

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4023 of 2024

Arising Out of PS. Case No.-69 Year-2021 Thana- BARHIYA District- Lakhisarai

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Gulshan Kumar, Son of Ram Subhag Singh, Resident of Village- Kanhaipur,
P.S.- Mokama, Distt.- Patna, at presently resided Sambhalgarh, P.S.-
Barahiya, Distt.- Lakhisarai. Appellant/s

Versus

The State of Bihar. Respondent/s

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Appearance :

For the Appellant/s	:	Dr. Anjani Pd. Singh, Advocate
		Mr. Sunny Kumar, Advocate
For the Respondent/s	:	Mr. Mukeshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 30-10-2024

Heard learned counsel appearing on behalf of

the parties.

2. At the outset, on the request of learned

counsel for the appellant, the matter is being taken up

for final hearing, which was not objected by learned

Additional Public Prosecutor for the State.

3. The present appeal preferred by the

appellant/convict Gulshan Kumar against judgment of

conviction dated 02.08.2024 and order of sentence

dated 03.08.2024 passed by the learned Additional

District & Sessions Judge IVth cum Exclusive Special

Excise Judge-1st, Lakhisarai, in Excise Case No.



327/2021 arising out of Barahiya P.S. Case No. 69/2021/69A/2021 whereby and whereunder the appellant/convict has been convicted for the offence under Section 30(a) of the Bihar Prohibition and Excise Act and sentenced him to undergo R.I. for eight years and fine of Rs. 5,00,000/- (Rupees five lacs only) and in default of payment of fine, he shall further undergo one year of simple imprisonment. Further convicted the appellant to undergo rigorous imprisonment for nine years and fine of Rs. 5,00,000/- (Rupees five lacs only) and in default of payment of fine, he shall further undergo one year of simple imprisonment.

4. The crux of prosecution, as it appears from the written information of the informant/PW-2 that on 06.03.2021 at 10:15 PM he got a secret information that one truck was parked between the Gulshan line hotel and poultry farm of Deepak Singh and found unloading prohibited liquor, upon that information, he informed the S.P., Lakhisarai and on instruction, he



constituted raiding party and proceeded from police station, at about 10:25 PM. He reached the place of occurrence and saw one 10 wheeler truck and 2-3 persons, who on seeing the police party, have started fleeing away, on chase one person apprehended and two persons have succeed to fleeing away, taking benefit of darkness. On interrogation, apprehended person disclosed his name as Sintu kumar and, thereafter, upon searching the truck, bearing Registration No-BR24G0765 in presence of witnesses, found with hundred cartoon of Macdowel company foreign liquor, each bottle containing 375 ml liquor and 64 cartoon containing 180 ml each bottle and 17 bottle of 180 ml was recovered which was total of 1456.02 liters foreign liquor. Upon query Sintu kumar disclosed that the appellant has bring him for Rs. 500/- for unloading the liquor but on seeing the police party, unknown persons fled away thereafter, prepared a seizure list and took signature of accused and witnesses, whereafter one copy



of seizure list handed over to apprehended person. Thereafter police lodged the F.I.R against Sintu Kumar and Gulshan kumar and seized the truck bearing registration No- BR24G0765.

5. To established its case before the learned trial court, the prosecution altogether examined total of four witnesses, namely, **PW-1** Ranjan Kumar, **PW-2** Dharendra Kumar Pandey, **PW-3** Satyendra Kumar Singh and **PW-4** Manoj Kumar.

6. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit-1 -Signature of officer-in-charge on seizure list.

Exhibit-2-Signature of Officer-in-charge on self written report.

Exhibit-3-Signature on FIR of Officer-in-charge.

Exhibit-4- Scientific report.

7. I have perused the trial court records carefully and gone through the evidences available on



record and also considered the rival submissions as canvassed by the learned counsel appearing on behalf of the parties.

8. As to re-appreciate the evidence, while disposing the present appeal, it appears apposite to discuss the evidences available on record, which are as under:-

9. It appears from the deposition of almost all prosecution witnesses and also from the testimony of PW-4, who is Investigating Officer of this case that the alleged illicit liquor was recovered from a truck bearing Registration No. BR24G0765, from where liquors was found unloading. The aforesaid illicit liquor was deposed to be unloaded by one Sintu Kumar, who started to run away after seeing the police force but arrested. In said unloading work, two other labours were also involved, who fled away taking benefit of darkness. Sintu Kumar upon his arrest, confessed that the illicit liquor was booked by the appellant, namely, Gulshan Kumar and he



was only unloading the same as per his instruction against payment of Rs. 500/-. Save and except, aforesaid confessional statement of co-accused Sintu Kumar, nothing appears incriminating against appellant out of the testimony of prosecution witnesses including informant/PW-1. Appellant appears to be the owner of Gulshan Line Hotel from where at a distance of 200-300 meters alleged truck was found unloading in open place. Truck/vehicle in issue also not appears connected in any manner with appellant.

10. With aforesaid evidence, the finding of the learned trial court as recovery was made from the physical possession of the appellant while recording the impugned judgment of conviction, not appears justified.

11. Hence, appeal stands allowed.

12. The impugned judgment of conviction and order of sentence dated 02.08.2024 and order of sentence dated 03.08.2024 passed by the learned Additional District & Sessions Judge IVth cum Exclusive



Special Excise Judge-1st, Lakhisarai, in Excise Case No. 327/2021 arising out of Barahiya P.S. Case No. 69/2021/69A/2021 is hereby quashed and set aside. Appellant/accused is acquitted of the charges levelled against him.

13. Appellant namely, Gulshan Kumar is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case.

14. Fine, if any, paid be returned to the appellant immediately.

15. Office is directed to send back the trial court records along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.11.2024
Transmission Date	14.11.2024

