off is allowed for the period of detention already undergone under section 428 of the Code.

Office is directed to communicate a copy of this judgment to the concerned court immediately.

SD/-
K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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