

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.5 of 2024

Arising Out of PS. Case No.-32 Year-2018 Thana- SAKRI District- Madhubani

The State of Bihar

Versus

... .. Appellant

1. Bikram Yadav Son of Jai Prakash Bhuban @ Bhola Yadav Resident of Village -Sagarpur, Police Station- Sakri, District -Madhubani
2. Awadhesh Rai Son of Fulgen Rai village- Radhopur, Ps- Gaighat, Dist- Muzaffarpur

... .. Respondents

Appearance :

For the Appellant	:	Mr. Abhimanyu Sharma, APP
For the Respondent	:	Mr. Rakesh Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 03-07-2025

Heard Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the appellant and Ms. Meena Singh, learned counsel for the respondents.

2. This appeal has been preferred against the judgment and order of acquittal dated 13.05.2024 passed in G.R. No. 378 of 2018 (C.I.S. No. 100378/2018), arising out of Sakri P.S. Case No. 32 of 2018 (hereinafter to be mentioned as the impugned judgment), instituted under Sections 272, 273, 406 & 420/34 of the Indian Penal Code (in short 'IPC') and under Sections 30(a), 36, 38(1) & 41(1) of the Bihar Prohibition and Excise Act, passed



by the learned Additional Sessions Judge-II-cum-Special Judge (Excise), Madhubani whereunder the learned trial court has acquitted both the respondents from the charges levelled against them observing and holding that there is lack of evidence to hold the accused persons guilty of the offences alleged against them.

3. By the impugned judgment, the learned trial court has been pleased to acquit Respondents of the charges under Sections 272, 273, 406 & 420/34 of the Indian Penal Code (in short 'IPC') and under Sections 30(a), 36, 38(1) & 41(1) of the Bihar Prohibition and Excise Act.

Prosecution Case

4. The case of the prosecution based on the written statement (Ext. P-2/PW-4) of the informant, namely, Rajesh Kumar (SHO, Sakri P.S.) is that on 27.03.2018 at about 5 PM, he along with other police personnels were on patrolling duty. He received information that one parcel van loaded with liquor has arrived at village Sagarpur near Darbhanga Maharaj pond. On the basis of information, police party reached at the said place where one truck was standing on the vacant land and 10-15 persons along with motorcycles and cycle were also standing. Police tried to apprehend them but several persons escaped away with motorcycles and cycles and four persons were apprehended along



with one motorcycle. Apprehended persons were identified as Anil Kumar, Pawan Kumar Safi, Surendra Mahto, Santosh Mahto and stated the name of escaped persons as Vikram Yadav, Awadhesh Ray and they did not state the name of truck driver and truck owner and rest persons. Thereafter, search of the truck bearing Reg. No. MH46AF2896 has been done and on search Seagrams Royal Stag Classic Whisky 180 ml, 11040 bottles total 1987.200 ltr, Seagrams Royal Stag Premier Whisky 375 ml, 1200 bottles total 450 ltr, Seagrams Royal Stag Premier Whisky 750 ml, 1176 bottles total 882 ltr total 3319 ltr 200 ml of liquor has been recovered from the truck. The paper of ownership was found in the truck which shows name of Mukesh Kumar SIHAG. The seizure list was prepared as per law in presence of two independent witnesses and the article recovered were seized. The apprehended persons were also searched and on search one motorcycle bearing Reg. BR32M2183 and one mobile has been recovered from possession of Anil Kumar and one mobile has been recovered from possession of each apprehended persons. Some cash was also recovered during the search. Copies of the seizure list have been given to the apprehended accused persons/family members and the case has been registered.



5. On the basis of the above fardbeyan, Sakri P.S. Case No. 32 of 2018 under Sections 272, 273, 406 & 420/34 of the IPC and under Section 41(1) of the Bihar Prohibition & Excise Act was registered. After investigation, Police submitted charge-sheet for the offence punishable under Sections 272, 273, 406 & 420/34 of the IPC and Section 30(a), 36, 38(1) & 41(i) of the Bihar Prohibition & Excise Act against the accused persons. The cognizance was also taken in the above sections. Thereafter second charge-sheet has been submitted against the accused persons of this case.

6. Charges were framed under Sections 272, 273, 406, 420/34 of the IPC and under Sections 30(a), 36, 38(1), 41(i) of the Bihar Prohibition and Excise Act and read over to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried.

7. Statement of the accused persons have been taken after the completion of the prosecution evidence on dated 05.12.2023 in which they claimed as innocent.

8. In course of trial, the prosecution examined altogether eight witnesses and exhibited several documentary evidences as well as material evidences. The description of the prosecution



witnesses, the documents brought in evidence and the material evidences are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Chandra Shekhar Yadav
PW-2	Bikram Safi
PW-3	Devendra Paswan
PW-4	Rajesh Kumar
PW-5	Md. Fahim Khan
PW-6	Lalbabu Paswan
PW-7	Hemant Kumar Bharti
PW-8	Ram Ji

List of Exhibits produced on behalf of the Prosecution

Ext-P-1/PW5	Signature of witness Chandrashekhar Yadav PW5 on seizure list of articles seized from truck.
Ext-P-2/PW5	Signature of witness Chandrashekhar Yadav PW5 on seizure list of articles seized from Pawan Safi.
Ext-P-3/PW5	Signature of witness Chandrashekhar Yadav PW5 on seizure list of articles seized from Anil Kumar.
Ext-P-4/PW5	Signature of witness Chandrashekhar Yadav PW5 on seizure list of articles seized from Santosh Mahto.
Ext-P-5/PW5	Signature of witness Chandrashekhar Yadav PW5 on seizure list of articles seized from Surendra Mahto.
Ext-P-1/PW6	Signature of witness Bikram Safi PW6 on seizure list of articles seized from the truck.
Ext-P-2/PW6	Signature of witness Bikram Safi PW6 on seizure list of articles seized from Pawan Safi.
Ext-P-3/PW6	Signature of witness Bikram Safi PW6 on seizure list of articles seized from Anil Kumar.
Ext-P-4/PW6	Signature of witness Bikram Safi PW6 on seizure list of articles seized from Santosh Mahto.
Ext-P-5/PW6	Signature of witness Bikram Safi PW6 on seizure list of articles seized from Surendra Mahto.
Ext-P-6/PW6	Signature of witness Bikram Safi PW6 on Arrest Memo



	of accused Anil Kumar.
Ext-P-7/PW6	Signature of witness Bikram Safi PW6 on Arrest Memo of accused Pawan Kumar Safi.
Ext-P-8/PW6	Signature of witness Bikram Safi PW6 on Arrest Memo of accused Surendra Mahto.
Ext-P-9/PW6	Signature of witness Bikram Safi PW6 on Arrest Memo of accused Santosh Mahto.
Ext-P-1/PW7	Details mentioned on Sl. No. 122 (7/18) in seized liquor Destruction Register.
Ext-P-1/PW4	Handwriting and signature of Rajesh Kumar PW4 on written statement.
Ext-P-2/PW4	Handwriting and signature of Rajesh Kumar PW4 on endorsement on written statement.
Ext-P-3/PW4	Handwriting and signature of Rajesh Kumar PW4 on seizure list of seized articles from the truck.
Ext-P-4/PW4	Handwriting and signature of Rajesh Kumar PW4 on seizure list of seized articles from Pawan Kumar Safi.
Ext-P-5/PW4	Handwriting and signature of Rajesh Kumar PW4 on seizure list of seized articles from Anil Kumar.
Ext-P-6/PW4	Handwriting and signature of Rajesh Kumar PW4 on seizure list of seized articles from Santosh Mahto.
Ext-P-7/PW4	Handwriting and signature of Rajesh Kumar PW4 on seizure list of seized articles from Surendra Mahto.
Ext-P-8/PW4	Liquor Inspection Report bearing Letter No. 6223 dated 18.06.2018
Ext-P-1/PW6	Handwriting and signature of Lalbabu Paswan on Arrest Memo of accused Awadhesh Kumar Rai.
Ext-P-2/PW6	Handwriting and signature of Lalbabu Paswan on Supplementary charge-sheet No. 51/2018.

List of material evidences produced on behalf of the Prosecution

Ext-M-1/PW9	750 ml bottle of liquor preserved from seized liquor.
Ext-M-2/PW9	375 ml bottle of liquor preserved from seized liquor.
Ext-M-3/PW9	180 ml bottle of liquor preserved from seized liquor.
Ext-M-4/PW9	180 ml bottle of liquor preserved from seized liquor.



9. On the other hand, the defence side has not produced any witness.

Findings of the learned trial court

10. Learned trial court has given its findings in Paragraph '39' of the judgment which is reproduced hereunder :

“39. Thus, from the analysis and scrutiny of the entire evidence oral as well as documentary, adduced on behalf of the prosecution, this court comes to the finding that:-

a) Police has recovered 3319.200 lt. of illicit liquor at the place of occurrence and apprehended four accused persons at the place of occurrence who had stated the names of the accused persons of this case A1 and A2, alleged to be absconded from the place of occurrence.

b) The A1 and A2 have been made accused in this case on the statement of the co-accused persons apprehended at the place of occurrence. Prosecution has not adduced even a single independent witness in this case in whose presence, the co-accused persons have stated the names of the A1 and A2 of this case. Prosecution has adduced PW1 and PW2 only on the point of seizure.

c) PW4, PW5 and PW7 are the eyewitnesses of this case and all of them have denied to identify the accused persons A1 and A2 in the courtroom.

c) PW6, IO of the case has even not mentioned the name of the family members of the co-accused persons of this case, to whom the IO has alleged that they have told the involvement of the A1 and A2 in the alleged occurrence and he has not taken the statement of even



a single independent witnesses alleged to be present at the place of occurrence.

d) Prosecution has failed to produce the CDR of mobile phones and the name of the owners of the vehicles recovered at the place of occurrence, which might throw some light about the connection of A1 and A2 in the alleged occurrence.

e) Except the statement of the co-accused persons of this case in police custody, there is no evidence available on the record regarding the presence and involvement of the accused persons A1 and A2 in the alleged occurrence.”

Submissions on Behalf of the Appellant

11. Learned counsel for the appellant has submitted that there is consistency in the deposition of all the prosecution witnesses but the learned trial court has not appreciated the depositions of the witnesses in correct manner. The trial court has failed to appreciate that the prosecution has properly proved its case. The finding of the learned trial court that prosecution has miserably failed to prove its case beyond all reasonable doubt is not correct in the eye of the law. Learned trial court has reached to a wrong conclusion acquitting all the accused persons in spite of the fact that the huge quantity of illegal wine was recovered from the pick-up van which was owned by the respondents. The learned counsel for the appellant has conceded



that there are of course certain laches in investigation but it is well-settled law that for the laches on the part of the investigating agency, entire prosecution will not fail. Learned counsel further submits that the learned trial court has not at all gone into the actual facts and circumstances of this case leading to completely perverse finding and erroneous conclusions. It has further been submitted by the learned counsel that the respondents are having criminal antecedents of similar nature of the case which goes to prove that the respondents are habitual offenders. It has also been submitted that the findings of the trial court is surprising because of the observations that fleeing away of accused persons does not show guilt of accused persons. The trial court has held that the witnesses are trustworthy witnesses. It has also been submitted that the purpose of justice has been frustrated as the learned trial court has not taken all the possible evidences in the present case in right perspective.

Submissions on Behalf of the Respondents

12. Learned counsel for the respondents has submitted that the impugned judgment is well discussed. The trial court has rightly acquitted the respondents. It has also been submitted that actually this is a case where prosecution has not been able to connect the accused/respondents with the occurrence.



Consideration

13. Before discussing the evidence of the prosecution witnesses, we would like to reproduce the view of the Hon'ble Apex Court in the case of **H.D. Sundra vs. State of Karnataka (2023) 9 SCC 581** regarding jurisdiction of Appellate court in appeal against acquittal. The Hon'ble Supreme Court has reiterated the principles in paragraph '8' of the judgment which are being reproduced hereunder for a ready reference :-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and



8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

14. Recently, the Hon'ble Supreme Court in the case of *Nikhil Chandra Mondal v. State of West Bengal*, reported in (2023) 6 SCC 605 has observed in paragraph no. 22 as under:

"22. Recently, a three-Judges Bench of this Court in the case of *Rajesh Prasad v. State of Bihar* has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court."

15. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that there is double presumption of innocence in favour of the accused when the order of



acquittal has been accorded by the Trial Court, firstly, the presumption of innocence, that is, available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court.

16. PW-1 is Chandrashekhar Yadav. This witness has deposed in his examination-in-chief that five seizure list were prepared in Sakri P.S. Case No. 32 of 2018 on which he has put his signature as witness and on his identification all the seizure list were marked as P-1/PW-5, P-2/PW-5, P-3/PW-5, P-4/PW-5 and P-5/PW-5 but in cross-examination this witness has stated that he got no personal knowledge about the facts written on seizure list and has further added that *Darogaji* has taken his signature on 5 blank papers.

17. PW-2 is also a seizure list witness. This witness has also stated in his cross-examination that *Darogaji* has taken his signature on a blank paper.

18. PW-3 is A.S.I. Devendra Paswan. He has deposed in his examination- in-chief that presently he is posted as store in-charge in Sakri PS. He is present in the Court with the liquor



destruction register of Sakri PS Case No. 32/2018. In Sl. No. (122) 7/18 of liquor destruction register, Sakri PS Case No. 32/2018 dated 27.03.2018 u/s 272, 273, 406, 419 of the IPC and 30(a), 36, 38, 41(1) of the Bihar Prohibition and Excise Act, 2016 is mentioned. Details of articles with identification mark of liquor are (1) One parcel truck van bearing Reg. No. MH46AF2896 (2) One passion pro motorcycle bearing Reg. No. BR32M2183 (3) one old black colour mobile phone of Samsung company along with SIM. (4) Red and black colour mobile of Carbon company with SIM. (5) One white colour mobile of Samsung company. (6) One Samsung mobile (7) 230 kardon of 180 ml foreign liquor Royal Stag. (8) 50 kardon of 375 ml. (9) Rs. 23000/- (500x5, 2000x1, 200x2, 50x10, 100x76) have been seized by S.I. Lalbabu Paswan. On the basis of letter no. 766 dated 29.09.2018 of legal cell of D.M. Madhubani, liquor was destructed on 24.11.2018. 1 ltr and 485 ml liquor was preserved. Sl. No. (122) 7/18 of register is marked as P- 1/PW7. In para 4 of his cross-examination he has stated that who has written the Sl. No. (122) 7/18 in malkhana register he don't know. In para 5 of his cross-examination he has stated that, it is not mentioned in the register that 1.485 litre liquor of which company and how much bottle was preserved.



19. PW-4 is S.I. Rajesh Kumar, who is informant of this case. He has stated that as he reached at village Sagarpur near Darbhanga Maharaj pond, 10-15 persons were standing there. Then they tried to flee away. Four persons were apprehended and others managed to escape. Apprehended persons were identified as Anil Kumar, Pawan Safi, Santosh Mahto and Surendra Mahto. These apprehended persons disclosed the name of Vikram Yadav and Awadhesh Rai. They are the respondents in this case. It is further stated by this witness that altogether 3319.200 liters of foreign liquor of different brands were recovered and seizure list was prepared and handed over to the accused persons. This witness has also identified the endorsement on his written statement which is marked as P-2/PW-4. In cross-examination, this witness has stated that 10 to 15 persons were standing with bicycle and bike when he reached the place of occurrence. It has also been submitted by this witness that the respondents managed to escape.

20. PW-5 is A.S.I. Md. Fahim Khan. He has also reiterated the statements which are made by PW-4 in cross-examination. This witness has stated that they were 100 meters far from the parcel van and when the accused persons started to flee, there



was dark and that is why, he cannot say that in which direction accused persons fled away.

21. PW-6 is the A.S.I. Lalbabu Paswan who is also the I.O. of this case. In his examination-in-chief, he has also reiterated the statements made by PW-4 and has disclosed the criminal antecedent of Vikram Yadav. This witness has stated that the sample of the liquor was sent for chemical examination. In cross-examination this witness has stated that he has not written in the case diary that who made him to see the place of occurrence. He has further stated in his cross-examination that he had not disclosed the name of the family members of Surendra Paswan and Santosh Mahto. This witness has also stated that he has not recorded the statement of any of the independent witnesses.

22. PW-7 is constable Hemant Kumar Bharti. He has also reiterated the statements which are made by PW-4 in his examination-in-chief and in cross-examination this witness has stated that he has not counted the number of papers recovered from the vehicle and he does not know as to how many bottles were recovered.

23. PW-8 is S.I. Ram ji. He has brought the material exhibits in the court.



24. From the FIR it is clear that the respondents were not apprehended from the place of occurrence and from evidence of the prosecution also it is clear that nothing has been recovered from their possession. Their name has surfaced in the statement of co-accused persons. There is nothing against the respondents save and except the statement of co-accused.

25. Learned trial court has rightly analyzed the evidences on record and has reached to a conclusion that prosecution has not been able to prove its case beyond all reasonable doubt. Learned trial court has rightly discussed the ratio of this Court in the case of **Patna High Court in D.Ref. No.5 of 2021 dated 13.07.2022** and also the judgment of the Hon'ble Supreme Court in the case of **Noor Aga v. State of Punjab, (2008) 16 SCC 417** wherein the Hon'ble Apex Court has held that an initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. So the presumption which has been provided under Section 32 of the Bihar Prohibition and Excise Act, 2016 cannot be raised in this case. The prosecution has miserably failed to connect the accused/respondents with the offence.

26. The impugned judgment of the learned trial court is well discussed and it needs no interference by this Court.



27. In view of the aforesaid discussions, we do not find any good ground to entertain the present appeal. Accordingly, this appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Durgesh/-

AFR/NAFR	
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