

*In The Court of Exclusive Special Judge-1 – Excise Act,
Darbhanga*

G.O. Case No. 10378 of 2022

Decided on 17.07.2023

F.I.R. date 13.05.2022

State of Bihar

Versus

Raj Kishore Paswan, aged about 52 yrs. S/o Late Mahendra Paswan, R/o vill./Moh. Ughra, P.S Bahadurpur (Patore OP), Distt. Darbhanga.

...Accused

*Bahadurpur Ps Case No. 197 of 2022, Darbhanga
Case u/s 30(a) of Bihar Prohibition and Excise Act*

Present ***Sh. Hare Ram Sahu***, Special PP for Excise
 Sh. Satyanarayan Sahni, Advocate for accused

Judgment

1. Accused is facing trial before this court for the offence allegedly committed u/s 30(a) of Bihar Prohibition and Excise Act based upon a gravamen with the allegations that upon a secret information of concealment of hooch, a raid was conducted at the house of Raj Kishore Paswan, from where 05.000 liters of hooch was recovered and seized. Search cum seizure-memo was prepared in the presence of two independent witnesses. The accused Raj Kishore Paswan was arrested from the spot itself.

2. Charges u/s 30(a) of the Bihar Prohibition and Excise Act were framed on 19.01.2023, read over and explained to the accused in vernacular language, which he after understanding, pleaded not guilty and claimed trial.

3. Prosecution, in order to prove its case examined as much as 04 witnesses in total.

4. Witness no. 1 Pradeep Kumar appeared in the witness box and in his examination-in-chief stated that on 13.05.2022 he was posted as constable in Patore OP. On that day he was on patrolling with ASI Sunil Kumar and ALTF team. A raid was conducted at the house of Raj Kishore Paswan. Raj Kishore Paswan was arrested at the spot. 05.000 liters of hooch was recovered from the house. Seizure-memo bears his signature which is exhibit 1. He stated that his restatement was recorded by Jitendra Choudhary. He could not identify the accused. In cross-examination he stated that he was posted in Patore OP on February, 2022 to August 2022. The information was received by superior officer. He stated that they went there by Scorpio. He stated that they were 06-07 persons in the team. He stated that they were with Anil Kumar ASI, Jitendra Paswan & he himself. He stated that Chowkidar Gyani Paswan told them that it is the house of accused. The witness showed his inability to remember the boundaries of the place of occurrence. He stated that 10-12 persons had gathered there. The liquor was recovered from the house itself. He denied the suggestion that Raj Kishore Paswan was not at his house and at the behest of Chowkidar, he has been hauled in this case. He stated that the liquor was in small pouches, which was of 05.000 liters. He denied the suggestion that from where the liquor was recovered it was not the house of Raj Kishore Paswan.

5. Witness no. 2. Jitendra Paswan appeared in the witness box and in his examination-in-chief stated that on 13.05.2022 he was posted as constable in Patore OP. On that day he was on patrolling with ASI Sunil Kumar and ALTF team. A raid was conducted at the house of Raj Kishore Paswan. Raj Kishore Paswan was arrested at the spot. 05.000 liters of hooch was recovered from the house. Seizure-memo bears his signature

which is exhibit 2. He stated that his restatement was recorded by Jitendra Choudhary. He identified the accused present in the Court. In cross-examination he stated that he was posted in Patore OP on February, 2022 to August 2022. The information was received by superior officer. He stated that they went there by Scorpio. He stated that they were 06-07 persons in the team. He stated that they were with Anil Kumar ASI, Jitendra Paswan & he himself. He stated that Chowkidar Gyani Paswan told them that it is the house of accused. The witness showed his inability to remember the boundaries of the place of occurrence. He stated that 10-12 persons had gathered there. The liquor was recovered from the house itself. He denied the suggestion that Raj Kishore Paswan was not at his house and at the behest of Chowkidar. He has been hauled in this case. He stated that the liquor was in small pouches, which was of 05.000 liters. He denied the suggestion that from where the liquor was recovered it was not the house of Raj Kishore Paswan.

6. Witness no. 3. Anil Kumar appeared in the witness box and in his examination-in-chief stated that it is an incident of 13.05.2022 on that day he was posted as A.S.I. in Patore OP. On that day there were Jitendra Paswan, Pradeep Kumar along with this witness on patrolling, a secret information of having possession of hooch against Raj Kishore Paswan of village Ughra was received. A raid was conducted at the house of Raj Kishore Paswan. He was trying to conceal a bag. 05.000 liters of hooch was recovered from his hand. He disclosed his name as Raj Kishore Paswan. The seizure-memo is in the writing and signature of this witness, which is marked as exhibit 3. He identified the signature and writing on the arrest memo which is exhibit 4. He stated that thereafter they came to the police station along with liquor and the accused, where a written application was given by him to the SHO which is exhibit 5.

He stated that he is acquainted with the writing of SHO. On the written application SHO, Patore OP forwarded it which is in his writing and signature and marked it exhibit 5/1. Patore P.S case no. 197/22 was registered and the investigation was entrusted to Jitendra Choudhary which is in his writing and signature, it is marked exhibit 5/2. He stated that the formal FIR is in the writing of clerk which also bears signature of SHO, Bahadurpur. The witness exhibited this document as exhibit 6. He stated that the statement was recorded by Jitendra Choudhary, ASI. The witness identified the accused present in the Court. In cross-examination the witness stated that he was posted in Patore OP from 14.01.2022 to august 2022. He stated that when they received a secret information, it was 13.00. They reached Ughra village at 13.40. He stated that the Chowkidar Gyani Paswan of Ughra village told about the house of Raj Kishore Paswan. He stated that the hooch was recovered from a polythene bag. He showed his inability to remember the color of bag. He stated that liquor was not recovered from the person of Raj Kishore Paswan. He stated that at the time of raid there were no villagers. He denied the suggestion that liquor was not recovered from the house of Raj Kishore Paswan and that the Raj Kishore Paswan has falsely been implicated in this case at the behest of village politics and Chowkidars and that nothing has been recovered from the accused and that he is deposing falsely.

7. Witness no. 4. Jitendra Choudhary appeared in the witness box and in his examination-in-chief stated that he was entrusted with the investigation of Bahadurpur Patore OP P.S Case no. 197/22 on 13.05.2022. He stated that thereafter he perused the seizure-memo, written application and FIR described all these things in the case diary. Thereafter, the statements of informant, witnesses Anil Kumar, Jitendra Paswan, Pradeep Kumar were recorded. He stated that on 14.05.2022 the

accused was produced before the Court by forwarding memo, it is exhibit 7. He stated that on 13.05.2022 itself he visited the place of occurrence and described the place of occurrence as well as boundaries. The witness further stated that the liquor was sent for chemical examination to the Superintendent Excise Darbhanga, report thereof was received inter-alia the liquor was containing power $92 \times 74.8 = 40.5$ UP, it is marked as exhibit 8. He then stated that he received supervisory note from Police Inspector, Sadar Circle, Darbhanga. Thereafter, a charge-sheet no. 47/22 dated 26.07.2022 was submitted in the Court. The witness identified the signature and writing and marked this document as exhibit 9. The witness identified the accused present in the Court. In cross-examination the witness stated that he visited the place of occurrence but did not record statement of any independent witness. He denied the suggestion that the house from where the liquor was recovered is not of Raj Kishore Paswan and that informant had told him about the house of Raj Kishore Paswan. He stated that they were 03 persons who visiting the place of occurrence i.e Investigating Officer, Informant and the witness. He stated that the liquor was not recovered from the person of accused. He stated that the informant had told him that 05.000 liters of liquor was recovered from a bag. He denied the suggestion that he has not visited the place of occurrence and that he prepared a charge-sheet in his office itself and that he has submitted false and forged charge-sheet.

8. On the request of learned Special Public Prosecutor, the prosecution evidence was closed on 19.05.2023 and statement of the accused u/s 313 Cr.P.C. was recorded on same day.

9. Now sole point for consideration before this court is whether the prosecution succeeded in proving its case beyond reasonable doubt.

10. *Ld. Special P.P in his oral argument submitted that the accused has been caught red handed having illegal hooch in his hands, the defense has no where denied this fact. By keeping silence the accused admittedly his guilt. It is argued that all the witnesses in unison have categorically proved the raid, recovery of hooch, arrest of accused from the spot. It is argued that chemical examination report is also proved on record.*

11. *On the other hand, learned counsel for accused in his oral arguments submitted that the ownership of the place of recovery has not been proved by the prosecution, which was very much to be proved. By not doing so the case of prosecution has been destroyed against the accused. Learned counsel for the accused submitted that the prosecution could not successfully discharge its onus of proving its case beyond reasonable doubt. In the last acquittal of accused is prayed for.*

Conclusion :-

12. *Intently heard rival submissions and perused the record in depth. Prosecution in order to prove its case examined following witnesses :-*

PW 1	Pradeep Kumar
PW 2	Jitendra Paswan
PW 3	Anil Kumar
PW 4	Jitendra Choudhary

Apart from the above, following documents have been proved :-

Ex 1	Signature of P.W. 1 in seizure-memo
Ex 2	Signature of P.W. 2 in seizure-memo
Ex 3	Seizure-memo
Ex 4	Arrest-memo
Ex 5	Complaint
Ex 5/1	Endorsement by SHO, Patore OP.
Ex 5/2	Entrustment of investigation

Ex 6	Formal FIR
Ex 7	Forwarding Memo
Ex 8	Chemical Examination Report
Ex 9	Charge-sheet

13. Witness no. 3 in this case is Anil Kumar who categorically stated that on 13.05.2022 a raid was conducted at the house of Raj Kishore Paswan, who was caught red handed having 05.000 liters of hooch in his hand. The witness first proved seizure-memo Ex 3, in his writing, arrest memo prepared by him which is Ex 4, a written application given by him to the SHO Ex 5. On this application FIR was lodged by SHO and Investigation was entrusted vide Ex 5/ 1 & Ex 5/ 2 respectively; formal FIR is Ex 6. The witness identified the accused present in the Court.

14. Deposition of witnesses no. 2 & 3 is also corroborative to the oral evidence of witness no. 1. Both these witnesses also in unison proved riad on 13.05.2022 at the house of accused Raj Kishore Paswan, recovery of hooch and they also proved their signatures on the seizure memo as Ex 1 & Ex 2 respectively. Out of these two witnesses, PW 1 could not identify the accused, whereas PW 2 identified the accused present in the Court.

15. Then PW 4 Investigating Officer came in the witness box and he stated the manner of his investigation and proved forwarding memo Ex 7, chargesheet Ex 9 and chemical examination report Ex 8. The chemical examination report is also admitted without any objection from the defense side.

16. Confluence of the above statements, there is no dispute as to the raid, recovery and identity of accused. Even the witnesses no. 1 to 3 all in their cross examination also reiterated that the liquor was recovered from the house of accused Raj Kishore Paswan. The witness no. 4 well described the house of Raj

Kishore Paswan and its boundaries, that has also not been disputed by the learned counsel for defense while cross examination of this witness.

17. Learned counsel for defense drew attention of the court on para no. 5 of cross examination of witness no. 3, wherein the witness has stated that the house of accused was told by chowkidar Gyani Paswan. Learned counsel argued that the said chowkidar has not been examined by the prosecution, which is fatal to the case of prosecution.

18. Here one fact is again to be discussed that the witness no. 4 in his examination in chief has well described the house of Raj Kishore Paswan and its boundaries, that has not been disputed by the learned counsel for defense while cross examination of this witness. In this position there was no need of said chowkidar Gyani Pawan to be examined. Therefore, this argument of the defense is rebuffed.

19. One more thing is again worth considering that all the witnesses except PW 1 have identified the accused present in the court, the defense while cross examining them has not put any suggestion as to how they are identifying the accused. When identity of the accused, recovery of pottle from his conscious possession, preparation of seizure memo is established in examination in chief the defense should had put specific question on this point and if not, then it is presumed that this point is not disputed. This view of the Court finds support from the law laid down by Hon'ble Apex Court in case, "Bhoju Mandal & Ors. Vs. Debnath Bhagat & Ors, AIR 1963 SC 1906", wherein it has been held that "The cross examination is a matter of substance not of procedure one is required to put one's own version in cross examination of opponent. The effect of non-cross examination is that the statement of witness has not been disputed". However, if not taken it as not disputed by

defense, it should at least be taken as true.

20. *Guided by above law, this court is of the opinion that the prosecution has succeeded in proving that the raid was conducted at the house of Raj Kishore Paswan, he was caught red handed having liquor in his possession, he was arrested from the spot.*

21. *Next to be considered is whether it was liquor or not. Witness no. 4 in his para no. 3 of deposition categorically stated that the liquor was sent for chemical examination and it was received from the office of Superintendent, Excise Department, Darbhanga, which is Ex 8 on record. In the report it has specifically been mentioned that it is chulai liquor with its power $92 \times 74.8 = 40.5$ UP. Firstly, this document is admitted in evidence without any objection from the defense side and secondly the defense has nowhere suggested contrary to this witness that the report is false or something else. It is also not suggested that the accused was having license to sell the liquor. By not doing so, the chemical examination report is admitted without any objection, hence well proved.*

22. *So far as contradictions of testimony of witnesses is concerned, firstly learned counsel could not dwell this court as to what are those major contradictions. Albeit there are some contradictions, but it is settled canon of law that minor discrepancies and deviations in evidence of witnesses are immaterial*

23. *True it is, as is held by the Hon'ble Supreme Court of India in case titled as, "Ram Sarup Vs. State 1994 SCC (Cri.) 29", that "Real onus is on the prosecution to prove its case, including the manner of occurrence beyond all reasonable doubt, The accused has only to raise doubt in the mind of the court or to satisfy that defense version is the probable version of*

the story". But in this case, when the prosecution has successfully discharged its onus, it was upon defense to raise doubt in the mind of this Court, if not satisfied that defense version is the probable version of the story. The defense has utterly failed to raise any doubt in the mind of this Court, what to speak of satisfaction that defense version is the probable version of the story, for here is no version of defense on the record.

24. In the peculiar facts and circumstances of this case, when the prosecution has successfully proved its case that the accused was having liquor in his conscious possession, it was onus upon the defense to prove that the accused was having any license to have the liquor in his possession. The presumption goes against the accused.

25. In the nutshell, the prosecution has successfully proved that the Illegal liquor was recovered from conscious possession of accused Manohar Jha. His identity is also proved by the witnesses in unison.

26. As a sequel of my above discussions, after ruminatively cogitating on the entire facts, circumstances and evidence on record, this court is of the view that confluence of evidence led by prosecution cues against the above named Raj Kishore Paswan qua commission of offence. The prosecution has well established by its cogent and convincing evidence that the accused was having liquor in his conscious possession without a valid license or permit under the Act; hence has committed an offence punishable u/s 30 (a) of the Bihar Prohibition and Excise Act, 2016.

27. Keeping in view the above this Court held the accused Raj Kishore Pawan guilty for the offence committed u/s 30 (a) of the Bihar Prohibition and Excise Act, 2016.

Accused is taken in custody. Now to put up after lunch for

hearing on quantum of sentence.

Announced in open court before lunch on 17.07.2023

Satya Bhushan Arya
Exclusive Special Judge 1 (Excise Act)
Darbhanga

After Lunch

Present Sh. Hare Ram Sahu, Special PP for Excise
Sh. Satyanarayan Sahni, Advocate for accused

ORDER RELATING TO QUANTUM OF SENTENCE

- 1. File taken up again after lunch for hearing on the quantum of sentence of the convict. Convict is present – produced from haajat.*
- 2. Heard on the quantum of sentence.*
- 3. The convict submitted that he is a poor person and there is no one else to look after his home, he is the only bread earner in the family. He has thus prayed for taking lenient view in the matter of sentence.*
- 4. On the other hand, learned Special PP for the State submitted that the convict does not deserve any leniency in the matter of sentence.*
- 5. As mentioned above the convict has prayed for leniency in the matter of sentence on the ground that he is sole bread earner of his family and is not a previous convict. Keeping in view the facts and circumstances of this case as well as submission of ld. Special PP and the convict, he is sentenced as follows :*

<i>Offences</i>	<i>Rigorous Imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine</i>
<i>U/s 30 (a) of the Bihar Prohibition and Excise Act, 2016</i>	<i>five years'</i>	<i>Rs.1,00,000/-</i>	<i>Six months' simple imprisonment</i>

6. *Fine not paid. Period of detention, undergone by the convict during investigation, inquiry or trial of the case shall be set off as provided under Section 428 of the Code of Criminal Procedure. Case property be disposed of as per rules.*

7. *A copy of this judgment be given to the accused free of cost.*

8. *File be consigned to record room after due compliance.*

Announced in open court:

Dated: 17.07.2023

Satya Bhushan Arya

*Exclusive Special Judge 1 -
(Excise Act), Darbhanga*

Judgment contains 13 pages in total, all are signed by me.

Satya Bhushan Arya

*Exclusive Special Judge 1
(Excise Act), Darbhanga*