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Leela vs State of Kerala

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Court : Kerala

Decided On : Jun-07-2024

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRL.A/2654/2009

Appellant : LEELA

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU FRIDAY, THE 7TH DAY OF JUNE 2024 / 17TH JYAISHTA, 1946 CRL.A NO. 2654 OF 2009 AGAINST THE ORDER/JUDGMENT DATED IN SC NO.57 OF 2009 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, THODUPUZHA APPELLANT/ACCUSED: LEELA W/O THANKAPPAN,, ALACKAL HOUSE, KOOVAKANDAM KARA, VELLIYAMATTEM VILLAGE, THODUPUZHA TALUK. BY ADVS. SRI.C.M.TOMY SMT.ANJANA VARGHESE SRI.K.J.JOSEMON SRI.MATHEW SKARIA RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. SRI.G.SUDHEER, PP THIS CRIMINAL APPEAL HAVING COME UP

FOR ADMISSION ON 07.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CRL.A NO. 2654 OF 2009 2

JUDGMENT

Aggrieved by the judgment dated 20.11.2009 passed by the Additional Sessions Judge (Ad hoc-II) Thodupuzha, the accused has preferred this Appeal. The appellant was convicted under Sections 8(2) and 55(g) of the Abkari Act and sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs.1 lakh.

2. The prosecution case is that on 28.7.2008 at 7.15 p.m, the accused was found in possession of 2 litres of arrack and the utensils for distilling arrack on the premises of her residential building bearing No.VIII/354 of Velliamattom Panchayat in Velliamattom Village in violation of the provisions of the Abkari Act.

3. After completing the investigation, final report was

submitted against the accused for the offence punishable under Sections 8(2) and 55(g) of the Abkari Act before the jurisdictional Magistrate. The case was committed to the Sessions Court, from where it was made over to the Trial Court. On the appearance of the accused, charge was framed against her for the offence CRL.A NO. 2654 OF 2009 3 punishable under Sections 8(2) and 55(g)of the Abkari Act. The accused pleaded not guilty to the charge, and therefore, she came to be tried by the Trial Court for the aforesaid offence.

4. The prosecution examined PWs 1 to 4 and proved Exts.P1 to P8 and MO1 to MO6.

5. After the closure of the prosecution evidence, statement of

the accused under Section 313 Cr.P.C. was recorded. She pleaded innocence. The Trial Court heard the matter under Section 232 Cr.P.C. and found evidence against the accused and hence she was called upon to enter on her defence and adduce evidence, if any, she may have in support thereof. After hearing the arguments addressed on both sides, the Trial Court convicted the

appellant/accused for the aforesaid offence.

6. Heard the learned counsel appearing for the appellant/accused and the learned Public Prosecutor appearing for the respondent.

7. The learned counsel for the appellant challenges the

judgment of conviction and sentence on the ground that the

prosecution failed to establish that the contraband substance allegedly seized from the place of occurrence has eventually reached the Chemical Examiner's Laboratory. CRL.A NO. 2654 OF 2009 4

8. The learned counsel for the appellant challenges the

judgment of conviction on the following grounds:-

(i) The arrest of the accused, as alleged is doubtful.

(ii) The prosecution failed to establish that the contraband allegedly seized eventually reached the Chemical Examiners Laboratory.

9. The alleged seizure and arrest were effected on 28.7.2008. Ext.P1 arrest memo contains the number of the crime registered against the accused. The learned counsel disputed the arrest of the accused. The learned counsel submitted that the presence of the Crime Number in the Arrest Memo makes the arrest doubtful. In Santhosh V. State of Kerala (W.P.(C) No.2182 of 2006), considering a similar factual situation this Court observed as under:-

13. The learned counsel for the accused disputed the

arrest of the accused. He mainly relied on the presence of the crime number in Ext.P4 arrest memo to contend that the arrest of the accused at the spot is doubtful. Ext.P4 contains the number of the crime (No.152/2002) registered against the accused.

14. The presence of crime number in the arrest

memo prepared by the detecting officer at the place of occurrence points to the following possibilities ; either the first information report was registered prior to the alleged recovery of the contraband substance or the number of the first information report was inserted in the arrest memo CRL.A NO. 2654 OF 2009 5 after its registration.

15. In either case, the veracity of the prosecution

> version regarding the incident proper is doubtful. It is for the detecting officer to offer explanation in this regard. In the instant case, it is alleged by the prosecution that the seizure was effected and the accused was arrested prior to the registration of the first information report ; then there could not be the crime number in the arrest memo. This creates doubt about the genesis of the prosecution case. The seizure of the contraband substance and the arrest of the accused, resultantly come under cloud. [See : Karunakar Bindhani v. State of Kerala (2016 KHC 758: 2017(1) KLD 48) and Rafeeque v. Sub Inspector of Police, Kunnamkulam Police Station and another (2020(3) KHC 715)].

10. The prosecution has not given evidence as to the date

on which the bottle containing the sample was forwarded to the laboratory. Ext.P8 certificate of Chemical Analysis shows that the sample was forwarded to the laboratory as per the letter dated 20.8.2008 of the Judicial First Class Magistrate I, Thodupuzha. The sample reached the laboratory on 30.8.2008. The custody of the sample during 20.8.2008 to 30.8.2008 has not been

explained by the prosecution. The sample remained in the custody of the Property Clerk till 20.8.2008. The Property Clerk and the police official who delivered the sample were not examined by the prosecution. Non-examination of those officials is fatal to the prosecution. This view is fortified by the decision of the Apex Court in State of Rajasthan v. Daulat Ram [AIR 1980 SC 1314]

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11. Since the prosecution failed to establish that the contraband substance allegedly seized from the place of occurrence eventually reached the Chemical Examiner's Laboratory, Ext.P8 Certificate of Chemical Analysis has no evidentiary value.

12. In Vijay Pandey v. State of U.P (AIR 2019 SC 3569)

the Apex Court held that mere production of a laboratory report that the sample tested was the contraband substance cannot be conclusive proof by itself and that the sample seized and that tested have to be co-related.

13. It is settled that the prosecution in a case of this nature

can succeed only if it is proved that the sample which was analysed in the Chemical Examiner's laboratory was the very same sample which was drawn from the contraband substance said to have been seized from the possession of the accused {Vide: State of Rajasthan v. Daulat Ram [AIR 1980 SC 1314], Sasidharan v. State of Kerala [2007 (1) KHC 275]}.

14. In the instant case, the prosecution was unable to

establish the link connecting the accused with the contraband seized and the sample analysed in the laboratory. The accused is entitled to the benefit of doubt arising from the absence of link CRL.A NO. 2654 OF 2009 7 evidence as discussed above.

15. The upshot of the above discussion is that the conviction

and sentence entered by the Court below overlooking these vital aspects of the matter cannot, therefore, be sustained. In the result, the accused is acquitted of the offence alleged. She is set at liberty. The Criminal Appeal is allowed as above. Sd/- K.BABU JUDGE Sru

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