

K.Aravindakshan Vs. State

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Court : Kerala

Decided On : Aug-31-2015

Judge : Honourable Mr. Justice Sunil Thomas

Appellant : K.Aravindakshan

Respondent : State

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 31ST DAY OF AUGUST 2015 9TH BHADRA, 1937 CRL.A.No. 2114 of 2005 ()
----- AGAINST THE

ORDER

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JUDGMENT

IN SC1712003 of ADDL. DISTRICT COURT (ADHOC-III), KASARAGODE DATED 31.10.2005 APPELLANT/ACCUSED: ----- K.ARAVINDAKSHAN, AGED 25 YEARS, S/O.K.KUNHAMBU, KANHIRAPOYIL, MADIKKAI KASARAGOD. BY ADVS.SRI.M.SASINDRAN SRI.M.B.PRAJITH RESPONDENT/RESPONDENTS: ----- STATE - REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BY ADV. PUBLIC PROSECUTOR: SMT P MAYA THIS CRIMINAL APPEAL HAVING

5. The prosecution is heavily relying on the oral testimony of PWs1 and 2, to prove the guilt of the accused, supported by the contemporaneous documents, which are Exts.P1 and P2. The crux of the prosecution case was that the appellant herein was acting as the driver of the autorikshaw and the second accused was carrying two cans of 10 liters each, containing illicit arrack. While it was being transported along the road in an autorikshaw, on the CrI.Appeal.2114/05 3 relevant day and time, he was allegedly intercepted by the excise party. They have a further case that even though PW1 had asked the vehicle to be stopped, the accused did not stop the vehicle and sped away. After proceeding forward, to a distance of 5 to 6 meters, it got struck at a ditch and the person who was sitting on the rear seat escaped. Two cans which were allegedly recovered were marked as MOs 1 and 2. The evidence of PW1 is to the effect that at that time, sampling was done and two sample bottles of 300 ml each were taken, labelled and sealed.

6. A perusal of the evidence of PWs1 and 2 indicate that on general aspects, they tally with each other. Ext.P1 arrest memo bears the signature of accused PW1 and witnesses. Ext.P2 is the mahazar prepared by the excise party. According to the prosecution, both the above documents are contemporaneous documents prepared at the spot. Thereafter, Ext.P3 occurrence report was prepared with the driver as the first accused and the second accused one Sasi, as allegedly revealed by the accused herein. By Ext.P5 property list, the cans and samples were produced before the Magistrate Court on 06.09.2000. By Ext.P6 forwarding note, samples were forwarded for chemical analysis CrI.Appeal.2114/05 4 and the report so received was marked as Ext.P7. Ext.P8 is the occurrence report. Ext.P7 shows that the sample that was recovered contained Ethyl Alcohol. There is a further reference that the sample bottle reached the lab of the Chemical Analyst in tact and the seal tallied with the samples sealed.

7. On the other hand, the defence set up by the accused was that he was absolutely innocent and has been falsely implicated. A further contention is set up by him that even assuming that he was driving the vehicle, he had no conscious possession or even knowledge about the contents of the can carried by the traveller. This is the consistent stand taken by the accused throughout the cross examination and also spoken to, in reply to Section 313 Cr.P.C questioning.

8. It is pertinent to note that the prosecution attempted to rely on PWs3 and 4 who are claimed to be the independent witnesses. Both admitted their signatures on the relevant documents. However, both turned hostile and did not support prosecution case, any further. PW3 completely deviated from the prosecution case. He deposed that at about 7.30 p.m., he saw one person being chased by the excise party. The person who was CrI.Appeal.2114/05 5 being chased had a bag on the shoulder, which he threw away. Thereafter, he was made to sign a paper by the excise party informing him that it was seized from the autorikshaw. He deposed that he had only signed blank papers. PW4 also stated that he has signed blank papers and accepted that he did not see the seizure. However, he admitted his signature on both Exts.P1 and P2.

9. It is pertinent to note that the interception happened, according to the prosecution, at about 9 p.m. Ext.P2 states that they saw one person running away from the autorikshaw with the light from the headlight of the jeep. Thereafter, checking was conducted with the help of a torchlight. Ext.P4 sketch prepared by PW5, Village Officer does not indicate that there were street lights at the spot. Evidently, the prosecution also has no such case, since it stated that the accused was seen with the headlight and torch was also used. A perusal of Ext.P2 shows that it contains the meticulous details of the alleged interception, search, sampling, sealing, labelling and arrest of the accused. Ext.P2 also discloses the essential facts. However in the circumstances, it is doubtful as to how those elaborate process of search, seizure and preparation CrI.Appeal.2114/05 6 of the contemporaneous documents were carried out in darkness, possibly only with the aid of torchlight. It casts serious doubt on the prosecution case, in the light of the specific assertion of PWs1 and 2, that the entire activities including preparation of Exts.P1 and P2 and affixing of the labels took place at the spot itself.

10. However, in this regard, there seems to be some contradictions also. PW1 asserted that he did not prepare Ext.P2 mahazar. On the other hand, PW2 deposed that the mahazar was prepared by PW1. It is important to note that on the label affixed on the material object, crime number was also seen. This was specifically put to PW2, who deposed that, it was prepared at the spot itself. It is unbelievable that crime number which is assigned after registration of the crime in

the excise office happened to be put in advance on the labels claimed to be prepared at the time of seizure. Hence, the specific version of the prosecution that the entire process were completed at the spot itself is highly doubtful and consequently, the seizure in the manner as claimed by the prosecution appears to be doubtful.

11. It is specifically contended by the accused that he did not have conscious possession of the contraband. According to Crl.Appeal.2114/05 7 the counsel, apart from contending that he was not involved in the case, it was further contended that even the prosecution case did not show that he had knowledge about the contents of the can. There is nothing to show that the accused was aware of the contents. The entire incident happened during night. Accused was admittedly driving the vehicle. Of course, that may raise a reasonable doubt that during night, travelling of a person in the autorikshaw, carrying two cans may normally raise a doubt regarding the contents. The prosecution heavily relied on the conduct of the accused to bring home the allegation that he was conscious about the crime involved. According to the prosecution, when PW1 asked the vehicle to be stopped, it was not stopped and the vehicle proceeded forward. It was strenuously argued by the learned Public Prosecutor that this indicates that the accused was conscious that he was involved in an illegal activity.

12. It is true that the vehicle, according to the prosecution, proceeded forward. However, it stopped at about 5 to 6 meters away from the place, where PW1 stood. It is also alleged that the vehicle hit against a ditch. Evidently, the Crl.Appeal.2114/05 8 vehicle did not proceed to any far distance. There might be several reasons as to why the accused did not stop the vehicle. In the absence of any definite evidence to show that the accused was conscious about the contents of the can, merely a strong suspicion will not be sufficient to substitute strong proof required in a criminal prosecution.

13. The accused was arrested and contraband was seized on 14.07.2000. However, the articles were produced before the magistrate only on 06.09.2000. Though the accused was produced before the magistrate on the same day of seizure, the huge delay in producing the contraband articles before the Court is

not seen explained. There is absolutely no evidence to show the identity of the person who was in possession of the contraband articles during the above long period. It is pertinent to note that even though the claim of the prosecution is that the samples were sealed at the spot, that they reached the Court and thereupon reached the public analyst's office intact and the seal corresponding the samples being provided, the impression of the seal is not shown on the mahazar. In the absence of any cogent evidence regarding the custody of the articles and the long Crl.Appeal.2114/05 9 unexplained delay, it casts serious doubt on the prosecution case as held by this Court in Ravi Vs. State of Kerala (2011 (3) KLT353 and Ramankutty Vs. Excise Inspector (2013(3) KLJ434. In the above circumstances, I feel that a conviction on the basis of this shaky evidence may not be justified. The accused is entitled for the benefit of doubt. In the result, the appeal is allowed, impugned judgment, conviction and sentence are set aside and the accused is acquitted. The bail bond executed by him shall stand discharged. Sd/- SUNIL THOMAS Judge Sbn

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