IN THE COURT OF SH. MANUJ KAUSHAL, JMFC-03, SE,
SAKET COURTS, NEW DELHI

DLSE020411852022

State Vs. Murgesan

FIR No.	:286/2020
Police Station	: Hazrat Nizamuddin
Under Section	: 33 Delhi Excise Act
Date of institution	: 09.11.2022
Date of pronouncement	:13.08.2026

<u>JUDGEMENT</u>

a)	Serial number of the case	10276/2022
b)	Date of commission of offence	23.09.2020
c)	Name of the complainant	ASI Bedi Ram
d)	Name, parentage and address of the accused	Murgesen S/o Lt. Munnu Swami R/o H.No.612, Madrasi Camp, Jangpura-B, New Delhi.
e)	Offence complained of	Section 33 Delhi Excise Act
f)	Plea of the accused	Pleaded not guilty
g)	Final order	Acquittal
h)	Date of final order	13.08.2026

BRIEF STATEMENT OF FACTS AND REASONS FOR THE DECISION

1. Briefly stated, it is the prosecution's case that on 23.09.2020 at about 2.45PM at Barapullah near Sabji Mandi Main Road Jangpura, within the jurisdiction of PS H.N.Din, accused was found in possession of plastic Katta containing 17 cartons of illicit liquor bearing the label of Asli Santra Masaledar Deshi Sharab for sale in Haryana only and ADS mark as mentioned in seizure memo without any permit/license in contravention of Delhi Excise Act and thereby accused committed an offence punishable u/s 33 Delhi Excise Act.

ACCUSATION AGAINST THE ACCUSED

2. Vide order dated 24.07.2023 passed by this Court, charge for the offence punishable u/s 33 Delhi Excise Act was framed against the accused to which he pleaded not guilty and claimed trial.

EVIDENCE OF THE PROSECUTION

3. The prosecution examined 5 witnesses in all. Their testimony is being reproduced hereinunder.

(a) PW-1 Ct. Rajesh has deposed that on 23.09.2020, he alongwith ASI Bediram and Ct. Bipin were on patrolling duty on foot. He further deposed that at about 2.45PM, when they reached under Barapullah flyover near Sabji Mandi, Madrasi camp, main road, Jangpura-B, they saw that one person was sitting on the gatta petti by spreading cloth on it. He further deposed that ASI Bediram got suspicious and went towards him. He further deposed that ASI Bedi Ram removed the cloth and checked the gatta petti. He further deposed that there were 17 petties, out of which 16 petties contained 50 bottles each having label of 'ADS Asli Santra Masaledar deshi

Sharab' of quantity of 180ml each. He further deposed that the 17th petty contained 46 quarters of 'Episode Gold Whiskey'. He further deposed that upon inquiry, the said person disclosed his name as Murugesen. He further deposed that IO/ASI Bediram took one sample quarter bottle from each petti and kept the remaining bottles in their respective boxes and sealed it with the seal of AK. He further deposed that after the use of the seal, it was handed over to Ct. Bipin. He further deposed that IO seized the case property and the sample quarter bottles vide seizure memo Ex-PW1/A and filled Form M-29. He further deposed that IO/ASI Bediram recorded the complaint and prepared the rukka and handed over the same to Ct. Bipin for registration of FIR. He further deposed that Ct. Bipin returned back to the spot alongwith the copy of FIR and original tehrir and handed it over to IO/ASI Bediram. He further deposed that IO/ASI Bediram prepared the site plan vide ExPW1/B and accused was arrested, personally searched and his disclosure statement was recorded by the IO vide Ex-PW1/C, Ex-PW1/D and Ex-PW1/E. He correctly identified the accused and the case property Ex-PH1(colly) and Ex-P2. He was cross-examined by Ld. Defence counsel for the accused.

(b) PW2 MHC(M)/HC Harender has proved entry no.2047 dated 23.09.2020 regarding the depositing of the case property i.e. Ex-PW2/A (OSR). He further deposed that the sample quarter bottles were taken from the Malkhana by Ct. Ajay vide RC No.191/21/20 for depositing the same in the Excise Laboratory. He was cross examined by Ld. Defence counsel.

(c) PW3 ASI Ravindra Kumar has deposed that on 23.09.2020, he was posted as Head Constable at Excise Department, L Block, Vikas Bhawan. He further deposed that upon information of illicit liquor being kept in Madrasi Camp, Jangpura, he reached at the aforementioned place. He further deposed that he met ASI Bedi Ram and two constables namely Ct. Bipin & Ct. Rajesh. He further deposed that the said police officials had already recovered 17 pettis of illicit liquor and had apprehended the accused Murugesen. He further deposed that he told them that he had the information qua the illicit liquor being kept in the Madrasi Camp. He further deposed that IO recorded his statement and he left the spot. He correctly identified the accused. He was cross examined by Ld. Defence counsel.

(d) PW4 HC Bipin has deposed along the lines of PW1, therefore, his entire testimony is not being reproduced for the sake of brevity. He correctly identified the accused and the case property. He was cross-examined by Ld. Defence counsel for the accused.

(e) PW5 ASI Bediram has deposed along the lines of PW1, therefore, his entire testimony is not being reproduced for the sake of brevity. He further proved the rukka Ex-PW5/A. He correctly identified the accused and the case property. He was cross-examined by Ld. Defence counsel for the accused.

STATEMENT / DEFENCE OF THE ACCUSED

4. In his examination under Section 313 r/w 281 Cr.P.C, the accused denied the entire evidence put to him. In defence the accused has stated that he is innocent and falsely implicated in the present case. Accused opted not to lead DE, hence the matter was fixed for final arguments.

ARGUMENTS

5. Learned APP for the State has argued that the testimonies of all prosecution witnesses have established the guilt on the part of accused and that he be

convicted for offence under section 33 Delhi Excise Act. On the other hand, it has been argued by the learned counsel for accused that accused is innocent and the prosecution has failed to prove its case beyond reasonable doubt. Ld. counsel further argued that the failure to join public witnesses to the recovery raises a doubt on the said recovery and seizure memo. Ld. Counsel has further argued that there are various contradictions and discrepancies in the testimony of prosecution witnesses.

ANALYSIS AND FINDINGS

6. I have heard Ld. APP for the State and the Ld. counsel for the accused at length and perused the record carefully.

7. In a criminal trial, the onus remains on the prosecution to prove the guilt of accused beyond all reasonable doubts and benefit of doubt, if any, must necessarily go in favour of the accused. It is for the prosecution to travel the entire distance from 'may have' to 'must have'. If the prosecution appears to be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused.

8. Before adverting further the contents of Section 33 of the Delhi Excise Act are reproduced as follows:

> *"33. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc. --*
>
> *(1) Whoever, in contravention of provision of this Act or of any rule or order made or notification issued or of any licence, permit or pass, granted under this Act--*
>
> *(a) manufactures, imports, exports, transports or removes any intoxicant;*
>
> *(b) constructs or works any manufactory or warehouse;*
>
> *(c) bottles any liquor for purposes of sale;*

> *(d) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant other than toddy or tari;*
>
> *(e) possesses any material or film either with or without the Government logo or logo of any State or wrapper or any other thing in which liquor can be packed or any apparatus or implement or machine for the purpose of packing any liquor;*
>
> *(f) sells any intoxicant, collects, possesses or buys any intoxicant beyond the prescribed quantity, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to one lath rupees."*

9. With respect to the charge under Section 33 of the Delhi Excise Act, the case of the prosecution is that on the fateful day the accused was found in possession of illicit liquor without any permit or licence. In order to bring home the charge against the accused, the prosecution was required to prove beyond reasonable doubt, the recovery of illicit liquor from the possession of the accused.

10. It was argued that a presumption in favour of the prosecution is raised under Section 52 of the Delhi Excise Act to the effect that the accused had committed the said offence and it is for the accused to prove the contrary. The said argument does not find favour with this Court. Section 52 of the Delhi Excise Act reads as under:

> *"Presumption as to commission of offence in certain cases. - (1) In prosecution under Section 33, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of any intoxicant, still, utensil, implement or apparatus, for the possession of which he is unable to account satisfactorily.*

(2) Where any animal, vessel, cart or other vehicle is used in the commission of an offence under this Act, and is liable to confiscation, the owner thereof shall be deemed to be guilty of such offence and such owner shall be liable to be proceeded against and punished accordingly, unless he satisfies the court that he had exercised due care in the prevention of the commission of such an offence".

11. The words "for the possession of which he is unable to account satisfactorily" used in Section 52(1) of the Delhi Excise Act clearly reveal that as a pre-requisite for the presumption under the aforesaid provision being raised against the accused, it is imperative for the prosecution to successfully establish the recovery of the said alleged articles from the possession of the accused. It is only after the prosecution has proved the possession of the alleged articles by the accused, that the accused can be called upon to account for the same. However, for the reasons mentioned hereinafter the prosecution has failed to establish beyond reasonable doubt that the accused was found in possession of the alleged illicit liquor. Accordingly, no presumption as provided for under Section 52 of the Delhi Excise Act can be raised against the accused in the present case.

Absence of independent witnesses

12. Evidently, no public witness to the recovery of the liquor has been either cited in the list of witnesses or examined by the prosecution. The spot of recovery as per the site plan ExPW1/B is located near *sabzi mandi*. Further, PW-1 Ct. Rajesh, PW-4 HC Bipin and PW-5 IO/ASI Bedi Ram have deposed that the shops of the *sabzi mandi* were open and the shopkeepers were present at the spot. The said testimonies and the site plan shows that the place of recovery and apprehension of the accused is, therefore, clearly located in an area where public persons would be readily available. It is not the case of the prosecution that no public person was present at or near the spot of arrest and recovery.

13. Further, all the above-mentioned witnesses have stated that the IO asked passerbys to join the investigation however, they refused to join the investigation. All the prosecution witnesses have admitted that no written notice was given to any public person to join the investigation. Nothing has been brought on record to suggest that the IO had given a notice to any shop keeper to join the investigation. Thus, the prosecution has failed to prove that any serious effort was made by the IO to join public persons in the proceedings. It is a well settled proposition that non-joining of public wi shrouds 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. Same has not been done in the present case. This casts a doubt on the fairness of the investigation. Reliance is placed on paragraph 6 of the judgment in ***Pawan Kumar v. The Delhi Administration, 1989 Cri.L.J. 127,*** wherein the Hon'ble High Court of Delhi had observed as under:

> *" ... According to Jagbir Singh, he did not join any public witness in the case while according to Kalam Singh, no public person was present there.*
>
> *It hardly stands to reason that at a place like a bus stop near Subhas Bazar, there would be no person present at a crucial time like 07.30 p.m. when there is a lot of rush of commuters for boarding the buses to their respective destinations. Admittedly, there is no impediment in believing the version of the Police officials but for that the prosecution has to lay a good foundation. At least one of them should deposed that they tried to contact the public witnesses or that they refused to join the investigation. Here is a case where no effort was made to join any public witness even though number of them were present. No plausible explanation from the side of the prosecution is forthcoming for not joining the independent witnesses in a case of serious nature like the present one. It may be that there is an apathy on the part of the general public to associate themselves with the Police raids or the recoveries but that apart, at least the I.O. should*

have made an earnest effort to join the independent witnesses. No attempt in this direction appears to have been made and this, by itself, is a circumstance throwing doubt on the arrest or the recovery of the knife from the person of the accused."

14. This Court is, however, conscious that the prosecution case cannot be thrown out or doubted on the sole ground of non-joining of public witnesses as public witnesses keep themselves away from the Court unless it is inevitable, as has been held in ***Appabhai and another v. State of Gujarat,*** AIR 1988 SC 696. However, in the present case, it is not only the absence of public witnesses which raises a doubt on the prosecution but there are other circumstances too, as discussed hereinafter, which raise suspicion over the prosecution version.

Possibility of misuse of seal of the investigating officer

15. As per the charge-sheet seal after use was handed over to Ct. Bipin however, no seal handing over memo has been placed on record by the IO. Moreover, no witness in their examination has deposed regarding the ultimate fate of the seal. Thus the misuse of the seal cannot be ruled out. Moreover, the seal after use is stated to be handed over to Ct. Bipin who not only apprehended the accused but also remained integral part of the investigation. There is nothing on record to suggest that IO had made efforts to handover the seal to any independent witness. In such a factual backdrop, the possibility of tampering with the case property cannot be ruled out.

16. In this regard, judgment in case titled as **Ramji Singh Vs. State of Haryana 2007 (3) RCR (CRIMINAL) 452,** may be adverted to, wherein it was observed in paragraph 7 that:

"…The very purpose of giving seal to an independent person is to avoid tampering of the case property. It is

> *well settled that till the case property is not dispatched to the forensic science laboratory, the seal should not be available to the prosecuting agency and in the absence of such a safeguard the possibility of seal, contraband and the samples being tampered with cannot be ruled out. In the present case, the seal of Investigating Officer-Hoshiar Singh bearing impression HS was available with Maha Singh, a junior police official and that of Deputy Superintendent of Police remained with Deputy Superintendent of Police himself. Therefore, the possibility of tampering with seals as well as seized contraband and samples cannot be ruled out."*

17. The facts that no independent witness was cited or examined, possibility of misuse of seal has not been ruled out, and the property remained with the arresting witness for a sufficient amount of time before the same was deposited in the malkhana, when kept in juxtaposition to each other, cast a cloud of suspicion over the prosecution version. In view of the aforesaid, the possibility of false implication of the accused in the present case cannot be ruled out.

18. Furthermore, as per the testimony of PW-1 Ct. Rajesh, PW-4 HC Bipin and PW-5 IO/ASI Bediram, ASI Bedi Ramhad prepared complaint, tehrir and seizure memo before the registration of FIR. On a perusal of the seizure memo Ex.PW-1/A, it is observed that the same bears the case particulars. From the aforesaid observation, it can be inferred that either the case particulars were added subsequently or the documents have been prepared subsequent to the registration of FIR. It is not the case of the prosecution that the case particulars were added on the seizure memo subsequently. This circumstance creates a serious doubt as to whether the documents were prepared contemporaneously or subsequently, thereby affecting the credibility of the prosecution version.

19. It is trite in criminal jurisprudence that the prosecution is under an obligation to prove its case against the accused beyond reasonable doubt. The standard of proof

to be adopted in criminal cases is not merely of preponderance of probabilities but proof beyond reasonable doubt on the basis of cogent, convincing and reliable evidence. It is also well settled that in case of doubt, the benefit must necessarily be allowed to the accused.

20. Thus, in view of the foregoing analysis, this Court is of the considered opinion that the benefit of doubt ought to be granted to the accused, who is entitled to be acquitted of the charges against him in the present case. **The accused Murgesen is hereby acquitted of the offence punishable under Section 33 of the Delhi Excise Act.**

21. Let a copy of this judgment be provided to accused free of cost and a copy be placed on the district court website.

22. **Announced in open court on 13.08.2026.**

MANUJ KAUSHAL

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(MANUJ KAUSHAL)
JMFC-03 (South-East),
Saket Courts, New Delhi