

In the court of Ms.Priyanka Sharma, PCS, Judicial
Magistrate Ist Class, Dasuya

CNR No.PBHOA 10012012021

Date of Instt. 08-07-2021

CIS No. CHA-78/2021

Date of decision:12-05-2023

State

Versus.

Baldev Singh son of Chanan Singh, R/o Village Talwandi Dadian,
P.S. Tanda, District Hoshiarpur.

.....Accused.

F.I.R. No. 214dated 28-02-2020

Under Section: 61-1-14 of the Punjab Excise Act, 1914.

Police Station: Tanda

Present: Sh. Moninder Singh, Ld. APP for the State
Accused Baldev Singh on bail
Sh. J.S. Sidhu, Advocate for accused Baldev Singh

JUDGMENT:-

Station House Officer of Police Station, P.S. Tanda has sent up the accused persons to face trial for having committed an offence punishable U/s 61 of the Punjab Excise Act, 1914

2. Prosecution story in brief is that on 28-08-2020 ASI Amrik Singh alongwith his police party were on patrolling in connection with search of bad elements and were going towards Talwandi Shalla, Prempur Takhri and Talwandi Dadian. When police party reached near Manpur turning point there Excise Inspector Tarlochan Singh alongwith other excise officials met and they joined the police party. When police

Ms. Priyanka Sharma, JMIC, Dasuya, UID-PB0544

party alongwith excise officials reached Bahadur turning point, there police party received a secret information that Baldev Singh son of Chanan Singh, R/o Village Talwandi Dadian, P.S. Tanda, District Hoshiarpur is indulged in the business of selling illicit liquor to general public and have prepared illicit liquor from the mixture of Jaggery and selling the same in huge quantity and they have stored the mixture of Jaggery in the village Talwandi Dadian. On the basis of information, ruqa was sent through the hands of PHG Gian Singh to the police station for registration of FIR. Thereafter, raid was conducted at the disclosed place and on seeing the police party accused ran away from the spot. It is submitted that one drum containing mixture of Jaggery was recovered. It is submitted that Excise inspector checked the mixture of Jaggery and prepared test report and handed over to I.O. The site plan of the place of recovery was prepared. Case property taken into police possession vide recovery memo. Total liquor is 70 liters of Lahan. Accused arrested. Statements of witnesses recorded. After completing the investigation final report under section 173 Cr.P.C presented before the Court.

3. On presentation of challan, copies of challan alongwith documents as required U/s 207 of the Code of Criminal Procedure were supplied to the accused free of cost.

4. From the report U/s 173 (2) of the Code of Criminal Procedure and documents annexed therewith, a *prima facie offence* punishable U/s 61 the Punjab Excise Act, 1914 was found to be made out

against the accused and charge was framed against them accordingly, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined PW1 Retired ASI Amrik Singh (I.O), Retired Excise Inspector Tarlochan Singh as PW2, HC Jaspal Singh as PW3, ASI Rajan Vasudev as PW4.

Prosecution also relied upon following documents:-

Exhibit	Document
Ex. PA	Ruqa
Ex. PD	Recovery memo
Ex. PE	Site plan
Ex. PF	Arrest-cum-intimation memo
Ex. PG	Personal bonds
Ex. PS	FIR
Ex. PC	Endorsement over ruqa
Ex. PH	Test report
Ex. MO1	Case property

Thereafter, Ld. APP for the State closed evidence on behalf of prosecution.

6. Statement of accused under section 313 Cr.P.C was recorded, putting him entire incriminating circumstances appearing in evidence of the prosecution against them, which he denied being incorrect. Defence taken. But defence evidence closed without leading any evidence.

7. I have heard arguments advanced by learned APP for the State as well as learned defence counsel. Ld. APP for the State contended that prosecution has duly proved its case. All the evidence is connected and corroborating each other. Therefore, he prayed for convicting the accused and maximum sentence.

To the contrary, Ld. defence counsel contended that no independent witness was joined by the police party at the time of alleged recovery. It is further argued that there are material discrepancies in the prosecution case. The prosecution has miserably failed to prove its case and hence the accused be acquitted.

8. After giving thoughtful consideration to rival submissions made by both the parties and minute appraisal of entire oral as well as documentary evidence placed on record, the following points requires determination in the present case:

“Whether accused Baldev Singh was found in possession of 70 Liter of Lahan, without any permit and license?”

9. PW-1 ASI Amrik Singh Investigating Officer of the case has deposed that recovery was effected from the the accused Baldev Singh on the basis of secret information. He proved on record Ruqa Ex. PA, Recovery memo Ex. PD, site plan Ex. PE, Arrest-cum-intimation memo PF, Personal bonds Ex. PG, FIR Ex. PS, Endorsement over ruqa Ex. PC, Test report Ex. PH, Case property Ex. MO1. However, when put to test of cross-examination, he deposed that they have visited the place of occurrence at 9.20 PM. He stated that distance of place of occurrence from police station is near about 8 K.M. *He deposed that accused is not owner of place of occurrence and ownership proof from where recovery was effected was not attached with judicial file.* He deposed that no independent witness was joined. He further stated that the measurement was arranged by HC Jaspal Singh.

Besided, PW2 Retired Excise Inspector Tarlochan Singh supported the case of prosecution and deposed that as per testimony of PW1 he also identified accused person present in the court. However, in his cross examination, it has come that *they reached with I.O at the place of occurrence at 6.30 PM and FIR was lodged at 7.00 PM.*

PW3 HC Jaspal Singh also supported the case of prosecution and deposed that as per testimony of PW1 he also identified accused person present in the court. However, in his cross examination he stated that they reached the place of occurrence at 4.00 PM and FIR was lodged against accused as 5.30. *He also stated that no recovery was effected from accused and no ownership proof of place from where the recovery was effected was taken.*

PW4 ASI Rajan Vasudev deposed that on 28-08-2020 ASI Amrik Singh deposited with him one empty iron drum. It is submitted that he made the entry of the same in register no. 19.

10. In order to sustain the conviction in the present case, it was incumbent upon the prosecution to prove that Lahan measuring 70 liter was recovered from the possession of accused. The case of prosecution from the very beginning is that accused Baldev Singh has kept the mixture of Jaggery near Canal of village in drums and on the basis of secret information drum containing Jaggery was recovered. However, in the instant case accused Baldev Singh was not arrested alongwith drum on the spot. It is the case of prosecution that drum containing Jaggery was recovered from the disclosed place and the accused had ran away from the

spot on seeing the police party. Meaning thereby the accused was not apprehended from the spot. Thus for connecting the accused with recovery independent evidence is required. However, no independent witness is examined in the present case. Here, it is pertinent to mention that this Court is well conscious of the settle law regarding the joining of independent witnesses that it is not absolutely necessary to sustain the conviction and in every case Trial Court must not reject the case of prosecution on the ground of non-joining of independent witness, if case otherwise made true and acceptable. But in such like situation when there exists discrepancies in evidence of prosecution, it becomes necessary to join the independent witness. The Court is of view that this is not the case where attempt was made to join the witness and investigating agency remained unsuccessful, rather it is a case where no such attempt was made at all. Thus recovery in the instant case is highly doubtful and there is nothing on record to connect accused persons with recovery made. Therefore, the benefit must go to accused.

Furthermore, as prosecution version recovery was effected near the Canal and accused was not arrested on the spot. Therefore, ownership proof of the property from which alleged recovery is effected becomes important to connect the recovery with the accused. However, in the instant case, I.O himself has stated that accused Baldev Singh is not owner of the property from where the recovery was effected. He has also stated that no ownership proof of the property from where recovery is effected was taken. In absence of proof regarding ownership, the recovery

cannot be connected with the accused. Accordingly, case of prosecution becomes doubtful and its benefit must go to accused.

Besides, prosecution case is also becomes doubtful from the statement of witnesses PW1 I.O of the case has deposed that they have reached the disclosed place at 9.20 PM, whereas Excise Inspector Tarlochan Singh has stated they had reached the place of occurrence at 6.30 PM and recovery witness went to the extent of deposing that they have reached the place of occurrence at 4.00 PM. This, puts the question mark on presence of raiding party as well as recovery from the disclosed place. This also makes the case of prosecution doubtful.

11. In view of the above given reasons, the court has reached to conclusion that prosecution has failed to prove its case beyond shadow of reasonable doubt. Hence accused Baldev Singh is acquitted of the charge framed against him. On expiry of period prescribed for filing appeal or revision, as the case may be and outcome thereof, if any, the case property be disposed under rules. File be consigned to the Judicial Record Room after due compliance.

Pronounced in open Court.
Dated: 12-05-2023
(Rashpal Kumar,J.W)

(Priyanka Sharma)
Judicial Magistrate Ist Class,
Dasuya/UID-PB0544