

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1717 of 2019

Arising Out of PS. Case No.-44 Year-2017 Thana- NIRMALI District- Supaul

DOMI KAMAT Son of Late Siay Ram Kamat Resident of Village-
Ghoghardiha, P.S.- Ghoghardiha, District- Madhubani.

... .. Appellant/s

Versus

THE STATE OF BIHAR Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Gagan Deo Yadav
For the Respondent/s : Mrs.Abha Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 03-12-2024

Heard learned counsel for the appellant and learned
APP for the State Mrs. Abha Singh.

2. This appeal has been directed against the
judgment and order dated 27.03.2019 passed in S.Tr. (Excise)
No. 464 of 2017 (447/2017) by Additional Sessions Judge-II-
cum-Special Judge (Excise), Supaul in connection with Nirmali
P.S. Case No. 44 of 2017 by which the appellant has been held
guilty for the offence under Section 30(a) of the Bihar
Prohibition and Excise Act, 2016 (Amendment Act, 2018) and
convicted for five years imprisonment and Rupees One Lakh
cost and further under Section 37(a) of Bihar Prohibition and
Excise Act, 2016 (Amended Act 2018) and cost of Rs. 50,000/-
has been imposed and upon non payment of fine of Rs.



1,00,000/- and 50,000/-, the appellant will have to undergo further imprisonment for a period of six months and three months respectively.

3. As per the prosecution case, one Satyendra Prasad Singh gave a written report to the Nirmali Police Station alleging therein that when the police was on patrol duty, they saw two persons coming on a motorcycle. Upon seeing the police, the person sitting on the back seat of the motorcycle fled away and the police, on suspicion, caught the driver of the motorcycle. It has further been alleged that several villagers assembled on the place of occurrence and disclosed the name of the driver of the motorcycle as Domi Kamat (the appellant) and the person who fled away was Deepak Kumar. It has further been alleged that in the presence of two independent witnesses, the police apprehended Domi Kamat and the motorcycle was searched. Upon search of the motorcycle, four bottles of Nepali English Wine, each containing 180 ml. have been recovered from the bag and accordingly, the seizure list was prepared. It has also been alleged that smell of liquor was also coming from the mouth of Domi Kamat which has also been confirmed by the breath analyzer test.

4. On the basis of the written complaint, Nirmali



P.S. Case No. 44 of 2017 was registered and the charge-sheet bearing Charge-sheet No. 60 of 2017 was submitted and charges were framed under Section 30(a) and 379(a) of Bihar Prohibition and Excise Act.

5. During trial, four witnesses have been examined by the prosecution side and their names have been mentioned below:-

P.W. 1 (Suresh Prasad, ASI and I.O.)

P.W. 2 (Mukesh Kumar)

P.W.3 (Satyendra Prasad Singh, the informant)

P.W. 4 (Subhash Kumar Paswan), Police Constable.

6. Following is the list of documents exhibited by the prosecution side:-

Exhibit-1 (Signature of arrested persons on the Seizure list).

Exhibit-2 (Examination report of breath analyzer test).

Exhibit-3 (Signature on application).

Exhibit-3/1 (Signature of S.I. Saroj Kumar).

Exhibit-4 (Identify the signature).

Exhibit-5 (Examination report of the wine).

Exhibit-6 (Confessional Statement of Domi Kamat).



7. Learned APP for the State Mrs. Abha Singh has submitted that prosecution has proved the case beyond reasonable doubt and the impugned judgment is a reasoned judgment. She also submits that there is a recovery of illicit liquor from the possession of the appellant and the appellant was also found in a drunken condition. The test report has proved that seized material was liquor and in the breath analyzer test, it has also come that the appellant was found to have consumed liquor.

8. I have heard and considered the submission of the parties.

9. Though all the four prosecution witnesses have supported the seizure of the liquor but none of them have said a single word about taking out of the sample from the seized liquor and sealing of the seized liquor. PW-1 to 3 have said that seizure list was prepared but PW 4 says that seizure list was not prepared.

10. From the statement of the prosecution witnesses, it has come that the seizure is from a residential area and the independent seizure list witnesses have not come forward from the neighbouring areas to support the prosecution case. The seized liquor has not been produced in the Court and



the destruction report has also not been produced in the Court and in absence of both the material exhibits and the destruction report, it cannot be said that the test report pertains to the seized liquor.

11. From the statement of the witnesses, who are official witnesses, it appears that seized materials were not properly seized, samples were not drawn from the seized liquor and one of the witnesses has said that no seizure list was prepared in their present.

12. So far as consumption of the illicit liquor by the appellant is concerned, this Court in the case of ***Manju Devi vs. The State of Bihar & Ors. (CWJC No. 2590 of 2022)*** has held that breathe analyzer report is not a conclusive proof of consumption of liquor by a person. The Hon'ble Supreme Court in the case of ***Bachubhai Hassanalli Karyani Vs. State of Maharashtra reported in 1971(3) SCC 930*** has also held that the consumption of alcohol can only be ascertained by way of blood and urine test of a person suspected to have consumed alcohol.

13. The material exhibits have not been produced in the Court during trial and their destruction report has also not been produced in the trial. The production of the sample report



without the material exhibits and the destruction report cannot be relied upon by the prosecution.

14. In view of the above, I am of the view that prosecution has not been able to prove the prosecution case beyond the reasonable doubt.

15. Accordingly, this application is allowed and the judgment and order dated 27.03.2019 passed in S.Tr. (Excise) No. 464 of 2017 (447/2017) by Additional Sessions Judge-II-cum-Special Judge (Excise), Supaul in connection with Nirmali P.S. Case No. 44 of 2017 is hereby set aside.

16. The records of the case, if any, be returned to the Trial Court forthwith.

17. Interlocutory Application, if any, shall be treated to be disposed of.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

