
(1990) 2 ILR HP 1070

High Court of Himachal Pradesh

Case No: Criminal A. No. 40 of 1987

State of H.P.

APPELLANT

Vs

Sahni Devi and Another

RESPONDENT

Date of Decision: July 26, 1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 100(4)#Punjab Excise Act, 1914 " Section 61(1)

Citation: (1990) 2 ILR HP 1070

Hon'ble Judges: Bhawani Singh, J

Bench: Single Bench

Advocate: Ram Murti Bisht, for the Appellant; O.P. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Bhawani Singh, J.

The State has challenged the acquittal of Smt. Sahni Devi and Smt. Pataso Devi by the trial Judge in a case u/s 61(1)(a)

of the Punjab Excise Act, 1964, as applicable to the State of Himachal Pradesh in Criminal Case No. 85-111/1983 by decision of 31-1-1986.

2. Briefly the case is that on 23rd August, 1982 at about 4.30 p.m. Sahibdial Singh, ASI accompanied by Pritam Chand, Constable No. 576,

A.K. Dewan, Excise Inspector and Kishori Lal raided the house of accused and found one pitcher containing about 14 Kgs. Lahan and illicit liquor

to the extent of 2075 ml. This was done as a result of secret information. On recovery of this material, information through ruka was transmitted to

the Police Station, as a result of which First Information Report Ext. PW 4/A was registered. It also appears that additional force was also sent for

and thereafter the raid was conducted. Recoveries were made and they were taken into possession by the police.

3. The matter was brought before the Court and after the trial, the accused were acquitted on the ground that although there is some mention of

contraband in the ruka (Ex. PW 6/A) yet there is no mention of the same in the First Information Report. This kind of difference in these two

important documents created doubt as to the truthfulness of the prosecution story. It is the principle question which has compelled the State to

challenge the decision before this Court.

4. Counsel for the State has re-iterated that this approach of the trial Court is grossly irregular and it was also submitted that when once the trial

Court had found that illicit liquor was recovered from the accused, the accused should have been convicted in accordance with law.

5. After hearing the counsel for the parties, I am of the opinion that the view taken by the trial Court cannot be considered to be unreasonable or

perverse. It is quite strange that these documents are different from each other. Further, the discrepancy has not been (explained satisfactorily to the

Court. The result is, no view different from the one already taken by the trial Court can be taken in this appeal against acquittal.

6. O.P. Sharma, counsel for the Respondent was permitted to urge that in this case also the Police did not follow the provision of Section 100(4)

of the Code of Criminal Procedure by associating two or more independent and respectable inhabitants of the locality where the place was

searched and no reason has been given by the Police in this connection. Learned Counsel placed reliance on number of decisions of this Court

some of which are Criminal Revision No. 13 of 1986 Krishna Devi v. State, Criminal Appeal No. 65 of 1986 State v. Chhinda. Criminal Appeal

21/86 State v. Philli, Criminal Appeal 18/86 Harhans Lal v. State, Criminal Revision 23/86 Maya v. State and Criminal Appeal 105 of 1985 Prem

Lata v. State of H.P. In all the decisions, it has been held that it is essential for the Investigating Agency to comply with the requirement of Section

100(4) of the Code of Criminal Procedure and in absence of reasonable and plausible explanation by the prosecution the investigation is liable to

be termed as unfair. In my view, in the present case also the Investigating agency has committed the same error. It is not complied with the

requirement of Section 100(4) of the Code of Criminal Procedure nor there is any explanation for noncompliance thereof. The House of the

accused was raided and it appears that the prosecution had enough time to do so. In such a situation it could very easily look for and arrange

independent witnesses as required under this provision in order to cast away any kind of doubt as to the commission of the offence and story of the

prosecution. Although the versions of the official witnesses cannot be discarded as they are official witnesses yet, in the absence of the association

of independent witnesses without any plausible explanation, it is difficult to understand why the Police Associated only the official witnesses in the

case. In these circumstances this submission of the id. counsel for the accused has substance and the same is accepted.

7. The result of the aforesaid discussion is, there is no merit in this appeal and the same is accordingly dismissed.