

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.572 of 2019

In
CRIMINAL APPEAL (DB) No.45 of 2019

Arising Out of PS. Case No.-25 Year-2017 Thana- BUNIYAD GANJ District- Gaya

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Shailesh Choudhary Son Of Late Ramchandra Choudhary Resident Of
Village - Seikh Bigha, P.S.- Buniyadganj, Distt - Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vinay Mistry, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP
Amicus Curiae	:	Ms. Nazia Saba

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 29-10-2024

Heard the learned counsel for the appellant; Mr. Vinay Mistry, the learned Spl. PP for the State; Mr. Dilip Kumar Sinha and Ms. Nazia Saba; *amicus curiae*.

2. The present appeal has been filed against the judgment and order of conviction dated 14.12.2018 passed by the Additional District and Sessions Judge-Vth-cum-Special Judge, Excise, Gaya in Sessions Trial No. 321 of 2018 arising out of Buniyadganj P.S. Case No. 25 of 2017 whereby the appellant has been convicted under Section 30(a) of Bihar Prohibition and Excise Act, 2016, and he has been sentenced to undergo imprisonment for 10 years and Rs. 1 Lakh fine and in default of payment of fine, additional 2 years sentence is awarded.



3. The brief facts of the case is that the F.I.R. has been instituted on the basis of a self statement of one Gurfan Ahmad, A.S.I. Buniyadganj alleging therein that he received an information on 05.03.2017 at about 6 A.M. that one Shailesh Choudhary keeps illegal *Mahua* liquor in his house and the same is sold and on such information, the raiding team visited the place of occurrence and entered into the house in which a person namely Shailesh Choudhary was standing with white colour bag. The bag was searched, and two red colour bladders was found wherein 10 liters and 2 liter liquor was found in both the bladders. Subsequently, the seizure list was prepared in presence of the witnesses.

4. The learned counsel for the appellant has submitted that on the basis of the allegations mentioned in the F.I.R., the police started investigation into the matter and accordingly charge sheet was submitted under Section 30(a) of the Bihar Prohibition & Excise Act, 2016 and Section 272 & 273 of the Indian Penal Code against the appellant and accordingly cognizance was taken for the aforesaid offences. He further submits that the charges were framed under Section 30(a) of Bihar Prohibition and Excise Act, 2016 and the appellant pleaded his innocence at the time of



framing of charges and accordingly summon was issued to the witnesses of the prosecution.

5. It has further been submitted by the learned counsel for the appellant that six witnesses namely Gurfan Ahmad i.e. Informant (P.W.-1), Umesh Kumar (P.W-2), Ajay Kumar (P.W-3), Jattu Ram (P.W-4), Jai Paswan (P.W-5) and Kamlesh Kumar (P.W-6) were examined on behalf of the prosecution and the seizure list (Ext. 1), written application (Ext. 2), the signature of witness of the seizure list Jai Paswan (Ext. 3) and Ved Prakash (Ext. 3/A), Test Report (Ext. 4) were exhibited on behalf of the prosecution. Subsequently, evidence was closed on 29.11.2018 and the statement of the accused under Section 313 of the Cr.P.C. was taken on 04.12.2018. He further submits that the prosecution failed to prove the charges under Section 30(a) of the Bihar Prohibition & Excise Act against the accused. The statement of the information namely Gurfan Ahmad (P.W-1) during the course of trial has not been supported by the P.W-3 & 4 that liquor in question was seized in two plastic bag. P.W-1 has stated that the date of occurrence is 05.03.2017 whereas P.W.-3 & 4 have stated the date of occurrence as on 25.03.2017.

6. Learned APP for the State has vehemently opposed the application of the appellant.



7. I have heard and the considered the submissions of the parties.

8. The informant namely Gurfan Ahmad (P.W-1) has said that the alleged liquor was recovered from two red colour bladders whereas P.W-3 & 4 have said that the alleged liquor was recovered from two plastic bags. P.W-1 has given the date of occurrence as on 05.03.2017 whereas P.W-3 & 4 have said that the date of occurrence was 25.03.2017. There were two seizure list witnesses namely Ved Prakash Sharma and P.W-5 namely Jai Paswan(Chowkidar of the Police Station). Both were the members of the raiding team out of them Ved Prakash Sharma was not examined during the course of trial.

9. The test report (Ext. 4) has been approved by the P.W-6 and it does not have the seal and stamp of his office on the test report (Ext. 4).

10. From the evidence of the witnesses, it appears that some witnesses says that the recovered liquor was kept in two red bladders whereas some witnesses have said that the recovered liquor was kept in plastic bags. The most important evidence is as to whether the recovered liquor was alcohol or not, was to be proved by a test report. The Excise Department has reported that the recovered material was liquor but the report does not contain



the stamp and signature of the person who has done the testing. The test report cannot be relied upon in this case and, therefore, even if it is accepted that there was some seizure of alcoholic material, the prosecution has not been able to prove beyond reasonable doubt that the seized article was alcohol.

11. In these circumstance, the conviction of the appellant on the basis of a defective report cannot be sustained. The judgment and order of conviction dated 14.12.2018 passed by the Additional District and Sessions Judge-Vth-cum-Special Judge, Excise, Gaya in Sessions Trial No. 321 of 2018 arising out of Buniyadganj P.S. Case No. 25 of 2017 is hereby set aside.

12. Accordingly, this appeal is allowed and the appellant is acquitted.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	11.11.2024
Transmission Date	N/A

