

Moideen Koya Vs. State

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Court : Kerala

Decided On : Apr-05-1990

Reported in : 1990CriLJ2761

Judge : K.G. Balakrishnan, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 17

Appeal No. : Criminal Appeal No. 492 of 1989

Appellant : Moideen Koya

Respondent : State

Advocate for Def. : Aysha Youseff, P.P.

Advocate for Pet/Ap. : Thomas Antony, Adv.

Disposition : Appeal allowed

Judgement :

K.G. Balakrishnan, J.

1. This is an appeal filed by the 1 st accused in Sessions Case No. 110 of 1989 on on the file of the 1st Addl. Asst. Sessions Judge, Kozhikode. The appellant-1st accused was found guilty of offence punishable under Section 17 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#). He was sentenced to undergo

rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1 lakh and in default of payment of fine he was directed to undergo R.I. for a further period of 2 years. .

2. The prosecution case is that on 24-10-1987 at about 5.45 p.m. PW1, the Circle Inspector of Police, Kozhikode Town Police Station was proceeding in a jeep in the company of two police constables. When the jeep reached near the post office at the South Beach Road, PW 1 saw two persons talking to each other. One of them was carrying a plastic bag. As the jeep went near them the person who was carrying the plastic bag entrusted the same to the other person and tried to run away, PW 1 stopped the vehicle immediately and alighted from the jeep and pursued the person who was running away. According to prosecution, he was the 2nd accused. The person who received the bag from the 2nd accused is the 1st accused. When PW 1 looked for the other person the 1st accused too tried to run away from the place but he was overpowered and caught. The bag was recovered from him and on searching the contents of the bag it was found that there were 74 packets, each containing 45 mgms of brown sugar. The bag contained a cover wherein the name of the 2nd accused was written. An aluminium spoon, 2 candles, one wills cigarette, paper pieces, a few coins etc. were found in the bag. PW 1 prepared Ext. P1 mahazar and seized the articles. Ext.P1 was got attested by two witnesses including PW 3 Kareem.

3. A case was registered against the present appellant and second accused Mothi and after investigation final charge-sheet was laid. On the side of the prosecution 6 witnesses were examined. The articles seized from the appellant were sent for chemical analysis and Ext.P6 is the report issued by the Chemical Analyst. The appellant-1st accused stated before the court below that he was innocent and he was falsely implicated in this case. The court below accepted the prosecution case partly and acquitted the 2nd accused and the 1st accused was convicted as aforesaid.

4. The learned counsel for the appellant-1st accused contended that the evidence adduced by the prosecution is unreliable and the 1st accused was falsely implicated in the case. The important item of evidence consists of the testimony of

PWs. 1 to 4. It is significant to note that, according to prosecution, at the time when the police came, the bag which contained the contraband articles, was in the hands of the 2nd accused. PW 1 would say that when the accused saw the police, 2nd accused entrusted the bag to 1st accused and the bag was recovered from the hands of the 1st accused under Ext.P1 mahazar. From the evidence adduced by the prosecution, it is not clear that the bag, in fact, belonged to the 1st accused. It is quite possible that the bag might have belonged to the 2nd accused and as soon as he saw the police party he might have entrusted the the same to the 1st accused. He escaped from the clutches of law. It is pertinent to note that the bag contained a cover wherein the name of the 2nd accused was written. In a case, of this nature, the police should have conducted further investigation to find out the ownership of the bag. If, in fact, the bag belonged to the 2nd accused and the same was given to the 1st accused out of a momentarily impulse on seeing the police, the possession if any of the 1st accused cannot be said to be legal possession. It may be that, at the time of recovery of the same by the police, 1st accused was holding the bag for and on behalf of the 2nd accused. The prosecution evidence is shrouded in mystery as regards the real ownership of the bag.

5. The evidence of the independent witnesses also creates suspicion. PW 3 would say that he had not attested Ext.P1 mahazar. I have perused the alleged signature of PW 3 found in Ext.P1 with the signature he had given while accepting the summons and also the signature he had put in his deposition. The signatures of PW 3 in Ext. P1 varies from the signature found in summons and deposition. PW 3 would say that he was not present at the time when the articles were seized.

6. The appellant-1st accused was convicted for a serious crime and the sentence imposed on him is also grave. However, the evidence adduced by the prosecution is not upto that standard. It is quite possible that the bag, wherein the contraband articles were found, did not belong to the appellant and he is definitely entitled to the benefit of doubt arising out of that situation. In view of the above circumstances, I set aside the conviction and sentence entered against the appellant and acquit him of all the charges framed against him. He is directed to be released forthwith, if his detention is not required in any other case.

7. Crl. Appeal is allowed.

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