IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 30TH DAY OF APRIL 2020 / 10TH VAISAKHA, 1942

CRL.A.No.474 OF 2008

SC 96/2007 DATED 12-02-2008 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, THODUPUZHA

CP 84/2006 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I(FOREST OFFENCES),TPA

APPELLANT/S:

GRACY,D/O.MATHAI
VAZHAYIL HOUSE,PANNIMATTOM KARA, VELLIYAMATTOM VILLAGE, THODUPUZHA.

BY ADVS.
SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

OTHER PRESENT:

C.K.PRASAD

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19-02-2020, THE COURT ON 30-04-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of April, 2020.

The appeal is filed challenging the judgment of the trial court by which the appellant stands convicted for the offence under Section 55 (i) of the Abkari Act and is sentenced to undergo simple imprisonment for six months and to pay fine of Rs.1,00,000/- with default sentence of simple imprisonment for two months.

2. The prosecution allegations, which led to the conviction of the appellant, are as follows:-

On 29.08.2005, PW3; the Sub Inspector of Kanjar Police Station, while on patrol duty, got information that the accused was selling liquor from her house. Thereupon, PW3 proceeded to the spot along with police party, including women police constables. On reaching near the house of

the accused, the police party found the accused pouring some liquid from a bottle into a glass, adding water to it and handing over the glass to a person who was standing outside the veranda of the house. That person drank the contents of the glass and give it back to the accused along with some money, which she kept inside her purse. By the time, the police party reached the house of the accused, the person who drank from the glass ran away. On examination of the bottle in the possession of the accused, it was found to be a bottle of 1.5 litres capacity containing 1.350 litres of Indian Made Foreign liquor. An amount of Rs.50/- was found inside the purse. From out of the bottle, sample was drawn and sealed. The bottle containing the liquor, the glass, the bottle containing water and the purse containing five ten rupee notes were seized and the accused

arrested. The sample, when subjected to chemical analysis, was found to contain 42.17% by volume of ethyl alcohol.

3. In order to prove the prosecution case, PW 1 to PW5 were examined and Exts.P1 to P8 marked in evidence. On the defence side, DW1 was examined and Ext.D1 marked. MO1 to MO6 are the liquor, cash and other items seized from the scene of occurrence.

4. On the basis of the evidence tendered, the trial court came to the conclusion that even though there was no independent evidence regarding sale of liquor by the accused, the evidence of PW3, the investigating officer was reliable and sufficient to prove the guilt of the accused.

5. On analysis of the oral evidence, it is seen that PW1 and PW2 were sought to be examined as witnesses to the sale of liquor, its seizure,

and arrest of the accused. But both the witnesses turned hostile and did not support the prosecution case. The trial court relied on the inculpatory portion of those witnesses to hold that from the evidence of PW1 and PW2, the fact that the police had gone to the house of the accused on 29.08.2005 stands established. By relying on the evidence of PW3 alone, the trial court held the element of sale to have been proved. The trial court disbelieved the contention of the accused that the liquor belonged to her brother, who was residing in the same house. The trial court found that the accused had failed to prove this contention by adducing evidence.

6. Heard Sri.C.M.Tomy, learned Counsel for the appellant and Sri.C.K.Prasad, learned Public Prosecutor.

7. Mere possession of Indian Made Foreign

Liquor within the prescribed limit by a person, irrespective of gender, is not an offence. Even consumption of such liquor by another person within the confines of a private residence is not an offence. The offence is attracted only when there is an element of sale. The question that arises for consideration in this appeal is whether the prosecution had succeeded in proving that the accused had sold liquor at her residence. The prosecution evidence in this regard is the oral testimony of PW3, the investigating officer coupled with the alleged recovery of the liquor, glass and cash. The best evidence to prove payment of money for the liquor consumed would have been the testimony of the person who is alleged to have consumed the liquor and paid money to the accused. Absolutely no attempt to examine that person was made, other than to say that the

person who had purchased and consumed the liquor ran away from the spot. It is impossible to accept the uncorroborated testimony of PW3 to find the accused guilty for the offence under Section 55(i) of the Abkari Act.

8. The court below committed a mistake in completely discarding the defence of the accused that the liquor belonged to her brother residing along with her, on the reasoning that the accused had failed to adduce evidence to prove this aspect. In this regard, it may be pertinent to note that the investigating agency had not made any effort to find out the details regarding the other residents of the house. For the aforementioned reasons, I am unable to sustain the finding of guilt and conviction entered by the trial court.

In the result, the impugned judgment is set

aside and the appellant acquitted. The bail bond executed by the appellant is cancelled and the appellant set at liberty.

sd/-
V.G.ARUN
JUDGE

Scl/30.04.2020