

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.1041 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

Sanjay Pratap Singh @ Sanjay Singh, S/o Late Jayshankar Singh, R/o Village  
and P.O.- Alipur, P.S.- Ara Muffasil, District- Bhojpur at Ara.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 1014 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

Sanjay Bahadur, S/o Late Ram Ayodhya Singh, R/o Vill. and P.O.- Anaith,  
P.S.- Ara Nawada, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 1025 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

Bhaskar Sinha @ Bhaskar Kumar Sinha, Son of Late Nakul Kumar Sinha,  
R/o Mohalla- Tari Muhalla, P.S.- Ara Town, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 1045 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

Rakesh Choudhary @ Bhandhi Choudhary @ Bhandi, S/o Rabinder  
Choudhary, R/o Village- Anaith Kurmi Tola, P.S.- Ara Nawada, District-  
Bhojpur at Ara.



... .. Appellant/s  
Versus  
The State of Bihar  
... .. Respondent/s

=====

with  
**CRIMINAL APPEAL (DB) No. 1052 of 2018**  
Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Pappu Chaudhary, S/o Late Vishwanath Choudhary, R/o Vill.- Anaith, Post Office- Anaith, P.S.- Ara Nawada, District- Bhojpur.

... .. Appellant/s  
Versus  
The State of Bihar  
... .. Respondent/s

=====

with  
**CRIMINAL APPEAL (DB) No. 1064 of 2018**  
Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Upendra Kumar, son of Kamta Singh @ Kamta Prasad, resident of Village- Baraura Tola, P.S.- Agiaon Bazar, District- Bhojpur. At present resident Anaith Dhobighat, Ara, P.S.- Ara Nawadah, District- Bhojpur.

... .. Appellant/s  
Versus  
The State of Bihar  
... .. Respondent/s

=====

with  
**CRIMINAL APPEAL (DB) No. 1093 of 2018**  
Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Upendra Kumar, son of Sarikhan Ray, resident of Village- Mathwalia, P.O.- Daulat Kumar, Police Station- Ara Mufassil, District- Bhojpur.

... .. Appellant/s  
Versus  
The State of Bihar  
... .. Respondent/s



=====

with

**CRIMINAL APPEAL (DB) No. 1109 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Ashok Rai @ Ashok Kumar Rai, Late Raja Ram Rai, Resident of Mohalla-  
Anand Nagar, Motijhill, P.S.- Ara Town, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

=====

with

**CRIMINAL APPEAL (DB) No. 1127 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Rakesh Singh @ Prakash Kumar Singh, S/o Late Shivnath Singh, R/o New  
Colony, Anaith Mathiya, Ara, P.S.- Ara Nawada, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

=====

with

**CRIMINAL APPEAL (DB) No. 1141 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Sanoj Yadav, son of Sri Rajeshwar Rai, resident of Village- Anaith, Police  
Station- Ara Nawada, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

=====

with

**CRIMINAL APPEAL (DB) No. 1144 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====



Manoj Surhi, S/o Late Govind Prasad, R/ Village- Baghi Pakar, P.S.- Ara Muffasil, District- Bhojpur, presently reside at Mirganj, Cold Storage Gali, P.S.- Ara Town, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 1163 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Manoj Yadav @ Manoj Kumar Yadav, Son of Late Sohan Yadav, Resident of Village- Jhoparpatti, Chhoti Line, P.S.- Ara Nawada, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 1168 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Saroj Prasad, Son of Late Hira Lal Prasad, Resident of Village- Ara Chhoti Line, Jhopara Pati, P.S.- Ara-Nawada, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 1200 of 2018**

Arising Out of PS. Case No.-353 Year-2012 Thana- ARA NAWADA District- Bhojpur

=====

Mantu Singh, Son of Late Suraj Singh, Resident of Village- Kawra, P.S. Jagdishpur, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

**Appearance :**

(In CRIMINAL APPEAL (DB) No. 1041 of 2018)

For the Appellant/s : Mr. Prabhakar Singh, Adv. (Amicus)  
Mr. Prabhat Ranjan, Adv.  
Mr. Chandan Kumar, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, SPP

(In CRIMINAL APPEAL (DB) No. 1014 of 2018)

For the Appellant/s : Mr. Sada Nand Roy, Adv.  
Mr. Navin Kumar, Adv.

For the Respondent/s : Mr. Sadanand Paswan, SPP

(In CRIMINAL APPEAL (DB) No. 1025 of 2018)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.  
Mr. Brajesh Prasad Gupta, Adv.

For the Respondent/s : Ms. Usha Kumari No-1, SPP

(In CRIMINAL APPEAL (DB) No. 1045 of 2018)

For the Appellant/s : Mr. Prabhakar Singh, Adv.  
For the Respondent/s : Mr. Usha Kumari No-1, SPP

(In CRIMINAL APPEAL (DB) No. 1052 of 2018)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.  
Mr. Brajesh Prasad Gupta, Adv.

For the Respondent/s : Mr. Binay Krishna, SPP

(In CRIMINAL APPEAL (DB) No. 1064 of 2018)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.  
Mr. Brajesh Prasad Gupta, Adv.

For the Respondent/s : Mr. Binay Krishna, SPP

(In CRIMINAL APPEAL (DB) No. 1093 of 2018)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.  
Mr. Brajesh Prasad Gupta, Adv.

For the Respondent/s : Mr. Sadanand Paswan, SPP

(In CRIMINAL APPEAL (DB) No. 1109 of 2018)

For the Appellant/s : Mr. Ravindra Kumar, Adv.  
For the Respondent/s : Mr. Binay Krishna, SPP

(In CRIMINAL APPEAL (DB) No. 1127 of 2018)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.  
Mr. Ritwik Thakur, Adv.  
Ms. Vaishnavi Singh, Adv.

For the Respondent/s : Mr. Sadanand Paswan, SPP

(In CRIMINAL APPEAL (DB) No. 1141 of 2018)

For the Appellant/s : Mr. Sunil Kumar, Adv.  
Mr. Bimal Kumar, Adv.

For the Respondent/s : Mr. Sadanand Paswan, SPP

(In CRIMINAL APPEAL (DB) No. 1144 of 2018)

For the Appellant/s : Mr. Ravindra Kumar, Adv.  
For the Respondent/s : Mr. Binay Krishna, SPP

(In CRIMINAL APPEAL (DB) No. 1163 of 2018)

For the Appellant/s : Mr. Surj Bansh Roy, Adv.



For the Respondent/s : Mr. Sadanand Paswan, SPP  
(In CRIMINAL APPEAL (DB) No. 1168 of 2018)  
For the Appellant/s : Mr. Surj Bansh Roy, Adv.  
For the Respondent/s : Mr. Sadanand Paswan, SPP  
(In CRIMINAL APPEAL (DB) No. 1200 of 2018)  
For the Appellant/s : Mr. Shiva Shankar Prasad Singh, Adv.  
Mr. Pushpendra Priyedarshi, Adv.  
For the Respondent/s : Mr. Sadanand Paswan, SPP

---

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**  
**C.A.V. JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**  
**Date : 07-10-2023**

All these fourteen appeals have been heard together and are being disposed off by this common judgment.

2. Heard the learned counsel for the parties appearing in the respective appeals.

3. All the appellants except appellant/Bhaskar Sinha @ Bhaskar Kumar Sinha [*Cr. Appeal (DB) No. 1025 of 2018*] have been convicted for the offences under Sections 272, 273, 328 and 304 (Part-II)/34 of the Indian Penal Code (*in short the I.P.C.*), Section 3(2) (v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 [*in short the SC/ST*]



(POA) Act] and Section 47(a) of the Bihar and Orissa Excise Act, 1915 (*in short the Excise Act*) vide judgment dated 24.07.2018 and by order dated 28.07.2018, they have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 25,000/- each for the offences under Section 304 (Part-II)/34 of the I.P.C. read with Section 3(2)(v) of the SC/ST (POA) Act; six months R.I. and a fine of Rs. 500/- each for the offences under Sections 272 and 273 of the I.P.C.; R.I. for five years and a fine of Rs. 5,000/- each for the offence under Section 328 of the I.P.C. and two years R.I. and a fine of Rs. 2,000/- each for the offence under Section 47(a) of the Excise Act.

4. The appellant/Bhaskar Sinha @ Bhaskar Kumar Sinha, referred to above, has been held guilty under Section 47(a) of the Excise Act and has been awarded R.I. for two years with a fine of Rs. 2,000/- and in default of payment of fine, he has further been directed to suffer S.I. for six months.



5. The sentences against all the appellants have been directed to run concurrently.

6. Twenty one (21) persons lost their lives to spurious liquor which they had consumed.

7. All the appellants are alleged to have sold the spurious liquor to the unsuspecting consumers, all of whom died because of excess of methyl and ethyl alcohol in their bodies. One of the witnesses has alleged to have been blinded as an effect of consumption of spurious liquor.

8. A tragic incident indeed!

9. All of unsuspecting consumers died in a short span of time within a day.

10. Initially, the local police officer suspected that the deceased were afflicted with some mysterious disease which has not been diagnosed. However, with the recovery of few pouches of locally brewed liquor around the dead-bodies of the deceased and few bottles of liquor recovered from behind the houses in



constructive possession of some of the appellants, it was found out that the spurious liquor was the culprit.

11. All the twenty one dead-bodies were subjected to *post-mortem* examination and the *viscera* was also sent to Forensic Laboratory for further confirmation about death because of spurious liquor, which proved positive.

12. Hence, a case was instituted arraigning many persons as accused, most of whom are either the erstwhile licensees to sell liquor or local dealers, whose names were taken by the relatives of the deceased.

13. A peculiar shortcut approach was adopted by the police and somehow or the other disquietingly the Trial Court also fell in error in convicting and sentencing the appellants on practically no evidence at all.

14. The learned Advocates, who have appeared for the appellants have in unison stated that the conviction rests solely on presumption of the appellants having sold spurious liquor to the deceased



persons. There is no evidence of any sale of liquor by the appellants nor the liquor, which is said to have been recovered from the possession of some of the appellants, were sent for any forensic examination.

15. It is quite unfortunate, it has been argued, that twenty one persons have lost their lives, which number could be more, but equally disconcerting is the manner in which the case has been investigated and the Trial has been conducted. The Trial Court appears to have completely foreclosed the discussion with regard to the innocence of the appellants. The names of the appellants have only been taken by some of the witnesses and on the information derived by the police officers about their selling liquor to unsuspecting consumers. This, it has been argued, is no material or evidence in the eyes of law to convict the appellants, particularly under Section 304 (Part-II) I.P.C. read with Section 3(2)(v) of the SC/ST (POA) Act.

16. It has further been argued that since



most of the deceased persons hailed from the scheduled castes/tribes community, the Trial Court has very erroneously jumped to the conclusion that they were provided the intoxicant which was noxious and adulterated which killed them, thereby attracting the mischief of the provisions of the SC/ST (POA) Act.

17. This logic, the learned Advocates have argued, defies a proper appreciation of law and facts.

18. To succinctly but tersely put forth the prosecution case, we deem it appropriate to refer to the F.I.R. of Ara Nawada P.S. Case No. 353 of 2012, dated 07.12.2012, registered for the offences under Sections 409, 420, 120(B), 272, 273, 304 and 325 of the I.P.C. and Section 47(a) of the Excise Act. Section 3(2)(v) of the SC/ST (POA) Act was added *vide* order dated 10.07.2013.

19. The self-recorded statement of Sub-Inspector/Shiv Narayan Ram (P.W. 59), which is the basis of the F.I.R., is as follows :-



On 07.12.2012 at about 7 O'clock in the morning, he had received information that approximately three to four persons have died because of some mysterious disease in a locality inhabited by people of scheduled castes/tribes community. The information was entered in the Station Diary and the same was transmitted to the superior police officers. Thereafter, a team of police officers along with P.W. 59 reached the locality, where a huge crowd had congregated. On inquiry, it was found that Jitendra Ram, Dhanjee Sah, Harendra Mushar, Chandav Mushar, Manjhari Devi and Kunti Devi had died of vomiting and pain in their bodies. Further information was received by P.W. 59 that more persons have died after vomiting. The soil where deceased/Jitendra Ram had vomited was seized. Behind the house of the deceased/Chandav Mushar, five empty liquor bottles of 200 mls. each were found. At other places also, the relatives of the deceased informed the police party that the death had



taken place after vomiting. Few of deceased were beggars. The police party got split up and visited several places from where news had been pouring about mysterious deaths. Everywhere, the police party learnt from the villagers that the death was because of consumption of liquor which was sold in shops/distillery of appellants/Sanjay Singh and Rakesh Singh. The aforesaid place was located next to *Bihari Mill*. The police party also learnt that some unknown persons had purchased liquor from the shops and had sold it to unsuspecting consumers in a clandestine manner. Last night also, the police party was informed, a consignment of liquor was made available to the persons who died after consuming it. On such information, P.W. 59 along with the Excise Inspector and superior police officers went to the place where the liquor was stated to be brewed. The place was found closed. Appellants/Sanjay Singh and Rakesh Singh were found missing. During the course of raid, one Pappu Chaudhary also had been



named by the villagers from whose house, one hundred fifty pouches, each of 200 mls. liquor, were recovered, which was seized and he was arrested. The appellant/Manoj Yadav also was arrested. Behind his house, ten pouches of liquor were found concealed. The house of appellant/Mohan Sah was also raided from where forty five pouches of 200 mls. each liquor were recovered. All the arrested persons were brought to the police station.

20. The F.I.R. was registered against five of the accused persons initially, namely, appellants/Pappu Chaudhary, Manoj Yadav, Rakesh Kumar and Sanjay Singh and one Mohan Sah (the appeal of Mohan Sah has abated as he died during the pendency of the appeal).

21. It further appears from the records that during the course of investigation, it was learnt that approximately twenty one persons had died, whose names are not required to be listed here. This invited the gaze of the police towards a number of accused



persons involved in sale of spurious liquor not made accused in the subject FIR. The investigations revealed that ten more persons were involved in the crime.

22. After investigation, *charge-sheet* was submitted on 04.02.2013 against fifteen accused persons, out of whom fourteen are the appellants before this Court. Against all the appellants, charges were framed under Sections 272, 273, 304, 328, 420, 201, 120(B)/34 of the I.P.C.; Section 47(a) of the Excise Act and Section 3(2)(v) of the SC/ST (POA) Act. Appellant/Bhaskar Sinha @ Bhaskar Kumar Sinha was charged only under Section 47(a) of the Excise Act.

23. The Trial Court has examined sixty nine (69) witnesses on behalf of the prosecution for convicting and sentencing the appellants as aforesaid.

24. Out of the total of sixty nine prosecution witnesses, P.Ws. 5, 6, 8, 10, 11 to 17, 19, 21 to 35, 39 and 40 were declared hostile.

25. P.Ws. 18, 20, 36, 37, 38, 41 and 42



have disclosed nothing before the Trial Court to take their evidence into any account.

26. P.Ws. 44 and 45 are the Judicial Officers, who had recorded the statements of the witnesses under Section 164 Cr.P.C. and they have proved the same before the Trial Court.

27. Be it noted that most of the persons, whose statements were recorded under Section 164 Cr.P.C., have said before the Trial Court that they were forcibly made to sign on the document and had been brought to the Court without their volition for making their statements.

28. P.Ws. 51 to 58 are the Doctors, who conducted the *post-mortem* examination on the dead-bodies of the deceased persons. P.W. 59, as has been noted above, is the informant of this case, whereas P.Ws. 60 and 61 are the Investigating Officers.

29. One of the surviving victims, namely, Majetar Ram @ Majetar Paswan (P.W. 62) has stated



before the Trial Court that two of his associates, namely, Biraj and Dhanjee had informed him that liquor is being sold in the Homeopathic shop for Rs. 50/- He gave rupees fifty to them to get the liquor. All the three consumed it, whereafter Biraj and Dhanjee died and he become unconscious.

30. It would be relevant to refer to his (P.W. 62) deposition at this place only. Before the Trial Court, he stated that the occurrence took place about five years ago. The liquor normally used to be sold near *Bihari Mill*, but the shop had been closed for about three to four days. Biraj and Dhanjee, referred to above, had informed him about the place where the liquor was being sold. The liquor was obtained by his friends, who died after consuming it. He himself suffered blindness after consuming it. He has made a specific statement before the Trial Court that he was informed that the liquor was being sold in a Homeopathic shop located at *Bijli More*. He consumed liquor everyday. Nowhere has he but



stated that the appellants either sold liquor from their respective shops or made it available to the desirous consumers.

31. It would also be relevant to refer to the deposition of one Vinod Kumar Jha (P.W. 63), who at the relevant time was posted as Assistant Commissioner, Excise and had visited the place of occurrences along with the police team which was constituted by the Collector. He has stated before the Trial Court that during the raid, it was learnt that spurious liquor was distributed from a house which was reported to be of Sanjay Bahadur (one of the appellants). He has testified to the fact that appellant/Pappu Chaudhary and others were arrested, whose names had surfaced with the allegation of storage and sale of spurious liquor. However, he could not give any definite opinion about the fact whether licences were given to the appellants. He has also stated that he supported the police team in the investigation.



32. Parth Banarjee and Neeraj Kumar Varsane, the two senior Scientists of F.S.L., who have been examined as P.Ws. 64 and 65 respectively, have testified to the fact that in the *viscera* of the deceased, methyl and ethyl alcohol were found.

33. The learned Advocates for the appellants have urged that the evidence of P.Ws. 64 and 65 would only suggest that the deceased died of consuming liquor containing excess of ethyl and methyl alcohol and nothing beyond.

34. It would also be relevant to refer to the deposition of Kharoon Khatun (P.W. 66) and Chana Muni Devi (P.W. 67), who are hearsay witnesses. They have stated that their late husbands had purchased liquor from appellant/Pappu Chaudhary and one Mohan Sah.

35. Nilesh Kumar, S.P., Cyber Crime, Patna (P.W. 68) has stated before the Trial Court that he was provided with the CDRs. of five suspect telephone numbers and was asked to analyze the same. He



prepared the graphics and also furnished the certificate regarding his having prepared such graphics, which was handed-over to the I.O. of the case. He has also signed the certificate as required under Section 65-B of the Indian Evidence Act, 1872. The CDRs. of the telephone numbers belonging to the appellants merely reflected that some of them had talked amongst themselves at some point of time. The appellants hail from the same area and, thus the telephonic conversation between them would not indicate anything except that they are known to each other.

36. Raj Kumar (P.W. 69), at the relevant time, was the Sub-Inspector, Economic Offence Unit, Bhojpur. He has testified to the fact that the house of appellant/Sanjay Bahadur Singh was raided and that six empty pouches of 200 ml. each were found from the backyards of his house. The contents of none of the pouches so recovered were sent for any forensic examination for confirmation that it was adulterated or



that it contained ethyl or methyl alcohol in excess of the permitted portion.

37. Witnesses, namely, Deepak Kumar Mishra (P.W. 46), Raj Kumar Chaudhary (P.W. 47), Raju Kumar (P.W. 48), Ravish Kumar (P.W. 49) and Mukesh Kumar (P.W. 50) are all police officers, who had either participated in the raid or had joined the team later. All of them but have taken the names of the appellants about whom they had learnt from people belonging to the area that they were involved in sale and purchase of spirit.

38. All such information was hearsay.

39. It would also be profitable to refer to the deposition of two Investigating Officers of this case, namely, Vinod Kumar (P.W. 60) and Anugrah Narayan Singh (P.W. 61). P.W. 60 took up the investigation on 09.12.2012 from P.W. 61. He has proved the inquest reports of some known and unknown deceased persons, marked as Exhibit 8 to 8/6. He has also identified and



proved the inquest reports of other deceased persons. All that he had to tell the Trial Court was that because of consumption of liquor, twenty one persons had died. Similar is the nature of evidence offered by P.W. 61, who claims to have recorded the statements of the relatives of the deceased persons, who have taken the names of some of the appellants as having sold liquor to the deceased persons. He had recorded the confession of some of the accused persons. He has proved the recovery of liquor in small and large quantities from the constructive possession of some of the appellants about which reference has been made earlier. An attempt also was made by P.W. 61 to prove Exhibit 27, which is the quota of liquor against the licence of appellant/Sanjay Pratap Singh and one Anjani Kumar Singh for the year 2012 – 2013.

40. The Trial Court, as it appears from the judgment, made a list of the deceased persons and had found that the death of those persons took place



because of consumption of spurious liquor on the basis of the *post-mortem* report and the evidence of the Doctors who had conducted the *post-mortem*.

41. There could be no dispute about such finding that the death was caused because of consumption of spurious liquor containing more percentage of ethyl and methyl alcohol.

42. The places where the deceased persons were found dead were mechanically taken by the Trial Court to be the place of occurrence as if the offence had been committed at the place where the deceased were found lying dead.

43. With respect to the involvement of the appellants, the Trial Court has found that appellants/Rakesh Singh @ Prakash Kumar Singh and Sanjay Pratap Singh @ Sanjay Singh were the authorized dealers of liquor in the area. Exhibit 1/2 and 1/3 were proved, which are the seizure-list for the recovery made from the house of appellant/Sanjay



Pratap Singh. The exhibit list, according to the Trial Court, demonstrated that appellant/Rakesh Singh @ Prakash Kumar Singh was a licensee for the year 2012 – 2013 for Shop No. 18 and the Shop No. 16, which had a different licence number but for the same financial year. A partnership deed also was found to be proved between appellants/Rakesh Singh @ Prakash Kumar Singh and Sanjay Pratap Singh @ Sanjay Singh. On the basis of the afore-noted documentary evidence, the Trial Court found that appellants/Rakesh Singh @ Prakash Kumar Singh and Sanjay Pratap Singh @ Sanjay Singh were actually the shop owners in the area where the maximum death had occurred and also in *Bazar Samiti* where also some deaths had taken place.

44. The document offered by the appellants, namely, Exhibit E, a certificate issued by the Public Information Officer, was not accepted for the reason that it did not have any seal of the Government Department, making it unreliable.



45. It further appears that the Trial Court, on the basis of Call Detail Report (Exhibit 12), came to the conclusion that nine of the appellants, namely, Pappu Chaudhary, Manoj Surhi, Upendra Yadav, Sanoj Yadav, Rakesh Choudhary @ Bhandhi Choudhary @ Bhandi, Manoj Yadav @ Manoj Kumar Yadav, Rakesh Singh @ Prakash Kumar Singh, Sanjay Singh @ Sanjay Pratap Singh and Sanjay Bahadur had, sometime or the other, talked amongst themselves. Surprisingly, on this evidence, the Trial Court has come to the conclusion that such analysis of the CDR reflects the involvement of the appellants in the crime.

46. We fail to understand the logic behind such conclusion.

47. If the contents of the liquor bottles and pouches recovered from the houses of some of the appellants would have been sent for forensic examination, one could have understood about them having stored for sale intoxicant which had become



noxious because of adulteration. No effort has been made by the investigating team to have the liquor tested for immediately jumping to the conclusion that all the recovered pouches, firstly contained liquor and secondly, that the liquor was adulterated, spurious and not fit for consumption.

48. With respect to appellant/Bhaskar Sinha @ Bhaskar Kumar Sinha [*Cr. Appeal (DB) No. 1025 of 2018*], the evidence of P.W. 62 (Majetar Ram @ Majetar Paswan) was taken into account, who had made statement before the Trial Court for the first time that he had become blind after consuming liquor which was obtained from a shop at *Bijli More*. On the basis of the afore-noted deposition of P.W. 62, the Trial Court has come to the conclusion that appellant/Bhaskar Sinha along with his compounder appellant/Upendra Kumar were involved in sale and purchase of spirit, which was used for preparation of illicit liquor.

49. Again, the learned Advocate representing



appellant/Bhaskar Sinha @ Bhaskar Kumar Sinha laments that even if such witness is assumed to be truthful, the conclusion of the Trial Court is based on no material, whatsoever.

50. The link evidence of such spirit having been sold with the knowledge and purpose of being used in manufacturing illicit liquor is completely absent.

51. Thus, we find that there is no direct evidence against any one of the appellants, who have been hounded by the investigating agency for the reason of either their being erstwhile dealers of local liquor under licence or of having sold liquor under the garb of expired licences, clandestinely when on a particular day around twenty one persons died of consuming the same.

52. The evidence which has been taken into account for the Trial Court to convict the appellants under Section 304 (Part-II) of the I.P.C. read with Section 3(2)(v) of the SC/ST (POA) Act, does not commend to us in any manner whatsoever. There



appears to be a knee-jerk reaction of the local police and the superior police administration to find out the cause of twenty one deaths and in the process, the persons whose names were taken by the relatives of the deceased as suppliers, became the sitting ducks.

53. We fail to understand as to how on such evidence, the appellants could be convicted under any one of the sections of the I.P.C. read with the offence under the erstwhile Excise Act and SC/ST (POA) Act.

54. That the victims were members of the scheduled castes/tribes community, cannot be the sole reason for attracting the mischief of the special legislation regarding prevention of atrocities on scheduled castes and scheduled tribes. The liquor definitely would not have been sold to them thinking that by such transaction, members of the scheduled castes/tribes community would be harmed. Unless the link evidence is established, conviction would not be justified. We say so for the reason that (i) merely



because a large number of persons had died because of consumption of illicit liquor; (ii) that some the appellants were licensees of local liquor and (iii) that from the constructive possession of a few of the appellants, liquor bottles and pouches were recovered, the contents of which were never sent for any forensic examination, the appellants cannot be saddled with the guilt and the consequent sentence.

55. Perforce, we set aside the judgment of conviction and order of sentence dated 24.07.2018 and 28.07.2018 respectively passed by the learned 1<sup>st</sup> Addl. District and Sessions Judge, Bhojpur at Ara in SC/ST Case No. 36 of 2013, arising out of Ara Nawada P.S. Case No. 353 of 2012, and acquit the appellants, above-named, of the charges levelled against them.

56. All the appellants are on bail. Their liabilities under the bail-bonds are cancelled.

57. All these appeals stand allowed accordingly.



58. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for record and needful.

59. The record(s) of these appeals be returned to the Trial Court forthwith.

60. Interlocutory application/s, if any, in all the appeals, also stand disposed off accordingly.

**(Ashutosh Kumar, J)**

**(Vipul M. Pancholi, J)**

Praveen-II/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | 26.07.2023 |
| Uploading Date    | 07.10.2023 |
| Transmission Date | 07.10.2023 |

