

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2004 OF 2009

RAJEEV

.. APPELLANT (S)

VERSUS

EXCISE INSPECTOR

.. RESPONDENT (S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.891 of 2003, dated 29.06.2009 whereby the High Court has confirmed the order of conviction passed by the Trial Court in SC No.196 of 2002, dated 29.05.2003. However, the order of sentence has been modified.

2. The prosecution's case is as follows:

On 16.10.1999, at about 10:15 am, on the west-side of Siva Temple, Oorakam Desom, Oorakam Village, the

appellant, while riding a bicycle, was intercepted by the Excise Inspector, Cherpu Range who had been patrolling the area with other Excise Officers. The appellant was searched and a Jerry Can containing 10 litres of Toddy was found in his possession. The appellant disclosed that he was a Toddy-Tapper for one Karuvannur Toddy Shop. A sample of the toddy as well as the Jerry Can were taken and sealed. The appellant was arrested and an FIR was registered. The said sample was forwarded to the Chemical Analysis Laboratory which reported that the sample contained 8.61% Ethyl Alcohol.

3. Thereafter, on the appellant appearing before the Trial Court, charges were framed against him for the offence under Section 58 of the Abkari Act, 1077 (for short, "the Act"). On the appellant pleading not guilty, the case was committed to trial.

4. The prosecution examined seven witnesses and produced 11 documents and two material objects. The appellant's statement was recorded under Section 313(1) (b) of the Code of Criminal Procedure (for short, "the Code") wherein he denied the offence and pleaded innocence.

5. The Trial Court considered the evidence on record as also the arguments of the parties and observed that the prosecution had been able to prove that the said Jerry Can (MO-1) had been seized from the possession of the appellant and that the same contained Toddy. The Trial Court further observed that once the possession had been proved, the burden lay on the appellant to provide an adequate explanation of the circumstances in which he came to possess the said Toddy and that the appellant had failed to discharge this burden. Therefore, the Trial Court concluded that the prosecution had been able to

establish the appellant's guilt beyond reasonable doubt and, *vide* judgment and order dated 29.05.2003, convicted the appellant for the offence under Section 58 of the Act and sentenced him to rigorous imprisonment for a period of three months and a fine of Rs.1,00,000/-.

6. Aggrieved by the said conviction and sentence, the appellant approached the High Court in Criminal Appeal No.891 of 2003 on the ground, *inter alia*, that the appellant was a Toddy Tapper and had been legitimately taking the said toddy to the toddy shop to measure it and, therefore, the appellant could not be convicted.

7. By the impugned judgment and order dated 29.06.2009, the High Court re-appreciated the entire evidence on record and observed that the appellant had been unable to sufficiently explain the circumstances in which he came to be in possession of

the said Toddy. The High Court further observed that the evidence on record proved that the appellant had been in conscious possession of the said Toddy and that the same had been recovered from him. Therefore, by the impugned judgment and order, the High Court confirmed the order of conviction passed by the Trial Court. However, the High Court modified the sentence to imprisonment for a period of one month and a fine of Rs.1,00,000/-.

8. Aggrieved by the judgment and order passed by the High Court, the appellant is before us in this appeal.

9. We have heard learned counsel for the parties to the *lis*.

10. Learned counsel for the appellant would submit that the appellant was a Toddy Tapper and was in legitimate possession of the said Toddy and,

therefore, the appellant's conviction was illegal and unwarranted. *Per contra*, learned counsel for the respondent-State would support the judgment and order passed by the High Court.

11. After going through the judgment and order passed by the High Court as well as the Trial Court and the material on record, the appellant's case fails to convince us. We concur with the finding of the High Court that the prosecution has been able to prove its case beyond reasonable doubt.

12. On the question of sentence, learned counsel for the appellant would submit that the sentence imposed on the appellant ought to be reduced. However, in light of the seriousness of the offence committed by the appellant, we find that the sentence imposed on the appellant cannot be further reduced.

13. In light of the aforesaid, we are of the considered opinion that the judgment and order passed by the High Court does not suffer from any infirmity whatsoever and does not require our interference.

14. Accordingly, the appeal is dismissed.

Ordered accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

NEW DELHI
SEPTEMBER 08, 2015.

ITEM NO.29

COURT NO.1

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2004/2009

RAJEEV

Appellant(s)

VERSUS

EXCISE INSPECTOR

Respondent(s)

Date : 08/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Nishe Rajen Shonker,Adv.

For Respondent(s) Mr. Jogy Scaria,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the
signed order.

As a sequel to the above, pending
application(s), if any, stand disposed of.

(Neetu Khajuria)
Sr.P.A.

(Vinod Kulvi)
Assistant Registrar

(Signed order is placed on the file.)