

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

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

Date of argument :06.08.2014
Date of Judgment. : 19.08.2014

G.R. No. 85/2012

T.R. No. 257/2012

State Prosecution
-Versus

Siba @ Shiba Kumar Behera, aged about 24 years,
S/o Surendra Behera.

Vill: Patanasahi, P.S: Balugaon,
Dist: Khurda. Accused.

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

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

For the Defence. : Sri K.C.Pradhan & others.

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:

One Sarat Kumar Behera A.S.I of police Balugaon P.S on 09.03.2012 at about 2.05pm he along with other police staffs performing patrolling duty at Chilika shore got reliable information that the accused was illegally selling liquor near Kalijai Temple. So they proceeded to the spot and saw that one person selling liquor kept in a cartoon. On search they found that the accused was possessed 20 bottles of Aska-40 C.S. liquor each containing 200ml. On demand he failed to show any license or authority for such possession and selling of liquor. After due verification he brought the accused along with the liquor to the P.S.

Upon such report P.S. Case No.35/2012 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 09th day of March 2012 at 2,05pm 20 bottles of C.S. liquor was seized from the conscious and exclusive possession of the accused?
 - (b) Whether the seized liquor was nothing but C.S. liquor?

05. In order to prove its case, prosecution has examined as many as three P.Ws in its favour where as defence has examined none. All are independent witnesses to the occurrence.

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.W1 deposed that the occurrence took place 2 years ago some liquor was seized near Chilika. During his cross examination he said that he could not say the name of person from whose possession the liquor was seized and no test was made in his presence. P.W.2 deposed that he does not know anything with regard to this case and nothing has been seized in his presence.

The witnesses to the seizure list did not support the fact of seizure of liquor from the possession of the accused in their presence. The prosecution has not been examined the informant who seized the liquor in this case. 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 set at liberty and discharged from his bail bond.

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 19th day of August, 2014.

Judicial Magistrate First Class,
Banpur.

List of witnesses examined for Prosecution.

PW.1 Prafulla Kumar Swain

PW.2 Bijay Kumar Swain.

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Nil

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil

Judicial Magistrate First Class,
Banpur.