

(2017) 07 KL CK 0005
In the High Court Of Kerala
Case No : 69 of 2011

ANIL KUMAR @ RAJAN, S/O.UYALUKKUNNINMEL	APPELLANT
Vs	
STATE OF KERALA	RESPONDENT

Date of Decision : 10-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 354\(4\)](#) -
Kerala Abkari Act, 1967, Section 8(2)

Citation : (2017) 07 KL CK 0005

Hon'ble Judges : P.Ubaid

Bench : SINGLE BENCH

Advocate : P.SAMSUDIN, ALEX M.THOMBRA

Final Decision : Disposed

Judgement

1. The appellant herein is the sole accused in S.C 374/2010 of the Court of Session, Manjeri. He faced prosecution before the court below on the allegation that at about 5.45 p.m on 21.9.2007 at Pulpatta within the limits of the Manjeri Excise Range, the accused was found possessing 2.250 litres of arrack in a can of 5 litres capacity. The offence was detected by the Excise Inspector of the Manjeri Excise Range during his usual patrol duty.
2. The prosecution case is that during patrol, the Excise Inspector saw the accused carrying a plastic can. When he examined the plastic can on suspicion, it was

found containing some quantity of arrack. By taste and odour, he identified the liquid therein as arrack. The accused was arrested on the spot, and the quantity of arrack was seized as per a detection mahazar. He produced the accused and the properties at the Excise Range Office without any delay, where he registered the crime and occurrence report. Later, another Excise ?Inspector took over investigation and he submitted final report in court. On committal, the case came up before the Court of Session, from where it was made over to the learned Additional Sessions Judge (Adhoc) I, Manjeri for trial and disposal.

3. The accused appeared before the trial court and pleaded not guilty to the charge framed against him under Section 8 (2) of the Kerala Abkari Act ("the Act" for short). The prosecution examined four witnesses in the trial court and proved Exts.P1 to P7 documents. The MO1 plastic can containing arrack was also identified during trial. The accused denied the incriminating circumstances, when examined under Section 313 Cr.P.C. He examined a witness on his side as DW1. The evidence of DW1 is that the accused was in fact taken into custody by the Excise people at his house and at that time nothing was seized from him. Thus, practically, the evidence given by DW1 is a negative evidence.

4. On an appreciation of the evidence adduced by the prosecution, the trial court found the accused guilty. On ? conviction, he was sentenced to undergo rigorous imprisonment for three months and to pay a fine of 1 lakh by judgment dated 22.12.2010. Aggrieved by the judgment

of conviction, the accused has come up in appeal.

5. When this appeal came up for hearing, the learned counsel for the appellant submitted that this is a case where there is inordinate delay in submitting final report after the detection, and that failure on the part of the Investigating Officer to prepare scene mahazar also is important in this case. .Of the four witness examined in the trial court, PW1 is the Excise Inspector who detected the offence, PW4 is the Excise Inspector, who conducted investigation and submitted final report, and PW3 is the Excise Guard, who assisted the Excise Inspector in the process of detection. PW2 examined as an independent witness turned hostile. However, he identified his signature in the detection mahazar and also on the label affixed on the properties.

6. PW1 and PW3 have given consistent evidence proving the detection in this case. Both are definite that during patrol, they saw the accused coming with a plastic can in his hands. When PW1 opened and examined the can on suspicion, it was found containing a quantity of about 2.250 litres of arrack. In court, the witnesses identified the MO1 plastic can containing arrack seized from the hands of the accused. Both the witnesses have given evidence regarding the collection of sample from the total quantity of arrack. The sample and the properties were produced in court on the next day itself. On analysis at the laboratory, the liquid in the sample bottle was identified as arrack. Both the witnesses are consistent that label containing the signature of the accused and the witnesses was affixed on the property , and also on the sample bottle. On the basis of

the labels, the witnesses identified the MO1 plastic can in court. Both are consistent that the liquid contained in the sample produced in court was taken from the MO1 plastic can. It stands well proved that the accused was found possessing some quantity of arrack in the MO1 plastic can by PW1. Thus, the case of the detection and also the arrest of the accused stands well proved in this case.

7. Ext.P6 forwarding note contains the specimen of the seal affixed on the sample bottle and Ext.P5 property list shows that the properties were produced in court on the next day itself. The detection in this case was made at about 5.45 p.m on 21.9.2007. Of course, there is no scene mahazar in this case. One point argued by the defence is that, the fact that there is no scene mahazar will make the prosecution case suspicious. I do not agree. It is nowhere stated that a scene mahazar is always necessary in a prosecution. Scene mahazar will assume importance, and it will have value as evidence, only in cases where the scene of incident will provide some evidence. In some cases, the scene of incident may provide some circumstances against the accused. In this case, I find that the scene is described in the detection mahazar itself, and the scene would not provide any sort of material or circumstance against the accused. So just because there is no scene mahazar in this case, the accused cannot be acquitted.

8. I find no inordinate delay also in this case. The Ext.P7 report of analysis was received in court only on 16.4.2008. Final report was filed in court by the Excise Inspector on 22.3.2010, within two years. I find that the accused is not entitled for the benefit of any infirmity or

defect in this case, and I find that the conviction is only to be confirmed in appeal. The sentence imposed by the court below is the minimum possible, in view of Section 354 (4) Cr.P.C . The fine sentence is also the minimum. However, the default sentence can be slightly reduced.

In the result, the conviction against the appellant under Section 8(2) of the Act in S.C No.374 of 2010 of the court below is confirmed, and the appeal is disposed of accordingly. The jail sentence imposed by the trial court is also confirmed. However, the default sentence imposed by the trial court will stand reduced to rigorous imprisonment for one month. The appellant will get the benefit of set off as already ordered by the trial court.