

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

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

Date of argument :13.10.2014
Date of Judgment.:14.10.2014

G.R. No. 325/2014
T.R. No. 428/2014

State Prosecution

-Versus-

Surendra @ Suresh Das, aged about 25 years,
S/o Jogi @ Jogendra Das.

Vill: Baurisahi, Kabisuryanagar,

P.S:Kabisuryanagar, Dist: Ganjam Accused.

Offence:Under Section 47(a) of the B & O Excise Act, 1915.

For the Prosecution. : Sri J.Pradhan, APP.

For the Defence. : Sri H.S.Pradhan, L.D.C.

J U D G M E N T.

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

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

On 24.07.2014 one Sachidananda Samantaray A.S.I of police Banpur P.S along with other police staffs proceeded towards Ramapur and Damia Barabara area for excise raid. During excise raid they got reliable information that the accused was selling liquor illegally in the end of village Rampur. So they proceeded to the spot and saw that the accused was possessed one plastic jerkin containing five liters of I.D. liquor. On demand he failed to show any license or authority for such possession. After verification he brought the accused along with the liquor to the P.S.

Upon such report P.S. Case No.222/2014 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused, the I.O. submitted charge sheet against him. Hence this trial.

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

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

(a) Whether on 24.07.2014 at about 7.45am five 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 as many as four P.Ws in its favour. Out of which P.W.1 is the informant, P.W.2 is a Home guard, P.W.3 is another Home guard who accompanied with the patrolling party, P.W.4 is the I.O where as defence has examined none

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 course of the trial P.W1 who is the informant of this case deposed that on the alleged date he along with P.W.3 had gone to Rampursahi for excise raid. On excise raid they received reliable information that accused Surendra Das was

selling liquor at the end of village. He along with witnesses went to the spot, seized the liquor and took the accused along with the seized articles to P.S. P.W.2 deposed that he does not know anything about this case. P.W.3 deposed that on 24.07.2014 while he along with the informant returning saw that 4 persons were sitting. On seeing them 3 persons fled away and they could not catch one. They found I.D liquor from his possession. P.W.4 the I.O deposed that he took up investigation of this case. During investigation he examined the witnesses, visited the spot and prepared the spot map.

On careful scrutinization of the evidence available on record it is found that the witness to the seizure list did not support the fact of seizure of liquor from the possession of the accused in his presence. Though the prosecution has examined the informant but during his cross examination he said that he has not undergone any special training to identify the liquor. The I.O in this case during his cross examination said that he has not sent the seized liquor for chemical examination. Further the seized articles were not produced before this court for its perusal. Hence, there is no proof in the record to prove that the seized liquids were nothing but the C.S. 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 contradictions and due to lack of independent corroboration and in absence of any test, 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 October, 2014.

Judicial Magistrate First Class,
Banpur.

List of witnesses examined for Prosecution.

PW.1	Sachidananda Samantaray
PW.2	Bikram Pradhan
P.W.3	P.C.Panda
P.W.4	Niranjana Mohanty

List of witnesses examined for defence.

None.

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 P.W.2 on Ext.1.
Ext. 1/3	Signature of P.W.4 on Ext.1
Ext.2	F.I.R
Ext.2/1	Signature of P.W.1 on Ext.2.
Ext.2/2	Signature of P.W.4 on Ext.2.
Ext.3	Spot map.
Ext.3/1	Signature of P.W.4 on Ext.3.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil

Judicial Magistrate First Class,
Banpur.