

IN THE COURT OF THE JUDICIAL MAGISTRATE
GHATAL, PASCHIM MEDINIPUR.

Present: Debojit Das
Judicial Magistrate,
Ghatal, Paschim Medinipur

GR 749 of 22

R. 1364/22, T.R. 175/23

State

-vs-

Gopal Dolai

Under Section 46A (C) of the B.E. Act.

Date of delivery of judgment 16/02/2024

J U D G M E N T

1. The prosecution case in a nutshell is that on 16/7/2022 informant ASI Rajendra Das of Ghatal P.S. lodged a complaint at Ghatal P.S. at about 20:55 hrs stating that on the said date while he was on mobile duty, he got information that one was selling liquor illegally at Dandipur from his grocery shop. Thereafter he held raid along with his force and found that accused was running illegal liquor business without any licence and seized I.D. liquor from his shop and arrested him. Thereafter he forwarded the accused before the O.C. of Ghatal P.S. along with seized articles.
2. Upon receiving the complaint police registered the case as Ghatal PS FIR being no. 246/22 under Section 46A(C) of the B.E. Act and the police conducted investigation into the matter.
3. Later the investigation was handed over to officer in charge of Excise Ghatal Circle. On completion of the investigation, the said officer submitted charge sheet against the sole accused under Section 46A(C) of the B.E. Act.
4. Copies of the relevant documents were furnished to the accused in accordance with Section 207 Criminal Procedure Code.
5. After examining the documents submitted under Section 173 Cr.P.C, the accused is charged under Section 46A(C) of the B.E. Act. The substance of the accusation is read over to the accused

- in Bengali and explained to him to which he pleaded not guilty and claimed to be tried.
6. During trial, the prosecution examined two witnesses after which the prosecution evidence was closed. The signature of PW1 in the forwarding report is marked as Exhibit P1, signature of PW2 in the in the seizure list is marked as Exhibit P2/1.
 7. The defence statements of the accused were, accordingly, recorded in separate sheets of paper wherein the accused declined the entire allegations made against the accused. Defence did not adduce any evidence.
 8. Upon hearing both the parties and on perusal of the case record, the following points for determination were formulated by this Court:
 - i. Is the accused guilty of the offence punishable under Section 46A(C) of the B.E. Act?
 9. I have heard the learned counsel on both sides and have gone through the evidence on records which have been outlined below.

EVIDENCE

10. PW1 deposed that he did not investigate the case. He deposed that he forwarded the accused before Ld. Court and later he handed over the investigation to excise department.
11. PW2, one of the seizure witnesses deposed that on 17/7/2022 he went on raid along with his officer at Dandipur village but could not recall why. He identified his signature in the seizure list but could not recall why he signed it. He denied being interrogated by the I.O.

APPRECIATION OF EVIDENCE

12. It is a search and seizure case. Prosecution needs to be prove that some liquor alleging to be liquor was seized from the custody of the accused. Thereafter, prosecution needs to prove that that such seized articles was liquor. Only thereafter the burden would come

upon the accused that he was selling the said liquor after obtaining licence. In this case, prosecution examined one of the seizure witnesses who miserably failed to say what was seized and why he went on raid. If one of the seizure witnesses fails to corroborate prosecution, the entire alleged seizure comes under question. The prosecution failed to prove the seizure in the first place. Therefore, chemical report of sample collected from seized article become irrelevant. Prosecution needs to prove its case beyond reasonable doubt. Since it is a case instituted by police personnel, degree of prove must be very high. If one of the seizure witnesses fails then the entire case fails. This is exactly what happened in this case.

13. The essential ingredients to connect the accused with the offence are punishable under Section 46A(C) of the B.E. Act are very much absent in the present case. The prosecution has failed to bring home any iota of evidence that the accused committed the alleged offence charged with. Hence, the accused is entitled to be acquitted of all charges framed against the accused.
14. All the points are thus answered in the negative. As a result, prosecution case fails and the accused merits acquittal.

Hence, it is

ORDERED

15. that the sole charge sheet accused is found not guilty to the charge so framed under Section 46A(C) of the B.E. Act and he is hereby acquitted under Section 248 (1) of the Cr.P.C.
16. Bail bond shall remain in force for the next six months as per the mandate of section 437A Cr.P.C.
17. The judgment is delivered in open Court. Let necessary noting be made in the register.
18. Let the soft copy of the judgment be uploaded in the CIS within 48 hours from this day as per Rule 186 A of the Cr. R.O of the Honourable High Court, Calcutta.

19. Let a copy of this judgment be forwarded to the District Magistrate, Paschim Medinipur & Secretary, DLSA, Paschim Medinipur for due intimation to the victim as defined under section 2(a) of the Code of Criminal Procedure. B.C I and B.C II to comply.

Typed and corrected by me.

Judicial Magistrate,
Ghatal, Paschim Medinipur
JO WB1370