

Sudhakaran Vs. State of Kerala

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Court : Kerala

Decided On : Feb-21-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Sudhakaran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD FRIDAY, THE 21ST DAY OF FEBRUARY 2014 2ND PHALGUNA, 1935 CRL.A.No. 702 of 2005 ()
----- SC262005 of ADDITIONAL SESSIONS COURT (ADHOC) II, KALPETTA APPELLANT(S)/ACCUSED.: -----
SUDHAKARAN, S/O. VELAYUDHAN, MELEVELLERI HOUSE, VADUVANCHAL, MOOPAMAD VILLAGE VYTHIRI TALUK. BY ADV. SRI.SUNNY MATHEW
RESPONDENT(S)/COMPLAINANT.: -----
THE STATE OF KERALA THOROUGH THE SUB INSPECTOR OF POLICE, SULTHAN BATTERY REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.JASMINE THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.HARIPRASAD, J.

JUDGMENT

Appeal filed under Section 374 of the Code of Criminal Procedure (for short, "Cr.P.C.").

2. Appellant was convicted by the learned Additional Sessions Judge (Adhoc) II, Kalpetta in S.C.No.26 No.2005 for an offence under Section 55(a) of the Abkari Act (for short, "the Act"). Case of the prosecution is that on 14.05.2002 at about 10.15 a.m., appellant was found in possession of ten bottles of Indian Made Foreign Liquor (IMFL), each bottle containing 750 ml. The liquor was intended to be sold in the State of Karnataka. Prosecution, therefore, contended that the appellant possessed illicit liquor unauthorisedly imported to the State and thereby committed an offence under Section 55(a) of the Act.

3. Seven witnesses were examined on the side of prosecution. Exts.P1 to P6 and MOs 1 to 3 were marked. Ext.D1 is the contradiction marked on behalf of the appellant/accused.

4. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor.

5. PW1 is the detecting officer. He was working as Sub Crl.Appeal No.702/2005 2 Inspector of Police, Bathery at the material time. On the date of occurrence, at about 10 a.m., he received a phone call from a Police Constable on duty at the bus stand that a person had been restrained for possessing illicit liquor. On receiving the information, PW1 and party proceeded to the bus stand and found the appellant/accused possessing ten bottles of IMFL, apiece containing 750 ml. Two bottles were labelled from the place of occurrence and the detecting officer, accused and witnesses signed on the label. Rest of eight bottles were packed as such. Ext.P1 is the seizure mahazar. MO1 series are the remaining eight bottles allegedly recovered from the appellant. Samples were produced before the court after 17 days of detection. It was sent up for analysis. On analysis, it was found to be IMFL. After close of the investigation, PW1 filed the charge sheet.

6. PW1 was subjected to cross examination. A specific question was asked to this witness as to what was the explanation for the delay of 17 days in producing the contraband and the sample before the court. To this question, PW1 answered that for two days he was on leave and later he could not produce it due to pressure of work. Learned counsel for the appellant contended that this explanation is too flimsy to be believed. PW2 is an independent witness and he turned hostile to the prosecution. PW3 was a Police Constable at the material time. He informed the presence of Crl.Appeal No.702/2005 3 the accused in the bus stand with the contraband. On furnishing information by PW3, PW1 came to the place and conducted search and seizure. PW3 also proved detection and recovery of contraband from the possession of the accused. PW4 supported the prosecution case to the extent that he saw the Police apprehending the appellant for possessing illicit liquor. When cross-examined, PW4 deposed that he saw the accused sitting in a Police jeep with the contraband. However, his evidence would strengthen the prosecution case that the accused was found possessing 10 bottles of 750 ml. of illicit liquor as alleged. PW5 also supported the prosecution case regarding the detection and seizure of contraband. PW6 too supported the prosecution case. PW7 conducted investigation and filed the final report.

7. On going through the evidence, I am satisfied that the appellant was found to be in possession of IMFL intended to be sold in the State of Karnataka. But, the vital infirmity canvassed by the appellant that there was undue delay in producing the contraband before the court will cut at the root of the prosecution case. Basing on the decision in Ravi v. State of Kerala (2011 (3) KLT353 it was contended that there is no link established by the prosecution to connect the contraband articles alleged to be seized and that is produced before court after 17 days of the detection. Division Bench of this Court has observed that prosecution can Crl.Appeal No.702/2005 4 succeed only if it is established that the sample reached the court and the hands of the Chemical Examiner in a tamper proof condition. There is no acceptable explanation offered by the prosecution for keeping the samples in their possession for 17 days and for not producing the same before the concerned Magistrate. I am of the view that the appellant is entitled to be acquitted only on account of the laches on the part of the prosecution in this respect. The reasoning stated by the learned trial Judge for rejecting this contention of the

appellant is neither convincing nor justifiable. Therefore, I find that the appeal is to be allowed. In the result, the appeal is allowed. Conviction of the appellant under Section 55(a) of the Abkari Act is in S.C.No.26 of 2005 on the file of Additional Sessions Judge (Adhoc-II), Kalpetta is hereby set aside. Appellant shall be set free, if not wanted in any other case. His bail bond shall stand cancelled. If any amount has been deposited by the appellant as a condition for securing bail, it shall be returned to him. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks

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