

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.453 of 2019**

Arising Out of PS. Case No.-96 Year-2017 Thana- NAUTAN District- West Champaran

1. Lalan Yadav And Anr Son Of Bharat Yadav Residents Of Village- Saraiya, Khaira Tola, P.S.- Pahadpur, District- East Champaran.
2. Hari Yadav Son Of Ganesh Yadav Resident Of Village- Saraiya, Khaira Tola, P.S.- Pahadpur, District- East Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Umesh Chandra Verma, Advocate Mr. Hemant Ray, Advocate
For the Respondent/s	:	Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 18-02-2025 Heard the learned counsel for the appellants and the learned APP for the State.

2. This Criminal Appeal is being filed for setting aside the judgment of conviction and order of sentence dated 28.11.2018 passed by the learned Special Judge, Excise, West Champaran, Bettiah in Trial No. 537 of 2017 arising out of Nautan P.S. Case No. 96 of 2017 holding the appellants guilty under Sections 30(a) of the Bihar Prohibition and Excise Act and in the result each of them has been convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/- under the said section and in case of non-payment of fine, they were ordered to further undergo rigorous



imprisonment for six months.

3. The brief facts of the case are that on 24.03.2017, at about 6.20 AM., the informant Kundan Kumar Singh, S.H.O., Nautan P.S., District West Champaran recorded his self statement alleging therein that on 24.03.2017 at about 5.30 AM, near Lalbegiya Bridge on Telhua Pokhara Road, while the informant along with members of police force were coming back from night patrolling duty, they saw two persons riding on a motorcycle coming from the opposite direction with a bag, and when they signalled them to stop, the accused persons tried to escape but they were apprehended with the help of police force.

4. In presence of two witnesses, namely, Naresh Ram and Shambhu Paswan, on search 28 plastic bottles each containing 300 ml. of Udaypur Saufy Nepali country made liquor, totaling to 8.4 liters, were recovered. The accused could not produce any valid paper for justifying the contraband and they also could not produce valid papers for the bike bearing registration no. BR-22-H-7402. On query, they disclosed their names as the appellants Hari Yadav and Lalan Yadav. The contraband and motorcycle were seized and seizure-list was prepared in accordance with law.



5. On the basis of the aforesaid, Nautan P. S. Case No. 96 of 2017 dated 24.03.2017 under section 414 IPC and 30 (a)/36 of the Bihar Prohibition and Excise Act, 2016 was registered, and charge-sheet was submitted under the same sections, and on 07.06.2017, cognizance of the said offences was taken. Thereafter, on 07.08.2017, charges were framed under sections 30 (a) and 36 of the Bihar Prohibition and Excise Act and after closing prosecution evidence on 09.04.2018, statement of accused under section 313 Cr. P. C was recorded on 13.04.2018, and on 14.09.2018, defence evidence was closed.

6. It has been submitted by the learned counsel for the appellants that prosecution in order to prove its case, examined the following witnesses:-

- P. W. I- Havaldar Girijanandan Pd. Singh — Member of Raiding Party.
- P.W. 2- Constable Shailendra Pd. Singh — Member of Raiding Party.
- P.W. 3- Constable Ram Kumar-Member of Raiding Party.
- P.W. 4 - Kundan Kumar Singh-S.H.O., Nautan P. S. (informant).
- P.W. 5 A.S.I. Kailash Yadav--Member of Raiding Party.
- P. W.-6 S.I. Fani Bhushan Singh- Investigating Officer.

7. He further submits that the following documents were marked exhibits on behalf of the prosecution:-



- *Exhibit-1 & 2 – Seizure-List & Statement.*
- *Exhibit-3 – FSL Report.*
- *Material Exhibit- 1 to 1/24.*

8. It has further been submitted by the learned counsel for the appellants that the defence has not adduced any oral or documentary evidence. The defense-version, as gathered from the trend of cross-examination and suggestions made to the witnesses during cross-examination and his statement recorded under section 313 Cr.P.C. is complete denial of the alleged recovery and the appellants are quite innocent.

9. The learned counsel for the appellants further submits that except members of the raiding party, no other witnesses have been examined on behalf of the prosecution, and even those witnesses have given contradictory evidence regarding recovery of contraband, casting doubt on the very search, recovery and seizure, which is the basis of the prosecution case. The witnesses are the members of raiding party and not even a single independent witness has been examined to substantiate the allegation and test the veracity of the prosecution case, and thus, neither seizure-list witnesses nor independent witnesses have been examined on behalf of the prosecution, whereas all the four witnesses of excise department have deposed that many independent witnesses and villagers were present at the time of search, recovery and seizure.



10. The learned counsel for the appellants further submits that all the prosecution-witnesses being the members of raiding team, appear to have done everything to win easy laurels for themselves, and thus, the whole investigation appears to be tainted. According to the FIR, 28 plastic bottles each containing 300 ml. of Nepali Saufy country made liquor were recovered, whereas the witnesses deposed that only 25 bottles were recovered. He further submits that full report detailing arrest should have been made available to the Immediate Superior Officer, but it has not been done.

11. Learned APP for the State has opposed the prayer of the appellants and has supported the impugned judgment and order.

12. Though the seizure-list was made and two independent witnesses had signed the seizure-list at the time of seizure but the prosecution has not examined them during trial. From the evidence of the witnesses who all are the members of the raiding team have arrested both the appellants. It appears that the seizure was made on the spot and the documents were also prepared on the spot. None of the witnesses have said anything about sealing of the seized Nepali liquor. They have also not said anything about taking out of the sample of the



liquor. The IO of the case, P.W-5 has also not said anything about sealing and taking away of the sample from the seized liquor. He has said that the sample report was received but the sample which was sent, was not received. The IO has said that the seizure-list witnesses were shown the seized articles and were told that they were seized from the appellants which means that the liquor was not seized in presence of the independent witnesses who were not examined.

13. From the above discussions it appears that seizure was not made before the independent witnesses. The seizure-list witnesses have not been examined. There is no evidence with regard to the fact that the seized liquor was sealed and sample was taken out and sealed properly.

14. The prosecution has miserably failed to prove the seizure from the appellants and reading of the sample and therefore the impugned judgment cannot be sustained.

15. In view of the discussions made above, the appeal stand allowed and the appellants are acquitted of all charges levelled against them.

16. Accordingly, the judgment of conviction dated 28.11.2018 and order of sentence dated 28.11.2018 passed by the learned Special Judge, Excise, West Champaran, Bettiah in



Trial No. 537 of 2017 arising out of Nautan P.S. Case No. 96 of 2017 is hereby set aside.

17. Since the appellants are on bail, they are discharged from the liabilities of their respective bail bonds.

18. Let the LCR be returned to the concerned Court below forthwith.

19. Interlocutory application/s, if any, also stand disposed off accordingly

(Sandeep Kumar, J)

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