

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.5 of 2021

Arising Out of PS. Case No.-347 Year-2016 Thana- GOPALGANJ TOWN District-
Gopalganj

=====

The State of Bihar

... .. Petitioner

Versus

1. Chhathu Pasi S/O Shiv Narayan Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
2. Indu Devi W/O Shiv Narayan Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
3. Munna S/O Shiv Narayan Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
4. Ranjay Choudhary S/O Shiv Narayan Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
5. Sanjay Choudhary S/O Shiv Narayan Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
6. Rita Devi W/o Late Nandji Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
7. Sanoj Pasi S/o Nandji Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
8. Rajesh Pasi S/O Nandji Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
9. Nagina Pasi S/O Gulab Chand Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
10. Lal Babu Pasi S/o Gulab Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
11. Kanhaiya Pasi S/O Bunni Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
12. Laljhari W/o Bunni Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.
13. Kailasho Devi W/O Binda Pasi Resident of Village - Khajurbani, P.S. and District - Gopalganj.

... .. Respondents

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with

CRIMINAL APPEAL (DB) No. 312 of 2021

Arising Out of PS. Case No.-347 Year-2016 Thana- GOPALGANJ TOWN District-
Gopalganj

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Chhathu Pasi @ Chhathu Chaudhary S/o Shiv Narayan Pasi Resident of Village- Khajurbani, Ward No.25, P.O. and P.S.- Gopalganj, District- Gopalganj.

... .. Appellant

Versus



The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 350 of 2021

Arising Out of PS. Case No.-347 Year-2016 Thana- GOPALGANJ TOWN District-
Gopalganj

1. Laljhari Devi @ Laljhari W/o late Bunni Pasi Resident of village - Khajurbani, Ward No.25, P.S.- gopalganj (Town), Distt.- Gopalganj.
2. Kailasho Devi W/O Late Binda Pasi Resident of Village - Khajurbani, Ward No.25, P.S.- Gopalganj (town), Distt.- Gopalganj.
3. Rita Devi W/O Late Nandji Pasi Resident of village - Khajurbani, Ward No.25, P.S.- gopalganj (Town), Distt.- Gopalganj.
4. Indu Devi W/O Late Shiv Narayan Pasi Resident of village - Khajurbani, Ward No.25, P.S.- gopalganj (Town), Distt.- Gopalganj.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 351 of 2021

Arising Out of PS. Case No.-347 Year-2016 Thana- GOPALGANJ TOWN District-
Gopalganj

1. Nagina Pasi Son of Late Gulab Chand Pasi Resident of Village - Khajurbani, Ward No. 25, Police Station - Gopalganj (Town), District - Gopalganj.
2. Lal Babu Pasi Son of Late Gulab Chand Pasi Resident of Village - Khajurbani, Ward No. 25, Police Station - Gopalganj (Town), District - Gopalganj.
3. Kanhaiya Pasi Son of Late Bunni Pasi Resident of Village - Khajurbani, Ward No. 25, Police Station - Gopalganj (Town), District - Gopalganj.
4. Munna @ Munna Pasi Son of Late Shiv Narayan Choudhary Resident of Village - Khajurbani, Ward No. 25, Police Station - Gopalganj (Town), District - Gopalganj.
5. Ranjay Choudhary @ Ranjay Pasi Son of Late Shiv Narayan Pasi Resident of Village - Khajurbani, Ward No. 25, Police Station - Gopalganj (Town), District - Gopalganj.
6. Sanjay Choudhary @ Sanjay Pasi Son of Late Shiv Narayan Pasi Resident of Village - Khajurbani, Ward No. 25, Police Station - Gopalganj (Town), District - Gopalganj.
7. Sanoj Pasi Son of Late Nandji Pasi Resident of Village - Khajurbani, Ward No. 25, Police Station - Gopalganj (Town), District - Gopalganj.
8. Rajesh Pasi Son of Late Nandji Pasi Resident of Village - Khajurbani, Ward



No. 25, Police Station - Gopalganj (Town), District - Gopalganj.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In DEATH REFERENCE No. 5 of 2021)

For the Petitioner/s : Mr.

For the Respondent/s : Mrs. Soni Shrivastava, Amicus Curiae

(In Criminal Appeal (DB) No. 312 of 2021)

For the Appellant/s : Mr. Vikas Ratan Bharti, Adv.

For the Respondent/s : Mr. Ajay Mishra

(In Criminal Appeal (DB) Nos. 350 & 351 of 2021)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Adv.

Mr. Pratik Mishra, Adv.

Mr. Sushil Kumar, Adv.

For the Respondent/s : Mr. Ajay Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE HARISH KUMAR**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 13-07-2022

These three appeals arise out of a common judgment of conviction and order of sentence dated 26.02.2021 and 05.03.2021 respectively passed by the learned Additional District & Sessions Judge-II-cum-Special Judge (Excise Act), Gopalganj in Sessions Trial No. 967 of 2016 arising out of Gopalganj P.S. Case No. 347 of 2016 whereby and whereunder the appellants have been convicted and sentenced to undergo R.I. for six months and fine of Rs.1,000/- each and in default of payment of fine further simple imprisonment for one month for



the offences under Section 272 of the Indian Penal Code (for short 'IPC'), R.I. for six months and fine of Rs.1,000/- each and in default of payment of fine further simple imprisonment for one month for the offence under Section 273 of the IPC, R.I. for seven years and fine of Rs.20,000/- each and in default of payment of fine further simple imprisonment for six months for the offence under Section 308 of the IPC and R.I. for life and fine of Rs.10,000/- each and in default of payment of fine further simple imprisonment for one year for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'Excise Act, 2016'). The appellants Nagina Pasi, Lal Babu Pasi, Kanhaiya Pasi, Munna Chaudhary, Ranjay Choudhary, Sanjay Choudhary, Sanoj Pasi, Rajesh Pasi and Chhathu Pasi have been sentenced to death and fine of Rs.10 lakhs each for the offence under Section 34(a)(b)(i) of the Excise Act, 2016. The appellants Laljhari Devi, Kailasho Devi, Rita Devi and Indu Devi have been sentenced to R.I. for life and fine of Rs.10 lakhs each and in default of payment of fine further simple imprisonment for one year under Section 34(a)(b)(i) of the Excise Act, 2016. It has been directed by the Trial Court that all the sentences shall run concurrently and the period undergone in jail custody shall be set off from the total period of sentence.



2. The death sentence awarded by the Trial Court to the appellants Nagina Pasi, Lal Babu Pasi, Kanhaiya Pasi, Munna @ Munna Pasi, Ranjay Choudhary @ Ranjay Pasi, Sanjay Choudhary @ Sanjay Pasi, Sanoj Pasi and Rajesh Pasi (appellants in Cr. Appeal (DB) No. 351 of 2021) and Chhathu Pasi @ Chaudhary (appellant in Cr. Appeal (DB) No. 312 of 2021) is subject to confirmation by the High Court. The reference made by the Trial Court under Section 366 of the Code of Criminal Procedure (for short 'Cr.P.C') has been separately registered as Death Reference No. 5 of 2021.

3. Since the appeals and the reference arise out of a common judgment of conviction and order of sentence, they have been heard together and are being disposed of by common judgment.

4. The first information report (for short 'FIR') is based on the self-statement of one B. P. Alok, Police Inspector and S.H.O. of Town Police Station, Gopalganj recorded on 17.08.2016 at 10:15 PM. The self-statement of the informant reveals that on 16.08.2016 at 11:00 PM he along with other police officials had proceeded from the police station in a government vehicle for special raid in the night. On 17.08.2016 at 00:10 AM he received a confidential information that some



persons are rushing to the Sadar Hospital, Gopalganj with complain of recurrent bouts of vomiting and are being treated in critical condition and probably some of them have died and some others have been referred to other places for better treatment. He informed his superior officers and reached the Sadar Hospital, Gopalganj. He found one Bandhu Ram being treated for recurrent bouts of vomiting, abdominal pain and suffocation in the hospital. On inquiry, Bandhu Ram revealed that Chathu Pasi, Kanhaiya Pasi, Laljhari Devi, Nagina Pasi, wife of late Binda Pasi, Lal Babu Pasi, Rajesh Pasi, Sanoj Pasi, Rita Devi wife of late Nandji Pasi, Grahan Pasi, Indu Devi wife of late Shiv Narayan Pasi, Sanjay Choudhary, Ranjay Choudhary and Munna Choudhary, all residents of village Khajurbani, Ward No. 25, P.S. Gopalganj are indulged in illicit trade of liquor. They mix Mahua, Mitha and Naushadar for preparing illicit liquor at their house, Dalan and other places and sale it. He stated that his health as well as health of some other persons started deteriorating after consuming spurious liquor. He disclosed that some of them have been referred to other places for better treatment. In order to verify the aforesaid disclosure made by Bandhu Ram, he and other police officials left for the village- Khajurbani at 02:00 AM. At about 02:20



AM, he raided the house of Chhathu Pasi, which allegedly led to recovery of 30-litre illicit country made liquor mixed with Mahua, Mitha and Naushadar kept in two gallons from the south of the courtyard of his house, 8 bottles each containing 180 ml with label 'for sale in U.P. only' in the brand name of '8PM' from a room adjacent to the courtyard. In further search, 75-litre country made liquor made of Mahua, Mitha and Naushadar kept in five jars of 15-litre each beneath the earth from the Dalan of Chhathu Pasi and 30-litre spurious liquor made of Mahua, Mitha and Naushadar from an open space adjacent to the house of Chhathu Pasi was recovered whereafter Chhathu Pasi was detained and interrogated. He confessed that he is indulged in the trade of illicit liquor. The alleged search and seizure were made in presence of two independent witnesses, namely, Paltu Kumar and Swaminath Sah. Accordingly, search and seizure list were prepared and Chhathu Pasi was taken into custody.

5. Subsequently, the house of Kanhaiya Pasi was raided, but he managed to escape. However, his dwelling house was duly searched in the presence of independent witnesses, which led to recovery of 4 plastic gallons each containing 15-litre illicit liquor from beneath the earth from the courtyard and 8 plastic gallons each containing 15-litre illicit liquor mixed



with Mitha, Mahua and Naushadar from beneath the earth from an open space adjacent to the house of Kanhaiya Pasi. Also, 135-litre illicit liquor mixed with Mahua, Mitha and Naushadar kept in 9 plastic jars of 15-litre each and 100 kg remains of sugar mill kept in gunny bag were recovered from his Dalan. Accordingly, search and seizure list were prepared in presence of two independent witnesses, who put their signature over it.

6. After that, the house of Nagina Pasi was raided, which led to recovery of 30-litre of poisonous liquor made of Mahua, Mitha, Nausadar kept in two plastic gallons. On seeing the police party, one person started running away. The police party chased him, but he managed to escape. During search of his house from the verandah 30-litre spurious liquor mixed with Mahua, Mitha and Naushadar kept in two plastic jars of 15-litre each was recovered. On inquiry, no body offered any satisfactory explanation. Accordingly, in presence of witnesses to the seizure, a search and seizure list was prepared. The witnesses revealed that the person, who managed to escape, was Nagina Pasi. A search was also conducted at the Dalan of the house of Nagina Pasi which was situated on the bank of the river which led to recovery of a yellow plastic bag containing 24 empty bottles of Thuja 30 (a homeopathic medicine) with a



written note thereon “alcohol contain 91% prepared according to USHP, STANDARD, HOMEOPATHIC LABORATORY- 07, Buro Shistala Road, Kolkata”. Further, 70 litre-illicit liquor kept in plastic gallons beneath the earth was recovered from a nearby field, which was also seized in accordance with law.

7. Consequently, the semi constructed house of Grahani Pasi was raided. On seeing the police party, one person started running away. Though the police party tried to apprehend him, he managed to escape. He was later identified as Grahani Pasi. During search of his house, two gallons of illicit liquor containing 15-litre each were recovered from beneath the earth. Accordingly, search and seizure list were prepared in presence of two independent witnesses, who put their signature over it.

8. Thereafter, the house of Lal Babu Pasi was raided. On seeing the police party, one person started fleeing away. The police party tried to apprehend him, but he managed to escape. On search made in the house of Lal Babu Pasi in presence of independent witnesses, 45-litre of illicit liquor kept in three gallons of 15-litre each was recovered. Accordingly, search and seizure list were prepared in this regard.



9. Subsequently, the house of Sanjay Pasi was raided. On search, the police party recovered 30-litre of illicit liquor mixed with Mahua, Mitha and Naushadar kept in two plastic jars of 15-litre each and four bottles of 'Royal Stag' English Wine, each containing 180 ml and bearing a label "for sale in U.P. only". One person was arrested from the house, who disclosed his name as Sanjay Pasi and confessed regarding manufacturing and selling of spurious liquor. A search and seizure list was prepared in the presence of independent witnesses, who put their signature over it.

10. After that, the house of Rajesh Pasi was raided and 30-litre illicit liquor kept in two gallons of 15-litre each mixed with Mahua, Mitha and Naushadar were recovered. One person was detained, who disclosed his name as Rajesh Pasi. He admitted to have manufactured illicit liquor. He also admitted that he is engaged in the trade of illicit liquor. Accordingly, a search and seizure list was prepared in presence of two independent witnesses, who put their signature over it.

11. Consequently, the house of Mukesh Pasi was raided from where 30-litre of illicit liquor kept in two gallons of 15-litre each mixed with Mahua, Mitha and Naushadar was recovered. The witnesses present there revealed that the illicit



liquor was being prepared and sold by the wife of late Binda Ram. Accordingly, search and seizure list were prepared in presence of two independent witnesses, who put their signature over it.

12. The self-statement of aforesaid B.P. Alok further disclosed that six persons, namely, Chhathu Pasi, Ranjay Pasi, Sanjay Pasi, Munna Pasi, all sons of Sheo Narayan Pasi, Rajesh Pasi and Sanoj Pasi both sons of late Nandji Pasi were apprehended by the police party while the raid was conducted in various houses situated at village Khajurbani. It further disclosed that apart from the aforesaid six apprehended accused persons, Kanhaiya Pasi, Laljhari Devi wife of late Bunni Pasi, Nagina Pasi, wife of late Binda Pasi, Rita Devi wife of late Nandji Pasi, Grahan Pasi son of late Sheo Narayan Pasi, Indu Devi wife of late Sheo Narayan Pasi, all resident of village Khajurbani in the district of Gopalganj were involved in illicit trade of liquor.

13. On the basis of the aforesaid self-statement, B. P. Alok, the Police Inspector and S.H.O. of Gopalganj Town Police Station drew formal FIR under Sections 272 and 273 of the IPC, Section 47(a) of the Excise Act and Section 57 of the Bihar Excise Amendment Act, 2018 on 18.08.2016 at 09:30 AM. He



handed over the investigation of the case to Nigam Kumar Verma, a Police Inspector of Gopalganj Sadar Police Station.

14. The Investigating Officer submitted charge-sheet in the case vide Charge-Sheet No. 511 of 2016 dated 14.10.2016 after completion of investigation under Sections 272, 273, 420 and 308 of the IPC and Section 47(a) and Section 57 of the Bihar Excise Amendment Act against the appellants.

15. Upon receipt of the police report (charge sheet) under Section 173(2) of the Cr.P.C, the learned Chief Judicial Magistrate, Gopalganj took cognizance of the offences against the appellants vide order dated 19.10.2011.

16. After complying with the statutory requirements of Section 207 of the Cr.P.C, the learned Chief Judicial Magistrate, Gopalganj committed the case to the court of Sessions vide order dated 02.12.2016.

17. Thereafter, the Trial Court framed charges under Sections 272, 273 and 308 of the IPC and Sections 34(a), 34(b) and 30(a) of the Excise Act, 2016 against the appellants. Since the appellants denied the charges, they were put on trial.

18. In support of the charges, the prosecution examined altogether seven witnesses. They are B. P. Alok (P.W.1), Rakesh Kumar Singh (P.W.2), Manish Kumar (P.W.3), Dhiraj Kumar



(P.W.4), Amit Kumar Singh (P.W.5), Shailendra Kumar Singh (P.W.6) and Nigam Kumar Verma (P.W.7). Out of the aforesaid seven witnesses, P.W.1 is the informant, P.Ws. 2, 3, 4 and 6 are police constables, P.W.5 is the Sub-Inspector of Gopalganj Town Police Station and P.W.7 is the Investigating Officer of the case.

19. The prosecution has also proved the following documents during trial:

1. Exhibit - 1 Search and seizure list with respect to recovered articles from the house of Chhathu Pasi
2. Exhibit -1/A Search and seizure list with respect to recovered articles from the house of Kanhaiya Pasi
3. Exhibit -1/B Search and seizure list with respect to recovered articles from the house of Nagina Pasi
4. Exhibit -1/C Search and seizure list with respect to recovered articles from the Dalan of Nagina Pasi and the open space adjacent to his house
5. Exhibit -1/D Search and seizure list with respect to recovered articles from the semi constructed house of Grahani Pasi
6. Exhibit -1/E Search and seizure list with respect to recovered articles from the house of Lal Babu Pasi
7. Exhibit -1/F Search and seizure list with respect to recovered articles from the house of Sanjay Pasi
8. Exhibit -1/G Search and seizure list with respect to recovered articles from the house of Rajesh Pasi
9. Exhibit -1/H Search and seizure list with respect to recovered articles from the house of Mukesh Pasi
10. Exhibit -2 Self-statement of the informant B. P. Alok
11. Exhibit -2/A Formal FIR
12. Exhibit -2/B Endorsement made on self-statement



- 13. Exhibit -3 Confessional statement of Nagina Pasi
- 14. Exhibit -3/1 Confessional statement of Lal Babu Chaudhary
- 15. Exhibit -4 F.S.L. Report
- 16. Exhibit -5 Charge-sheet no.1 of 2017 of Gopalganj Town P.S. Case No.348 of 2016 dated 18.08.2016
- 17. Exhibit -5/1 Charge-sheet no.590 of 2016 of Gopalganj Town P.S. Case No.348 of 2016 dated 18.08.2016
- 18. Exhibit -6 FIR of Gopalganj Town P.S. Case No.348 of 2016 dated 18.08.2016

20. **Mr. B.P. Alok (P.W.1)**, the informant of the case stated in his examination-in-chief that on 16.08.2016 he was posted as S.H.O. of Gopalganj Town Police Station. On that date, he along with other police officials proceeded for raid in the night at about 00:10 AM. He received information that some people had fallen critically ill after consumption of illicit liquor and were being treated at the Sadar Hospital, Gopalganj and some of them had also died. At that time, S.I. Amit Kumar Singh (P.W.5), Shailendra Kumar Singh (P.W.6), Rakesh Kumar Singh (P.W.2), Sudhir Kumar (not examined) and others were accompanying him. He went to the Sadar Hospital, Gopalganj along with them. At the Sadar Hospital, he found Bandhu Ram (not examined) and others being treated. Bandhu Ram told him that today itself he had taken liquor at the house of Kanhaiya Pasi as a result of which his health deteriorated and he came to the hospital. He further disclosed him that besides him several



others had fallen ill after consumption of spurious liquor being sold by Chhathu Pasi, wife of Binda Pasi, Laljhari Devi, Grahan Pasi, Nagina Pasi and others at their respective houses. On such information, he along with other police personnel went to the village Khajurbani after informing the superior police officers. He raided the house of accused persons and recovered huge quantity of liquor from their respective houses. He stated that liquor was hidden beneath the earth and Thuja medicine was recovered from the house of Nagina Pasi. Some bottles of foreign liquor were also recovered. Separate seizure lists were prepared for the seizures made from different houses in presence of two independent witnesses, namely, Paltu Kumar and Swaminath Sah. He proved the writings made on the seizure lists and his own signature. The seizure lists were marked as Exhibits-1, 1/A, 1/B, 1/C, 1/D, 1/E, 1/F, 1/G and 1/H. He stated that at the time of initial raid, six persons were apprehended. He recorded his self-statement at the place of occurrence itself. He proved his writing on the self-statement, which was marked as Exhibit-2. He proved his writing and signature on the formal FIR, which was marked as Exhibit- 2/A. He also proved his signature and endorsement made on the formal FIR, which was marked as Exhibit-2/B. He stated that pagination was also done



by him on Exhibit-2. According to him, several persons had died in the Sadar Hospital due to the consumption of spurious alcohol by them for which a separate case was registered.

21. In cross-examination, he admitted that though Bandhu Ram had taken alcohol at the house of Kanhaiya Pasi, his breath analyzer test was not conducted. He admitted that Khajurbani village is densely populated. However, at the time of raid no person of the village came forward at the place of occurrence. He stated that the seizure list witnesses were present at the place of occurrence itself. He admitted that no FIR was registered against Bandhu Ram for consumption of liquor. Though he stated that when he went to the village Khajurbani and raided the house of Chhathu Pasi first, he admitted that he had no prior knowledge about the location of the house of Chhathu Pasi. He failed to tell the name of person/ persons from whom he came to know about the house of Chhathu Pasi. He admitted that the house of Chhathu Pasi had no door. He could not say the exact time when the search operation was completed. He admitted that he had not recorded his self-statement prior to the search and seizure made by him. He further admitted that huge quantity of liquor was also found from outside the house of the accused persons. He also admitted



that there were several persons present in the house from where six of the accused persons were arrested on the date of occurrence. He denied the defence suggestion that no seizure of any article was made from the house of the accused persons rather the articles were seized from the open space. He admitted that he cannot identify the persons whom he had arrested. He further admitted that he cannot explain the boundary of the houses in which search and seizure was made. He also admitted that he cannot say the exact time when raids were conducted in the houses of the accused persons. He stated that Thuja medicine was recovered from the house of Nagina Pasi and from the bank of river near the field.

22. **Rakesh Kumar Singh (P.W.2)**, a constable, stated in his evidence that at the relevant time he was posted at Gopalganj Town Police Station. On that day he was on duty along with the S.H.O. B.P. Alok, who had received information that some persons have been admitted in the hospital. Hence, along with others, he reached the hospital where Bandhu Ram disclosed that he had taken wine at Khajurbani village due to which he became ill. He further disclosed that apart from him, others are also being treated at Sadar Hospital and some of them have died. Thereafter, he along with B.P. Alok and others



went to Khajurbani village where raids were conducted in several houses. During the raid conducted in the houses and outside the houses poisonous alcohol was recovered. Accordingly, seizure lists were prepared in presence of Swaminath Sah and Paltu Kumar and six persons were arrested by the police party.

23. In his cross-examination, he admitted that when he reached the hospital, Bandhu Ram was critically ill and was being treated. He did not see any other person being treated at the hospital. He further admitted that Khajurbani is a large village and is densely populated. He stated that he cannot identify the accused persons, who were arrested at the spot and whose houses were searched on the day. He clearly admitted that he cannot say what was recovered from which house. He denied the defence suggestion that nothing was recovered from the house of the accused persons.

24. **Manish Kumar (P.W.3)**, a constable, stated in his evidence that on 16.08.2016 he was posted at Gopalganj Town Police Station. On that date, he was on patrolling duty in the night near the Post Office Chowk. The Police Inspector received an information that after taking wine at village Khajurbani some people have suffered recurrent bouts of vomiting and are



admitted in the hospital. On such information, he along with others reached at the Sadar Hospital, Gopalganj where some persons were being treated and some others had been referred to other places for better treatment. He stated that some persons had already died. He stated that the Police Inspector talked to Bandhu Ram, who was undergoing treatment. He disclosed that after consumption of alcohol at village Khajurbani his health deteriorated. Thereafter, the police party went to the Khajurbani village where houses of Chhathu Pasi, Grahan Pasi, Nagina Pasi, Sanjay Pasi, Kailasho Devi, Laljhari Devi and Rita Devi were raided and huge quantity of country made wine, English wine and homeopathic medicine were recovered. Accordingly, the seizure list was prepared separately for the recovered wine and other articles. He stated that six persons were arrested during raid.

25. In cross-examination, he stated that the police party had arrived in the village Khajurbani at 01:30 AM. He stated that he cannot say the name of the persons, who were being treated at the Sadar Hospital except the name of Bandhu Ram. He further admitted that he does not know the name of the persons, who had died after consumption of illicit liquor. He admitted that Khajurbani is a densely populated village.



According to him the house of Nagina Pasi was raided first. He further stated that he does not remember name of the persons whose houses were raided thereafter. He stated that he cannot say as to when and where his statement was recorded by the police during investigation of the case. He stated that he cannot say about the place in the village where the seized articles were kept. He further stated that he cannot say the name of the persons who called the witnesses to the seizure list. He denied the defence suggestion that nothing was recovered from the house of the accused persons and maliciously the persons of Pasi caste were being persecuted.

26. **Dhiraj Kumar (P.W.4)**, a constable, stated in his testimony that on 16.08.2016 he was posted at Gopalganj Town Police Station. In the night he was on patrolling duty along with B.P. Alok, Inspector of Police, Amit Kumar, Sub-Inspector of Police and others. Mr. B.P. Alok received an information on his mobile phone that some persons were having recurrent bouts of vomiting after consumption of alcohol and they are admitted in the hospital. On such information, they went to the hospital and saw that Bandhu Ram was vomiting. On inquiry, he stated that after consumption of liquor at the house of Nagina Pasi his health deteriorated. He has further disclosed that he came to



know that some persons have been referred to other places for better treatment and some of them had died. Thereafter, they went to the Khajurbani village and raided various houses. During the raid, alcohol and homeopathic medicines were recovered. He stated that alcohol was found stored inside the houses beneath the earth. He stated that 5-6 persons were arrested during raid. According to him, a separate case was registered for the death of several persons caused due to consumption of spurious liquor.

27. In cross-examination, he stated that he had reached at the Sadar Hospital, Gopalganj at midnight. At that time, though he saw dead bodies, he did not inquire about their identity. He along with others reached at Khajurbani village at about 01:30-01:45 AM. He stated that the houses from which recoveries were made were having doors and windows which the raiding team got opened. He stated that the police party stayed at Khajurbani village for over three hours. He stated that he cannot identify the accused persons by name. He admitted that the recovered articles were kept by the side of the road and the seizure lists were prepared there. He stated that local chowkidar (not examined) was sent for calling the witnesses. He denied the defence suggestion that neither he visited the hospital



nor he was present at the village Khajurbani during raid conducted in different houses.

28. **Amit Kumar Singh (P.W.5)**, a Sub-Inspector of Police and a member of the raiding party, stated in his deposition that on 16.08.2016 he was posted at Gopalganj Town Police Station. On 17.08.2016 at about 01:00 AM he had gone to the Sadar Hospital, Gopalganj along with the S.H.O. B.P. Alok where 3-4 persons, who had taken illicit liquor were found vomiting and were being treated there. Their vision was impaired. There was one Bandhu Ram, who was in a condition to speak. In his presence, on inquiry by the S.H.O., Bandhu Ram disclosed that he along with others had taken liquor at Khajurbani village in the house of Nagina Pasi, Chhathu Pasi, Grahan Pasi, wife of late Binda Pasi, Rajesh Pasi and Sanoj Pasi whereafter they had fallen ill. He further disclosed that some people have also died after consumption of illicit liquor and their dead bodies were concealed by their family members. After receipt of such information, the raiding team reached at the village Khajurbani at about 02:00 AM on 17.08.2016. First of all, search was made in the house of Chhathu Pasi. Though one person tried to run away, he was chased and apprehended by the raiding team. He disclosed his name as Chhathu Pasi. In



presence of two independent witnesses, search was made in his house in which 2 jars of 15-litre each containing solution of Mahua, Mitha and Nausadar and 8 bottles each containing 180 ml wine in the brand name '8PM' were recovered. Thereafter, searches were made in the houses of other accused persons and solution of Mahua, Mitha and Nausadar and huge quantity of Indian made foreign liquor were recovered. Some recoveries of illicit liquor were also made from outside the house of the accused persons. He further stated that from the Dalan of Nagina Pasi situated at the bank of the river 30 empty bottles of Thuja medicine were recovered. For the said recoveries, the S.H.O. prepared nine separate seizure lists and about 6-7 persons were caught at the place of occurrence, who were produced before the court and were remanded to the judicial custody in the instant case. He stated that due to consumption of illicit liquor sold by the accused persons, 19 persons had died for which a separate case vide Gopalganj Town P.S. Case No. 348 of 2016 was registered against them.

29. In cross-examination, he stated that the raid continued at the place of occurrence from 02:00 AM to 09:00 PM on 17.08.2016. The raiding team returned at the Police Station at about 03:00 AM on 18.08.2016. At that time the Sub-



Divisional Police Officer was present at the Police Station. He stated that he cannot say as to when the FIR was registered as he had gone to his house. He admitted that he cannot identify the accused persons, who were arrested at the place of occurrence by their name. However, he claimed to identify them by face. He admitted that at the time of raid, some of the houses were found partially built. He also admitted that recoveries were made from an open field near the bank of river. He stated that the witnesses to the seizure were present at the place of occurrence from before. He stated that when he and others went to the hospital, they had interacted with Bandhu Ram, but no inquiry was made from others because they were not in a position to speak. He admitted that at the time of search and seizure certain persons of the neighboring houses had come but he could not disclose their names. He denied the defence suggestion that nothing was recovered from the possession of the accused persons. He further denied the defence suggestion that the accused persons have been falsely implicated in the case due to pressure exerted upon the police from the Government.

30. **Shailendra Kumar Singh (P.W.6)**, a constable and a member of the raiding team stated in his deposition that on 16.08.2016 he was on patrolling duty with the S.H.O. B.P. Alok.



At midnight, when the patrolling party reached near the Post Office Chowk, the S.H.O. received a secret information on his mobile phone. Thereafter, the patrolling party reached at the Sadar Hospital, Gopalganj where several persons, who had taken spurious liquor, were lying unconscious. They were being treated in the hospital. On inquiry, it was revealed that the victims had taken spurious liquor at village Khajurbani. Thereafter, the patrolling party went to the village Khajurbani. During the search made by the police, recoveries of illicit liquor were made from the houses of Nagina Pasi, Chhathu Pasi and others. The S.H.O. had prepared the seizure lists and at the place of occurrence itself six persons were arrested. The arrested accused persons and the seized illicit liquor were brought to the Police Station.

31. In cross-examination, he admitted that he cannot say the name and number of the persons undergoing treatment in the hospital after consumption of illicit liquor. He admitted that he cannot say the exact quantity of illicit liquor recovered from the houses of Nagina Pasi and Chhathu Pasi. He further admitted that he had not seen the houses of Nagina Pasi and Chhathu Pasi prior to the occurrence. However, he came to know about their houses from the local persons. He stated that



he does not remember the name of local persons, who had disclosed him about the houses of Chhathu Pasi and Nagina Pasi. He stated that he does not remember as to whether he had taken the name of Nagina Pasi and Chhathu Pasi before police in his previous statement made during investigation. He stated that after conducting raid, the raiding team came back at the Police Station at 05:00 AM on 17.08.2016. He denied the defence suggestion that he had falsely deposed before the court.

32. **Nigam Kumar Verma (P.W.7)**, a Police Inspector and the Investigating Officer of the case, stated in his testimony that on 18.08.2016 at 09:30 AM he was handed over investigation of the case under the orders of the Superintendent of Police, Gopalganj. On that day at 10:15 AM he departed from the Police Station to reach at the place of occurrence and reached there at 10:30 AM. He inspected the houses of the accused-appellants Chhathu Choudhary, Kanhaiya Pasi, Nagina Pasi, Grahan Pasi, Lal Babu Pasi, Sanjay Pasi, Rajesh Pasi and Mukesh Pasi situated in village Khajurbani. During inspection, he recovered huge quantity of solution of Mahua, Mitha, Nausadar and empty bottles of Homeopathic medicine Thuja. He recorded the statements of the witnesses. He also recorded the confessional statement of the accused-appellants Lal Babu



Pasi and Nagina Pasi. He proved his signature and writing on the two confessional statements, which were marked as Exhibits-3 and 3/1 respectively. He sent the seized articles to the Forensic Science Laboratory for chemical test and produced the report of the Forensic Science Laboratory in sealed cover before the court during his deposition, which was marked as Exhibit-4. On completion of investigation, he submitted charge-sheet in the case against all the FIR named accused persons finding the case to be true under Sections 272, 273, 420 and 308 of the Indian Penal Code, Section 47(a) of the Excise Act and Section 57 of the Bihar Excise Amendment Act, 2016.

33. In cross-examination, he stated that he was not a member of the raiding team. He further stated that he is the informant of the Gopalganj Town P.S. Case No. 348 of 2016. The present case and Gopalganj Town P.S. Case No. 348 of 2016 were registered on the same day. He admitted that he went to the place of occurrence after the FIR of the present case was instituted. According to him, the place of occurrence is densely populated. During inspection of the place of occurrence, he saw 1-2 persons of the locality, but they refused to give their statements. He further admitted that during the inspection of the place of occurrence and investigation of the case, he could not



meet any person, who had consumed liquor. He admitted that during investigation he never met Bandhu Ram. He denied the defence suggestion that no recovery of illicit liquor was made from the respective houses of the accused-appellants.

34. At this stage, it would be pertinent to note that P.W.7 was examined in this case on 25.05.2018. Thereafter the prosecution filed a certified copy of the charge-sheet submitted in Gopalganj Town P.S. Case No. 348 of 2016 and a certified copy of the FIR of Gopalganj Town P. S. Case No. 348 of 2016 with the list of documents, which were marked as Exhibit-5 and 6 respectively vide order dated 27.06.2018 by the Trial Court. Immediately, thereafter, vide order dated 04.07.2018, the prosecution case was closed and the case was fixed for leading evidence on behalf of the defence.

35. After examination of the aforesaid seven prosecution witnesses, the prosecution case was closed by the Trial Court on 04.07.2018. Thereafter, the appellants were examined under Section 313 of the Cr.P.C on 24.07.2018.

36. On behalf of the defence, one Swaminath Sah, a seizure list witness was examined during trial. In his testimony, he stated that about two years ago he had gone to Gopalganj Police Station in order to lodge an FIR. The police officer



present there took his signature on 4-5 sheets of blank paper. He told him that his case would be registered, but it was never registered. He stated that he does not know as to how and where those signed papers were used.

37. In cross-examination, he stated that he has come to depose pursuant to receipt of summons from the court. He stated that he does not know about the case in which he had come to depose. He disclosed that he had gone to the Police Station to register a case against his agnates Bhagrasan Sah and Birsan Sah, who had assaulted him as a result of which he had sustained injuries.

38. After the evidence of Swaminath Sah (D.W.1) was recorded, the case of the defence was closed vide order dated 01.10.2018.

39. After the closure of the prosecution and the defence case and after hearing the parties, the Trial Court vide impugned judgment dated 26.02.2021 and the consequent order dated 05.03.2021 convicted and sentenced the appellants in the manner stated hereinabove in paragraph no.1.

40. We have heard Mr. Kanhaiya Prasad Singh, learned senior counsel being assisted by Mr. Birendra Kumar Singh and Mr. Prateek Mishra, learned counsels for the appellants in Cr.



Appeal (DB) Nos.350 and 351 of 2021, Mr. Vikash Ratan Bharti, learned counsel for the appellant in Cr. Appeal (DB) No. 312 of 2021 and Mr. Ajay Mishra and Satya Narayan Prasad, learned Additional Public Prosecutors for the State and carefully perused the record. We have also heard Ms. Soni Srivastava, learned *amicus curiae* in Death Reference No. 5 of 2021.

41. Mr. Kanhaiya Prasad Singh, learned senior counsel for the appellants submitted that the Trial Court failed to appreciate the evidence properly. It failed to appreciate that there was considerable delay in lodging the FIR. It further failed to appreciate that only the police officials have been examined during trial on behalf of the prosecution. According to him, the prosecution witnesses examined during trial are not consistent. They have contradicted each other in material particulars. None of them told the name of the accused-appellants.

42. He further contended that after receiving the secret information the informant along with the police party reached at the Sadar Hospital, Gopalganj and met with one Bandhu Ram, who was undergoing treatment. He told him that the appellants are involved in illicit trade of liquor and after consuming spurious liquor his health as well as health of others had deteriorated. The aforesaid Bandhu Ram was not examined



during trial. He was not medically examined to corroborate that he had taken spurious liquor. He contended that though the Investigating Officer admitted in his cross-examination that the place of occurrence is densely populated, the seizure list witnesses belong to some other villages and their presence at the place of occurrence at the dead of night appears to be highly improbable. His further contention is that the prosecution has not examined even the seizure list witnesses in support of its case. On the contrary, one of the seizure lists witnesses, namely, Swaminath Sah has been examined on behalf of the defence. In his evidence, he has deposed that two years ago when he had gone to the Gopalganj Town Police Station for lodging a case, the S.H.O. took his signature on 4-5 blank sheets of paper and compelled him to return from the Police Station, but his case had not been registered.

43. Mr. Singh, learned senior counsel argued that the Trial Court failed to appreciate that the Investigating Officer of the case has admitted in his cross-examination that he neither contacted Bandhu Ram during investigation nor took statement of any independent witness. He argued that the informant (P.W.1) has deposed that the seizure lists were prepared by him, which are in his writing and signature, but he has not proved the



contents of those seizure lists.

44. Mr. Singh further argued that though it is stated that altogether 19 persons died due to consumption of poisonous liquor, the prosecution did not bring on record even the name of those persons, who died nor the post-mortem report of a single person, who died due to consumption of poisonous liquor was brought on record.

45. Mr. Vikash Ratan Bharti, learned counsel for the appellant Chhathu Pasi @ Choudhary in Cr. Appeal (DB) No. 312 of 2021 while adopting the submissions made by Mr. Kanhaiya Prasad Singh, learned senior counsel contended that in the present case the witnesses examined during trial did not identify the accused persons in the dock, which creates serious doubt about the involvement of the appellants in the case. He submitted that since the report of FSL was not supplied to the accused-appellants along with other relevant documents under Section 207 of the Cr.P.C. they filed an application before the Trial Court on 07.12.2020 under Section 311 of the Cr.P.C to enable them to cross-examine the Investigating Officer about the contents of the said FSL report. The said application dated 07.12.2020 filed under Section 311 of the Cr.P.C on behalf of the appellants was erroneously rejected by the Trial Court vide



order dated 08.12.2020. He submitted that since the FSL report was never supplied to the appellants, the said report ought not to have been taken into evidence and relied upon for arriving at a conclusion against the appellants.

46. Ms. Soni Srivastava, learned *amicus curiae* appearing in Death Reference No.5 of 2021 also while adopting the submissions made on behalf of the appellants contended that in the instant case the witnesses examined on behalf of the prosecution have failed to prove the seizures made from the houses or possession of the accused-appellants. She contended that the FSL report in itself cannot conclusively determine as to what were the articles seized from the possession or from the house of the accused-appellants. She submitted that the failure of the prosecution in the present case to relate the seized articles sent to the FSL with that of seized items from the houses of the accused-appellants would make the entire case doubtful. Mere production of FSL report that the sample seized contained Ethyl Alcohol with Methyl Alcohol, which was highly poisonous, cannot be the conclusive proof of guilt of the accused-appellants. The sample of country made liquor, empty bottles of Thuja 30 and foreign liquor seized in the case had to be correlated with the seizures made from the houses of the



accused-appellants in order to prove the guilt, which was not done in the present case.

47. Ms. Srivastava, learned *amicus curiae* further contended that in the instant case the incriminating circumstances were also not put to the accused persons in their examination under Section 313 of the Cr.P.C. She contended that the circumstances, which were not put to the accused-appellants in their examination under Section 313 of the Cr.P.C cannot be used against them. Those circumstances ought to have been excluded from the consideration by the Trial Court.

48. On the other hand, Mr. Ajay Mishra, learned Additional Public Prosecutor appearing for the State submitted that in the instant case the Trial Court has correctly appreciated the evidence on record. It has rightly held the accused-appellants held guilty after scrutinizing the evidences and the materials available on record. According to him, the witnesses examined in this case are consistent. It is the definite case of the prosecution that Bandhu Ram had disclosed to the informant Mr. B.P. Alok that Chhathu Pasi and others had sold poisonous liquor in the Khajurbani village and many persons became critically ill and died after consumption of the illicit liquor sold by them. He further contended that in view of Section 32(2) of



the Excise Act, 2016 since the accused-appellants failed to offer any satisfactory explanation for the possession of the seized substances from their respective houses, there shall be a presumption against them that they are guilty of the commission of the offences under the Excise Act,2016.

49. Mr. Mishra submitted that the poisonous liquor was recovered from the houses of the accused-appellants which had been kept beneath the earth and seizure lists were prepared for the seized materials. He contended that P.W.4 categorically stated that Thuja, a homeopathic medicine had been recovered during raid. He further contended that the Investigating Officer has established the place of occurrence as the respective houses of Chhathu Pasi, Sanjay Pasi, Grahan Pasi, Lal Babu Pasi and Nagina Pasi from where huge quantity of Mitha, Mahua, Nausadar and empty bottles of Thuja used in preparation of spurious liquor had been recovered. The seized liquor was sent for chemical test to the FSL and the test report confirms the presence of Ethyl Alcohol and Methyl Alcohol, which was highly poisonous. Mr. Mishra further contended that the testimony of the witnesses corroborates each other. The FSL report further corroborates the oral testimony of the witnesses.



50. Mr. Satya Narayan Prasad, learned Additional Public Prosecutor for the State submitted that the act of the appellants resulted into death of 19 persons and disability to many others. He submitted that looking at the gravity of the offence, the Trial Court has rightly awarded death sentence to the male accused-appellants for the offence punishable under Section 34(a)(b)(i) of the Excise Act, 2016. He contended that in this case the accused-appellants were responsible for mixing noxious substance with the liquor they manufactured. They sold such noxious substance to several persons, which resulted into death of 19 persons and disability to many others. In that view of the matter, the Trial Court rightly awarded death sentence to the nine male convicts and life imprisonment to the four female convicts for the offence punishable under Section 34(b)(i) of the Excise Act, 2016.

51. In reply, Mr. Kanhaiya Prasad Singh, learned senior counsel for the appellants submitted that the aspect of presumption as provided under sub-section (2) of Section 32 of the Excise Act, 2016 would not arise merely upon charge being levelled against the accused-appellants under the Excise Act, 2016. The law requires that the prosecution must lay down the foundation and bring sufficient material on record to make out a



case for presumption. Only after the foundational facts are established, the burden of proof shifts on the accused to rebut the presumption. He further contended that it is settled position of law that the prosecution must prove its case beyond reasonable doubt to establish the guilt of the accused.

52. I have given my anxious consideration to the rival submissions and have carefully perused the record.

53. It would appear from the prosecution case that in sum and substance the allegations are that the accused-appellants were involved in trade, manufacture and sale of spurious illicit liquor at the village Khajurbani under Gopalganj Town Police Station. The further allegation against them is that because of consumption of spurious illicit liquor sold by them 19 persons have lost their lives and several others were critically ill. It would further appear from the submissions made on behalf of the defence that the prosecution has completely failed to prove its case. According to the defence, the prosecution has not been able to lay even the foundation and bring sufficient material on record against the accused-appellants.

54. In order to appreciate the rival submissions made on behalf of the parties, it would be essential to examine as to whether the prosecution has been able to lay foundation and



bring sufficient materials on record to make out a case against the accused-appellants.

55. It has also been argued on behalf of the appellants that there was an inordinate and unexplained delay caused in lodging the FIR, which causes serious doubt about the veracity of the prosecution case.

56. In this regard, when I closely look at the FIR and the testimonies of the witnesses, I would find that as per prosecution case a secret information was received by B.P. Alok (P.W.1) at 00:10 AM on 17.08.2016 that some persons, who are critically ill and are having recurrent bouts of vomiting, have come to the Sadar Hospital, Gopalganj for treatment. He also received the information that possibly some of the persons have died and some others are being referred for better treatment. Immediately, thereafter, he proceeded to Gopalganj Sadar Hospital and reached there at 00:20 AM on 17.08.2016 and found one Bandhu Ram in a critical condition. He disclosed in detail about the persons, who were involved in selling spurious liquor mixed with Mahua, Mitha, Nausadar etc. at village Khajurbani. He further disclosed that several persons had consumed spurious liquor in the houses of the accused-appellants as a result of which condition of their health



deteriorated.

57. The information given by Bandhu Ram was definitely in respect of a cognizable offence. The witnesses examined on behalf of the prosecution except P.W.7 claimed themselves to be present at the Sadar Hospital when inquiry was made by P.W.1 from Bandhu Ram are all police personnel. They were on a government vehicle. This Court may take judicial notice of the fact that Sadar Hospital, Gopalganj where the so called Bandhu Ram is said to be admitted is situated at a close distance from Gopalganj Town Police Station.

58. Section 154 contained in Chapter XII of the Cr.P.C deals with the information to the police and their powers to investigate. The Cr.P.C classifies the offences in two categories, namely, (a) cognizable offence; and (b) non-cognizable offence. Registration of an FIR is mandatory under Section 154 of the Cr.P.C if the information discloses the commission of a cognizable offence.

59. In the instant case, since the information regarding a cognizable offence is said to have been given to the police on 17.08.2016 at 00:20 AM by Bandhu Ram at the Sadar Hospital, Gopalganj, it was incumbent upon P.W.1, who was the S.H.O. of Gopalganj Town Police Station, to have instituted the FIR



promptly. Surprisingly, in spite of the receipt of a concrete information regarding the commission of a cognizable offence, he failed to register FIR promptly.

60. The institution of the FIR much after receipt of the information regarding a cognizable offence on 18.08.2016 at 09:30 AM after raiding the respective houses of the accused-appellants and preparing respective seizure lists gives rise to the presumption that the same was instituted after due deliberations and consultation.

61. In ***Dilawar Singh vs. State of Delhi***, since reported in ***(2007) 12 SCC 641***, while holding that unexplained delay in lodging of the FIR is fatal, the Supreme Court held:

“9. In criminal trial one of the cardinal principles for the court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the



allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.

10. In Thulia Kali v. State of T.N. [(1972) 3 SCC 393: 1972 SCC (Cri) 543: AIR 1973 SC 501] it was held that the delay in lodging the first information report quite often results in embellishment as a result of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

11. In Ram Jag v. State of U.P. [(1974) 4 SCC 201: 1974 SCC (Cri) 370: AIR 1974 SC 606] the position was explained that whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay can be condoned if the witnesses have no motive for implicating the accused and/or when plausible explanation is offered for the same. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness or authenticity of the



version of the prosecution.”

62. In ***P. Rajagopal vs. State of Tamil Nadu***, since reported in **(2019) 5 SCC 403**, the Hon’ble Supreme Court held:

*“12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. [See *Apren Joseph v. State of Kerala* [*Apren Joseph v. State of Kerala*, (1973) 3 SCC 114: 1973 SCC (Cri) 195] and *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1: (2017) 2 SCC (Cri) 673]”*

63. In ***State of Punjab vs. Ramdev Singh***, since reported in **(2004) 1 SCC 421**, the Hon’ble Supreme Court held:

“Delay in lodging the FIR cannot be used a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information



report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version. ...”

64. It is surprising that in the instant case the FIR has not been instituted on the basis of the oral statement of Bandhu Ram made before the S.H.O. of Gopalganj Town Police Station at the Sadar Hospital, Gopalganj at 00:20 hours on 17.08.2016, which definitely disclosed about commission of a cognizable offence in great detail. The S.H.O. not even bothered to record the oral statement of aforesaid Bandhu Ram. He started the investigation of the case without registration of the FIR. He went to the place of occurrence, raided several houses, prepared search-cum-seizure lists, recorded his self-statement at 10:15 PM on 17.08.2016 i.e., almost 22 hours after getting the information regarding a cognizable offence from Bandhu Ram and registered the FIR at 09:30 AM on 18.08.2016 i.e., about



11½ hours after recording of his self-statement.

65. Apparently, the FIR was not instituted on the basis of the first information received by the S.H.O. regarding commission of a cognizable offence, but the same was also instituted after an inordinate and unexplained delay and that too after completing a major part of investigation. The aforesaid act of the police gives rise to the possibility of concoction of evidence by the prosecution.

66. It is the case of the prosecution that on secret information the informant along with police officials went to the Sadar Hospital, Gopalganj and met one Bandhu Ram, who was undergoing treatment and he told him that all the accused-appellants are indulged in illegal trade of illicit liquor made of Mahua, Mitha, Nausadar etc. and he had consumed the same. The aforesaid Bandhu Ram has not been examined during trial nor there is any evidence that he was medically examined by the doctors at the Sadar Hospital. Except the oral version of the witnesses, there is no documentary proof that the said Bandhu Ram had fallen ill after consumption of illicit liquor at the village Khajurbani and was being treated at the Sadar Hospital, Gopalganj.

67. Moreover, P.W.7, the Investigating Officer of the



case admitted in para 26 of his cross-examination that during investigation that he could not meet Bandhu Ram. Thus, Bandhu Ram appears to be a creature of imagination.

68. Furthermore, P.W.7 admitted in para 21 of his cross-examination that he could not meet any person at the place of occurrence, who had taken spurious liquor. He stated that though he tried to locate and find out the persons who had taken liquor at the village Khajurbani, he failed to locate them. In para 25 of his cross-examination, he admitted that during investigation he did not record the statement of any independent witness.

69. When I look at the testimony of P.W.6, a constable and a member of the raiding team, I find that in para 10 of his cross-examination, he stated that he cannot say the name of the persons being treated in the hospital after consuming spurious liquor.

70. Similarly, P.W.5, a Sub-Inspector of police and a member of the raiding team, stated in his testimony that 3-4 persons were being treated in the hospital, who had taken poisonous liquor and were vomiting. He stated that 19 persons had died after consumption of spurious liquor for which Gopalganj Town P.S. Case No. 348 of 2016 was separately



registered. However, in cross-examination, he admitted that when the raiding team reached at the hospital inquiry was made only from Bandhu Ram. He stated that other persons being treated there were not in a position to speak. There is no investigation about the persons who were being treated in the hospital apart from Bandhu Ram. Though P.W.5 stated that some persons had died, there is no investigation who were those persons who had died due to consumption of spurious liquor.

71. Likewise, P.W.4, a constable and a member of the raiding team admitted in para 8 of his cross-examination that when he reached at the hospital, he saw 3-4 persons being treated there, but he did not make any inquiry about their identity. P.W.3, another member of the raiding team also admitted in his cross-examination at para 11 that he cannot say name of the persons who had died after consumption of spurious liquor. Thus, I find that though the prosecution has tried to make out a case that 19 persons died due to consumption of poisonous liquor, it neither brought on record name of the deceased persons nor their post-mortem reports.

72. On the point of search and seizure, I find that P.W.1 proved his writing and signature on the seizure lists, which were marked as Exhibit-1 to 1/H respectively. He stated that the



seizure lists were prepared in the presence of two independent witnesses, namely, Paltu Kumar and Swaminath Sah. He did not utter a word in his evidence as to what was recovered from whose house. In other words, he did not whisper a word in his testimony about the recoveries of articles made from the houses of the accused-appellants.

73. When I look at the evidence of P.W.2, I find that he admitted in para 13 of his cross-examination that he cannot say about the articles recovered from the respective houses of the appellants. Similarly, P.W.3 stated in his evidence that firstly the house of Nagina Pasi was raided and thereafter he cannot say whose houses were raided. He further stated that he cannot say about the place where the seized articles were kept together. Further, P.W.4 admitted in cross-examination that the articles recovered in the raid were kept beside the road in front of the houses and the seizure lists were prepared there. Furthermore, P.W.6 admitted in his cross-examination that he cannot say as to what was the quantity of spurious liquor recovered from the houses of Nagina Pasi and Chhathu Pasi.

74. When I closely scrutinize the testimony of P.W.7, I find that he stated in his evidence that during inspection of the place of occurrence at 10:30 AM on 18.08.2016 after the



investigation was handed over to him at 09:30 AM on 18.08.2016, he recovered huge quantity of illicit liquor and Mahua, Mitha, Nausadar and Thuja from the respective houses of the appellants and their courtyards. In support of his oral testimony no seizure list was prepared for the alleged seizures made on 18.08.2016 by the Investigating Officer of the case.

75 As far as the searches and seizures made by the informant of the case are concerned, I find the testimonies of the witnesses examined on behalf of the prosecution to be wholly unreliable. The informant has not even whispered about the articles recovered from the houses of the accused-appellants and their quantity. He has simply proved his writing and signature on the nine seizure lists, which have been marked as Exhibits-1 to 1/H.

76. Apparently, there is no oral evidence regarding the articles seized from the houses of the accused-appellants. The seizure lists prepared by the informant in themselves cannot be treated to be proof of their contents. The witnesses examined on behalf of the prosecution in respect of searches and seizures do not appear to be reliable. They are not sure about the articles recovered from different houses alleged to have been raided by the police officials.



77. Not only the witnesses examined on behalf of the prosecution are unreliable, the two so called independent witnesses to the seizures, namely, Paltu Kumar and Swaminath Sah were not examined by the prosecution. One of them, namely, Swaminath Sah has been examined on behalf of the defence. He deposed that two years ago when he had gone to the Gopalganj Town Police Station for lodging a case, the S.H.O. had taken his signature on 4-5 blank sheets of paper and asked him to go, but the case was not registered. In the absence of examination of the independent seizure list witness Paltu Kumar on behalf of the prosecution during trial and in absence of any plausible explanation for the same and for the reason that another seizure list witness, namely, Swaminath Sah was examined as a defence witness, no reliance can be placed on the truthfulness of the seizure lists prepared by the informant of the case.

78. It would appear from the impugned judgment that the Trial Court has placed reliance on the report of the FSL, marked as Exhibit-4 to convict the accused-appellants. It would appear from Exhibit-4 that three wooden boxes were sent to the Forensic Science Laboratory for examination, which were marked as 1, 2 and 3 and the box marked as '3' contained 45



plastic dibbas, marked as 1 to 45 each respectively contained approximately 350 ml brown colour liquor with Alcoholic smell. Ethyl Alcohol along with Methyl Alcohol were detected in the contents of those 45 plastic dibbas. It has been reported that Methyl Alcohol is highly poisonous. Curiously enough, there is no evidence that from whose house those 45 plastic dibbas were recovered.

79. Moreover, the report of the FSL was not supplied to the appellants along with the police papers in compliance with the provisions of Section 207 of the Cr.P.C.

80. It would be evident from the perusal of the lower court records that in the present case charge-sheet was submitted on 14.10.2016. Thereafter, charges were framed against the accused-appellants on 25.05.2017 whereas articles sent for chemical examination to the FSL were examined by the Assistant Director of the Forensic Science Laboratory, Government of Bihar, Patna and a report in this regard was prepared on 17.04.2018, which was produced by the Investigating Officer of the case in sealed cover when he was being examined during trial on 25.05.2018. Thus, it is crystal clear that the FSL report was never supplied to the accused-appellants during trial.



81. In this background, when the accused-appellants filed a petition on 07.12.2020 for recalling the Investigating Officer for cross-examination, the Trial Court dismissed the petition vide order dated 08.12.2020 holding therein that recalling the Investigating Officer is not necessary in the ends of justice and to the just decision of the case as the Investigating Officer has already been examined and cross-examined at length and report of the FSL is admissible under Section 293 of the Cr.P.C.

82. At this stage, it is pertinent to note that the FSL report is nothing but a document within the meaning of the Cr.P.C. Since the prosecution is relying on the same and has used it against the appellants, it was incumbent upon it to furnish a copy of the same to the accused-appellants not only in terms of Section 207 read with Section 173(5) of the Cr.P.C but also to uphold the right of the accused a fair trial guaranteed under Article 21 of the Constitution of India.

83. Even if the accused-appellants did not demand a copy of the FSL report when the same was produced by the Investigating Officer in a sealed cover while he was deposing before the court, it was the duty of the court to ensure that a copy of the report of FSL be supplied to the accused persons in



advance so that they may go through the same and prepare their defence.

84. From the record, it would be evident that while filing the petition dated 07.12.2020 under Section 311 of the Cr.P.C, the accused-appellants pleaded that they could not cross-examine the Investigating Officer upon the report of the FSL due to its non-supply at the time of receiving the police papers in compliance with Section 207 Cr.P.C. They submitted that in the interest of justice and for the just decision of the case questioning the Investigating Officer about the manner of sending the illicit liquor to the FSL was highly essential. Hence, a request was made to recall the Investigating Officer so that his further cross-examination may be conducted. However, the Trial Court rejected the application filed under Section 311 of the Cr.P.C, on the ground that the same was filed in order to delay the judgment of the case. According to the Trial Court, the FSL report was well known to the defence as it was received in evidence during examination of P.W.7, who had duly been cross-examined and the defence had not asked any question about the genuineness of the FSL report knowingly and deliberately.

85. In my considered opinion, the order passed by the



Trial Court was not justified. It is no more res integra that an accused has a right to a free and fair trial which flows from Article 21 of the Constitution of India. The procedural law for criminal trial as contained in the Cr.P.C is meant to ensure free and fair trial. On receipt of the police report and accompanying documents by virtue of Section 207 of the Cr.P.C, the Magistrate is obliged to furnish copies of each of the statements and documents to the accused.

86. Section 207 of the Cr.P.C reads as under:

“207. Supply to the accused of copy of police report and other documents: In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

- i. the police report;*
- ii. the first information report recorded under section 154;*
- iii. the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;*
- iv. the confessions and statements, if any, recorded under section 164;*
- v. any other document or relevant extract*



thereof forwarded to the Magistrate with the police report under sub- section (5) of section 173: Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through a pleader in Court.

87. Indisputably, the provisions of Section 207 of the Cr.P.C. are set down in a mandatory language. There is an obligation on the prosecution to perform judicial duty of supplying all the necessary copies of the documents to the accused. In the instant case, the prosecution has violated this mandatory provision as the copy of the FSL report was not supplied to the accused-appellants. The report itself was prepared after the charge-sheet was filed in the court and charges had already been framed. It was definitely a supplementary material which came into existence during trial



in the hands of the prosecution. Since the prosecution intended to rely upon it, it was incumbent upon it to have supplied a copy of the same in advance to the accused-appellants so that they could defend themselves properly and effectively.

88. In **Tarun Tyagi Vs. C.B.I.**, since reported in **(2017) 4 SCC 490**, the Supreme Court considered the purport of Section 207 Cr.P.C and observed as under:

“8. Section 207 puts an obligation on the prosecution to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay. It includes, documents or the relevant extracts thereof which are forwarded by the police to the Magistrate with its report under Section 173(5) of the Code. Such a compliance has to be made on the first date when the accused appears or is brought before the Magistrate at the commencement of the trial inasmuch as Section 238 of the Code warrants the Magistrate to satisfy himself that provisions of Section 207 have been complied with. Proviso to Section 207 states that if documents are voluminous, instead of furnishing the accused with the copy thereof, the Magistrate can allow the accused to inspect it either personally or through pleader in the court.”



89. In *Manu Sharma v. State (NCT of Delhi)*, since reported in *(2010) 6 SCC 1*, the accused alleged that the conduct of the prosecution was done in such a manner that it deprived him of fundamental right to a fair trial secured under Article 21 of the Constitution. It was argued that the prosecutor had suppressed vital evidence (laboratory reports) which was a breach of the duty of disclosure and, thus, vitiated the trial. It was further argued that the duty of disclosure went beyond material being relied upon by the prosecution. Though the Supreme Court dismissed the appeal, it made certain important observations on this issue. It emphasized that fair trial and fair investigation are not only the right of the accused but an integral part of rule of law itself. It linked the duty of disclosure upon the investigating agency and the prosecutor to this idea of a fair trial which understood as “the very foundation of a fair investigation and fair trial”. The Supreme Court held that there was “an implied obligation” to make fair disclosure, which would take in its ambit furnishing of a document which the prosecution relied upon whether filed in Court or not. That document should essentially be furnished to the accused and where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the prosecutor is



relevant and would help in arriving at the truth, that document should also be disclosed to the accused. The provisions of Section 207 of the Cr.P.C will have to be given liberal and relevant meaning so as to achieve its object. It specifically included all materials sent to the court during investigation under Section 170 of the Cr.P.C as a part of the materials that had to be provided to an accused. To claim documents within the purview of scope of Section 207, 243 read with Section 173 in its entirety and power of the Court under Section 91 of the Cr.P.C to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

90. In ***Manu Sharma v. State (NCT of Delhi)*** (*Supra*), the Supreme Court held as under:

*“218. The liberty of an accused cannot be interfered with except under due process of law. The expression “due process of law” shall deem to include fairness in trial. **The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights***



given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforesaid. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section



207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression “documents on which the prosecution relies” are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

221. *It will be difficult for the Court to say that*



the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially. (emphasis supplied)

91. In ***V.K. Sasikala v. State***, since reported in **(2012) 9 SCC 771**, the Supreme Court heard the challenges to the two orders of the Karnataka High Court whereby it had upheld the rejection of two applications made by the applicant for being supplied with the copies of the documents/right to inspect the documents that were purportedly filed with the court but not exhibited by the prosecution in pending trial. The appellant had not raised any objection to the non-supply of this material when Section 207 proceedings were conducted or even afterwards but



filed the application in question when her statement under Section 313 of the Cr.P.C was being recorded in a bid to be able to answer the question more effectively and not be prejudiced while making the statement. The Supreme Court allowed the petition and permitted the appellant to inspect the court record. While doing so, the court specifically rejected the argument that the appellant's right is foreclosed as it was raised at a late stage in the trial. The Court held that the trial courts must consider any plea suggesting prejudice due to non-supply of materials at the earliest. The court's duty of disclosure is, therefore, beyond providing only the material relied upon by the prosecution and covers all the material that are filed in the court as it would otherwise render an accused person defenseless against the suppression of exculpatory material by the investigators/prosecutors. The Court held that the accused need not wait till the conclusion of trial to show the prejudice caused to him.

92. In *V.K. Sasikala v. State* (Supra), the Supreme Court held as under:

“21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question



arising would no longer be one of compliance or non-compliance with the provisions of Section 207 CrPC and would travel beyond the confines of the strict language of the provisions of CrPC and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in



our criminal jurisprudence have to be balanced. (emphasis supplied)

93. It is true that the accused-appellants lately came to realize that due to non-supply of FSL report and its sudden production during trial deprived them the opportunity to confront the Investigating Officer about the contents of the report and the manner in which it was procured and, in this view of the matter, the application dated 07.12.2020 was filed before the court on behalf of the accused-appellants to enable them to cross-examine the Investigating Officer about the contents of the said FSL report, but that could not be the ground to deny them to have a copy of the FSL report and to cross-examine the Investigating Officer.

94. It is not in dispute in the case at hand that the FSL report was not supplied to the appellants at any stage. The same was taken into evidence on being furnished by the Investigating Officer. Generally, the opinion of an expert though relevant, requires the expert to be examined as a witness in court otherwise his report cannot be admitted in evidence. However, Sections 292 and 293 Cr.P.C are exceptions to the general rule as laid down in Section 273 Cr.P.C. Both these sections also depart from the elementary rule of law that unless the evidence is given on oath and is tested by cross-examination, it is not



legally admissible against the party affected. Section 293 Cr.P.C. make the report of the certain government scientific experts mentioned in sub-section (4) of this Section, admissible in evidence without calling him as a witness.

95. In the present case, the expert, who had prepared the FSL report has not been examined. The said report after being produced by the Investigating Officer has been taken into consideration under Section 293 of the Cr.P.C. Since the FSL report was never supplied to the appellants at any stage, when an application was filed on behalf of the appellants under Section 311 of the Cr.P.C to summon the Investigating Officer for further cross-examination, the Trial Court ought to have allowed the application and permitted the defence to further cross-examine the Investigating Officer after ensuring that a copy of the FSL report is supplied to the appellants.

96. Considering the facts and circumstances enumerated above and the ratio laid down by the Supreme Court in the judgments noted above, I am of the view that no reliance can be placed on the FSL report, which was not provided to the accused-appellants at any stage of the trial for arriving at a conclusion of guilt against the accused-appellants.

97. At this stage, in order to appreciate the argument



advanced on behalf of the accused-appellants as to whether the ingredients of the offences under which they are convicted by the trial court have been established, the relevant provisions of the Excise Act, 2016 and the IPC may be extracted for ready reference: -

Excise Act, 2016

30. Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor.—Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorization granted thereunder—

(a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp;

- | | | | |
|-----|------|------|------|
| (b) | xxxx | xxxx | xxxx |
| (c) | xxxx | xxxx | xxxx |
| (d) | xxxx | xxxx | xxxx |
| (e) | xxxx | xxxx | xxxx |
| (f) | xxxx | xxxx | xxxx |



(g) xxxx xxxx xxxx

shall be punishable with imprisonment for the term which may extend to life and with fine which may extend to ten lakh rupees.

Provided that the punishment:

(a) For the first offence shall not be less than five years imprisonment and fine of not less than one lakh rupees, and

(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees.]

34(a)(b)(i). Penalty for mixing noxious substance with liquor. —Whoever,

(a) mixes or permits to be mixed with any liquor sold or manufactured or possessed by him, any noxious drug or any poisonous ingredient; or

(b) makes, sells or possesses any preparation, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated which is likely to cause disability or grievous hurt or death to human beings, shall be punishable: —

(i) if as a result of such an act, death



is caused, with death or imprisonment for life and shall also be liable to fine, which shall not be less than five lakh rupees but which may extend to ten lakh rupees”

IPC

“272. Adulteration of food or drink intended for sale. —*Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”*

273. Sale of noxious food or drink. —*Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

308. Attempt to commit culpable homicide. —*Whoever does any act with such intention or knowledge and under such circumstances that,*



if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

98. From a bare reading of the Section 30(a) of the Excise Act, 2016, it would be evident that in order to establish the charge under this provision the prosecution would be required to prove that the accused persons were indulged in the act of manufacturing, possessing, buying, selling, distributing, collecting, storing, bottling, importing, exporting, transporting or removing any intoxicant or liquor in contravention of the provisions of the Excise Act, 2016 or any rule or order or notification issued thereunder or in contravention of any condition of any license, permit or pass, renewed or authorization granted thereunder.

99. It is true that in the instant case the informant prepared nine seizure lists for the alleged seizures made from the houses of the accused-appellants and from outside their



houses from open space or Dalan. However, the material exhibits, i.e., the seized materials were never produced before the court. It is not known where the seized materials were kept after their seizure. Neither Malkhana in charge has been examined nor Malkhana register has been produced before the court. The Investigating Officer did not prepare any inventory of the seized materials. There is no destruction report of the seized materials. It is not known what happened to the materials seized from the respective houses of the accused-appellants. There is no evidence to suggest that any sample was drawn on the spot of recovery of any intoxicant or liquor.

100. In respect of the searches and seizures of the intoxicant and liquor there is yet another aspect which cannot be lost sight of. The witnesses examined on behalf of the prosecution are all police personnel, but they are not consistent. They have contradicted each other in material particular.

101. In so far as the time of searches and seizures is concerned, though P.W.1 stated that they continued till morning of 18.08.2016, the search and seizure lists were prepared between 04:30 AM and 09:00 PM on 17.08.2016 whereas P.W.4 stated that the raid continued at village Khajurbani for over three hours only and P.W.6 stated in his evidence that the raiding



team came back to the Police Station at 05:00 AM on 17.08.2016. It is reiterated that as per the prosecution case the police party had arrived at the place of occurrence at about 02:00 AM on 17.08.2016. Hence, if the police party had stayed at village Khajurbani for over three hours only as stated by P.W.4 or the police came back at the police station at 05:00 AM on 17.08.2016 as stated by P.W.6, it is surprising as to how the seizure lists could have been prepared at the village Khajurbani between 04:30 AM and 09:00 PM on 17.08.2016.

102. It has rightly been argued on behalf of the appellants that except the police officials no independent witness has been examined in this case. The two seizure list witnesses are not the residents of village Khajurbani. Their presence at the place of occurrence at 04:30 AM and their continuance till 09:00 PM on 17.08.2016 appears to be highly doubtful. In this regard also, the witnesses examined on behalf of the prosecution are inconsistent. P.W.1 and P.W.5 have stated that the witnesses to the seizure were present at the place of occurrence from before whereas P.W.4 stated in his evidence that the local chowkidar was sent for calling the witnesses and P.W.3 stated in his evidence that he does not remember the name of the person, who had called the witnesses to the seizure list.



The local chowkidar who, according to P.W.4, called the witnesses was not examined during trial.

103. Thus, considering the non-production of either the seized material or their destruction report before the court as well as non-examination of the seizure list witnesses on behalf of the prosecution and the other discrepancies in the evidence of the witnesses relating to searches and seizures, as discussed above, I am of the considered opinion that the prosecution has completely failed to establish the essential ingredients of the offence punishable under Section 30(a) of the Excise Act, 2016.

104. Coming back to the charge under Section 34(a)(b) (i) of the Excise Act, 2016, in order to constitute the offence, it was essential for the prosecution to have proved that the accused-appellants were indulged in mixing or permitting to be mixed with any liquor sold or manufactured or possessed by them, any noxious drug or any poisonous ingredient or making, selling or possessing any preparation, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated which is likely to cause disability or grievous hurt or death to human beings. Further, in order to attract penalty provided under



Section 34(a) (b)(i), it was incumbent upon the prosecution to prove that as a result of the act as provided under Section 34(a) or (b) done by the accused-appellants death was caused to any person.

105. Since, I have already held hereinabove that the prosecution has failed to prove the offence punishable under Section 30(a) of the Excise Act, 2016, which provides seizure for manufacturing, possessing, buying, selling, distributing, collecting, storing, bottling, importing, exporting, transporting or removing any intoxicant or liquor, it is difficult to hold that the prosecution has been able to establish the charge under Section 34(a)(b)(i) of the Excise Act, 2016. Though some of the witnesses examined on behalf of the prosecution have stated that altogether 19 persons died due to consumption of poisonous liquor, the prosecution has not brought on record name of even a single person, who died due to consumption of poisonous liquor. The prosecution witnesses are not the eye-witnesses to the occurrence. They are not victims of the crime. They all are official witnesses. In absence of any cogent evidence regarding the searches and seizures of noxious substance with liquor and in absence of any evidence as to who the victims are, it would be a travesty of justice to hold that the prosecution has been able



to prove the charge under Section 34(a)(b)(i) of the Excise Act, 2016.

106. While saying so, this Court is mindful of the fact that the prosecution has led into evidence documentary evidences, such as the FIR and charge-sheet submitted by the police in Gopalganj Town P.S. Case No. 348 of 2016 by filing them with list of documents after all the witnesses on behalf of the prosecution were examined. They have been marked as Exhibits by the Trial Court without any objection. The prosecution has not led any oral evidence with respect to the police case numbered as Gopalganj Town P.S. Case No. 348 of 2016. Thus, the FIR and the charge-sheet of that case would at best suggest that another case bearing Gopalganj Town P.S. Case No. 348 of 2016 was registered by the police and pursuant to the investigation of that case the police found sufficient material to submit charge-sheet against the accused persons in that case. Beyond that, those documents do not substantiate anything against the accused-appellants in respect of the charges levelled in the present case.

107. In so far as the submission made on behalf of the State with respect to presumption as to commission of the offences under the Excise Act, 2016 is concerned, it would be



apt to refer to Section 32 of the Excise Act, 2016, which reads as under:

“32. Presumption as to commission of offence in certain cases. —

(1) In prosecution under any relevant provision of this Act, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of any liquor, intoxicant, material, still, utensil, implement or apparatus, for the possession of which he is unable to account satisfactorily.

(2) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises is used in the commission of an offence under this Act, and is liable to confiscation and/or liable to be sealed, the owner or occupier thereof shall be deemed to be guilty of such offence and such owner or occupier shall be liable to be proceeded against and punished accordingly, unless he satisfies the court that the offence was committed without his knowledge or that he had exercised due care in the prevention of the commission of such an offence.

(3) Where an offence is said to have been committed,

– at a place or inside any premises where any



toxicant or liquor is found, consumed, manufactured, sold or distributed, or – inside any house occupied by a family where any intoxicant or liquor is found or consumed, it shall be presumed that all the adults above the age of eighteen occupying or working at the place or in the premises or the members of the family above eighteen years of age occupying the house are having the knowledge of commission of such an offence, unless proved otherwise.”

108. A bare reading of Section 32 of the Excise Act, 2016 would demonstrate that it deals with presumption of culpable mental state of the accused in case he fails to account for the possession of any liquor, intoxicant, material, still, utensil, implement or apparatus for manufacturing or storage of liquor. The failure of satisfactory explanation for possession of any liquor, intoxicant, material, still, utensil, implement or apparatus would lay down the foundation for the possession of the aforesaid articles. It has been rightly argued on behalf of the appellants that the presumption would not come into picture merely upon a charge being levelled against the accused-appellant under the Excise Act, 2016.

109. A similar legislation is there under the Narcotic Drugs and Psychotropic Substances Act (for short ‘NDPS Act).



Section 35 and Section 54 of the NDPS Act deals with the presumption of culpable mental state of the accused.

110. While dealing with an issue whether the mere charge under the NDPS Act would be enough for presumption to apply, in *Naresh Kumar v. State of H.P.*, since reported in **(2017) 15 SCC 684**, the Supreme Court set aside the conviction imposed by the High Court against the accused, who was charged under Sections 20 and 61 of the NDPS Act wherein the allegation against the appellant was that two kg charas was recovered from a bag in his possession. In that case the Supreme Court observed:

“9. The presumption against the accused of culpability under Section 35, and under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. That the right of the accused to a fair trial could not be whittled down under the Act was considered in Noor Aga v. State of



Punjab [Noor Aga v. State of Punjab, (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748] observing : (SCC p. 450, paras 58-59)

“58. ... An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

59. With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to



be”

10. In the facts of the present case, and the nature of evidence as discussed, the prosecution had failed to establish the foundational facts beyond all reasonable doubt. The Special Judge committed no error in acquitting the appellant. The High Court ought not to have interfered with the same. The submissions regarding non-compliance with Section 50 of the Act, or that the complainant could not be the investigating officer are not considered necessary to deal with in the facts of the case.”

111. In ***V.D. Jhingan v. State of U.P.***, since reported in ***AIR 1966 SC 1762***, the Supreme Court held “... *it is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e., that of establishing on the whole case the guilt of the accused beyond a reasonable doubt*”.

112. In ***Noor Aga v. State of Punjab***, since reported in ***(2008) 16 SCC 417***, while dealing with Sections 35 and 54 of the NDPS Act, the Supreme Court held “*Sections 35 and 54 of*



the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

113. The Supreme Court further held: “*With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would*



continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt.”

114. On the basis of the ratio laid down by the Supreme Court in the abovementioned decisions, it can be safely said that to shift the burden on the accused-appellants to prove their innocence an initial burden exists upon the prosecution and only after the foundational facts for constituting the offence under Section 34(a)(b)(i) would be established, the burden would shift upon the accused persons.

115. Since we have already held that the prosecution has miserably failed to establish the foundational facts for constituting the offences under Section 30(a) and 34(a)(b)(i) of the Excise Act, 2016 against the accused-appellants, question of shifting the burden on the appellants to rebut the presumption do not arise in the present case.

116. In so far as the offences under Sections 272 and 273 of the IPC are concerned, there is no evidence that the accused-appellants adulterated any article of food or drink so as to make such article noxious as food or drink, their conviction under the aforesaid provisions of the IPC cannot be sustained.

117. Similarly, since there is complete lack of evidence that the accused-appellants did any act with such intention or



knowledge and under such circumstances that it caused death of any person, they cannot be held guilty of culpable homicide punishable under Section 308 of the IPC.

118. Thus, on a responsible scrutiny of evidence, it can safely be concluded that the prosecution miserably failed to prove their case beyond reasonable doubt for the following reasons:

- (a) In spite of receipt of a definite information regarding the commission of a cognizable offence, the S.H.O. OF THE Gopalganj Town Police Station failed to register FIR.
- (b) A major part of the investigation was carried by the S.H.O. even before the registration of the FIR.
- (c) The institution of the FIR and that too not on the basis the first-hand information received from Bandhu Ram, but on the basis of self-statement of the S.H.O. creates suspicion about the initiation of the criminal prosecution in the present case.
- (d) The institution of the FIR after an inordinate and unexplained delay gives rise to the presumption that the same was instituted after due deliberations and consultation.



- (e) Though Bandhu Ram was the first person who disclosed about the entire incident to the S.H.O., he is neither a witness to the charge sheet nor the Investigating Officer could meet him during the entire investigation.
- (f) Though the prosecution has tried to make out a case that 19 persons died due to consumption of poisonous liquor manufactured and supplied by the accused persons, none of the witnesses examined during trial disclosed the name of any deceased.
- (g) The prosecution has failed to bring on record the postmortem report of the persons, who allegedly died to consumption of liquor.
- (h) It is the case of the prosecution that Bandhu Ram and others, who were critically ill after the consumption of spurious liquor were being treated at the Sadar Hospital, Gopalganj, but neither any medical report of their treatment was produced before the Trial Court nor the doctors, who examined them were examined during trial.
- (i) Though the witnesses examined during trial stated



in their testimonies that the place of occurrence was a densely populated village, no local person was made witness to the searches and seizures of incriminating materials made from the houses of the accused-appellants.

- (j) Since the two seizure list witnesses belong to different villages their presence in the village at the time of searches and seizures appears to be highly improbable.
- (k) Out of the two seizure list witnesses, one was not examined by the prosecution and the another one was examined as a defence witness.
- (l) No independent witness was examined on behalf of the prosecution.
- (m) Though all witnesses examined on behalf of the prosecution are police personnel, they have contradicted each other in material particular.
- (n) The FSL report was not supplied to the accused-appellants either before the framing charge in compliance of Section 207 Cr.P.C. or after the framing of charges during the trial.
- (o) The essential ingredients of the offences for which



the charges were framed by the Trial Court were not proved during the trial.

- (p) There is no oral evidence regarding the incriminating articles seized from the respective houses of the appellants.
- (q) The so-called incriminating materials seized in connection with the case was not produced before the court.
- (r) There is no destruction report of the seized materials.
- (s) It is not known where the seized materials were kept after the seizure.
- (t) There is no evidence to suggest that any sample was drawn on the spot of recovery of any intoxicant or liquor.
- (u) There is no evidence regarding the house or the place from where the materials seized were sent to the FSL for chemical examination.

119. Accordingly, the impugned judgment of conviction dated 26.02.2021 and the consequent order of sentence dated 05.03.2021 passed by the learned Additional District & Sessions Judge-II-cum-Special Judge (Excise Act), Gopalganj



in Sessions Trial No. 967 of 2016 arising out of Gopalganj P.S. Case No. 347 of 2016 are, hereby set aside. The appellants Chhathu Pasi (Cr.Appeal (DB) No. 312 of 2021), Laljhari Devi, Kailasho Devi, Rita Devi and Indu Devi (Cr. Appeal (DB) No. 350 of 2021), Nagina Pasi, Lal Babu Pasi, Kanhaiya Pasi, Munna @ Munna Pasi, Ranjay Choudhary @ Ranjay Pasi, Sanjay Choudhary @ Sanjay Pasi, Sanoj Pasi and Rajesh Pasi (Cr. Appeal (DB) No. 351 of 2021 are acquitted of the charges levelled against them. They shall be released from jail forthwith unless they are required in any other case.

120. Since I have allowed the appeals and set aside the impugned judgment of conviction and order of sentence, the reference made by the Trial Court for confirmation of death sentence by Death Reference No.5 of 2021 is hereby rejected.

121. Before parting with this judgment, I must record that this Court had occasion to notice a considerable number of judgments of the Trial Court subjecting the accused persons to maximum sentences including death sentences, which have ended in clean acquittal on reference and appeal. The samples are numerous.

122. What surprises this court is the weird process of casual reasoning implied by the Trial judges in appreciating the



evidence. It appears that the judgments of the Trial Court are more because of personal feelings rather than being deliberate based on facts and proof. It only goes to show that the Trial Courts relied upon limited number of heuristic principles and reduced complex judgment process and complex task of assessing possibilities and predicting values to very simple judgment operations leading to systematic errors.

123. Though heuristics are useful instrument of arriving at conclusions, the deployment of heuristics are also coloured by associative and other biases and prejudices leading to overestimation or underestimation of the evidence.

124. This Court would take note of the fact that several irrelevant factors go into making of judgment by the Trial Judges of this State. They are not averse voluntarily and deliberately to allow their judgments to be influenced by systematic errors in thinking processes or by cognitive biases.

125. The Judges are supposed to be persons with skills and expertise in the field of justice dispensation. A lot of time and money is expended by the State to train them to dispense justice and not mere passing of orders yet the appreciation of evidence leaves lot to be desired. Severe errors in judgments have been noticed by this Court, which cannot be termed as a



mere error or flaw in human judgment but shows complete lack of skill and training to appreciate the evidence. The magnitude of fallacy in appreciation of evidence can be imagined in such cases where the judgments swing from conviction and maximum sentencing (including imposition of death sentence) to clean acquittal in the course of appeal. The Trial Judges are completely oblivious of the consequences of their decisions on the families, who have to suffer insurmountable miseries only for the reason that the Trial Judge has not duly applied himself to the evidence available on record.

126. In today's fast paced lifestyle, we often feel increasingly pressured to make instant, fast and efficient decisions that allow us to meet the demands that are made of us. The primacy of this way of judging tends to slow thinking to the background. The process of thinking and processing of information by brain involves two different systems. While one is fast and intuitive, but prone to systemic errors, biases and prejudices while the other is slow and deliberate and leads to controlled decision making and beneficial even in the most complex cases that require deeper reasoning.

127. The criminal trials involve complex process of collation and analysis of countless evidences and requires



intensive attention which is an exclusive function of Trial Judges. The Trial Judges, who are supposed to be persons trained and skilled to apply themselves to the evidences have repeatedly failed the criminal justice system and have allowed their judgments clouded by irrelevant factors.

128. The Trial Judges cannot resort to heuristics to resolve problems of complex factual aspects of criminal trial and randomly apply law to the facts in a completely unstructured manner, which would lead to travesty of justice.

129. They have duty to protect the rights of the accused and the interests of the public in the administration of criminal justice. They have responsibility to hold the trial in appropriate manner in order to promote just determination of the trial, which is the prime object of a criminal trial. Their responsibility is to determine whether the prosecution has been able to prove the charges against the accused beyond reasonable doubt and establish the guilt of the accused as required by law. They are required to conduct each trial with unbiased approach. They are required to give each case an independent treatment and the final determination should be based on particular facts of that case and the relevant laws. They need to appreciate evidences objectively. They are required to be committed and sensitive to



ensure a fair trial and determination of the case. They are required to be familiar with and adhere to the cannons of the statutes applicable to the individual case in order to ensure proper administration of criminal justice.

(Ashwani Kumar Singh, J)

Harish Kumar, J: I agree.

(Harish Kumar, J)

Pradeep/-

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