

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

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

Date of argument :11.08.2014
Date of Judgment. :22.08.2014

G.R. No. 446/2012
T.R. No. 881/2013

StateProsecution

-Versus-

- Bibhuti Dalei, aged about 45 years, S/o Bhramar Dalei. Vill: Langaleswar, P.S: Khallikote, Dist: Ganjam.
- Dhruva Nayak, aged about 55 years, S/o Late Sudarsana Nayak.Vill: Chandapur Mainroad, Madhuban Sahi, P.S: Ranapur,Dist: Khurda.
- 3. Bikash Sahu, aged about 20 years, S/o Bhagirathi Sahoo. Vill: Chhatargada, P.S: Balugaon, Dist: Khurda Accused persons.

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

For the Prosecution. : Sri J.Pradhan, APP

For the Defence. : Sri P.K.Patajoshi, Ajit Ku. Swain & others

J U D G M E N T.

01. The accused persons stand 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 22.12.2012 at 7pm Mahammad Hidar Alli constable of police along with other police staffs were performing evening patrolling duty at Naval Chhaka. They got reliable information that one Tata Sumo bearing Regd. No.OR02BJ-3351 loaded with huge quantity of country made liquor coming from Narayani temple towards Balugaon. So they watched the vehicle on N.H-5. After some time they found the said vehicle was coming from Narayani side . They detained the vehicle and on search they found huge quantity of country made liquor were kept inside the vehicle. On demand the driver of the vehicle failed to produce any authority or license for such transportation. After due verification they brought the accused along with the liquor to the P.S.

Upon such report P.S. Case No.158/2012 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused persons, the I.O. submitted charge sheet against them. Hence this trial.

During the course of trial the case against Tutu @ Bijaya Pattnaik was abetted vide order dated 02.05.2014.

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 22.12.2012 at 7pm 750 liters of I.D liquor was seized from the conscious and exclusive possession of the accused persons?

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

05. In order to prove its case, prosecution has examined as many as 10 P.Ws in its favour where as defence has examined none. Out of which P.W.9 is the informant, P.W.10 is the I.O. P.Ws 1,2,3,4,5,6,7 & 8 are independent witnesses to the occurrence. 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 C.S 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.W.9 the informant deposed that on the alleged date getting reliable information they detained one vehicle and found liquor from it. They took the accused persons along with the vehicle, then lodged the F.I.R. which is marked as Ext.2 and proved his signature marked as Ext.2/1. During his cross examination he said that when the vehicle was detained P.Muthu was present there but the accused persons were not present there. At the spot 40 to 50 persons gathered at the spot and the spot was a market place. He also said that as per the direction of P.Mathu he lodged the FI.R. He also deposed that he could not verify the liquor. PP.W.10 the I.O of this case deposed that she took up investigation as per the direction of I.I.C and during course of investigation she examined the informant and other witnesses and seized the said liquor, arrested the accused. She also sent the sample of the liquor for chemical

examination. She said that she has not undergone any distillery training and the seized articles were kept at P.S. Malkhana. P.Ws 1,2,3,4,5,6,7 & 8 are the independent witnesses as well as the seizure witnesses of this case. In their evidence they did not support the prosecution evidence and deposed that they do not know anything about this case and nothing has been seized in their presence.

On careful scrutinization of the evidence it is found that the witnesses to the seizure list did not support the fact of seizure of liquor from the possession of the accused persons in their presence. The evidence of P.Ws 9 & 10 are full contradictory to each other. P.W.9 said that they detained one vehicle and found some liquor from it. They took the accused persons along with the vehicle to the P.S. During his cross he said that as per the direction of M.Pathu the I.O he lodged the F.I.R. But the I.O deposed that after registration of the F.I.R the I.I.C directed her to take up investigation. The informant also said that the accused persons were not present at the spot but the I.O present at the spot. Further the seized article 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 I.D. liquor. Further the fact of seizure from the conscious and exclusive possession of the accused persons are 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 persons are 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. They be set at liberty and discharged from their bail bonds.

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 22nd day of August, 2014.

Judicial Magistrate First Class,

Banpur

List of witnesses examined for Prosecution.

PW.1	Amaresh Palei
PW.2	Kedar Behera
P.W.3	Trinath Behera
P.W.4	Ramesh Padhi
P.W.5	Chitrasena Sahu
P.W.6	Deepak Sahu
P.W.7	Rabindra Palei
P.W.8	Sathia Palei
P.W.9	Md. Haidar Ali
P.W.10.	Padma Muthu

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Ext.1	Signature of P.W.1 on seizure list.
Ext.1/1	Signature of P.W.7 on the seizure list.
Ext. 1/2	Seizure list.
Ext.1/3	Signature of P.W.10 on Ext.1/2.
Ext. 2	F.I.R.
Ext.2/1	Signature of P.W.9 on Ext.2.
Ext.2/2	Signature of P.W.10 on the F.I.R.
Ext.2/3	Signature of the I.I.C. on Ext.2.
Ext.3	Spot map.
Ext.3/1	Signature of PW.10 on Ext.3.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil

Judicial Magistrate First Class,
Banpur