

IN THE COURT OF JUDL. MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.B.,
Judl. Magistrate First Class,
Banpur.

Date of argument. : 02.07.2014

Date of Judgment. : 14.07.2014

2(a)cc No. 01/2007

T.R. No. 629/2010

State ... Prosecution

-Versus-

Akhya Naik, aged about 35 years,
S/o Raghunath Naik.

Vill: Dasarathipur (Podasahi), P.S: Banpur

District. Khurda

Accused.

Offence: U/s.47 (a) of the Bihar & Orissa Excise Act, 1915.

For the Prosecution. : Sri Jaladhar Pradhan, APP

For the Defence : Sri G.S. Ram & others.

J U D G M E N T.

01. The accused stands charged for the offence punishable Under Section 47 (a) of Bihar and Orissa Excise Act, 1915.

02. The case of the prosecution in brief runs thus:

On 15.02.2007 at 3pm the S.I of Excise Balugaon, Mrutyunjaya Behera and his staff while performing patrolling duty at Betuli Canal road they found a person coming in a cycle by holding two jar bags in the handle of the cycle in a suspicious manner. So they detained him and on search they recovered two jari bags, one bag containing 40 polythene packets and another bag containing 28 liters. After conducting various tests on it and found it to be nothing but I.D. liquor. He seized the same in presence of witnesses. After completion of

investigation he submitted P.R. against the accused U/s.47 (a) of Bihar and Orissa Excise Act. 1915.

03. The plea of defence denial one and false implication.

04. The point for determination in this case emerges as follows:

(a) Whether 15.02.2007 at 3pm at Betuli Canal road two jari bags one bag containing 40 polythene packets and another bag containing 28 liters of I.D.liquor was seized from the conscious and exclusive possession of the accused?

(b) Whether the seized liquor was nothing but I.D. liquor?

05. In order to prove its case, prosecution has examined two P.Ws. in its favour where as defence has examined none. P.W. 1 is an A.S.I of Excise who was accompanied with the patrolling party and P.W.2 is an independent seizure witness.

06. In order to prove a case U/s 47(a) Bihar and Orissa Excise Act, it is for the prosecution to prove not only the fact of seizure from the exclusive and conscious possession of the accused but also the seized articles to be nothing but I.D. liquor.

07. This is a case U/s 47(a) Bihar and Orissa Excise Act. In order to substantiate the case against the accused, it is necessary to scrutinize the case of prosecution. During the course of the trial P.W.1 deposed that on 15.02.2007 he along with S.I. M. Behera had gone on patrolling duty in the Betuli canal road, while performing the patrolling duty, they found the accused coming in a cycle by holding two jari bags in the handle of the cycle. On search they found 40 polythene packets in a jari bag and 28 liters liquor in another jari bag. The S.I of Excise tested the same in blue litmus paper and in skys hydrometer test and from the above test and from long service experience they could come to know the exact nature of the liquid. Then the S.I of Excise seized the liquor and prepared the

seizure list in presence of independent witnesses. During his cross examination he said that he has not conducted any test except smelling and only one packet was opened and put to test. He also said that he could not say the exact nature of the liquors kept in the packet. P.W.2 deposed that he does not know anything with regard to this case and the Excise staff has not seized anything in his presence from the accused.

On perusal of the evidence it is found that the prosecution has not examined the informant and other witnesses who corroborated the prosecution story. The only independent witness who examined by the prosecution did not support the case of the prosecution and deposed that nothing has been seized in his presence. The S.I of Excise, M.Behera reported to have been examined the liquor through blue litmus paper test and hydrometer test but the said S.I was not examined by the prosecution. Hence, there is no proof in the record to prove that the seized liquids were nothing but the I.D liquor. Further the fact of seizure from the conscious and exclusive possession of the accused is also not proved as none of the independent witnesses have corroborated the prosecution version Hence in view of the above discussion and due to lack of independent corroboration, I am of the opinion that the prosecution has failed to prove its case against the accused beyond all reasonable doubts.

07. In the result, the accused is found not guilty for the offence U/s.47 (a) of Bihar and Orissa Excise Act, 1915 and acquitted thereof U/s.248 (1) of Cr.P.C. He be released from the custody forthwith.

The seized materials, if any be destroyed after four months of the appeal period, if no appeal is preferred and if preferred be dealt as per the order of the appellate court.

Enter the case as mistake of fact

Judicial Magistrate First Class,
Banpur

This judgment typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 14th day of July, 2014.

Judicial Magistrate First Class,
Banpur

List of witnesses examined for Prosecution.

P.W.1 Ramnath Reddy
P.W.2 Rohitswara Behera

List of witnesses examined for the Defence.

Nil

List of Exhibits marked for Prosecution.

Ext.1 Seizure list.
Ext 1/1 Signature of P.W.1 on Ext.1.
Ext.1/2 Signature of S.I on Ext.1.
Ext. 1/3 & ¼ Signatures of accused on Ext.1.
Ext.1/5 Signature of P.W.2 on Ext.1.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,
Banpur.