

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3891 of 2019

Arising Out of PS. Case No.-79 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Saharsa

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PARO SADA S/o Late Balo Sada Resident of Ranginia, Mushahari Tola, P.S.-
Bakhtiarpur, District- Saharsa

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sada Nand Roy

For the Respondent/s : Mr.Sujit Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 22-10-2024 Heard learned counsel for the appellant and learned
Special P.P. for the State.

2. The present appeal has been preferred against the judgment and order of conviction and sentence dated 30.07.2019 passed by the learned Special Judge, Excise, Saharsa in Special (Excise) Case No. 79/17, by which the trial court was pleased to convict the appellant for the offence punishable under section 37(b) of Bihar Prohibition and Excise Act, 2016 and sentenced to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) and in default of payment of fine, the convict-appellant shall undergo simple imprisonment of three months. The period of detention already undergone by him shall be set off in terms of provisions of section 428 of Cr.P.C.

3. The prosecution case, in nut-shell is that on 21.04.2017, the appellant Paro Sada was found in a drunken



state by a team of Excise Department at around 6.41 P.M. at Ranginia Chowk, Bakhtiarpur, Saharsa. The appellant was subjected to breath analysis test with the aid of breath analyzer machine. As per the test, 76.0 mg/100ml. of alcohol was detected in the breath of the accused-appellant. The appellant was arrested and on next day i.e. on 22.04.2017, he was remanded to the judicial custody. On the basis of the aforesaid statement, a prosecution report dated 22.04.2017 was submitted by the Department against the accused-appellant and on that basis, cognizance was taken on 01.05.2017 and charge was framed against the appellant under Section 37(b) of the Bihar Prohibition and Excise Act, 2016.

4. Learned counsel for the appellant has relied upon a judgment of this Court in the case of ***Manju Devi vs. The State of Bihar & Ors. (CWJC No. 2590 of 2022)*** and has submitted that breathe analyzer report is not a conclusive proof of consuming liquor by a person. The appellant has also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Bachubhai Hassanalli Karyani Vs. State of Maharashtra*** reported in ***1971(3) SCC 930*** and has submitted that the consumption of alcohol can only be ascertained by way of blood and urine test of a person suspected to have consumed alcohol.



5. Learned counsel for the appellant submits that in the present case, the blood and urine samples of the appellant was never taken and therefore, the appellant cannot be convicted and sentenced only on the basis of the breath analyzer report.

6. Learned Special P.P. appearing on behalf of the State has opposed the application of the appellant.

7. I have considered the submission of the parties.

8. From the facts of the case, it is clear that the appellant has been held to have committed the offence only on the basis of a breathe analyzer test. The standard proof in a criminal trial is strict and the charges must be proved beyond all the reasonable doubts. The blood sample of the appellant was not taken and there is no conclusive proof that the appellant has been found to be consuming illicit liquor.

9. A Three-Judge Bench of the Hon'ble Supreme Court in ***Bachubhai Hassanalli Karyani*** (*supra*) had considered the question whether charge of rash and negligent driver after consuming alcohol was proved or not. The Hon'ble Supreme Court therein had held that no conclusion with regard to consumption of alcohol by a person can be made on the fact that the appellants breath smells of alcohol, that is gait was unsteady, that his speech was incoherent and that his pupils were dilated.



Consumption of alcohol can only be conclusively be ascertained by way of blood and urine test of the person suspected to have consumed alcohol. The Hon'ble Supreme Court also noticed in the case of *Bachubhai Hassanalli Karyani (supra)* that the doctor had admitted that the person could smell of alcohol even without being under the influence of alcohol.

10. In these circumstances, the conviction of the appellant cannot be held to be legal. Once it is held that the appellant was not found to have consumed illicit liquor, then the conviction and sentence of the appellant cannot be sustained.

11. Accordingly, this appeal is allowed and the judgment and order of conviction and sentence dated 30.07.2019 passed by the learned Special Judge, Excise, Saharsa in Special (Excise) Case No. 79/17 is hereby set aside.

(Sandeep Kumar, J)

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