

Abdu Vs. State of Kerala

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Court : Kerala

Decided On : Oct-01-2013

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : Abdu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN TUESDAY, THE 1ST DAY OF OCTOBER 2013 9TH ASWINA, 1935 CRL.A.No. 901 of 2005 -----
[AGAINST THE

JUDGMENT

DATED 28-04-2005 IN SC832003 of ADDL.SESIONS COURT, FAST TRACK COURT-II, ALAPPUZHA] APPELLANT(S)/ACCUSED: ----- SATHYAN, S/O.CHANDRAN, YELAPPALLY THARAYIL VEEDU, ERAMATHUR MURI THRIPPERUMTHURA VILLAGE, MAVELIKKARA. BY ADV. SRI.N.ASHOK KUMAR RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM. BY PUBLIC PROSECUTOR SRI.E.M.ABDUL KHADIR. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-10-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: V.K.MOHANAN, J.

JUDGMENT

The above appeal is filed at the instance of the accused in S.C.No.83 of 2003 of the court of Additional Sessions Judge, Fast Track Court-II, Alappuzha , challenging the judgment dated 28.4.2005 in the above sessions case as he is convicted and sentenced for the offences under Sections 8(1) and (2) of the Abkari Act.

2. The prosecution case is that at about 7.30 p.m. on 18.12.2001, while Pws.1 and 2 conducted patrol duty, they saw the appellant/accused coming from the opposite direction by holding a can of 5 litres capacity along the road which proceeds from Ikkaramukku to Paruthipallikadavu. While the accused tried to run away from the spot, on seeing the excise party, he was intercepted and on inspection of the can which was held by the accused, the officials realised that the can contains two litres of illicit arrack on ascertaining Crl.A.No. 901 Of 2005 :-2-: the same by smelling and tasting. Thus, according to the prosecution, the accused has committed the offences punishable under Sections 8 (1) and (2) and 55(a) of the Abkari Act.

3. On the basis of the above allegation, Crime No.112 of 2001 was registered in the Mavelikkara Excise Range and on completing the investigation, they filed a charge sheet before the Judicial First Class Magistrate Court-II, Chengannur and the case was committed to the court of Sessions, Alappuzha (C.P.No.80 of 2002) and it was made over for trial and disposal to the Additional Assistant Sessions Judge, Alappuzha, who framed charge against the accused for the offences punishable under Sections 8(1) and (2) and 55(a) of the Abkari Act. The accused pleaded not guilty to the charge and claimed to be tried for the above offences. Subsequently, the learned Sessions Judge, Alappuzha by order dated 10.9.2004 withdrew the case from the file of the Additional Assistant Sessions Court and transferred the same to the present trial court for trial and disposal. Thus, on the Crl.A.No. 901 Of 2005 :-3-: appearance of the accused, the case was posted for further trial during which Pws.1 to 5 were examined from the side of the

prosecution and Exts.P1 to P4 were marked. MO1 can was also identified as material object. The trial court by an elaborate judgment finally found that the prosecution has proved beyond reasonable doubt that the accused kept in his possession and transported two litres of arrack in MO1 can for sale at about 7.30 p.m. on 18.1.2001 in contravention of Sections 8(1) and (2) of the Abkari Act and accordingly, he is found guilty for the said offence and he is convicted for the same. On such conviction, the appellant/accused is sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rupees one lakh and in default to pay fine, the appellant/accused is directed to undergo simple imprisonment for six months and set off is allowed. Challenging the above finding and order of conviction and sentence, the appellant/the accused in the above sessions case preferred this appeal.

4. I have heard Sri.N.Asok Kumar, learned counsel for the Crl.A.No. 901 Of 2005 :-4-: appellant and the learned Public Prosecutor.

5. To prove the prosecution allegation, as I indicated earlier, Pws.1 to 5 were examined out of which Pws.3 and 4 are independent witnesses who are attestors to Ext.P1 mahazar, but they turned hostile. Thus, in order to canvass the conviction, the prosecution was constrained to depend the evidence of Pws.1,2 and 5.

6. Pws.1 and 2 are the then Excise Preventive Officers attached to Mavelikkara Excise Range. PW1 is the official, who detected the crime and effected the seizure of the contraband article and the arrest of the accused. When PW1 was examined, he had identified Ext.P1 mahazar prepared by him and also identified MO1 plastic can which was found holding by the accused at the time of the seizure. During the examination of Pws.1 and 2, they have categorically deposed about the entire incident which led to the seizure of the contraband article and arrest of the appellant/accused. According to them, on 18.12.2001 at about 7.30 p.m., while they were on patrol duty in Crl.A.No. 901 Of 2005 :-5-: Chennithala Village, they saw the accused coming from the opposite direction by holding a plastic can along the road proceeding from Ikkara Junction. According to them, when the accused had seen the Excise Party, he tried to slip away from the place, but he was

intercepted and the can which was held by the accused was examined in the presence of the witnesses and thus, found the can containing a liquid of two litres and the content of the can is identified as illicit arrack by smelling and tasting. Pws.1 and 2 deposed the steps taken by PW1 towards the sampling and the safety measures adopted for the same and the preventive measures against the tampering of the sample etc. According to the witnesses, the entire procedure is elaborately prescribed in Ext.P1 mahazar and thus, the contraband articles were seized from the possession of the accused and the accused was arrested then and there. According to these witnesses, after proceeding for the seizure of the contraband article and the arrest of the accused, they returned to the Excise Range Office with the CrI.A.No. 901 Of 2005 :-6-: contraband article and the accused and other documents and the same were handed over to PW5, the Excise Inspector of Excise Range Office, Mavelikkara. When PW5 was examined, he had deposed that on receiving the Ext.P1 mahazar and the contraband article and the accused from Pws.1 and 2, he prepared Ext.P2 crime and occurrence report and after preparing Ext.P3 property list, he produced the contraband article and the sample and other materials before the court and he has also produced the accused before the court. When PW5 was examined, he identified Ext.P4 chemical analysis report by which it is proved that the sample, which is drawn from the contraband article which was found in the possession of the accused contains ethyl alcohol, 61.09% by volume. It is on the basis of the above evidence and materials, the trial court convicted the appellant for the offence under Section 8(1) and (2) of the Abkari Act.

7. Learned counsel for the appellant vehemently submitted that the prosecution case is false and the accused was not arrested from the CrI.A.No. 901 Of 2005 :-7-: place of occurrence as claimed by the prosecution. Sticking on the stand taken by the accused during the trial, the learned counsel vehemently submitted that the prosecution has not produced any legal and reliable evidence to convict the accused and the evidence of Pws.1,2 and 5 cannot be believed and accepted in the absence of any independent evidence to corroborate the evidence of the above officials. According to the learned counsel, the appellant has been implicated in the above crime falsely. On the other hand, the learned Public Prosecutor submitted that the evidence of Pws.1,2 and 5 are intact and their

evidence is supported by contemporary documentary evidence such as Exts.P1 to P4. Thus, according to the learned Public Prosecutor, the trial court is perfectly correct and legal in its finding and convicting the appellant and therefore, no interference is warranted.

8. I have carefully considered the arguments advanced both by the counsel for the appellant as well as the learned Public Prosecutor CrI.A.No. 901 Of 2005 :-8-: and I have gone through the evidence and materials on record.

9. In the light of the contentions advanced and in the light of the evidence and materials on record, the question to be considered is whether the trial court judgment requires any interference and whether the same is liable to be set aside.

10. I have already referred to the evidence and materials on record. Though Pws.1,2 and 5 were subjected to lengthy cross- examination, nothing brought on record to discredit their version. In fact, no facts are seen elicited from the evidence of Pws.1,2 and 5 so as to substantiate the defence taken by the accused about his false implication in the above crime. It is true that Pws.3 and 4, the independent witnesses cited and examined by the prosecution have turned hostile against them. But, the above hostile attitude of the prosecution witnesses is not a ground for an acquittal of the accused. There is no legal impediment in accepting and acting upon the evidence of official witnesses. The question of corroboration of their CrI.A.No. 901 Of 2005 :-9-: evidence from independent source requires only if the evidence adduced by such official witnesses is doubtful. But, in the present case, as I indicated above, though the official witnesses are subjected to cross-examination, nothing brought on record to discredit their version. A learned Judge of this Court in the decision reported in Abdul Rasheed v. State of Kerala (2008(3) KLT150 has held that if the testimony of official witnesses is blemishless and free from suspicion and inspires confidence, hostility shown by ill-motivated independent witnesses is of no consequence. Thus, according to me, in the present case, the evidence of Pws.1,2 and 5 remained intact, which fully supported the prosecution allegation and therefore, there is no illegality in the finding arrived on by the court below, based upon the evidence of official witnesses though the independent witnesses turned hostile. In the light of the

above discussion and the finding and the materials referred to above, I find no reason to interfere with the finding of the court below and the conviction CrI.A.No. 901 Of 2005 :-10-: recorded against the appellant.

11. As this Court is not inclined to interfere with the finding and the conviction recorded by the trial court, the learned counsel for the appellant submitted that a lenient view may be taken in the matter of sentence. It is pointed out that the appellant/accused has not involved in any similar offences previously. According to me, the above submission requires positive consideration. At the time of the alleged incident, the accused was young and he is a coolie and it is borne out from the records that he was not a married man at that time and he has to look after his parents and a marriageable sister. The prosecution has no case that the appellant/accused is a habitual offender. The quantity involved in the present case is only two litres of arrack. Having regard to the above facts and circumstances and the mitigating circumstances, according to me, the substantial sentence and the default sentence imposed on the appellant require modification. According to me, rigorous imprisonment for six months and the CrI.A.No. 901 Of 2005 :-11-: default sentence of 15 days are sufficient to meet the ends of justice. Accordingly, in modification of the sentence imposed on the appellant by the trial court, the appellant is sentenced to undergo rigorous imprisonment for six months, instead of two years and while retaining the sentence to pay fine of rupees one lakh, the default sentence is reduced from six months to 15 days and set off is allowed. In the result, this appeal is dismissed confirming the conviction of the appellant for the offences under Sections 8(1) and (2) of the Abkari Act as recorded by the trial court, but subject to modification with respect to the sentence to the extent indicated above. The appellant is directed to appear before the trial court on 1.11.2013 to receive the modified sentence. If there is any failure on the part of the appellant in appearing before that court as directed above, the trial court is free to take coercive steps to secure the presence of the appellant and to execute the sentence. CrI.A.No. 901 Of 2005 :-12-: The appeal is accordingly dismissed. V.K.MOHANAN, MBS/ Judge CrI.A.No. 901 Of 2005 :-13-: