

O.K.Bhaskaran vs State of Kerala

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Court : Kerala

Decided On : Dec-10-2019

Judge : Honourable Mr.Justice T.V.Anilkumar

Appeal No. : CRL.A/1262/2006

Appellant : O.K.Bhaskaran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR
TUESDAY, THE 10TH DAY OF DECEMBER 2019 / 19TH
AGRAHAYANA, 1941 AGAINST THE JUDGMENT IN DATED 15.5.2006
IN S.C NO.249/2001 OF THE FILE OF ADDITIONAL SESSIONS
JUDGE (ADHOC)-I, KALPETTA APPELLANT/ACCUSED:
O.K.BHASKARAN, S/O.CHOYI, OTTAKACHALIL HOUSE,
NOOLPUZHA KALOOR, SULTHAN BATHERY. BY ADVS.
SRI.LALGI.P.THOMAS SRI.S.SANTOSH KUMAR (PERUNADU)
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
R1 BY PUBLIC PROSECUTOR OTHER PRESENT: SRI.B.

JAYASURYA - SENIOR PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 10th day of December, 2019 The sole accused convicted of offence punishable under Section 55 (a) in S.C.No.249/2001 before Additional Sessions Judge (Adhoc) -1 Kalpetta and sentenced to undergo rigorous imprisonment for 2 years and pay a fine of Rs.1 lakh with default sentence of another RI for 3 months has filed this appeal challenging the impugned judgment of conviction and sentence.

2. The prosecution allegation, in gist, is that on 28.12.1999

at 6PM, appellant was found to be transporting three litres of illicit arrack concealed in MO1 5 litre Can in Panappadi Adivasi Colony Road, within the limits of Excise Range Office, Sulthan Bathery.

3. The prosecution case is that during patrol duty, the Excise

party consisting of PW1, Excise guard, PW2 Preventive Officer and others, came across the appellant who was carrying MO1 Can in suspicious manner through the place of occurrence aforesaid on 28.12.1999 at 6PM and he was intercepted. The Excise officials conducted smell and taste test of the liquid kept in MO1 Can and was satisfied that accused was carrying illicit arrack and accordingly, he was immediately arrested at the spot itself. Sample of 200ml of arrack was collected in 375ml of bottle in the presence of independent witnesses and it was sealed and labelled along with MO1 in accordance with law. Ext.P1 seizure mahsar was also prepared by PW2, Preventive Officer, contemporaneously with the arrest of the appellant and seizure of contraband liquor at the spot itself. PW2 prepared Ext.P3 occurrence report and forwarded it to the committal court. He himself conducted investigation also and submitted Ext.P4 property list along with the material objects. For the purpose of sending the sample bottle for chemical analysis, the Preventive Officer prepared Ext.P5 forwarding note and submitted the same

before the court. The final report too was submitted by PW2 in the committal court.

4. On the case being committed to the Court of Sessions,

Kalpetta, it was made over to Additional Sessions Judge (Adhoc) -1 Kalpetta, where charge was framed against the appellant for offence punishable under Section 55 (a) of the Act which he denied when it was read over and explained to him. Prosecution examined Pws 1 to 4 and marked Exts P1 to P7 as well as MO1 5 litre Can. While accused was questioned with reference to incriminating evidence on record, he denied the evidence and stated that, in fact, he was arrested from his

own house and later implicated in the false crime. In support of his plea, he examined two neighbours of his, as DW1 and 2.

5. The court below after considering the rival contentions

urged on behalf of the appellant as well as the State concluded on the basis of evidence on record that appellant possessed and transported arrack on 20.12.1999 at the place of occurrence and committed offence punishable under Section 55 (a) of the Act.

6. I heard the learned counsel for the appellant as well as the learned Public Prosecutor.

7. Learned counsel for the appellant contended that the court

below failed to appreciate the defence contention that arrest of appellant was from his own house and consider the veracity of evidence given by his two neighbours examined as DW1 and 2 that they found the appellant being arrested from his own house. It was also argued that the inordinate delay that intervened in production of material objects before the committal court was also not taken due notice of by the court below. Further argument is to the effect that the evidence on record was not sufficient to satisfy the conscience of the court that the contraband liquor was arrack. On the other hand, the learned Public Prosecutor sought to sustain the impugned

judgment of the court below on the basis of the testimonies of official

witnesses and contemporaneous records produced before court.

8. PW1, is an Excise guard attached to Excise Range , Sulthan

Bathery, where PW2, preventive Officer is also attached. It is true that none other than Pws 1 and 2 was examined to prove the prosecution case of seizure of arrack from appellant nor his arrest. PW3, the independent witness who signed Ext.P1 seizure mahsar turned completely hostile to prosecution though he admitted having signed the mahsar and arrest memo. The seizure mahsar and Ext.P2 arrest memo prove that appellant was arrested from Panappadi Adivasi Colony Road. The contrary evidence given in this respect by the two neighbours of appellant does not appear to be inspiring. Though they spoke in uniform voice that appellant was arrested from his own house, they were not able to pinpoint the exact date on which the appellant was taken into alleged custody from his house. On the other hand, there is clear evidence from the prosecution records as well as the testimonies of official witnesses that accused was arrested at 6PM on the date of detection from the place of occurrence aforementioned.

9. Even though the official witnesses were subjected to severe cross examination, nothing could be brought out to assail their

credibility or trustworthiness in this respect. Only because independent witnesses did not support prosecution case, evidence otherwise credible and given by the official witnesses cannot be rejected. The evidence given by official witnesses carries with it the presumption that official acts were regularly and correctly performed. The defence evidence adduced is not sufficient enough to rebut this presumption of fact as regards the credibility of testimonies given by the Excise officials. I am satisfied agreeing with the court below that contraband liquor was seized from the possession of appellant on the date of detection. The contemporaneous records prepared on the spot itself amply prove that the prosecution case of seizure and arrest is absolutely true and convincing.

10. The argument advanced by the learned counsel for the

appellant that there is delay in production of material objects before the court in time does not appear to be sound. Ext.P4 property list discloses that material objects were produced before the court on 30.12.1999, after two days of detection. This cannot in my opinion taken to be an inordinate delay. Ext.P1 seizure mahsar contains the description of the MO1 Can seized from the appellant. It also contains the details of sample taken at the spot. It cannot be conceived that material objects were manipulated within the next 48 hours before

the contraband was produced in Court on 30.12.1999. The testimonies of Pws 1 and 2 satisfy the conscience of the court that there was no unreasonable delay in the production of material objects and further that the contraband liquor remained in the safe custody also. Pw2 said that sample bottle was sealed using his personal seal and there was labeling also which contained the signature of independent witnesses and officials.

11. Ext.P5 forwarding note proves that the committal court had the advantage of comparing the personal seal of the detecting officer

with the seal impression affixed on the sample bottle also. This establishes that the sample reached the court in untampered condition. This is supported by Ext.P7 chemical analysis report also. I find it hard to accept the argument of learned counsel for the appellant that the sample tested by the laboratory cannot be said to be illicit liquor at all. Ext.P7 signifies that the liquor tested has all the characteristics of illicit liquor. This is in addition to the smell and taste test conducted by the Excise officials proved to be in the presence of independent witnesses. Ext.P7 clearly indicates that the liquor had the smell of alcohol and its colour and appearance recorded in the

chemical analysis report also support the prosecution case. In my view, Ext.P7 has been rightly admitted in evidence even without examining the chemical examiner. Section 293 of the Code of Criminal Procedure provides that chemical analysis report is admissible in evidence even without examining the author thereof. Having gone through the entire materials on record, I am satisfied that,

there is no reason to disagree with the view taken by the court below to the effect that the appellant possessed and transported illicit liquor along the place of occurrence on 28.12.1999.

12. The impugned judgment of conviction therefore, has to

stand undisturbed. The learned counsel for the appellant submitted that the appellant has already undergone detention for 21 days during the stage of investigation and further he is an old man. It was also submitted that the appellant is incapable of taking care of himself due to his health condition. He is also the sole bread winner of the family. I am satisfied looking at the quantum of sentence imposed by the court below that it was excessive and harsh being disproportionate to the degree of offence committed . So therefore, while confirming the

judgment of conviction, I am inclined to take a lenient view in favour

of the accused by granting reasonable reduction in the sentence imposed. It appears that modification of sentence to simple imprisonment for 3 months will meet ends of justice. In the result, appeal succeeds in part and appellant is sentenced to undergo simple imprisonment for 3 months and pay a fine of Rs. 1 lakh in default of which he will undergo another simple imprisonment for 1 month. He will get set off as usual. The Registry will furnish free copy of this judgment to him forthwith. Sd/- T.V.ANILKUMAR JUDGE NR/16/12/19

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