

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1942 of 2019

Arising Out of PS. Case No.-55 Year-2016 Thana- SULTANGANJ District- Bhagalpur

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RAUSHAN BIND @ PAPPU BIND @ RAUSHAN KUMAR BIND @ PAPPU
(Male) aged about 35 years, Son of Late Panchanand Bind @ Panchanand
Vind Resident of Pildauri, Bind Tola, Ward No.16, Police Station-
Sultanganj, District-Bhagalpur.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr.Praveen Kumar

For the Respondent/s : Mr.Syed Ashfaque Ahmad

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 26-11-2019

This criminal appeal has been preferred for
setting aside the impugned judgment of conviction and
order of sentence dated 12.04.2019 passed in G.R.
Case No. 1048/2016 (arising out of Sultanganj P.S.
Case No. 55 of 2016) passed by learned 2nd Additional
District & Sessions Judge, Bhagalpur – cum – Special
Judge, Excise, Bhagalpur.

By the impugned judgment and order the
appellant has been convicted for offence punishable
under Section 47(A) of the Excise Act and has been



sentenced to undergo rigorous imprisonment for three months and pay a fine of Rs. 500/- and in default to undergo simple imprisonment for five days further.

On perusal of the judgment and order under appeal, it appears that one Rama Shankar Singh A.S.I. lodged the First Information Report alleging that on a secret information that this petitioner was engaged in manufacturing and sale of illicit liquor, he proceeded with the police force to verify this fact at the place of occurrence. The informant alleged that in course of search of the house of this petitioner 15 liters of Mahua wine kept in a red container and three bottles each of two liters containing Mahua wine were seized and the accused – appellant was arrested.

After investigation, a charge-sheet was filed on which after taking cognizance by the learned Chief Judicial Magistrate, the case was sent to the learned Special Court for inquiry and trial. Charge was framed on 03.01.2018 and thereafter in course of trial the



prosecution produced five witnesses. Some other witnesses on behalf of the prosecution did not turn up. On behalf of defence two witnesses were produced and after recording the statement of the accused under Section 313 Cr.P.C. and upon hearing the parties the learned trial court held that the prosecution has been able to prove it's case beyond all reasonable doubt.

Learned counsel for the appellant has assailed the impugned judgment and order, as according to him, the learned trial court has completely erred in appreciating the prosecution evidence and has failed to consider the defence of the appellant. It is submitted that the Mahua wine was not recovered from the house of this appellant and there are strong contradictions in the evidence of the prosecution witnesses.

Learned Public Prosecutor for the State has however opposed the appeal and he has submitted that the trial court has rightly considered the materials on record and upon finding that the allegations against the



appellant has been proved beyond all reasonable doubts, the judgment and sentence have been passed.

On perusal of the impugned judgment this court finds that on behalf of the prosecution the written complaint on the basis of which First Information Report was lodged has been marked as Exhibit '1', the seizure list is Exhibit '2', the application by which the seized material was sent to the Excise Inspector for obtaining test report is Exhibit '3' and the test report is said to be Exhibit '3/1'.

So far as the oral evidence on behalf of the prosecution is concerned, this court finds that all the prosecution witnesses are either the informant or the members of police force who were said to be present with the informant at the time of raid. The prosecution witness no. 1 has proved the seizure list (Exhibit '2'), but the seizure list witnesses namely Surendra Bind and Bideshi Bind were not produced. It is only in the margin portion of the seizure list the signature of the accused is



present but without any endorsement that the copy of the same has been made available to him. In his cross examination this P.W.1 has stated that after taking the seized materials and the accused the police party had gone to another place for conducting raid. He has also stated in his cross examination that all the seized materials were shown in separate seizure list but in course of evidence only one seizure list was produced as Exhibit '2'. This witness has also stated that he is not an expert in the excise matter and he can only say on an estimation basis about the seized article, he had sent the seized article for testing. This witness was given a suggestion that no wine was recovered from the possession of the appellant and he has been falsely implicated which was denied by P.W.1.

P.W.2 who was a member of the police force has stated that the seized materials were sealed separately but in his presence no identification mark was put on the seal. He had not put any identification mark



on the seal. He has stated in his cross examination that the sealed material was kept in Malkhana.

P.W.3 Shankar Choudhary who was said to be present with the police force has stated that he did not know as to what happened inside as he was doing his duty outside the gate. This witness was declared hostile. P.W.4 who is another member of the police force who has stated in his cross examination that he was outside the house and he had not seen from his own eyes that wine were recovered and cannot say as to from which room it was recovered.

P.W.5 Gagan Kumar Sudhakar who had assumed the charge of investigation has proved his signature and writing on the formal F.I.R. He had recorded the statement of the informant and members of the police force. He has stated that the seized wine was sent to the Excise Inspector, Bhagalpur vide Exhibit '3' and the test report was received vide Exhibit '3/1' and it was found that the seized material was Mahua



wine.

In course of hearing when this court perused the exhibits, it is found that Exhibit '3' is a letter written by the Sub-Inspector of Police, Sultanganj Police Station on 29.04.2016, but there is no proof that the letter was delivered to the Excise Inspector and on which date, it is also not proved that seized articles were handed over to the Excise Inspector, Bhagalpur in sealed condition and the same was sent for test to a Laboratory. On the back side of the Exhibit '3' there is a hand written opinion that the seized wine sample of Sultanganj P.S. Case no. 55/2016 dated 01.04.2016 is in the nature of country made wine prepared by Mahua and it is injurious to health. The original test report has not been brought before the trial court and what is stated on the back side of Exhibit '3' is said to be the opinion expressed in the test report. The person who has written the same on the Exhibit '3/1' has not been produced and P.W.5 who has proved the endorsement made on the back side of



Exhibit '3' saying that it is a test report has not even named the person who has signed the same and in what capacity he had recorded the same on the very next date i.e. 30.04.2018. The manner in which P.W. 5 has stated that after obtaining order from the court on 02.04.2018, he had sent the sealed article for testing on 29.04.2019 and then on 30.04.2019, an endorsement has been shown on the back side of Annexure '3' this court finds that the prosecution has miserably failed to show that the seized articles were in fact sent for testing and those were tested in any laboratory and in fact any test report was issued by a Laboratory. To this court it appears that Exhibit '3' & '3/1' are the exercises done in haste only for the purpose of somehow proving the case against the appellant. Exhibit '3' & '3/1' are not at all reliable and no conviction can take place on that basis. Apart from that non-production of seizure list witnesses would also prove fatal to the prosecution case.

In result, this court finds that the prosecution



has not brought sufficient and cogent evidence to prove the guilt of the appellant beyond all reasonable doubts. The impugned judgment and order is, thus, set-aside and the appeal is allowed.

The appellant is hereby acquitted and discharged from the liability of his bail bond.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
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