

**IN THE COURT OF Ms. SWAYAM SIDDHA TRIPATHY
JUDICIAL MAGISTRATE FIRST CLASS-02, DWARKA COURT,
NEW DELHI**



FIR No. 458/2019
PS: Dabri
U/s: 33 Delhi Excise Act
Case no. 677/2021

STATE Vs. HEENA

S. No. of the case	: 677/2021
CNR No.	: DLSW020405992020
Date of offence	: 24.07.2019
Name of the complainant	: Ct. Jai Kishan
Name of the accused	: Heena W/o Sh. Vikram @ Kalu R/o H. No. A-75D, Gali no. 3, Rohtash Nagar, Mahavir Enclave Part -II, Delhi.
Offence complained	: Section 33 Delhi Excise Act
Plea of the accused	: Pleaded not guilty
Argument heard on	: 16.07.2026
Date of Judgment	: 16.07.2026
Verdict	: Acquitted
Ld. APP for the State	: Sh. Vinay Tehlan

JUDGMENT

1. It is the case of the prosecution that on 24.07.2019, HC Jai Kishan was posted at PS Dabri as Constable. On that day, while patrolling duty in beat no. 7, he reached Gali no. 3, Rohtash Nagar, Mahavir Enclave Part II and saw accused alongwith one plastic katta dragging the plastic katta towards A-75D. On seeing her moving, HC Jai Kishan ran towards her and stopped her, asked her what is inside the plastic katta. Upon asking, accused did not give any satisfactory answer and thereafter, HC Jai Kishan checked the plastic katta and found containing illicit liquor.
2. An FIR bearing No. 458/2019, U/s 33 Delhi Excise Act was registered at PS Dabri against the accused. Investigation of the case was handed over to Investigating Officer HC Bahadur Singh
3. On completion of investigation, a chargesheet u/s 33 Delhi Excise Act was filed against the accused. After taking cognizance of the offence, the accused was summoned to face trial.
4. On her appearance, a copy of chargesheet along with documents were supplied to the accused in terms of Section 207 of the Code of Criminal Procedure (*hereinafter referred to as 'CrPC'*) . On finding prima facie case against the accused, a charge under section 33 Delhi Excise Act was framed against her, to which she pleaded not guilty and claimed trial.

5. During the course of trial, the prosecution examined the following witnesses.
6. HC Bahadur Singh was examined as PW1. He stated that: “On 24.07.2019, I was posted at PS Dabri as HC. On that day, on receiving DD No. 63B regarding the apprehension of accused along with illicit liquor I along with W/Ct. Lalita reached at the spot i.e A-75D, Gali No. 3, Rohtash Nagar, Mahavir Enclave, Part II, Delhi where Ct. Jai Kishan, ASI Mahavir, HC Raj Kumar and Ct. Ashwani met me and handed over the accused along with recovered liquor to me. I requested some passers by to join the proceedings but none agreed and left the place without disclosing their names and address. Thereafter, the said katta was checked it was found containing 59 qtr. Bottles (34 quarter bottles of asli santra masaledar desi sharab and 19 quarter bottles of party special and 6 quarter bottles of crazy romeo). Thereafter, I took out one quarter bottle from each brand as sample and the rest of the case property sealed with the seal of BS. The sample bottles were also sealed with the seal of BS. Form M-29 was filled up by me. Seizure memo of case property was prepared vide memo Ex. PW1/A bears my signature at point X. Thereafter, I recorded statement of Ct. Jai Kishan which is Ex.PW1/B bears my attesting signature at point X and prepared a rukka Ex.PW1/C bearing my signature at point X and handed over the same to Ct. Jai Kishan for the registration of the case. He went to PS and after getting the case registered returned to the spot and handed over the copy of FIR and original rukka to me. I prepared the site plan Ex.PW1/D bearing

my signature at point X. Accused was allowed to leave on furnishing the undertaking as per the provisions of Section 41 Cr.P.C Ex.PW-1/E bearing my signature at point X. I recorded disclosure statement of accused Ex. PW-1/F bearing my signature at point X. Thereafter, we left the spot. Case property and samples were deposited in the malkhana. I recorded the statement of witnesses. Accused is present in the court today correctly identified by the witness. I can identify the case property if shown to me. At this stage, MHCM has produced case property i.e. one unsealed sample of asli santra masaledar desi sharab, one sample of party special and one sample of crazy romeo. Same is shown to the witness and same is correctly identified by the witness. Same is Ex. A1 (colly). MHCM also produced copy of destruction order dated 01.08.2020. Present FIR is mentioned at S no. 18 of the same. Same is now taken on record as Mark Y1 (colly).”

7. In his cross-examination, PW1 stated that: “I came at the spot at about 06:45 PM and left the spot at about 12 mid night. Ct. Jai Kishan went to PS for registration of FIR at about 09:00 PM and came back at the spot at about 10:00 PM. There were houses and shops near the spot. No notice was served to any public person. No seal handing over memo was prepared in my presence. Case property was taken to PS on my bike. It is incorrect to suggest that nothing incriminating has been recovered from the possession of the accused or at the instance of accused or that all the proceedings had been conducted while sitting at PS or that I am deposing falsely.”

8. HC Ashwani was examined as PW2. He stated that: “On 24.07.2019, I was posted at Special Staff Dwarka as Constable. On that day, I alongwith ASI Mahavir and HC Raj Kumar went to A-75, Gali No. 3 Rohtas Nagar, Mahaveer Enclave, Part II as ASI Mahaveer received information from secret informer regarding selling of illicit liquor at the above said address. When we reached there, we met Ct. Jai Kishan who already apprehended the accused, namely, Heena alongwith illicit liquor. After that Ct. Jai Kishan informed the same to DO. After some time, HC Bahadur alongwith WCt. Lalita came at the spot. IO HC Bahadur requested some passer-by to join the investigation, however, all refused by stating personal reasons. IO checked the plastic katta which was found containing total 59 quarter bottles out of which 34 quarter bottle of *Asli Santra Masalear Desi Sharab*, 19 quarter bottle of *Party Special Deluxe Whiskey*, 6 quarter bottle of *Crazy Romeo Whiskey*. IO took out one quarter bottle from each sample and sealed the same with the seal of BS, seized case property vide seizure memo already Ex.PW1/A in our presence. IO prepared site plan, released accused on 41(A) Cr.P.C notice in our presence. IO recorded my statement u/S 161 Cr.P.C. I can identify the accused. Accused is present in the Court, correctly identified by the witness. I can identify the case property. At this stage, MHC(M) has produced one unsealed quarter bottle of Asli Masalear Santra, One unsealed sample of Party Special Deluxe Whiskey, One unsealed bottle of Crazy Romeo. All same is shown to the witness. Witness correctly identified the same as recovered from accused. Same is now Ex.A1 (Colly.). At this stage, MHC(M) also produced destruction order dated 01.08.2020, present

FIR is mentioned at S/N 18 of the same, same is now taken on record as Ex.A2 (OSR) (Colly.)”

9. In his cross-examination, PW2 stated that: “I, came at the spot at about 06:30 PM and left the spot at about 10.30 PM. Ct. Jai Kishan went to PS for registration of FIR at about 09.00 PM and came back at the spot at about 10.00 PM. There were houses and shops near the spot. No notice was served to any public person. No seal handing over memo was prepared in my presence. It is correct that I do not know my departure or arrival entries pertaining to the day of incident. It is incorrect to suggest that nothing incriminating has been recovered from the possession of the accused or at the instance of accused or that all the proceedings had been conducted while sitting at PS or that I am deposing falsely.”
10. ASI Jagbir Singh was examined as PW3. He stated that: “On 19.09.2019, I was posted at PS Dabri as Head Constable. On that day, I entrusted one quarter bottle of Crazy Romeo and one quarter bottle of Party Special sealed with the seal of BS vide RC No. 217/21/19 to Ct. Jai Kishan, same is now marked as Mark X bearing my signature at point A. Thereafter, Ct. Jai Kishan deposited the same at Excise Lab, Vikas Bhawan, ITO without any fabrication or tempering. Opportunity was given to accused to cross examine PW3, however, no cross examination was carried out by the accused.

11. HC Jai Kishan was examined as PW-4. He stated that: “On 24.07.2019, I was posted at PS Dabri as Constable. On that day, I was on patrolling duty in beat no. 7. While patrolling when I reached A-75 D, Gali no. 3, Rohtash Nagar, Mahavir Enclave part II, I saw accused alongwith one plastic katta. While she was dragging the plastic katta towards A-75D. On seeing her moving, I ran towards her and stopped her, asked her what is inside the plastic katta. Upon asking, she did not give any satisfactory answer and thereafter, I checked the plastic katta and found containing illicit liquor. In between, three police officers from Special Staff also came at the spot and informed me that they had also received information regarding the selling of illicit liquor. I informed about this to the DO. Thereafter, HC Bahadur along with W/Ct. Lalita came to the spot. IO asked 4-5 public person to join the investigation but they refused to join the same by stating their personal reasons and without stating their names. I handed over abovesaid plastic katta full of illicit liquor to the IO/HC Bahadur and accused to W/Ct. Lalita. IO inspected the said plastic katta which was found containing total 59 quarter bottles, out of which 34 quarter bottles of Asli Santra Masaledar Sharab for sale in Haryana only, 180 ml, 6 quarter bottles of Crazy Romeo and 19 quarter bottles of Party Special. From which one quarter bottle from each brand were taken as sample, the same was sealed with the seal of BS and rest of the quarter bottles were placed in the respective white katta and sealed with the seal of BS. IO prepared seizure memo vide already Ex. PW1/A bearing my signature at point A. IO filled M29 form. After that IO recorded my statement which is already Ex. PW1/B (bearing my signature at point

A) and prepared the rukka in my presence already Ex. PW1/C. After that IO handed over seal to me and gave me rukka for registration of FIR. Thereafter, I went to PS and got the FIR registered, after sometime, I came back at the spot and handed over copy of FIR and original rukka to IO. IO prepared the site plan at my instance already Ex. PW1/D bearing my signatur at point A. IO recorded my statement u/s 161 Cr.P.C. During investigation, I deposited the sample vide RC no. 217/21/19 on 19.09.20219 at Excise Lab, same is already marked as Mark X bearing my signature at point X. I can identify the accused. At this stage, Ld. Counsel for accused submits that identity of accused is not disputed. I can identify the case property, if shown to me. At this stage, Ld. Counsel for accused submits that identity of case property is not disputed as the same is already Ex. A-1 (Colly) and Ex. A-2 (OSR) (Colly).

12. In his cross-examination, PW4 stated that: “IO came at the spot at about 07:00 PM and left the spot at about 10:15 PM. I went to PS for registration of FIR at about 09:00 PM and came back at the spot at about 09:45 PM. There were houses and shops near the spot. No notice was served to any public person. No seal handing over memo was prepared in my presence. Case property was taken to PS by IO on his bike. It is incorrect to suggest that nothing incriminating has been recovered from the possession of the accused or at the instance of accused or that all the proceedings had been conducted while sitting at PS or that I am deposing falsely.”

13. Statement of accused was recorded under Section 294 Cr.P.C and she admitted the following documents:
- a. FIR No. 458/2019 PS-Dabri as Ex.P1(Colly).
 - b. DD No. 63B dated 24.07.2019 as Ex. P2.
 - c. Report of Excise Lab as Ex. P3.
14. In view of the statement u/s 294 Cr. P.C., witness at Sl. No. 3, 9 and 10 were dropped from the list of witnesses. Witnesses at Sl. No. 2, 6 & 7 were also dropped from the list of witnesses vide order dated 01.06.2026 as they would have deposed the same facts as deposed by PW1, PW2 and PW4.
15. The prosecution evidence was closed vide order dated 01.06.2026 and thereafter the statement of accused u/s 313 Cr.P.C was recorded on 16.07.2026 wherein all the incriminating evidence was put to her, which she denied to be correct and submitted that she was not found in possession of illicit liquor. That she has been falsely implicated in this present case and that she is innocent and all the witnesses deposing against her are interested witnesses. The accused chose not to lead any evidence in her defence. Thereafter, matter was fixed for final arguments.
16. At the time of final arguments, it was argued by Ld. APP for the State that it is clear from the statement of the complainant and other witnesses as well as the documents appearing on record that the accused was in possession of illicit liquor. He thus submitted that the

prosecution has proved its case beyond reasonable doubt against the accused and she be, therefore, held guilty and convicted for the above-said offence.

17. Per contra, Ld. Counsel for the accused had argued that the State has failed to establish its case beyond reasonable doubt and since nothing incriminating had appeared against the accused, she be, therefore, acquitted for the offence charged.
18. I have heard the Ld. APP for the State and Ld. Defence counsel at length, perused the record, gone through the relevant provisions of law and given my thoughts to the matter.

Findings of the Court

19. Before embarking on the analysis and appreciation of the statements and evidences on record, it is apposite to state that to bring home the guilt of the accused in any criminal matter beyond the shadow of reasonable doubt the burden rests always upon the prosecution. The burden of proof on the prosecution is heavy, constant and does not shift. The case of the prosecution needs to stand on its own footing failing which benefit of doubt ought to be given in favour of the accused. Needless to say, in this case also, with or without defense evidence, the prosecution has to establish its case beyond reasonable doubt. On the touchstone of the above settled legal proposition, the facts of the present case are to be analysed.

I. Non-joining of Public Witnesses

20. One of the arguments of Ld. Counsel for the accused is that since no independent witness has been joined at the time of investigation, it is, therefore, difficult to believe the prosecution version as it creates a doubt on the veracity of the statement of police witnesses.
21. This court has given its thoughts to the above contention of Ld. Counsel for the accused. Perusal of the testimony of PW-1, PW2 and PW4 reveal that they have categorically stated that there were houses and shops near the spot and public persons were passing by. They had also asked public persons to join the investigation, but none of them had agreed. Thus, it is not the case of the prosecution that no public person was present at or near the spot of recovery. However, it is equally true that no steps are shown to have been taken to note down the names and addresses of those persons. It is a well settled proposition of law that non-joining of public witness throws doubt over the fairness of the investigation by police. Section 100 (4) of the CrPC also casts a statutory duty on an official conducting search to join two respectable persons of the society. However, no public person has been joined by the IO in the present case.
22. In a case titled as ***Nanak Chand v. State of Delhi, 1990 SCC OnLine Del 469***, Hon'ble High Court of Delhi has observed as under:
- “The recovery was from a street with houses on both sides and shops nearby. And, yet no witness from the public has been produced. Not that in every case the police officials are to be treated as unworthy of reliance but their failure to join witnesses from the public especially when they are*

available at their elbow, may, as in the present case, cast doubt. They have again churned out a stereotyped version. Its rejection needs no Napoleon on the Bridge at Arcola (Emphasis supplied)."

23. In the present case also, non-joining of any public person as a witness creates doubt on the case of the prosecution. Although, this Court is conscious of the fact that it is a well settled law that the prosecution case cannot be thrown out or doubted on the sole ground of non-joining of public witnesses as they keep themselves away from the Court unless it is inevitable, however, it creates a reasonable doubt on the prosecution version.

II. No seal Handing over memo.

24. PW 1 in his cross examination stated that no seal handing over memo was prepared in his presence. PW2 and PW4 also stated that no seal handing over memo was prepared in his presence. Thus, in the instant case no handing over memo of the seal was prepared which can suggest that case property remained intact and there is no tampering with the same.
25. As per evidence available on record, the seal after use was not given to any independent public person. Further, there is nothing on record to prove whether the said seal was ever deposited in the Malkhana of Police Station or not. In such case, tampering with case property can also not be ruled out. As a result, the benefit of doubt has to be given to the accused. Reliance is placed upon the decision in ***Safiullah v.***

State, (1993) 49 DLT 193, where the Hon'ble High Court of Delhi observed:

"9. ... The seal after use were kept by the police officials themselves therefore the possibility of tempering with the contents of the sealed parcel cannot be ruled out. It was very essential for the prosecution to have established from stage to stage the fact that the sample was not tempered with. Once a doubt is created in the preservation of the sample the benefit of the same should go to the accused."

III. Discrepancy in the case qua Seizure Memo and Form M29.

26. There exists yet another discrepancy in the case of the prosecution. PW 1/IO in his examination categorically stated that he prepared the site plan, seizure memo, rukka and Form M 29 and then handed over the rukka to PW 4 for the purpose of registration of FIR. PW4, thereafter, went to the PS and got the FIR registered. PW 2 also submitted the same. Thus, it is clear from the testimony of PW 1/IO and PW 4 that the seizure memo and Form M 29 were prepared before the tehrir/original rukka was handed over by PW1 IO to PW4 for registration of the FIR. The FIR was thus, admittedly registered after the preparation of the seizure memo and Form M 29, however, surprisingly it bears the FIR number and it is thus worth wondering that if the FIR was never registered at the time when the seizure memo and Form M 29 were prepared, how the FIR number came to be noted in the seizure memo and Form M 29 since the number of the FIR could have come to knowledge of PW 1/IO only after a copy of the FIR was brought to the spot by PW 4. Thus, the number of FIR in no circumstances could have been mentioned by the IO on the seizure

memo and Form M 29, which came into existence before registration of the FIR.

27. In this context, Hon'ble High Court of Delhi in ***Pawan Kumar v. The Delhi Administration, 1987 SCC OnLine Del 290***, has observed as under in paragraph 6:

“Learned counsel for the State concedes that immediately after the arrest of the accused, his personal search was effected and the memo Ex. PW11/D was prepared. Thereafter, the sketch plan of the knife was prepared in the presence of the witnesses. After that, the ruqa EX. PW11/F was sent to the Police Station for the registration of the case on the basis of which the FIR, PW11/G was recorded. The F.I.R. is numbered as 36, a copy of which was sent to the I.O. after its registration. It comes to that the number of F.I.R. came to the knowledge of the I.O. after a copy of it was delivered to him at the spot by a constable. In the normal circumstances, the F.I.R. No. should not find mention in the recovery memo or the sketch plan which had come into existence before the registration of the case. However, from the perusal of the recovery memo, I find that the FIR is mentioned whereas the sketch plan does not show the number of the FIR. It is not explained as to how and under what circumstances the recovery memo came to bear the F.I.R. No. which had already come into existence before the registration of the case. These are few of the circumstances which create a doubt, in my mind, about the genuineness of the weapon of offence alleged to have been recovered from the accused.”

28. In another case titled ***Mohd. Hashim v. State, 1999 SCC OnLine Del 859***, the Hon'ble High Court of Delhi while dealing with an appeal under the Narcotic Drugs and Psychotropic Substances Act, 1985 has also observed about the discrepancy, i.e., appearance of FIR number on seizure memo and other documents before registration of FIR and it

runs as under:

“Surprisingly, the secret information (Ex. PW7/A) received by the Sub-Inspector Narender Kumar Tyagi (PW-7), the notice under Section 50 of the Act (Ex. PW5/A) alleged to have been served on the appellant, the seizure memo (Ex. PW1/A) and the report submitted under Section 57 of the Act (Ex. PW7/D) bear the number of the FIR (Ex. PW4/B). The number of the FIR (Ex. PW4/B) given on the top of the aforesaid documents is in the same ink and in the same handwriting, which clearly indicates that these documents were prepared at the same time. The prosecution has not offered any explanation as to under what circumstance number of the FIR (Ex. PW4/B) had appeared on the top of the aforesaid documents, which were allegedly prepared on the spot. This gives rise to two inferences that either the FIR (Ex. PW4/B) was recorded prior to the alleged recovery of the contraband or number of the said FIR was inserted in these documents after its registration. In both the situations, it seriously reflects upon the veracity of the prosecution version and creates a good deal of doubt about recovery of the contraband in the manner alleged by the prosecution.”

29. In the light of the abovesaid judgments, the mentioning of the number of FIR in the seizure memo creates serious doubt on the prosecution version and alleged recovery of illicit liquor and it leads to only one conclusion that either the said document was prepared later on or that the FIR was registered earlier in point of time. In both the aforesaid eventualities, a reasonable doubt has been raised on the version of the prosecution, the benefit of which has to be given to the accused.

IV. No departure or the arrival entry of PW 4.

30. The present case rests entirely on the alleged recovery of case property, i.e. illicit liquor, from the possession of the accused at the relevant time

by a police official PW 4, who was on patrolling duty at the relevant time and place, as per the prosecution story.

31. Police officials are under a statutory duty to mark their departure and arrival in the register kept in the police station for the purpose as per the Punjab Police Rules. Chapter 22 Rule 49 of Punjab Police Rules, 1934, provides that the hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere, with a statement of the nature of their duty shall be entered vide a separate entry and this entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personally by signature or seal. In the present case, no departure or the arrival entry has been proved on the record by the prosecution. In absence of the departure and arrival entry of the police officials their presence at the spot cannot be believed. Reference can be placed upon ***Rattan Lal v. State 1987 (2) Crimes 29 Delhi High Court*** wherein it has been observed:

"if the investigating agency deliberately ignores to comply with the provisions of the Act, the courts will have to approach their action with reservations. The matter has to be viewed with suspicion if the provisions of law are not strictly complied with and the least that can be said is that it is so done with an oblique motive. This failure to bring on record, the DD entries creates a reasonable doubt in the prosecution version and attributes oblique motive on the part of the prosecution."

32. In the present matter, there exists no entry which could even remotely suggest that PW 4 was assigned patrolling duty on the given date and

time and he went for the purpose of patrolling at the given date and time, which again creates a dent in the story of prosecution.

33. Thus, in light of the above discussions throwing doubt on the authenticity of the prosecution version, this court is of the opinion that prosecution has failed to prove its case beyond reasonable doubt that illicit liquor was recovered from the possession of the accused. The accused Heena is, therefore, acquitted of the offence u/s 33 Delhi Excise Act.

Announced in the open court on 16.07.2026.

**(Swayam Siddha Tripathy)
JMFC-02/Dwarka Courts
New Delhi/ 16.07.2026**

It is certified that the present judgment runs into 17 pages and each page bears my signature.

**(Swayam Siddha Tripathy)
JMFC-02/Dwarka Courts
New Delhi/16.07.2026**