IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3120 of 2025
Arising Out of PS. Case No.-64 Year-2016 Thana- KISHANPUR District- Supaul

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1. Rahul Kumar S/o Parmeshwar Chaudhary R/o Village- Nirmali, P.S.- Nirmali, District- Supaul
2. Kundan Kumar Paswan S/o Late Satan Paswan R/o Village- Pathara, Ward No. 06, P.S.- Pipra, District- Supaul

... ... Appellants

Versus

The State of Bihar

... ... Respondent

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Appearance :

For the Appellant/s : Mr.Murari Narain Chaudhary, Adv.
Mr.Vijay Kumar, Adv.
Mr.Aniket Kumar, Adv.
Mr.Brahmanand Kumar, Adv.

For the State : Mr.Mukeshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
Date : 31-10-2025

This appeal is directed against the judgment of conviction and order of sentence dated 30.06.2025 passed by Exclusive Special Excise Court No. 01, Supaul in S.T. Excise Case No. 586 of 2017 arising out of Kishanpur P.S. Case No. 64 of 2016, whereby and whereunder appellants have been convicted for the offence under Section 47(a) of the Bihar Excise Act, 1915 and has been sentenced to undergo rigorous imprisonment for 3 years alongwith fine of Rs. 5,000/- for the said offence. In default of payment of fine, appellants have been further sentenced to undergo simple imprisonment for 3 months. The period undergone by the convicts in jail custody has been directed to be set off from the period of custody.

2. As per prosecution case, the informant, who is

S.H.O. Kishnapur police station, recorded his self statement on 29.03.2016 that he proceeded on night patrolling at 10.30 P.M. alongwith other police officials. During patrolling, at around 02.00 A.M. he received secret information that huge quantity of illegal country made liquor was to cross through Singhiyawan Bazar. He alongwith police force reached at Singhiyawan Chowk at 02.15 A.M. It is alleged that at 2.30 A.M. a black coloured Bajaj Tempo bearing registration no. BR 50A 2705 was coming and when same was asked to stop, the driver of the vehicle attempted to escape but he was caught. On search, country made liquor was recovered and on interrogation the driver revealed his name as Kundan Kumar Paswan (appellant no. 2) and he disclosed that said liquor was of Manish Chaudhary and Hriday Chaudhary who are collecting country made liquor for the occasion of Panchayat election. It is alleged that 240 liters country made liquor was seized from the said vehicle. It is further alleged that at 3.00 A.M. a red coloured Tata Magic Paggio vehicle bearing registration no. BR 50C 3687 which was coming from southern direction was stopped by the police force. On search, 960 liter country made liquor was recovered and the driver of the vehicle was apprehended who disclosed his name as Rahul Kumar (appellant no. 1) and he also disclosed that said liquor was of Manish Chaudhary and Hriday Chaudhary.

3. On the basis of statement recorded by S.I. Chandan Kumar, S.H.O., Kishanpur P.S. Case No. 64 of 2016 was registered on 29.03.2016 under Section 47(a) of the Bihar Excise Act. Statement of witnesses came to be recorded and on completion of investigation, charge sheet has been submitted against the appellants under Section 47(a) of the Bihar Excise Act. Thereafter charges have been framed against the appellants under Section 47(a) of the Bihar Excise Act. Charges were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.

4. In order to bring home guilt of accused persons, prosecution has examined altogether five witnesses. PW-1 Md. Nehal Khan, PW-2 Shashikant Singh, PW-3 Sushil Paswan, PW-4 Injmamul Haque and PW-5 Vinod Kumar Sah.

5. Apart from oral evidence, prosecution has produced the following documents :

Ext. 1	*Formal F.I.R.*
Ext-P2/PW4	*Written Application*
Ext-P3/PW4 &Ext P3/1/PW4	*Seizure Lists*
Ext P3/2/PW5 &Ext P3/3/PW5	*Signature of witness Vinod Kumar Sah on Seizure lists*
Ext.-4	*Liquor Test Report*

6. The defence has not produced any witness in its defence. It has, however, proved the following documents :

Ext. A	*No objection certification of BSBCL, Supaul*
Ext. A/1	*No objection certificate of BSBCL, Supaul*
Ext. B	*Copy of last pass/permit register*
Ext. B/1	*Copy of last pass/ permit register*

7. After hearing the parties, the learned trial court was pleased to convict the appellants and to sentence them as indicated in the opening paragraph of the judgment.

8. Heard Mr. Murari Narain Chaudhary, learned counsel for the appellants at sufficient length of time. Following submissions have been made by the learned counsel for the appellants :-

9. Learned counsel has submitted that the impugned judgment of conviction and order of sentence has been passed without considering the evidence available on the record and the same is fit to be set aside. He further submitted that none of the prosecution witness has supported the case of prosecution as alleged in the first information report. It is further submitted that out of the two seizure list witnesses, one witness has not been examined. The seizure list witness, who

has been examined, has not supported the materials which were seized on the place of occurrence. In this way, the crux of the case has not been proved by the prosecution. The test report produced by the prosecution suffers from infirmities when P.W. 3 who is Investigating Officer of the case has already admitted that the said seized items were not sent for examination and he has not taken any effort for examining the seized items. In this way, very authenticity of the seized items is put on question mark. The seizure report does not reveal the quantity of material seized at the particular place of occurrence. The seizure list witnesses have not supported with regard to materials seized at the place of occurrence. In the light of the aforesaid fact, the seizure report is without having any authenticity and it has not evidentiary value in the eye of law.

9(i). Learned counsel has submitted that informant has not been examined in this case and the person i.e. P.W. 4, who has been examined to prove the signature of informant, has stated that he was not present at the place of occurrence. None of the witnesses has pointed out the vehicle number of the vehicles which were seized at the place of occurrence and they have not supported the allegations as made in the prosecution story. All the prosecution witnesses were the police official and none of the independent witness has supported the case of prosecution. It is further submitted that Vinod Kumar Shah, who is the seizure list witness and has examined as P.W. 5, has admitted that he had gone to police station for his personal work and at the request of S.H.O. he put his signature on blank paper. In this way, the story of prosecution has not been supported and corroborated by any of the witnesses.

10. Learned A.P.P. vehemently opposes and submits that the concerned court has passed the judgment of conviction and order of sentence on the basis of material available on record. Learned counsel submits that all the prosecution witnesses i.e. P.W. 1, P.W. 2 and P.W. 3 have supported the case of prosecution during examination-in-chief. Learned counsel submits that test report clearly indicates that the seized item was prohibited under the Bihar Excise Act. In this regard, prosecution has fully supported the case beyond reasonable doubt and the judgment of conviction and order of sentence passed by the concerned court is justified and legal.

11. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf

of the parties as noted above.

12. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

13. P.W.1/ Md. Nehal Khan has stated in his examination-in-chief that occurrence took place on 29.03.2016. He has stated that a tempo was stopped by police and during course of search 30 cartoons containing country made liquor were recovered. During course of seizing liquor, another tempo came which was stopped by the police and on search 120 cartoons, each cartoon containing 20 bottles liquor were recovered. The drivers of both the vehicles i.e. Kundan Kumar (appellant no. 2) & Rahul Kumar (appellant no. 1) were apprehended and they stated that Manish Chaudhary and Hriday Chaudhary were owners of the seized liquor. During cross-examination, PW-1 stated that he could not tell the boundaries of the place of occurrence. He further stated that he could not point out the registration number of the vehicles.

14. From perusal of the evidence of P.W. 1, several infirmities have been found which is quite inconsistent with the story of prosecution. In the FIR, the description of vehicle is fully explained and the quantity of liquor recovered

from a particular vehicle has been described which is quite evident from the FIR but during examination-in-chief, PW-1 has not pointed out how much quantity of illicit liquor was recovered from particular vehicle which is quite inconsistent with the story of prosecution. P.W.1 has only stated that there were two vehicles. He has not pointed out the registration number of the vehicles from which the alleged cartoons were recovered. He has only stated that 30 cartoons and 120 cartoons were recovered containing country made liquor. He has not described what is alleged in the first information report. He has also not pointed out the names of independent witnesses who put signature on the seizure list, though, he is member of raiding party.

15. In the light of aforesaid facts and circumstances of the case, from perusal of the F.I.R. it is evident that PW-1 is member of the raiding party but he has not pointed out description of boundary of place of occurrence as well as manner of occurrence. The evidence of P.W. 1 is quite inconsistent with the story of first information report. In this way, the evidence of P.W. 1 does not inspire confidence and same is not reliable.

16. P.W-2/ Shashikant Singh is the Investigating

Officer of the case. He has stated in that he inspected the place of occurrence. He has further stated that he received the liquor test report and he submitted charge sheet against the appellants. During cross-examination, he has stated that he has not received any training for testing liquor. He has stated that he did not test the seized liquor, nor did he make an effort to get the seized item tested. He has specifically stated that statements of all the witnesses were recorded at the police station. During cross-examination, PW-2 is claiming the seized items to be a prohibited items under the Bihar Excise Act on mere assumption.

17. From perusal of the evidence of PW-2/I.O., it is crystal clear that investigation conducted by the I.O. suffers from infirmities as he has not recorded the statement of witnesses at the place of occurrence rather he recorded the statement of witnesses at Thana. He has neither tested the seized items nor has he made an effort to get the seized items tested. PW-2 is claiming that seized items are prohibited under Bihar Excise Act on the basis of mere assumption. In this way, the evidence of P.W. 2 does not inspire confidence and same is not convincing.

18. P.W.3/ Sushil Paswan was posted as

Chaukidar in the Kishanpur police station. He is claiming to be present at the place of occurrence. He has pointed out that 30 cartoons and 120 cartoons of liquor were seized. During cross-examination, he has pointed out that he does not know the number of the tempo. He has not pointed out the boundary of place of occurrence and colour of the tempo. He has also not pointed out actual quantity of seized liquor, which is quite evident from initial version of prosecution story. In this way, evidence of P.W. 3 does not inspire confidence and such evidence cannot be trustworthy.

19. P.W. 4/ Injmamul Haque is a formal witness, who identified the signature of the informant. He has admitted that nothing was recovered before him.

20. P.W.5/ Vinod Kumar Sah is one of the independent witness and witness of seizure list. He has not supported the case of prosecution as he has stated that he has put signature on blank paper. He has stated that nothing was recovered before him.

21. From perusal of initial version of prosecution story, it is evident that 240 litre country made liquor was recovered from Bajaj Tempo bearing Registration No. BR 50A 2705 and 960 litre country made liquor was

recovered from Tata Magic Paggio vehicle bearing Registration No. BR 50C 3687 and appellants were apprehended on the spot. The prosecution has produced five witnesses and out of five witnesses, PW-5 is an independent witness and witness of seizure list but he has not supported the case of the prosecution. In the present case, seizure list is the gist of the case. Seizure list clearly indicates that 240 litre country made liquor was recovered from Bajaj Tempo bearing Registration No. BR 50A 2705 and 960 litre country made liquor was recovered from Tata Magic Paggio vehicle bearing Registration No. BR 50C 3687 and out of two seizure list witnesses, Vinod Kumar Sah has been examined as PW-5. The very crux of the prosecution story is based upon the seized items at the place of occurrence. One of the seizure list witnesses has not been examined and another seizure list witness, who has been examined as PW-5, has not supported the case of the prosecution. In this way, crux of the prosecution story has not been proved and prosecution has failed to prove the case beyond reasonable doubt on the said ground. It is very interesting to point out that Investigating Officer/ PW-2 has admitted that seized items were not tested and he did not make an effort to get the seized items tested. The question arises how the prosecution story would be proved, if the seized items were not tested. PW-2 has also admitted that he has not got the training for testing the alcohol. PW-2 has also admitted that statement of all the witnesses were recorded at Thana which means that statement of witnesses were not recorded at the place of occurrence. In this way, evidence of Investigating Officer/PW-2 suffers from infirmities and he makes the whole prosecution story doubtful. Apart from that, the evidence of all the witnesses, who have been examined, are totally inconsistent with the story of prosecution regarding the registration number of the vehicles, which have been seized and the quantity of recovery from the respective vehicles. PWs-1, 3, 4 and 5 have not pointed out the description of boundary of the place of occurrence as well as actual quantity of liquor seized from a particular vehicle. There is no description regarding sampling of the seized articles and even there is no description as to whether any sampling was done or not. There is no description as to how much quantity was sent for examination. The liquor test report also does not reveal as to how much quantity has been tested.

22. Keeping in view the discussions made above, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where

conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, the impugned judgment of conviction and order of sentence dated 30.06.2025 passed by Exclusive Special Excise Court No. 01, Supaul in S.T. Excise Case No. 586 of 2017 arising out of Kishanpur P.S. Case No. 64 of 2016 is, hereby, set aside and the appeal stands allowed. Since, the appellants are already on bail, they are discharged from the liability of their bail bonds.

(Alok Kumar Pandey, J)

mcverma/-

AFR/NAFR	AFR
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