

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST  
CLASS(O), BHUBANESWAR**

Present : Sk. Md. Quais, M.A., LL.M.  
J.M.F.C (O), Bhubaneswar.

Date of conclusion  
of argument : 14.05.2014

Date of Judgment : 22.05.2014

GR Case No. 2369/2003  
Trial Case No. 2947/2009

S t a t e

vrs

Ramesh Bhoi, aged about 55 years,  
S/o.- Nalu Bhoi,  
Vill: Patia Jalimunda Sahi, P.S: C.S.Pur,  
Dist: Khurda.

... Accused

For offences punishable u/s 47 (a) of B & O Excise Act & 272/273  
of IPC

For the Prosecution : A.P.P.

For the Defence : Sri Madhumadhaba Jena &  
his Associate

Advocates.

**J U D G M E N T**

The accused stands charged for offence punishable u/s  
47(a) of B & O Excise Act and 272/273 of IPC for alleged  
possession of 12 polythene packets of Country Spirit Liquor each

containing 200 ml without any authority.

2. The case of the prosecution shortly runs as hereunder

;

That on 18.07.2003 at about 7.00 AM while the then W.S.I of Police, Chandrasekharpur P.S., Sujata Khandual was present in P.S. She got reliable information that one person is selling liquor at Village-Jalimunda Sahi without any authority. Hence, she along with A.S.I., D. Sahu and Havildar, P.K. Pattnaik proceeded to the spot and found the accused namely, Ramesh Bhoi of Village-Jalimunda Sahi was selling liquor illegally in his veranda. On search of the spot, she recovered 12 numbers of Country made polythene packet liquor each containing 200 ml from the possession of accused. As the accused failed to produce any authority for possessing such liquor, Sujata Khandual seized the same in presence of witnesses. She brought the accused and seized article to P.S and presented a written report to that effect. Basing upon such report Chandrasekharpur P.S. Case No. 158 dtd. 18.07.2013 U/s. 47(a) of B&O Excise Act and U/s. 272/273 of IPC was registered and the matter was investigated into. During investigation, the accused was arrested, witnesses were examined and after completion of investigation, charge-sheet U/s. 47(a) of

B&O Excise Act and 272/273 of IPC was submitted against the accused. Hence, this case.

3. The plea of the accused is clean denial and false implication.

4. The points to be determined are as follows ;

I) Whether on 18.07.2003 at about 7.00 AM at village Jalimunda the accused was in conscious and exclusive possession of 12 numbers of Country made polythene packet liquor each containing 200 ml of liquor without any authority?

II) Whether the liquid so seized was nothing but Country made spirit liquor ?

III) Whether on the same date time and place of occurrence, the above named accused adulterated the drink like liquor for the purpose of sale to public ?

IV) Whether on the same date time and place of occurrence, the above named accused sold any abnoxious drink like liquor to public ?

5. To substantiate the charge, prosecution has examined

four witnesses in all out of whom PW.2, Sujata Khandual is the informant of this case. PW.1, Gopal Chandra Sahu is a ASI of Chandrasekharpur P.S, P.W.3, Pramod Kumar Pattnaik is the Havildar, Special Squard and both are accompanying witnesses to seizure, P.W.4, Dinabandhu Sahoo is the I.O of this case. Defence has examined none on its behalf.

6. Regarding the factum of recovery and seizure, PW.2 has stated that on 18.07.2003, while she was working as W.S.I. of Excise, of Police at Chandrasekharpur P.S., she got telephonic information at about 6.30 A.M that one person is selling polythene liquor at Jalimunda Sahi towards Nandankanan. She along with A.S.I, D. Sahu and Havildar P.K. Pattnaik proceeded to the spot in police van. At the spot, they found one person was selling polythene pouches of liquor in a cartoon. On being asked, the accused told his name Ramesh Bhoi and he could not produce any valid license or authority in support of sale of liquor. The liquor was seized from the possession of accused. The accused was brought to the P.S along with the seized packets. During cross-examination she admitted that she was the Diary Charge Officer on that day. She deposed that the spot of seizure is on the main road. She also admitted that there were some houses near the spot.

P.W.3 has deposed that he had accompanied P.W.2 to the spot during seizure. But, he deposed that liquor was seized from a thatched house. He also deposed that 4 to 5 persons were present in such thatched house at the time of seizure. P.W.3 failed to identify the accused. P.W.4 has deposed that he had accompanied P.W.2 to the spot and P.W.2 has seized some polythene packets containing liquor from possession of accused. P.W.1 has not supported the prosecution case.

From the aforesaid evidence of prosecution witnesses it appears that while P.W.3 has deposed that the liquor was seized from thatched house of accused. P.W.2 and P.W.4 are silent about the exact place of seizure. Whereas it reveals from FIR that seizure was made from the house veranda of accused. The seized articles were not produced in Court during trial for identification. While there were 4 to 5 persons in the alleged house, the exclusive possession of liquor by accused remained under shadow of doubt. While it is alleged that accused was selling liquor at the time of detection, no sale out money or tumbler has been seized nor any customer has been examined which creates doubt regarding sale of liquor by accused.

7. Regarding the nature of liquid prosecution witnesses have

admitted that no test of whatever kind has been made over the seized liquid. The informant as well as I.O are silent about the brand name of the liquor pouch. In a catena of decision our Hon'ble Court have required the prosecution to examine the liquid through a chemical examiner which has not been done in the present case. No document providing the experience and training of official witnesses to call them as experts. Under the above circumstances, without any test the liquid so seized cannot be accepted to be nothing but C.S liquor.

8. Since, no test has been conducted over the seized liquid, it cannot safely be held to be adulterated or noxious drink as required U/s. 272/273 of IPC. Hence the prosecution has miserably failed to bring home the charge against the accused beyond all reasonable doubt.

In the result, I hold the accused not guilty of offence punishable u/s 47(a) of B&O Excise Act and 272/273 of IPC and acquit him therefrom u/s 248(1) of Cr. PC. The accused be set at liberty forthwith and he is discharged from his bail bond.

The seized article if any be destroyed after four months from the date of expiry of appeal period if no appeal is

preferred and in case of appeal as per direction of Appellate Court.

Sd-  
22.05.2014  
J.M.F.C.(O), Bhubaneswar

Dictated, corrected and pronounced in the open court on  
this the 22<sup>nd</sup> day of May, 2014 under my hand signature and seal of  
this court.

Sd-  
22.05.2014  
J.M.F.C.(O), Bhubaneswar

List of witnesses examined for prosecution

PW.1        Gopal Chandra Sahu  
PW.2        Sujata Khandual  
P.W.3        Pramod Kumar Pattnaik  
P.W.4        Dinabandhu Sahoo

List of witnesses examined for defence

N o n e

List of documents for prosecution

Ext.1        FIR.  
Ext.1/1      Signature of PW.2 on Ext.-1.  
Ext.1/2      Endorsement of IIC along with signature on Ext.-1.  
Ext.2        Seizure list.  
Ext.2/1      Signature of PW.2 on Ext.-2.  
Ext.3        Spot Map.

Ext.3/1      Signature of P.W.4 on Ext.-3.

List of documents for defence

N I L

Sd-  
22.05.2014  
J.M.F.C.(O), Bhubaneswar