

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 : 28.11.2014

Date of Judgment : 01.12.2014

GR Case No. 520/2012  
Trial Case No. 547/2012

S t a t e

vrs.

Karunakar Pradhan, aged about 45 years,  
S/o. Late Akrura Pradhan,  
Vill: Budhipada, Naikula Sahi, P.S.-Balianta,  
Dist-Khurda.

... Accused

For offence punishable u/s 47(a) of B&O Excise Act

For the Prosecution : A.P.P.

For the Defence : Kishore Bharatiya & 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 for alleged possession of 6 numbers Aristocate Whiskey sealed liquor bottles each containing 180 ml of Indian made Foreign Liquor and 30 numbers of sealed bottle of Aska-40 each containing 200 ml Country Spirit Liquor without any authority.

2. The case of the prosecution shortly runs as hereunder ;

That on 27.07.2012 at about 8.30 P.M while the then ASI of Police, Balakati Outpost under Baliana PS, Sri Manoj Kumar Dash and Home Guard, Ramesh Chandra Pradhan were performing evening patrol duty, they got reliable information that one person is selling liquor at Village-Budhipada without any authority. Hence, they proceeded to the spot and found the accused namely, Karunakar Pradhan of Village-Budhipada, Naikulasahi was selling liquor illegally in his betel shop. On search of the shop of accused, the A.S.I, Sri Manoj Kumar Dash recovered 6 numbers Aristocate Whiskey sealed liquor bottles each containing 180 ml of Indian made Foreign Liquor and 30 numbers of sealed bottle of Aska-40 each containing 200 ml Country Spirit Liquor from the possession of accused. As the accused failed to produce any authority for possessing such liquor, Sri Manoj Kumar Dash seized the same in presence of witnesses. The accused along with seized articles were brought to Baliana PS, where on the written report of Sri Manoj Kumar Dash, PS Case No. 104 dtd. 29.07.2012 u/s 47(a) of B & O Excise Act was registered and the matter was investigated into. After completion of investigation, charge sheet u/s 47(a) of B & O Excise Act was submitted against the accused to face his trial in court of law. 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 27.07.2012 at about 8.30 P.M at village Budhipada, the accused was in conscious and

exclusive possession of 6 numbers Aristocate Whiskey sealed liquor bottles each containing 180 ml of Indian made Foreign Liquor and 30 numbers of sealed bottle of Aska-40 each containing 200 ml Country Spirit Liquor and sold the same without any authority ?

II) Whether the liquid so seized was nothing but Indian Made Foreign Liquor and C.S Liquor ?

5. To substantiate the charge, prosecution has examined four witnesses in all out of whom PW.1, Babuli Behera, PW.2, Ramesh Ch. Pradhan and PW.3, Hrusikesh Rout are witnesses to seizure. PW.4 Sri Manoj Kumar Das, ASI of Balakati is the informant and author of seizure. Defence has examined none on its behalf.
6. Regarding the factum of recovery and seizure, PW.4 has stated that on 27.07.2012 at about 8.30 PM he along with his staff were performing evening petrol duty near Budhipada Sishole area. During such patrolling, he got reliable information that the accused was selling Foreign Liquor and Country Spirit Liquor in his betel shop. He along with staff Ramesh Chandra Pradhan proceeded to the spot. At the spot, he found that the accused was selling Country Spirit Liquor in that betel shop. On search he recovered 6 numbers Aristocate Whiskey sealed liquor bottles each containing 180 ml Indian made Foreign Liquor and 30 numbers of sealed bottle of Aska-40 each containing 200 ml Country Spirit Liquor in presence of witnesses. He seized those

liquor bottles and prepared seizure list. Then, he brought the accused and those seized articles to Balakati O.P. He produced the accused before O.P. in-charge. During cross-examination, he admitted to have not undergone distillery training. P.W.1, P.W.2 and P.W.3 have not supported the prosecution case. Although, P.W.1 and P.W.3 have admitted their signatures on seizure list, but they have not corroborated the factum of seizure. All three witnesses are independent witnesses to seizure.

7. Let us scrutinize the evidence of the prosecution. P.W.4 is the informant and official witness. P.W.1, P.W.2 and P.W.3 are independent witnesses. Except P.W.4 none of the witness has whispered a single word against the accused. The I.O of this case has been decline to be examined by the prosecution. There is no corroboration at all to the evidence of P.W.4. There is no evidence of affixing any seal to the seized property after seizure. The seized articles were not produced in court during trial for verification. There is no evidence of collection of sample or test of the seized liquid by any means. Regarding the nature of the liquid so seized the prosecution witnesses are silent whether any test was conducted over the seized liquid. P.W.4 has admitted to have not undergone any distillery training. Hence, without any test it cannot safely be accepted that the liquid so seized was nothing but C.S liquor and Indian Made Foreign Liquor beyond reasonable doubt. The benefit of doubt is extended to the accused.

In the result, I hold the accused not guilty of offence punishable u/s 47(a) of B&O Excise Act 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 articles 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.

J.M.F.C(O), Bhubaneswar

Dictated, corrected and pronounced in the open court on this the 1<sup>st</sup> day of December, 2014 under my hand signature and seal of this court.

J.M.F.C(O), Bhubaneswar

List of witnesses examined for prosecution

PW.1	Babuli Behera
PW.2	Ramesh Ch. Pradhan
PW.3	Hrusikesh Rout
P.W.4	Manoj Kumar Dash

List of witnesses examined for defence

N o n e

List of documents admitted in evidence for prosecution

Ext.1	Signature of PW.1 on Seizure list.
Ext.1/1	Signature of PW.3 on seizure list.
Ext.1/2	Signature of PW.4 on seizure list.
Ext.2	FIR.
Ext.2/1	Signature of PW.4 on Ext.2.

List of documents admitted in evidence for defence

N I L

J.M.F.C(O), Bhubaneswar