

PBGDA10026362023



Presented on : 02-05-2023
Registered on : 02-05-2023
Decided on : 14-09-2023
Duration : 0 years, 4 months, 12 days

**IN THE COURT OF
Judicial Magistrate - Ist Class
AT Batala, Gurdaspur
(Presided Over by Sh. Manpreet Sohi)**

CHA/133/2023

CIS No:	CHA-133-2023
Date of Decision	14.09.2023

State	Versus	Surinder Singh alias Shinda son of Rehmat Singh, resident of Village Kalar, Tehsil Batala, District Gurdaspur.
-------	--------	--

FIR No. 89 dated 07.09.2022
Under Sec. 61(1) (a) (b) (c) of Punjab Excise Act, 1914
Police Station, Ghanie Ke Banger.

Present: Sh. Ravinder Singh, APP for the State.
Accused on bail with counsel Sh. Pushpinder Singh, Advocate.

JUDGMENT

1. Accused named above has been sent up to face trial for commission of an offence punishable under section 61(1) (a) (b) (c) of

The Punjab Excise Act, 1914 by police, Police Station Ghanie Ke Banger.

2. Germane facts necessary to decide the present case are that on 07.09.2022, police party headed by ASI Sukhdev Singh was on patrolling duty in connection with search of bad elements and was present at bridge canal, Aliwal, where IO received a secret information to the effect that accused Surinder Singh alias Shinda son of Rehmat Singh, resident of village Kalar is habitual in distilling and selling illicit liquor at his house and if raid is conducted, recovery can be effected. Before conducting the raid, IO tried to join the public witness but nobody ready to join with the police party. Finding the information reliable, police party conducted raid at the house of accused, where one person was seen giving fire to working still. On seeing the police party, accused tried to escape but IO with the police help apprehended him. Police party recovered one cann plastic containing 10 Kg of lahan, 6 bottles of illicit liquor and working still from the house of accused. A sample nip of 180 ml was drawn and remaining liquor i.e. 5 bottles of 750/750 ml each and one bottle of 570 ml, which were poured into cane plastic. Cann plastic and other case property along with sample was sealed with seal bearing impression "SS" and seal after use was handed over to ASI Vishwamitter. On basis of ruqa, the present FIR was registered. Statement of witnesses were record. Accused was arrested on the spot. After the completion of investigation and other formalities, challan against accused was presented in the court.

3. On appearance of accused in the court, copies of all the documents sent along with the police report and relied upon by prosecution, were supplied to him, free of costs as envisaged under Section 207 Cr.P.C.

4. After hearing learned APP for State, defence counsel and on perusing the documents on the file, a prima facie case for offence punishable under section 61(1) (a) (b) (c) of the Punjab Excise Act, 1914 was made out against the accused and accordingly he was charge sheeted, which was explained to him in simple language to which he pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution examined following witnesses:-

PW1	ASI Vishwamitter	Witness who was member of police party. He has also proved documents such as recovery memo Ex. P1, arrest memo Ex. P2, ruqa Ex. P3 and the fact of handing over the seal to him.
PW-2	ASI Daljit Singh	Concerned MHC to depose about depositing of case property with him by ASI Sukhdev Singh on 07.09.2022. He also proved on record entry in register no. 19 as Ex. P4 & Ex. P5.
PW-3	Ct. Rajinder Singh	Sample carrier to prove the fact of depositing the sample parcel to chemical examiner Kharar on 29.09.2022.

PW-4	Retired ASI Sukhdev Singh	Investigating officer to prove sequence of investigation and documents such as recovery memo Ex. P1, arrest-cum-intimation memo Ex. P2, personal search Ex. P3, copy of register no. 19 Ex. P4 and Ex. P5, ruqa Ex. P6, FIR Ex. P7, endorsement on ruqa Ex. P8, Form M29 Ex. P9, site plan Ex. P10, chemical examiner report Ex. P11 and case property Ex. MO1 to Ex. MO6.
PW-5	EI Deepak Kumar	EI to prove on record test report of Lahan Ex. P12 and identify his signature at point A.

Thereafter, learned APP for the State closed prosecution evidence vide separate statement.

6. Statement of accused under Section 313 Cr.P.C was recorded in which whole of the incriminating evidence was put to him to which he pleaded innocence and false implication.

7. This court has heard the submissions made by learned APP for the State and learned Defence counsel and has also gone through the prosecution evidence. From the entire case, following points for determination emerge :-

- 1. “Whether on 07.09.2022 at about 03.00 PM in the area of Village Kalar, accused was found in possession of working still, 10 kg lahan and 6 bottles of illicit liquor without having any valid permit or license?”***
- 2. "Whether the evidence of prosecution led on the file is sufficient to hold the accused guilty and to convict and sentence him ?"***

POINT NO.1 AND 2 FOR DETERMINATION :-

8. Both points for determination have been taken up together for the sake of brevity and to avoid repetition. Sh. Ravinder Singh, learned APP for the State has argued that all the prosecution witnesses have deposed on the lines of prosecution story and proved on record documents such as recovery memo Ex. P1, arrest-cum-intimation memo Ex. P2, personal search Ex. P3, copy of register no. 19 Ex. P4 and Ex. P5, ruqa Ex. P6, FIR Ex. P7, endorsement on ruqa Ex. P8, Form M29 Ex. P9, site plan Ex. P10, chemical examiner report Ex. P11 and case property Ex. MO1 to Ex. MO6 and test report Ex. P12. Thereby placing reliance on the oral statements of witnesses and documentary evidence proved on record by prosecution, learned APP for the State has further contended that the case of prosecution has been established on record beyond the shadow of reasonable doubt, therefore, accused must be convicted and be sentenced with maximum punishment as provided under law.

9. On the other hand, Ld. Counsel for the accused argued that accused has been falsely involved in this case. He was not found in possession of any working still, lahan or liquor. A false case has been planted upon the accused. Moreover, there are various discrepancies in the statement of the prosecution witnesses. Hence, benefit of doubt be given to the accused. Accused is innocent and he be acquitted.

10. I have given thoughtful consideration to these submissions and in order to appreciate the same, have gone through the record of the

case carefully.

11. It is general principle of criminal jurisprudence that it is the duty of prosecution to prove the guilt of accused beyond all reasonable doubts. Prosecution has to stand on its own legs and it cannot take advantage of weakness of defence. In order to bring home guilt of accused prosecution examined as many as five witnesses. Let's see whether prosecution has been successful in bringing home guilt of accused beyond all reasonable doubts.

12. In the instant case accused is charge-sheeted under section 61(1) (a) (b) (c) of Punjab Excise Act, 1914 for illegal possession of working still, 10 Kg lahan and 6 bottles of illicit liquor and in order to prove the guilt of accused, prosecution examined as many as five witnesses. But perusal of the testimony of prosecution clearly shows that the prosecution has miserably failed to prove its case.

13. It is pertinent to mention here that the alleged recovery is not a chance recovery as **PW-4 ASI Sukhdev Singh** conducted raid at the house of accused only after receiving the secret information. Meaning thereby, the IO had sufficient time to join or inform any respectable of the village but he did not join any independent witness. IO did not even try to join any independent witness in the alleged recovery.

14. The IO of the case has not joined any public persons during the proceedings despite opportunities to him. it is highly unnatural that they could not get even a single person to join in the proceeding despite

the fact that the place of arrest is a through fair area. The police officials failed to give reasonable excuse as to why no public person was joined in the police proceedings with notice in writing or why they failed to take legal action u/s 187 IPC on refusal of the public persons. This failure on the part of the prosecution creates reasonable doubts in the prosecution story.

15. In this regard reliance may be placed on the following case laws: In case reported as **"1990 CCC 3", titled as "Roop Chand Vs. State of Haryana"** the Hon'ble Punjab & Haryana High Court has held that:

"When some witness from the public was available then the explanation furnished by the prosecution that they refused to join the investigation, the same is wholly unsatisfactory, particularly when the IO did not note down the names and addresses and did not take any action against them".

16. Prosecution has also produced in the Court the case property Ex. MO1 to Ex. MO6. When attention of the PW-4 was brought to the case property, it is admitted by him that there is no such lahan was present in the said drum and there was no illicit liquor was present in the cane plastic. Moreover, the case property was without any seal or any slip qua the detail of present FIR. Further, there was no malkhana number was

written on the case property. In these circumstances, chances of tempering with case property cannot be ruled out. Further, in absence of any chit on the same, the case property cannot be linked with the present case.

17. It was the duty of the prosecution to keep the case property intact till the conclusion of trial. Since one of the case properties produced in the court with broken seal and there is no seal and slip at all on the case property, so the possibility of tampering and manipulation of the case property cannot be ruled out entirely. In these circumstances reasonable doubt arises as to the veracity of the prosecution's story. The lapses on the part of the SHO in keeping and preserving the case property which has come in the deposition of PW4 can be the sole reason for acquitting the accused.

18. In **Channa Ram @ Maiya Vs. State of Haryana, (P&H) 2004(4) R.C.R. (Criminal) 440 and Didar Singh Vs. State of Punjab, (P&H) 1989(2) R.C.R. (Criminal) 195** the accused was acquitted by the Hon'ble High Court as when the case property was produced in the Court it was found that the same was not sealed properly.

19. Regarding the observation made by the court in respect to the case property, two things could be analysed, first that at the time of sealing the case property, the same was not done properly or second that with the lapse of time the seal might have got weaken and the case property might not have been preserved properly. Whatever might have

been the case, **under Rule 22.15 of Punjab Police Rules**, it is responsibility of Officer In charge of Police Station to examine the property twice a month. **Under Rule 27.17** it is his duty to preserve and maintain case property till such time the final orders are passed. Once the case property is found to be broken/damaged important link in the prosecution story goes missing and the accused becomes entitled to acquittal.

20. Therefore, is clear that the case of prosecution is full of loop holes and doubts. There is no cogent and convincing evidence to prove the fact that the alleged recovery was effected from the accused. Case property is also not proved as per law. The absence of independent witnesses is also creates doubts in the prosecution story.

21. In **Sadhu Singh Vs. State of Punjab, 1997 (3) Crimes 55, Hon'ble Punjab & Haryana High Court** observed as under: "In a criminal trial, it is for the prosecution to establish its case beyond all reasonable doubts. It is for the prosecution to travel the entire distance from may have to must have. If the prosecution appears to be improbably or lacks "credibility, the benefits of doubt necessarily have to go to the accused".

22. In view of the facts and circumstances of the case, it is crystal clear that the Prosecution has failed to prove its case beyond the shadow of reasonable doubt. There is no convincing evidence on the record which could substantiate any charge upon the accused and it can

safely be concluded that in the present case the evidence on the record is not at all sufficient to hold the accused guilty of the alleged offence, as the Prosecution story is highly doubtful and the benefit of doubt is the right of the accused. It is also an established law of the land that the accused should not be convicted in doubtful circumstances. Even, if there are two views possible, the view favourable to the accused has to be accepted. Since, the Prosecution has failed to establish a case against the accused **Surinder Singh alias Shinda** for the alleged offences beyond reasonable doubt, I am also not inclined to convict the accused in doubtful circumstances. Consequently, by giving benefit of doubt, I hereby acquit the accused **Surinder Singh alias Shinda** for the offence punishable U/s 61(1) (a) (b) (c) of Punjab Excise Act, 1914. Accused is directed to furnish bail bonds in the sum of Rs. 30,000/- with one surety in the like amount for the purpose of Section 437A Cr.P.C. Bail bonds furnished which are accepted and attested. Case property if any, be dealt with as per rules after expiry of period of limitation for filing appeal or revision, or subject to the result of appeal or revision, if any. File be consigned to the Record Room, Batala after its compliance.

Pronounced in open Court
Dated :- 14.09.2023

(Manpreet Sohi), PCS,
Judicial Magistrate Ist Class,
Batala. UID No. PB0656

Ikbal Singh, JW Gr. II

Present: Sh. Ravinder Singh, APP for the State.
Accused on bail with counsel Sh. Sh. Pushpinder Singh,
Advocate.

Statement of accused under Section 313 Cr.P.C recorded.

Arguments heard. Vide my separate detailed Judgment of even date, accused Surinder Singh alias Shinda is acquitted for the commission of offence punishable under Section 61(1)(a) (b)(c) of Punjab Excise Act, 1914. Case property if any, be dealt with as per rules after expiry of period of appeal or revision, or subject to the result of appeal or revision, if any. File be consigned to record room, Batala after due compliance.

Pronounced in open Court
Dated:- 14.09.2023

(Manpreet Sohi), PCS,
Judicial Magistrate Ist Class,
Batala. UID No. PB0656

Ikbal Singh, JW Gr. II