

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2073 OF 2009

AYYAPPAN

...APPELLANT(S)

VERSUS

THE STATE OF KERALA

...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.258 of 2003, dated 22.06.2009 whereby and whereunder the High Court has upheld the judgment of conviction and modified the order of sentence passed by the Trial Court in Sessions Case No. 206 of 2000 dated 07.01.2003.

2. The case of the prosecution is as follows:

On 26.07.1998, at about 07:30 pm, the appellant was

found hiding in a bush on panchayat property by PW-2

Signature Not Verified

Digitally signed by
Ramana Venkata Ganti

(police

Date: 2015.09.14

16:53:06 IST

Reason: constable) and PW-3 (Sub-inspector of

Police, Marayoor) and 1.5 litres of arrack was

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recovered from his possession. The appellant was

arrested and a sample of the said arrack was seized

and sealed. An FIR was registered against the

appellant. Subsequently, on the investigation being

completed, a charge sheet was filed before the Trial

Court.

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3. Thereafter, on the appellant appearing

before the Trial Court, both sides were heard and

charges were framed against the appellant for offences punishable under Section 55A of the Abkari Act, 1077 (for short "the Act"). The charges were read over and explained to the appellant who pleaded not guilty. Consequently, the case was committed to trial.

4. The prosecution examined three witnesses and produced 3 documents and 4 material objects. While no evidence was adduced by the defense, 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 prosecution's case.

5. The Trial Court considered the evidence on record as also the arguments of the parties and observed that though the independent witness (PW-1) had turned hostile, the testimonies of PWs 2 and 3 were reliable and clearly established that the appellant had been found in possession of the said arrack. The Trial Court further observed that the chemical examiner's reported was credible and clearly proved that the seized sample contained 70.72% ethyl alcohol. The Trial Court, therefore, concluded that the appellant's guilt had been conclusively established and, vide judgment and order dated 07.01.2003, convicted the appellant for the offence punishable under Section 55A of the Act and sentenced him to rigorous imprisonment for a three months and fine of Rs.1,00,000/-, in default of which the appellant would have to suffer imprisonment for a further period of 15 days.

6. Aggrieved by the said conviction and sentence by the Trial Court, the appellant

approached the High Court in Criminal Appeal No. 258 of 2003(A) on the grounds, inter alia, that the evidence on record was not sufficient to convict the appellant and that the prosecution's case suffered from several procedural irregularities which vitiate the prosecution's case.

7. By the impugned judgment and order dated 22.06.2009, the High Court re-appreciated the entire evidence on record and observed that, though PWs 2 and 3 were the official witnesses, their testimonies were cogent and credible and did not suffer from any material defect and, therefore, could be relied on. The Court further observed that all procedural requirements had been complied with and there was no evidence that the material evidence placed on record had been tampered with and, therefore, the chemical examiner's report could be relied on. Therefore, the High Court, vide the impugned judgment and order, confirmed the judgment of conviction passed by the

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Trial Court. However, in light of the quantity of contraband involved, the age of the appellant and other facts and circumstances of the case, the High Court modified the sentence imposed on the appellant to simple imprisonment for a period of 2 months and a fine of Rs.1,00,000/-, in default of which the appellant would have to suffer imprisonment for a further period of 15 days.

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 parties to the lis and carefully perused the evidence on record, including the judgments and orders passed by

the Courts below.

10. Shri C.N. Sree Kumar, learned counsel for the appellant, would submit that, in light of the fact that PW-1 has turned hostile and no other independent witnesses have been produced, the prosecution has been unable to prove its case beyond
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reasonable doubt. Per contra, Shri M.T. George, learned counsel for the respondent-State, would support the judgment and order passed by the High Court.

11. Having considered the submissions made before us and having gone through the entire evidence on record, the appellant's case fails to convince us. The High Court has rightly concluded that the prosecution has been able to prove that the appellant was found in illegal possession of arrack and we concur with the findings of the High Court in this regard.

12. On the question of sentence, Shri C.N. Sree Kumar, learned counsel for the appellant, would submit that the sentence imposed on the appellant ought to be reduced. Shri M.T. George, learned counsel for the respondent-State has not objected to the reduction of the sentence imposed on the appellant. In light of the peculiar facts and circumstances of the case, we find that the ends of
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justice would be met if we reduce the sentence imposed on the appellant to simple imprisonment for a period of one month and imprisonment for a further period of 15 days in default of the fine of Rs.1,00,000/- imposed on the appellant by the Courts below.

13. In the light of the aforesaid, the appeal is partly allowed. The judgment of conviction passed by the High Court is confirmed while the order of sentence is modified and the sentence imposed is reduced to imprisonment for a period of one month and fine of Rs.1,00,000/-, in default imprisonment for a further period of 15 days. The appeal is disposed of accordingly.

14. The appellant is on bail. The concerned authorities are directed to take the appellant into custody forthwith to serve out the remaining period of sentence, if the same has not already been served.

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

.....J.
(ARUN MISHRA)

NEW DELHI,
SEPTEMBER 09, 2015.

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ITEM NO.4 COURT NO.1 SECTION IIB
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
Criminal Appeal No(s). 2073/2009
APPPELLANT(s)
AYYAPPAN
VERSUS
STATE OF KERALA Respondent(s)

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

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

For Appellant(s) Mr.C.N.Sree Kumar, Adv.
Mr.Amit Sharma,Adv.
Mr. V. K. Sidharthan,Adv.

For Respondent(s) Mr.M.T.George, Adv.
 Ms.Yoga Maya, Adv.

 Ms. Liz Mathew,Adv.(NP)

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

The appeal is partly allowed and the appellant is
directed to taken into custody forthwith to serve out the
remaining period of sentence, in terms of the signed order.

(G.V.Ramana)
AR-cum-PS
(Signed order is placed on the file)

(Charanjeet Kaur)
AR-cum-PS