

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4233 of 2019

Arising Out of PS. Case No.-74 Year-2010 Thana- SONBERSHA RAJ District- Saharsa

1. Amarjeet Kumar Singh Son of Bhupendra Narayan Singh Resident of Village - Biratpur, P.S.- Sonbarsa Raj, Dist.- Saharsa.
2. Ashish Kumar Singh Son of Shyamal Kishore Singh @ Shyamal Kishor Singh Resident of Village - Biratpur, P.S.- Sonbarsa Raj, Dist.- Saharsa.
3. Birju Sharma Son of Uttam Sharma Resident of Village - Bherdhari, P.S.- Saharsa, Dist.- Saharsa.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Krishna Prasad Singh, Sr. Advocate Mr. Bhaskar Shankar, Advocate
For the State	:	Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 13-11-2024 Heard learned counsel for the appellants and learned APP for the State.

2. The present appeal has been preferred against the judgment and order dated 31.08.2019 passed by learned Spl. Judge (Excise), Saharsa in Cr. Misc. No. 25/2018 arising out of Sonbarsa Raj P.S. Case No. 74/2010, whereby and whereunder the appellants have been convicted for the offences punishable under Section 47 (a) of the Bihar Excise Act, 1915 and accordingly they were sentenced to undergo simple



imprisonment for 3 months and each of them shall also pay fine of Rs. 1000/-. In default of payment of fine, they shall further undergo S.I. for 15 days.

3. The prosecution case, as per F.I.R., is that on 16.08.2010, S.I. Rahmat Ali alongwith ASI Rajesh Kumar Ranjan and SAP force proceeded from police station at 00:30 O'clock in the night for conducting raid and for arresting absconding criminals. During the course of Patrolling they reached near Manori Chowk when S.I. Rahmat Ali got information that illicit liquor was being transported in a white colour pick-up van which was coming from Sahpur. Accordingly, they proceeded towards Sahpur. After passing some distance, they saw a white colour pick-up van taking turn with a high speed towards PCC road of Village-Soha. On suspicion they gave signal to stop the vehicle. However, the driver of the van saw the Police force and he drove the vehicle to some distance and thereafter suddenly stopped the vehicle. The driver of the vehicle alongwith another person who were also sitting in the vehicle started fleeing away in south direction towards Bansbitti. Police force chased them and apprehended one of them. The person who was apprehended disclosed his name as Amarjeet Kumar Singh. He further disclosed the name



of the person who successfully fled away as Birju Sharma and that Birju Sharma was the driver of the pick-up van. He also disclosed that the pick-up van was loaded with liquor and was being transported to the house of one Ashish Kumar Singh, who sells liquor from his house. Thereafter, in presence of two independent witnesses, Police team searched Bolero pick-up van bearing no. BR-19C-1994 and upon search total 4500 pouches of country made liquor, each pouch of 400 ml, 48 bottles of OLD Traven Whisky each of 180 ml and 72 bottles of Haywards 5000 Beer each of 650 ml were recovered. Amarjeet Kumar Singh did not show any valid permit to transport the liquor. Accordingly, the recovered liquor and the vehicle Bolero pick-up were accordingly seized. The accused Amarjeet Kumar Singh was arrested and later on sent to judicial custody.

4. Thereafter an F.I.R. bearing no. 74/10 dated 16.08.2010 was registered under Section 47 (a) of the Bihar Excise Act, 1915 and Section 273 of I.P.C., against Amarjeet Kumar Singh, driver of the vehicle, Birju Sharma and owner of the vehicle Ashish Kumar Singh. After investigation, police submitted charge sheet and supplementary chargesheet under Section 47 (a) of the Bihar Excise Act, 1915 and Section 273 of the Indian Penal Code against accused persons. Cognizance was



taken under Section 47 (a) of the Bihar Excise Act, 1915 and Section 273 of the Indian Penal Code and on 19.03.2013 charge was framed by Judicial Magistrate under Section 47 (a) of the Bihar Excise Act, 1915 and Section 273 of the Indian Penal Code. The accused pleaded not guilty and claimed to be tried.

5. The prosecution examined only one witness to prove the guilt of the accused persons. The accused persons were examined under Section 313 of the Cr.P.C. on 01.08.2019 wherein the accused persons simply claimed their innocence.

6. Learned APP for the State has supported the prosecution case, conviction and sentence to the appellants.

7. I have considered the submission of the parties. In this case, only one witness has been examined who is P.W.-1. Rajesh Kumar Ranjan who was a member of raiding team and as per him, the appellant no. 1 Amarjeet Kumar Singh was apprehended along with the seized liquor in the Bolero pick-up van. Amarjeet Kumar named the appellant no. 2 as the person to whom the illicit liquor was to be delivered and the named appellant no. 3, Birju Sharma as the driver of the vehicle.

8. In his evidence, seizure list has been marked as Exhibit-1, self-statement has been marked as Exhibit-2, formal FIR has been marked as Exhibit-3. Though it has been



mentioned in the impugned judgment that the report of the seized foreign liquor was marked as Exhibit-4 but this is not a fact. The test report has not been marked as Exhibit during trial. The appellants have been convicted only on the basis of the evidence of P.W.-1. The witnesses of the seizure list have not deposed. The test report has not been exhibited. The I.O. of the case has not deposed. The appellant no. 1 was caught on the spot that too not with a vehicle but while he was fleeing away and there is no evidence to connect him with the alleged recovery except the statement of P.W.-1. Appellant no. 2 and appellant no. 3, who were not caught on the spot, have been made accused only on the basis of confessional statement of appellant no. 1. The non examination of the I.O. of the case and the seizure list witnesses are fatal to the prosecution case. Moreover, the test report has also not been produced or marked as Exhibit.

9. In view of the above, I am of the view that the prosecution has miserably failed to prove the charges beyond all reasonable doubt levelled against the appellants.

10. Accordingly, the judgment and order dated 31.08.2019 passed by the learned Special Judge (Excise), Saharsa in Cr. Misc. No. 25 of 2018 arising out of Sonbarsa Raj



P.S. Case No. 74 of 2010 is hereby set aside and the appellants
are acquitted of all the charges levelled against them.

11. This appeal is allowed.

(Sandeep Kumar, J)

P. Kumar/ Saif

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