

APVS180028032022



**IN THE COURT OF ADDITIONAL CIVIL JUDGE (Jr. DIVISION) – CUM –
ADDITIONAL JUDICIAL FIRST CLASS MAGISTRATE
NARSIPATNAM.**

CALENDAR AND JUDGMENT in CC No:143/2023

Date of offence	:	29.05.2017
Date of Complaint or report	:	29.05.2017
Date of apprehension of accused	:	29.05.2017
Date of release on bail	:	U/sec.41(A) of Cr.P.C notice
Date of commencement of trial	:	15-04-2026
Date of close of trial	:	15-04-2026
Date of sentence or order	:	27-04-2026
Explanation for delay	:	Due to non production of witnesses by prosecution
Name of the complainant	:	The State represented by the Sub-Inspector of Police, Narsipatnam Police Station.
Name of the Accused	:	Pudi Ganesh, S/o.Apparao, Aged about 26 years, Cast Yatha, R/o.Pedaboddepalli Narsipatnam Mandal
Offence	:	U/sec.34(A) of A.P.Excise Act, 1968
Finding	:	Found not guilty
Sentence or Order	:	In the result , the accused found not guilty for the offence under section 34(A) of A.P.Excise Act, 1968 hence he is acquitted under section 248(1) of Criminal Procedure Code, 1973. The bail bonds and surety bonds of the accused shall remain in force for further period of Six months from today as prescribed in Section 437-A of Criminal Procedure Code, 1973. The case property/MO1 sample bottle of 180 ML shall be destroyed after expiry of appeal time.

ADDITIONAL CIVIL JUDGE (Jr. DIVISION),
cum ADDL. JUDL. FIRST CLASS MAGISTRATE,
NARSIPATNAM.

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (Jr. DIVISION) – CUM –
ADDITIONAL JUDICIAL FIRST CLASS MAGISTRATE: NARSIPATNAM**

Present: Sri M. Rohith,
Additional Civil Judge (Jr. Division) – cum -
Addl. Judl. First Class Magistrate,
Narsipatnam.

Monday, this is the 27th day of April, 2026

CALENDAR CASE NO:143/2023**Between:**

The State represented by the Sub-Inspector of Police, Narsipatnam Police Station.

...Complainant

And:

Pudi Ganesh, S/o.Apparao, Aged about 26 years, Cast Yatha,
R/o.Pedaboddepalli Narsipatnam Mandal

.....Accused.

This case is coming before me for final hearing on 20-04-2026 in the presence of Learned Assistant Public Prosecutor for the complainant and of Sri Kishore Kumar, Learned Counsel for Accused, having stood over till this day for consideration, this court delivered the following:-

J U D G M E N T

1) The Sub Inspector of Police, Narsipatnam PS filed charge sheet in Cr. No.82/2017 against the accused for the offence punishable under section 34(A) of A.P.Excise Act, 1968.

2) **The brief facts of the prosecution case are that :**

On 29.05.2017 at about 16:00 hours, LW3 B.Madhusudhana Rao , Proh. & Excise Sub Inspector, ESTF, Gajuwaka received credible information about illegal possession/transportation of illicit liquor on such LW3 along with LW.1 and 2 proceeded to the accused at Pedaboddepalli village, wherein they found some persons gathered at accused house and on seeing the police party, they scattered away, but they could able to catch one person, on their enquiry he revealed his identity particulars and confessed that white plastic bag containing 17 nip bottles of Officers Choice reserve whisky and 02 Nip bottles of MC

Dowels Luxury whisky (Total 17 nip bottles) and he is selling the same at higher prices, for which the police party informed him, manufacturing, selling and transporting of illicit liquor is an offence, as no mediators were available they arrested the accused under the cover of occurrence report and seized 17 Nip bottles of illicit liquor from his possession and drawn sample bottle of 180 ML from the seized illicit liquor for the sake of Chemical Examination, later they return back to the station along with the accused and seized liquor, basing on the occurrence report LW3 registered as case in Cr. No.82/2017 under section 34(A) of A.P.Excise Act, 1968, examined witnesses and recorded their statements and arrested the accused and served Sec.41(A) of Cr.P.C notice to the accused and the accused complied the same and after completion of investigation LW3 filed charge sheet against the accused for the offence punishable under section 34(A) of A.P.Excise Act, 1968.

3) This court took cognizance the offence under section 34(A) of A.P.Excise Act, 1968, against the accused and issued summons.

4) On appearance of the accused before this court, the copies of the case records were furnished to him as contemplated U/sec. 207 of Criminal Procedure Code, 1973.

5) Accused was examined U/Sec.239 of Criminal Procedure Code, 1973 and the charges under section 34(A) of A.P.Excise Act, 1968 are framed against him and the same was read over and explained to him in Telugu for which the accused pleaded not guilty and claimed to be tried. Hence, the trial.

6) In order to prove the case of prosecution, the prosecution has examined PW1 and got marked Ex.P1 to Ex.P3 and MO1 and the Learned APP gave up evidence of LW1 M.Apparao, LW2 S.Pavan Murthy, LW3 N.Madhu and LW6 G.Srinivasu

7) After closure of the evidence of the prosecution accused was examined U/Sec.313 of Criminal Procedure Code, 1973 stating the particulars of the incriminating material made against him in the evidence of prosecution witness, for which he denied the same and reported no defense evidence.

8) Heard learned Assistant Public Prosecutor for complainant and the learned counsel for Accused and perused the material on record.

9) Now the point for determination is:

Whether the prosecution is able to bring home the guilt of the accused for the offence under section 34(A) of A.P.Excise Act, 1968 beyond all reasonable doubt or not ?

POINT:

10) In order to prove the case of prosecution, it has to be seen whether the evidence of PW1 coupled with Ex.P1 to Ex.P3 and MO1 are sufficient to base the conviction of the accused for the offence punishable under section 34(A) of A.P.Excise Act, 1968, after scrutinizing them with due care and caution.

11) PW1 deposed before the Court that, on 29.05.2017 at about 09:30 hours, he received credible information about selling of illicit liquor at Pedaboddepalli village, then he along with LW1 and LW2 proceeded to the scene of offence, there they found one person was selling illicit liquor, on seeing them, he tried to escape from the place along with illicit liquor in a card board box, but they could not catch him along with 17 Nip bottles, they enquired him from where he purchased the said liquor, then he stated that he purchased from unknown person, then they seized 17 bottles, as no mediators are available they drafted Ex.P1 occurrence report and seized MO1 sample bottle of 180 ML from the seized property, basing on Ex.P1 occurrence report, he registered as a case vide Ex.P2 FIR in Cr. No.82/2017 under section 34(A) of A.P.Excise Act, 1968 and he also arrested the accused and served Sec.41(A) Cr.P.C notice to the accused, he also examined the witnesses and recorded their statements so also received Ex.P3 REL report, after completion of investigation he filed charge sheet.

12) It is the specific case of the prosecution that, PW1 got a credible information about selling of illicit liquor on such he conducted patrolling duties at Pedaboddepalli village along with other staff members and caught hold the accused and enquired. On enquiry he confessed the alleged offence. On such, he arrested the accused and seized 17 Nip bottles of illicit liquor from the

possession of the accused. To prove the alleged offence against the accused, the prosecution has to establish, the alleged seizure of case property i.e., one mica bag containing 1 ML bottles and 17 Nip bottles of illicit liquor from the possession of the accused beyond all reasonable doubt. In the present case, the prosecution examined PW1 who is none other than police official, LW1 is the raiding party and PW1 registered the FIR, examined the witnesses and investigated into the material part of the case failed to speak about the non securing the independent witnesses to corroborated the seizure from the possession of the accused. From the evidence of PW1 it is very much evident that the police raiding party did not make efforts to secure the presence of the mediators at the time of arrest of accused and seizure of case property. Further, no evidence was placed with regard to purchasing of illicit liquor by the accused or selling of the same. Except the contents of Ex.P1 occurrence report, the prosecution has not placed positive material to connect the accused with the alleged offence.

13) With regard to the seizure the Hon'ble High Court of A.P. Observed that if any seizure is made in contravention of Section 100 (4) of Criminal Procedure Code, 1973, entire seizure proceedings are deemed to have been vitiated. In this case also the search was made in the absence of any independent witnesses.

Section **100(4) of Criminal Procedure Code, 1973** makes it clear that

“Before making a search under this chapter the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do”

The observations of the *Hon'ble High Court of A.P. in the case of S. Babu Saheb @ Babu Vs. State of A.P., reported in 2010(1) ALT (Crl.) 32 AP, are very much relevant which are extracted hereunder:*

“Admittedly PW-1 accompanied the excise officials from Srikalahasti. The excise officials were proceeding on information. When they were proceeding on information they were right in taking mediators along with them where there is no possibility of securing any local mediators then probably they will be justified in

conducting seizure proceedings in the presence of mediators brought by them from a different place. But when they are conducting the search in a colony or at a place wherein there is possibility of securing the presence of independent mediators, the excise officials or Prohibition officers are bound to take the local respectable independent inhabitants. They must make sincere efforts to secure the local respectable mediators, that is the mandate of Section 100(4) of Cr.P.C., but excise officials are also authorized to issue an order in writing asking them to act as mediators under Section 100(4) of Cr.P.C. The object of section 100(4) of Cr.P.C., is to ensure confidence in the neighbours and in the public in general. That is genuine search has been made and incriminating material has been really found and not planted. The presence of independent respectable mediators at a search is always desirable and the persons of mediators of any other locality would not only weakened but sometimes destroy the prosecution case."

14) It is not the case of the prosecution witnesses that they examined any independent witness at the scene of offense though the scene of offence is a busy area, it consists of Sachivalayam, Secretary, VRO, Engineering Section employees. The entire case of the prosecution relies on the testimony of PW1 who is police official. If no independent persons were examined then it is the duty of the prosecution to explain as why it could not secure independent witnesses. Non-mentioning of the reasons for not securing independent witnesses is fatal to the case of the prosecution. Further the Hon'ble High Court of Andhra Pradesh in the case reported on 27-11-2001 **Yeduru Srinivasulu Reddy Vs. State of Andhra Pradesh** observed that the prosecution has to bring on record while charge in the accused that they have followed the procedure contemplated U/sec. 100(4) of the code. If it fails to prove that they had followed such procedure the search and seizure becomes vitiate.

15) Here, it is exactly stated as to the mandatory requirement of the police to secure independent witnesses from local inhabitants. While conducting such arrest and seizure or the seizing officer has to mention the reasons as to why section 100(4) could not be followed. But in the present case, it is seen that there has been no such thing done by PW1. Further other witnesses who participated in the raid also did not depose supporting the prosecution to the reasons best known to them. The evidence of PW1 do not inspire the confidence

of this Court to establish and come to conclusion that accused committed the offence under section 34(A) of A.P.Excise Act, 1968 and the prosecution has failed to prove the guilt of accused beyond all reasonable doubt and nothing is brought out to connect the accused with the offence with which he was charged and that this court is of the opinion that the accused is entitled for acquittal.

16) **In the result**, the accused found not guilty for the offence under section 34(A) of A.P.Excise Act, 1968 hence he is acquitted under section 248(1) of Criminal Procedure Code, 1973. The bail bonds and surety bonds of the accused shall remain in force for further period of Six months from today as prescribed in Section 437-A of Criminal Procedure Code, 1973. The case property/MO1 sample bottle of 180 ML shall be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer on computer system, corrected and pronounced by me in open court on this the 27th day of April, 2026.

ADDITIONAL CIVIL JUDGE (Jr. DIVISION),
cum ADDL. JUDL. FIRST CLASS MAGISTRATE,
NARSIPATNAM.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

PW1 M.Mohan Proh. And Excise Inspector, Narsipatnam Golugonda

For Defence: None

EXHIBITS MARKED

For Prosecution:

Ex.P1 Occurrence report

Ex.P2 FIR

Ex.P3 REL report

For Defence: Nill

Material Objects

MO1/ Sample bottle of 180 ML

ACJ(Jr.D)/NRPM