

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

CRL.A.No. 1235 of 2006 ()

**AGAINST THE JUDGMENT IN SC 335/2005 of ADDITIONAL SESSIONS COURT, FAST
TRACK - I, PALAKKAD DATED 01-06-2006**

APPELLANT(S)/ACCUSED:

**BALAN, S/O.MAYANDI,
THOLAMPUZHA VEEDU, THARUR VILLAGE, ALATHUR.**

**BY ADVS.SRI.P.VIJAYA BHANU(SR.)
SRI.P.M.RAFIQ**

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 1235 of 2006

Dated this the 18th day of December, 2015

J U D G M E N T

The accused, who was then 58 years of age in 2001, was prosecuted for the offence punishable under Section 8 of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer rigorous imprisonment for one year and to pay a fine of ₹1 lakh with a default clause of rigorous imprisonment for a further period of six months.

2. The incident in this case is said to have occurred on 10.10.2001. PW1 was then working as the Preventive Officer attached to Excise Circle Office, Alathur. He along with his team of officers had gone on routine patrol duty. While they were going along the Panchayath road near a canal at Malampuzha as they were about to pass the house of one Abookacker, they happened to see the accused coming along the road carrying a can. He was stopped and the can was seized and the contents were examined. The

can contained 5 litres of arrack. A sample of 300ml was taken and that was sealed and labelled. On the label, signatures of the accused and PW1 were affixed. The mahazar prepared by PW1 is Ext.P1. The articles, the accused and the documents were entrusted to the duty officer at Alathur Excise Office. PW4, at the relevant time, was the Preventive officer attached to the Excise Range Office, Alathur. At about 7.15 p.m., PW1 is said to have come to the office and handed over the accused, the contraband seized and the records to him. He accepted the same and on that basis, registered crime as per Ext.P3 crime report. Ext.P4 is the forwarding note prepared by him and Chemical Analysis Report received by him is Ext.P5. PW5 took over investigation of the case. He recorded statements of witnesses, prepared Ext.P6 scene mahazar, completed investigation and laid charge before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offence to be

exclusively triable by a Court of Sessions, committed the case to Sessions Court, Palakkad under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court, Fast Track-I, Palakkad for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused before the said court, framed charge for the offence punishable under Section 8 of the Abkari Act.

5. To the charge the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 6 examined and had Exts.P1 to P6 marked. MO1 was got identified and marked.

6. After the close of prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent.

7. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

8. Accepting the evidence furnished by PWs 1 and 6 and also the contents of Ext.P1, the court below found it sufficient to hold the accused guilty. He was accordingly convicted and sentenced as already mentioned.

9. Assailing the conviction and sentence, the learned counsel appearing for the appellant pointed out that no property list is seen filed by PW4, who registered crime as per the records given by PW1. There is thus no guarantee that the properties were duly produced before the court. In the absence of such an evidence, conviction cannot stand.

10. The learned Public Prosecutor on the other hand contended that the evidence of PWs 1 and 6 are sufficient to show that the contraband article was seized from the possession of the accused. The evidence of PWs 1 and 6 would show that the seized article was produced in court.

The mere fact that the property list is not seen marked does not mean that the articles were not produced before court. In the defence, the accused had no case that there was any delay in producing the documents and the contraband articles before court. The learned Public Prosecutor contended that all these aspects have been considered in considerable detail by the court below and no interference is called for.

11. The evidence regarding detection stands confined to the oral testimony of PWs 1 and 6, the two Excise Officials at the relevant period. They give a uniform, consistent and convincing narration of the incident as to what transpired at the spot. Both of them say about having seized the can from the accused and identifying the material as arrack. Sampling is also spoken to by both the witnesses and so also about the preparation of Ext.P1 mahazar. Even though they were cross examined at length, nothing could be brought out in their evidence to show that they had any ill-will towards

the accused.

12. True, there is no independent corroboration to support the evidence of PWs 1 and 6. It is not necessary when the court finds that the evidence of PWs 1 and 6 are convincing and cogent and credit worthy.

13. It is not as if that there is no corroboration at all. Ext.P1 is the contemporaneous document drawn up by PW1 at the relevant time and that contains all the details. That adds further to the credit of the prosecution. Further, the prompt production of the accused and the articles before the court concerned justifies the conclusion drawn by the court below that there could not have been any manipulation or fabrication.

14. The contention based on the absence of property list has no basis as it does not carry much weight. That the seized articles were produced before court is evident from the other records produced and marked by the prosecution. There is no case for the accused that there was considerable

delay in producing the thondi article before court. Under these circumstances, the absence of property list has of no consequence.

15. On going through the findings of the court below, it is seen that the court below has analysed the evidence in considerable detail and has come to the right conclusion. Conviction has only to stand.

16. Faced with the above situation, the learned counsel for the appellant contended that almost 15 years have elapsed and the accused is now over seventy. It is therefore prayed that leniency may be shown to him. The learned counsel also emphasized the quantity seized and also pointed that there is no criminal antecedents as far as the accused is concerned.

17. It is noticed that as pointed out by the learned counsel for the appellant, the accused is aged 58 at the time of detection that is in 2001. 15 have elapsed and he is now crossed 70 and it will be too harsh to confirm the sentence

which was imposed by the court below.

18. Of course, an offence is made out, it cannot be said that it can be viewed lightly. But passage of time may also have some relevance in the matter of sentence.

19. After having given anxious consideration into various aspects, it is felt that substantive sentence needs to be reduced.

Hence, this appeal is partly allowed. While confirming the conviction for the offence under Section 8 of the Abkari Act, the sentence imposed is set aside and the sentence of imprisonment stands confined to the period of pre-trial detention already undergone by the accused and the accused is sentenced to pay a fine of ₹1 lakh in default of payment of which he shall suffer simple imprisonment for a period of 15 days.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge