

**CALENDAR AND JUDGMENT
KRISHNA DISTRICT**

**Calendar Cases tried by the Junior Civil Judge-Cum-Judicial Magistrate of Ist
Class, Mylavaram.
C.C. No.1152/2022**

Date of offence	Date of Report or complaint	Date of Apprehension of accused	Date of Release on bail	Date of Commencement of trial	Date of Closure of trial	Date of Sentence or order
05.09.2020	05.09.2020	08.09.2020	10.09.2020	15.02.2023	10.03.2023	31.03.2023

1. NAME OF THE COMPLAINANT :

State Represented by Sub-Inspector of Police, G.Konduru P.S., Krishna District.

2. NAME OF THE ACCUSED :

Ambatipudi Raju, S/o. Santhikumar @ Paul yesu, Age 35 years, caste Mala, G.Konduru Village and Mandal, Krishna District.

3. OFFENCE

: Import, Export, Transport, Manufacturing, collection or possession of any intoxicants punishable Under Section 34 (a) of the Andhra Pradesh Excise Act, 1968.

4. FINDING

: Accused is found not guilty

5. SENTENCE

: Accused is acquitted Under Section 248 (1) Cr.P.C.,

6. EXPLANATION FOR DELAY :

Cognizance of case was taken for the offence Under Section 34(a) of A.P. Excise Act on 29.08.2022. On 12.10.2022 on appearance of accused, copies of case documents furnished to him Under Section 207 Cr.P.C. On 11.01.2023 accused was examined Under Section 239 Cr.P.C, charges framed, read-over and explained to him in Telugu, for which, he pleaded not guilty and claimed to be tried. On 15.02.2023 PW.1 was examined and Exs.P1 to P4 and M.O.1 were marked and on the same day prosecution evidence was closed. On 10.03.2023 accused was examined Under Section 313 Cr.P.C and reported no defence evidence and defence evidence closed, Heard Arguments 10.03.2023. Judgment was pronounced in open court on 31.03.2023. Hence the delay.

Sd/-Sk. Shireen,

**Junior Civil Judge-cum-
Judicial Magistrate of First Class,
Mylavaram.**

Copy

Submitted to

The Hon'ble I Addl. District and Sessions Judge,
Machilipatnam, for kind perusal.

The Superintendent of police, Machilipatnam.

**IN THE COURT OF THE JUNIOR CIVIL JUDGE-CUM-JUDICIAL MAGISTRATE
OF FIRST CLASS AT MYLAVARAM**

Present: Smt Sk.Shireen
Junior Civil Judge-Cum-Judicial Magistrate Of First Class,
Mylavaram
Friday, on this the 31st day of March, 2023

C.C. No.1152/2022

Between:

State Represented by Sub-Inspector of Police, G.Konduru P.S., Krishna District.

... Complainant

And:

Ambatipudi Raju, S/o. Santhikumar @ Paul yesu, Age 35 years, caste Mala, G.Konduru Village and Mandal, Krishna District.

.. Accused

* * *

This case is coming on 10.03.2023 for final hearing before me in the presence of Sri M.A. Hameed, the learned Assistant Public Prosecutor for the State and of Sri P.Ramakrishna, Advocate for the Accused and having stood over till this day for consideration, this court delivered the following:

J U D G M E N T

The Sub-Inspector of Police, G. Konduru Police Station, Krishna District laid a charge sheet in Cr.No.629/2020 against the accused for the offence Under Section 34 (a) of A.P. Excise Act, 1968.

2. The Brief case of the prosecution as per the charge sheet is as follows:

On 05.09.2020 at 19.00 hours, LW4/R.Dharmaraju, the Sub Inspector of Police of G. Konduru Police Station conducted checking along with staff near Gail Company of G. Konduru Mandal, and found the accused and on seeing the police, he tried to flee away, then they caught hold of the accused and found 87 bottles of Old Admiral Brandy each 180 ml, without any license or bills in his possession. That the same were for sale in Telangana State only. That they enquired the name and address of the accused. Then tried for mediators but in vain.

3. Then the Sub-Inspector, G. Konduru Police Station seized and sealed the contraband, drawn the samples for chemical analysis, prepared the occurrence

report and arrested the accused under cover of the report. Brought the accused to the G. Konduru Police Station along with the seized contraband. Then affixed identity slips duly signed by police officials, Basing on the occurrence report, he registered First Information Report as Cr.No.629/2020 for the offence Under Section 34(a) of A.P. Excise Act, 1968, and arrested the accused and produced him for judicial remand. After completion of entire investigation, LW.4/R.Dharma Raju, Sub-Inspector of Police, G. Konduru Police Station filed charge sheet. Hence, the Charge.

4. The case was taken on file for the offence under Section 34(a) of A.P. Excise Act, 1968 against the accused.

5. After appearance of accused, case copies were furnished to him Under section 207 of Criminal Procedure Code, he was examined Under Section 239 of Criminal procedure Code. A charge framed Under Section 34(a) of A.P. Excise Act, 1968 was read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

6. In the trial afforded by both parties, prosecution cited 04 witnesses. Examined P.W.1 and the evidence of LW.1 S.Raghu Kmar, HC 1809, LW2 M.Raja Rao, PC 1267 and LW3 M.Madhava Rao, PC 1752 was given up by prosecution. Ex.P.1 to Ex.P.4 were marked. M.O.1 was marked.

7. After completion of prosecution evidence, accused was examined Under section 313 of Cr.P.C. Incriminating material was read over and explained to him in Telugu, for which, he denied and reported no defence. No exhibits were marked in "D" series.

8. Heard the Learned Assistant Public Prosecutor and the Learned counsel for the accused.

9. Now the point for determination is:

“Whether the prosecution has proved the guilt of the accused for the offence charged Under Section 34 (a) of A.P. Excise Act, 1968 beyond reasonable doubt?”

POINT:

a) After considering the arguments on both sides and Scrutinizing entire evidence of prosecution, P.W.1 the Sub-Inspector of Police, G. Konduru Police Station deposed about conducting of checking on 05.09.2020 at 19.00 hours near Gail Compnay of G. Konduru Mandal and about seizure bottles of 87 bottles of Old Admiral Brandy each 180 ml without any license or bills, from the Accused. He deposed about drafting the occurrence report, and arresting the accused and registering of First Information Report as Cr.No.629/2020 under Section 34 (a) of A.P. Excise Act, 1968. He also deposed about obtaining of chemical analysis report and filing of charge sheet by him. The occurrence report, First Information Report, Rough Sketch and Chemical Analysis report are marked as Exs.P.1 to P.4. The Sample bottle is marked as M.O.1.

b) The evidence of P.W.1 who is a police personnel cannot be discarded on the sole ground that his evidence is found to be incredible or it is unsafe to rely upon his evidence. Our lordship decided on this aspect which was reported in ***Kalpnaath Rai vs State (Through Cbi) 1997 (2) ALD Cri 805*** where in it was observed by the Hon'ble Apex Court that: *“Indeed, the evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigation or the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation; requires greater care to appreciate their testimony.”*

c) But, The rule of Prudence is that the Testimony of a Official (Police) Witness shall be corroborated, in order to prove the case of the Prosecution beyond reasonable doubt. And the evidence of P.W.1 that the accused was found in possession of Liquor bottles cannot be relied on, without any corroboration. The prosecution failed to prove the seizure in the presence of mediators as contemplated Under section 100(4) of Cr.P.C, and the case of prosecution is clouded with shadow of doubt. while discussing about the cases where under the police officer who is the informant, himself is an investigator, The Hon'ble Supreme Court of India has held as under: *"In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its' attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion"* in **Mohan Lal v. The State Of Punjab 2018 (17) SCC 627**. Despite the fact that the above conclusion was with regard to the cases filed under The Narcotic Drugs and Psychotropic Substances Act, where the burden of proof is on the accused to prove his innocence, the conclusion with regard to the reliability of the witness, where the witness himself is an informant as well as investigator and the fact that the evidence of such witness is not corroborated by any independent witnesses cannot be overlooked. Hence, as per Section 100(4) of Cr.P.C and relying upon the above case law, accused is entitled for benefit of doubt. The search, seizure and arrest of the accused are in contravention of sec 100(4) of Cr.P.C as the above section itself envisages to secure any of the inhabitants of the locality as mediator.

d) It is not a rule of prudence to convict the accused without any corroborating evidence. Therefore, in such circumstances, the accused in this case is entitled to benefit of doubt. Hence, In view of the above circumstances, prosecution has failed to prove the guilt of the accused for the offence charged Under Section 34 (a) of A.P Excise Act, 1968 beyond reasonable doubt.

10. In the result, the Accused is found not guilty for the offence charged Under Section 34 (a) of A.P. Excise Act, 1968. He is acquitted Under section 248(1) of Cr.P.C. The Bail Bonds of the accused shall stand canceled after expiry of appeal time. M.O.1 shall be destroyed after expiry of appeal time.

Typed by stenographer to my dictation, corrected and pronounced by me in the open court on this the 31st day of March, 2023.

Sd/-Sk.Shireen,
**Junior Civil Judge-cum-
 Judicial Magistrate of First Class,
 Mylavaram.**

Appendix of Evidence
Witnesses Examined

For Prosecution :

PW.1: 15.02.2023/R.Dharmaraju , Sub-Inspector of Police, G.Konduru Police Station.

For Defence:

None.

Exhibits Marked

For Prosecution:

Ex.P.1: occurrence Report, dated 05.09.2020

Ex.P.2: First Information Report

Ex.P.3: Rough sketch.

Ex.P.4: Chemical Analysis Report.

For Defence:

- NIL -

Material Objects :

M.O.1: One sample bottle of 180 ml.

Sd/-Sk.Shireen,
**Junior Civil Judge-cum-
 Judicial Magistrate of First Class,
 Mylavaram.**