

IN THE COURT OF CHANDAN, PCS,
JUDICIAL MAGISTRATE IST CLASS, FARIDKOT.

(UID NO. PB0680)

CNR No.PBFD03-001644-2019

CIS No. CHA-154-2019

Date of Decision: 06.10.2022.

State	Versus	1. Moti Ram, aged 39 years son of Nathu Ram, resident of Khokhran Mohalla, District Faridkot. 2. Naveen Kumar, aged 24 years, son of Puran Chand, resident of Mohalla Khokhran, District Faridkot. 3. Pardeep Kumar @ Deepu @ Deepak, aged 22 years, son of Tulsi Ram, resident of Mohalla Khokhran, District Faridkot.
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.....Accused.

F.I.R. No. 181 Dated 16.08.2018.

Under Section 61 of Excise Act, 1914.

Police Station City Faridkot.

Present: Shri Satnam Singh Gill, APP for the State.
Accused on bail with counsel, Sh. Sandeep Khosla, Advocate.

JUDGMENT

Accused have been sent up to this court by the Station House Officer, police station City Faridkot, to face trial for commission of offence punishable under section 61 of the Punjab Excise Act, 1914.

2. In brief, the facts of the present case are that on 16.08.2018, ASI Gurlal Singh along with other police officials, on government vehicle make Bolero bearing registration no.PB-02 AS-5727, in connection with patrolling and checking of suspicious persons, was present near Astbal, where he received secret information Moti Ram, Naveen Kumar and Deepak Kumar resides in a one house and they habitual of selling liquor at

higher price after bringing the same on lesser price from outside area and if raided upon their house, heavy quantity of liquor can be recovered. Finding information reliable and trustworthy, ruqa was sent to the police station through HC Jagsir Singh, on the basis of which FIR was registered and rest of the party raided the house of Moti Ram and recovered 56 bottles of country make liquor First Choice (Haryana) and 26 bottles of country made liquor make Crazy Romeo (Arunachal Pardesh) from plastic bags. One sample parcel of 180ml out of 56 bottles of country made liquor First Choice (Haryana) and one sample parcel of 180ml out of 26 bottles of Crazy Romeo (Arunachal Pardesh) were taken and remaining 55-1/3 bottles of country made liquor First Choice (Haryana) and 25-1/3 bottles of Crazy Romeo (Arunachal Pardesh) were again put in the plastic bags and sealed with seal bearing impression GS. Sample parcels were also sealed with seal bearing impression GS and seal after use was handed over to HC Lakhvir Singh. Spot was inspected, site plan was prepared and statements of witnesses were recorded. Accused Moti Ram was arrested. Thereafter on 22.8.2018 accused Naveen Kumar and on 1.9.2018 accused Pardeep Kumar @ Deepu @ Deepak Kumar were arrested. Samples were sent to FFSL, Mohalai for chemical analysis and report has been received. After completion of the investigation and on receipt of report, the instant challan has been presented in the Court for judicial verdict.

3. On presentation of challan, complete copies thereof were supplied to the accused free of costs as required under Section 207 of Cr.P.C.

4. Finding prima facie case for offence under Section 61 of the

Punjab Excise Act, the accused were charge-sheeted accordingly to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined PW1 ASI Lakhvir Singh, PW2 ASI Lakbh Singh, PW3 Sct Balraj Singh, PW4 SI Gurlal Singh and thereafter learned APP for the State closed the prosecution evidence.

6. All the incriminating evidence that had come up during the prosecution evidence was put to both the accused as required under section 313 Cr.P.C. The accused denied the allegations and pleaded their innocence and false implication and also stated that present case has been registered at the instance of Mohan Lal MC, who is brother of Moti Ram and uncle of remaining accused. Accused opted to lead evidence in their defence, but did not lead any and closed the same.

7. I have heard the arguments of learned APP for the State as well as learned counsel for accused and gone through the evidence and documents on file carefully.

8. It is argued by learned APP for the state that from the evidence on record, the guilt of accused has been fully proved and they are liable to be convicted for the offences for which they are facing trial.

9. On the other hand, it is argued by the learned defence counsel Sh. Sandeep Khosla, Advocate, learned counsel for the accused assailed the version of the prosecution with the plea that there are discrepancies in the statements of prosecution witnesses, which creates serious dent in the case of prosecution. Learned defence counsel further argued that the

prosecution case is based on the statements of official witnesses only and it is not supported by any independent corroboration. He argued that no reliance can be placed on the statements of official witnesses which is not corroborated by any independent testimony. Thus, he prayed for acquittal of the accused.

10. From the arguments of learned APP for state and learned defence counsel for accused following points for determination emerged:-

1. Whether on 16.08.2018 in the area of Street No.5, Mohalla Khokhran, District Faridkot, you accused were found in possession of 56 bottles of country made liquor make First Choice and 26 bottles of country made liquor make Crazy Romeo without any licence or permit?

11. Prosecution case was unfolded in the Court by PW4 SI Gurlal Singh- Investigating Officer of the case, who deposed as to receipt of secret information, registration of FIR and resultant investigations into the matter. He also deposed with regard to Ex.PW1/A ruqa, Ex.PW4/A FIR, Ex.PW1/B site plan, Ex.PW1/C arrest memo, Ex.PW1/B memo regarding taking into possession case property, Ex.PW1/D intimation memo, Ex.PW1/E memo regarding calling counsel and Ex.PW1/F personal search memo. He further deposed that on 22.8.2018 accused Naveen Kumar was arrested. He further deposed with regard to Ex.PW1/G memo regarding calling counsel, Ex.PW1/H personal search memo and Ex.PW1/I arrest memo. He further deposed that on 01.09.2018 accused Pardeep Kumar @ Deepa @ Deepak Kumar was arrested. He further deposed with regard to Ex.PW1/J arrest memo, Ex.PW1/K intimation memo, Ex.PW1/L memo

regarding calling counsel and Ex.PW4/C sample seal, Ex.PW4/D chemical report and MO1 and MO2 case property. PW1 ASI Lakhvir Singh, who was one of the members of the police party headed by SI Gurlal Singh, Investigating Officer, appeared into the witness box and corroborated the version of PW4 SI Gurlal Singh. PW2 ASI Labh Singh stepped into the witness box and stated that SI Gurlal Singh handed over case property i.e. two parcels containing illicit liquor along with sample seal to him and he deposited the same in malkhana vide entry no. 1936. He further proved on record Ex.PW2/A photocopy of register. PW3 Sct Balraj Singh stated that on 5.8.2018, ASI Labh Singh handed over one sample nip of 180ml bearing seal impression GS along with sample seal to him and as per directions he deposited the same in Chemical Examiner Kharar and on return he handed over the receipt to said MHC. This is all the evidence by the prosecution.

12. To establish on record the recovery of illicit liquor, the prosecution has heavily relied upon the testimonies of PW4 SI Gurlal Singh and PW1 ASI Lakhvir Singh, who was one of members of the police party headed by PW4 SI Gurlal Singh, investigating officer. The perusal of testimonies of both these witnesses provides that although they have unequivocally deposed as per the case of the prosecution in their respective examination-in-chief but they have failed to substantiate their allegations in their cross-examination. There are so many discrepancies in the statements of both these witnesses, which provides that both these witnesses were not present at one time and it makes their testimony unreliable. ASI Lakhvir Singh (PW-1) during his cross-examination has stated that the police party left CIA staff police station at about 08:00 PM, but PW4 SI Gurlal Singh

during his cross examination has stated that the police party left CIA staff at about 7:00 PM. The case of prosecution is that on 16.08.2018, SI Gurlal Singh along with other police officials was present near Astbal, where he received secret information, but PW1 ASI Lakhvir Singh further during his cross-examination has stated that he does not remember whether the vehicle in which they were travelling was already parked, when the Investigating Officer received secret information, or whether informer stopped their vehicle by giving sign of stop. This type of answer of PW1 ASI Lakhvir Singh, raises a doubt on his presence with the police party on the date of incident. PW1 ASI Lakhvir Singh further stated that the police party did not take any U-turn and went straight to the place of recovery. But PW4 SI Gurlal Singh during his cross examination has stated that there is U-Turn on the circular road from where the police party turn towards the Mohalla Khokhran for the place of recovery. PW1 ASI Lakhvir Singh further during his cross-examination has stated that there was no karyana shop near the place of recovery, but PW4 SI Gurlal Singh during his cross examination has that place of recovery is in dense populated area and shops were near the place of recovery. No doubt, the discrepancies are bound to occur in the statements of the witnesses with the passage of time but the discrepancies, on material points, cannot be ignored particularly when the accused has no other method to point out the discrepancies to dis-credit the official witnesses. If the discrepancies on material points are ignored then every accused is bound to be convicted, which will result into mis-carriage of justice.

13. It is further significant to mention here that PW1 ASI Lakhvir Singh stated that Investigating Officer prepared the exact site plan Ex.PW4/B of the place of recovery. After the perusal of site plan it has come to know that there was night time at about 8/9 PM. There was no light, no bulb, no electricity meter are shown in the house in the site plan. It is very strange that if there was no light, no bulb in the house and no where mention in the examination-in-chief of PWs that they had carried any torch with them for recovery, then how they saw the bottles in the tied bags in night, has not been explained by the prosecution. Therefore PWs failed to prove the scenery on the place of recovery.

It is further significant to mention here that PW1 ASI Lakhvir Singh stated that the information of arrest of accused Moti Ram was given to Sunny, but he do not know the father name of Sunny. The defence counsel drawn the attention of witness to EX.PW1/D Memo of information of arrest, wherein the father name of Sunny is mentioned as Mohan Lal. This was the material discrepancy on the part of Prosecution which creates a dent on the prosecution case. Here PW1 ASI Lakhvir Singh during his cross-examination has stated that the house of Sunny (whose father is Mohan Lal as per EX.PW1/D) adjoining to the house of recovery. Mohan Lal is neighbourer as well as MC of that area, even then Mohan Lal has not cited as a witness and cannot be examined as a witness, has not been explained by the prosecution.

14. PW1 ASI Lakhvir Singh during his cross-examination has stated that the illicit liquor after drawing samples, again put into the plastic bags

and sealed by Investigating Officer with seal bearing impression "GS" . PW2 ASI Labh Singh during his examination-in-chief has stated that two parcels containing illicit liquor sealed with seal bearing impression 'GS' along with sample seal, were handed over to him. In his cross examination he sated that he had checked the case property before depositing the same and it was 55 bottles and 1/3 bottle of First Choice. He had also counted the Crazy Romeo, which was 25-1/3 bottles before depositing in the malkhana. Now, the question arises how PW2 ASI Labh Singh came to know about the number of bottles put into plastic bags without opening the seal of the same. It implied that PW2 Labh Singh has opened the seal, checked the case property and deposited in the malkhana. It is not duty of PW2 ASI Labh Singh to open the seal and check the case property, but his duty is only to deposit the handed over case property as it is in malkhana. This is major lapse on the part of prosecution case.

15. PW3 Sct Balraj Singh during his examination-in-chief has stated that on 05.08.2018, ASI Labh Singh handed over to him one sample nip of 180ml sealed with seal bearing impression GS along with sample seal and as per directions, he deposited the same in Chemical Examiner Kharar on 7.8.2022, but during his cross-examination said PW3 has stated that sample handed over to him was Crazy Romeo and not any else and other sample was First Choice and he had checked it himself and he did not stay in the police station during the time when the sample remained with him. Now, it is coming out that sample was handed over to PW3 on 5.8.2018 and deposited the same on 7.8.2018 and he checked the same and

found Crazy Romeo and First Choice. Meaning thereby the sample remained with him during said period and he checked the same by opening the parcels. It is not duty of PW3 Sct Balraj Singh to open the seal and check the case property, but his duty is only to deposit the handed over case property as it is in the office of Chemical Examiner Kharar. So, there is possibility of tempering with the samples, cannot be ruled out and this is major lapse on the part of prosecution case, which creates a serious dent in the case of the prosecution.

16. The contention of learned defence counsel is that no independent witness has been joined by the police party and this fact creates doubt on the story of prosecution. Firstly, the place from where the alleged recovery was effected from the possession of accused is densely populated area and it was very easy for the police party to join witness from the public before effecting the recovery from the possession of accused, but no serious effort was made by police to join independent witness nor any action was taken by police party against any of such member of public who might have been refused to join the investigation. Moreover, the case of the prosecution is based upon the solitary statements of the official witnesses and their testimonies are not corroborated from any independent witness. As the prosecution was having ample time and opportunity to join the public witness, but they failed to do so, therefore, non-joining of independent witness in the present case is quite fatal to the case of the prosecution. In the given circumstances, testimonies on record cannot be said to be reliable testimonies and conviction cannot be

maintained on the basis of said testimonies which are especially not corroborated from any independent source as discussed above.

17. Moreover, prosecution alleged recovery was effected from the house of accused Moti Ram, but no record regarding ownership of the house of accused Moti Ram has been taken into police possession. PW4 SI Gurlal Singh during his cross-examination has stated that he has not seen ownership document of house of accused. Meaning thereby, prosecution has failed to prove on record that police party conducted raid at the house of accused, as no record regarding ownership of house in question was taken into possession, nor any photographs of the alleged house were taken by the prosecution.

18. PW3 during his cross examination has stated that no envelope was given to him along with the case property. It implied that the Form M29 was not carried by PW3. No arrival entry of PW3 entered in police station.

19. Hence, with the aforementioned fatal flaws staring in the case of prosecution, it's version is rendered improbable and benefit of doubt is legitimately extended to the accused. The prosecution has been unsuccessful in driving home the guilt of the accused beyond reasonable doubt and as such the point for determination is decided against the prosecution and accused are acquitted of the charges framed against them. Bail/surety bonds, if any, stand discharged, after awaiting the result of appeal and revision if preferred or if no appeal or revision is preferred after the expiry of the time, so prescribed for the filing of such appeal or

revision. File be consigned to the record room after due compliance.

Pronounced
06.10.2022

Sarbjit Singh

(Chandan)
Judicial Magistrate Ist Class,
Faridkot.
UID No. PB0680