

State vs Bimla on 17 May, 2025

IN THE COURT OF MS. DEEKSHA SETHI, JMFC-08,
SOUTH WEST DISTRICT, DWARKA COURTS, DELHI

CNR No. : DLSW02-014397-2023
ID. No. : 2815/2023
FIR No. : 573/2022
U/s : 33 Delhi Excise Act
P.S. : Uttam Nagar
State v/s Bimla

a) Name & address of the complainant : Ct. Kaladeep
No. 1706/DW
b) Name & address of accused : Bimla
w/o Sunny
r/o A-393, Shiv Vihar, JJ
Colony, Uttam Nagar,
Dwarka, Delhi.
c) Date of Commission of offence : 28.08.2022
d) Offence complained of : 33 Delhi Excise Act
e) Plea of the accused : Pleaded not guilty.
f) Final Order : Acquitted.
g) Date of Institution : 10.03.2023
h) Judgment Pronounced on : 17.05.2025

JUDGMENT

Brief facts

1. The prosecution version in brief is that on 28.08.2022 at about 4:10 PM, accused Bimla was found to be in possession of 100 quarter bottles (180 ml each) of Fresh Motta Masaledar desi Sharab for sale in Haryana only, at Mother Dairy, Shiv Vihar, JJ Colony, Uttam Nagar, New Delhi. Complainant Ct. Kaladeep has informed the duty officer of PS Uttam Nagar about the aforesaid facts.

Thereafter, an FIR bearing no. 573/2022 u/s 33 Delhi Excise Act was registered at PS Uttam Nagar. Investigation of the case was handed over to Investigating Officer HC Devender Kumar.

Proceedings before the Court

2. On completion of investigation, a charge-sheet u/s 33 Delhi Excise Act was filed against the present accused, i.e., Bimla. After taking cognizance of the offence, the accused was summoned to face trial.

3. On her appearance, a copy of chargesheet along with documents were supplied to the accused in terms of Section 207 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC'). On finding prima facie case against the accused, a charge under section 33 Delhi Excise Act was framed

against her, to which she had pleaded not guilty and claimed trial.

4. During the trial, prosecution has examined the following witnesses:

(i) PW-1 Ct Kaladeep has deposed that in the year 2022, he was posted at PS Uttam Nagar as constable. On 28.08.2022, he was on patrolling duty at beat no.4 During patrolling, when he reached at Shiv Vihar, Safeda Park, Uttam Nagar and was going towards Mother Dairy, Nala Road, at around 4.10 pm, he saw that one lady namely Bimla was carrying one white plastic bag on her shoulder.

Upon checking, the said white plastic bag was found to be containing illicit liquor. Thereafter, he shared the said information with duty officer of PS Uttam Nagar. After sometime, IO HC Devender Kumar reached at the spot and after reaching there, he handed over the custody of accused and case property to IO. IO opened the said bag and found it to be containing 100 quarter bottles of "Fresh Mota Masaledar Desi Sharab for Sale in Haryana Only". IO took out two samples from the said lot and sealed back the remaining 98 quarter bottles into the said bag and sealed with the seal of DK. The samples were also sealed with the seal of DK. IO filled M-29 form. IO seized the said liquor vide seizure memo Ex. PW1/A. IO recorded his statement Ex. PW1/B. On the basis of his statement, IO prepared tehrir which he took to police station and returned to the spot after registration of FIR. He handed over the original rukka and copy of FIR to the IO. IO prepared site plan at his instance (Ex. PW1/C). IO recorded disclosure statement of accused (Ex. PW1/D). Accused was released after giving notice U/s 41A CrPC. IO recorded his statement U/s 161 CrPC. Finally, he left the spot alongwith case property and same was deposited in Malkhana. The identity of accused was not disputed by Ld. Defence counsel. Witness has correctly identified the case property and the same was exhibited as Ex.

P1(Colly). This witness was thoroughly cross examined by Ld. Defence counsel.

(ii) PW-2 Ct Kuldeep has deposed that on 20.09.2022 he was posted at PS Uttam Nagar as constable. On that day on the instructions of IO HC Devender he collected the sealed sample alongwith Form M-29 vide RC no. 247/21/22 from the MHC(M) and deposited the same at Excise Department, L Block, Vikas Bhawan, ITO and thereafter, he handed over the receipt in this regard to the MHC(M). The witness submitted that the seal of the sample was not tampered with as long as it was in his possession. This witness was cross examined by Ld. Defence counsel.

(iii) PW-3 W/Ct Prem Lata has deposed that on 28.08.2022, she was posted at PS Uttam Nagar as woman constable and on that day she alongwith IO HC Devender reached at the spot i.e. Mother Dairy, Nala Road, near Mandir Shiv Vihar, J J Colony, Uttam Nagar vide DD no. 93A. On reaching there, they met Ct. Kaladeep who handed over the custody of accused alongwith plastic katta containing illicit liquor to the IO. IO opened the said bag and found it to be containing 100 quarter bottles of "Fresh Mota Masaledar Desi Sharab for Sale in Haryana Only". IO took out two samples from the said lot and sealed back the remaining 98 quarter bottles into the said bag and sealed with the seal of DK. The samples were also sealed with the seal of DK. IO filled M-29 form. Seal after its use was handed over to Ct Kaladeep. IO seized the said liquor vide seizure memo Ex. PW1/A. IO

recorded the statement of Ct. Kaladeep and prepared tehrir which was handed over to Ct Kaladeep for the registration of FIR. Ct Kaladeep left the spot for the registration of FIR and again came back at the spot alongwith original rukka and copy of FIR and thereafter he handed over the same to the IO. IO prepared site plan at the instance of Ct Kaladeep (Ex. PW1/C). IO recorded disclosure statement of accused Ex. PW1/D. Accused was released after giving notice U/s 41A CrPC. IO recorded his statement U/s 161 CrPC. The identity of accused was not disputed by Ld. Defence counsel. Case property was exhibited as Ex. P1(colly). This witness was cross examined by Ld. Defence counsel.

(iv) PW-4 HC Devender has deposed that on 28.08.2022, he was posted at PS Uttam Nagar. On that day, he received DD No. 93 A, dated 28.08.2022, (Ex. PW- 4/A) and thereafter, he along with Lady Ct. Prem Lata reached at the spot i.e Mother Dairy, Nala Road, Near Shiv Vihar, JJ Colony, Uttam Nagar. On reaching there, he met Ct. Kaladeep who handed over to him one plastic Katta and the custody of accused Bimla to Lady Ct. Prem Lata. Thereafter, he opened the plastic katta and it was found to be containing 100 quarter bottles of Fresh Mota Masaledar Desi Sharab. He kept two quarters as a sample and put back remaining quarters in the plastic katta. Thereafter, he sealed the plastic katta and both samples with seal of DK. He filled form M-29 (Ex. PW-4/B). Seal after its use was handed over to Ct. Kaladeep. He seized the above mentioned illicit liquor vide seizure memo Ex. PW- 1/A. He recorded the statement of the Ct. Kaladeep Ex. PW-1/B. He prepared the rukka on the basis of statement of Ct. Kaladeep Ex. PW-4/C. He handed over original rukka to Ct. Kaladeep for the registration of FIR and thereafter, Ct. Kaladeep left the spot for the registration of FIR . After some time Ct. Kaladeep came at the spot along with original rukka and copy of FIR and same were handed over to him. He had prepared the site plan at the instance of Ct. Kaladeep (Ex. PW-1/C). He recorded the disclosure statement of the accused (Ex. PW-1/D). He had served notice u/s 41 A Cr.PC upon the accused vide notice Ex. PW-4/D. Thereafter, they returned back to the police station and case property was deposited in the malkhana. During the course of investigation, he got deposited sealed samples at Excise Lab, Vikas Bhawan, ITO and collected the result of the same. He prepared the charge sheet and filed it before the concerned court. The identity of accused was not disputed by Ld. Defence counsel.

Case property was exhibited as Ex. P-1. This witness was cross examined by Ld. Defence counsel.

(v) PW-5 HC Inderjeet has deposed that on 28.08.2022 he was posted as MHCM at PS Uttam Nagar. On that day, IO HC Devender came at PS Uttam Nagar and deposited the case property of the present case in the malkhana and entry with respect to the same was made by him in register no.19 at serial no. 5446 (ExPW5/A). On 20.09.2022 upon the direction of the IO, Ct Kuldeep took the case property from the malkhana vide RC certificate no. 247/21/22 to Excise Lab and deposited back the certificate in the malkhana on the same day. Entry with respect to the same was made in register no.21 and the RC certificate was exhibited as ExPW5/B. This witness was not cross-examined by Ld. Defence counsel despite having been given an opportunity to do so.

5. Vide separate statement of the accused u/s 294 CrPC, she had admitted the genuineness of the FIR bearing no. 573/2022 without contents, Certificate U/s 65 B of Indian Evidence Act and result analysis of Excise Control Laboratory. The above-said documents were exhibited as Ex. X-1, Ex. X-2

and Ex. X-3 respectively. Accordingly, the concerned witnesses were dropped by the prosecution.

6. The prosecution evidence was closed and thereafter the statement of accused u/s 313 CrPC read-with section 281 CrPC was recorded wherein all the incriminating evidence appearing against the accused was put to her, which she had denied to be correct and submitted that she was innocent and falsely implicated. The accused chose not to lead any evidence in her defence.

7. It is argued by Ld. APP for the State that it is clear from the statement of the complainant and other witnesses as well as the documents appearing on record that the accused was in possession of 100 quarter bottles of illicit liquor. He has thus, submitted that the prosecution has proved its case beyond reasonable doubt against the accused and she be, therefore, held guilty and convicted for the above-said offence.

8. Per contra, Ld. Counsel for the accused has argued that the State has failed to establish its case beyond reasonable doubt and since nothing incriminating has appeared against the accused, she be, therefore, acquitted for the offence charged.

9. I have heard the Ld. APP for the State and Ld. Defence counsel at length, perused the record, gone through the relevant provisions of law and given my thoughts to the matter.

Findings of the Court

10. It is a well settled principle of criminal law that the burden of proof is on the prosecution and the presumption of innocence of the accused has to be rebutted by the prosecution by adducing cogent evidence that points towards the guilt of the accused beyond reasonable doubt.

11. The first argument of Ld. Counsel for the accused is that since no independent witness has been joined at the time of investigation, it is, therefore, difficult to believe the prosecution version as it creates a doubt on the veracity of the statement of police witnesses.

12. This court has given its thoughts to the above contention of Ld. Counsel for the accused. Perusal of cross examination of PW-1 Ct Kaladeep (the complainant) reveals that the IO had asked some public persons to join the investigation, but none of them had agreed. Thus, it is not the case of the prosecution that no public person was present at or near the spot of recovery. However, it is equally true that no steps are shown to have been taken to note down the names and addresses of those persons. It is a well settled proposition of law that non-joining of public witness throws doubt over the fairness of the investigation by police. Section 100 (4) of the CrPC also casts a statutory duty on an official conducting search to join two respectable persons of the society. However, no public person has been joined by the IO in the present case. In a case titled as Nanak Chand Vs. State of Delhi, 1990 SCC OnLine Del 469, Hon'ble High Court of Delhi has observed as under:

"The recovery was from a street with houses on both sides and shops nearby. And, yet no witness from the public has been produced. Not that in every case the police officials are to be treated as unworthy of reliance but their failure to join witnesses

from the public especially when they are available at their elbow, may, as in the present case, cast doubt. They have again churned out a stereotyped version. Its rejection needs no Napoleon on the Bridge at Arcola." (Emphasis supplied)

13. In the present case also, non-joining of any public person as a witness creates doubt on the case of the prosecution. Although, this Court is conscious of the fact that it is a well settled law that the prosecution case cannot be thrown out or doubted on the sole ground of non-joining of public witnesses as they keep themselves away from the Court unless it is inevitable, however, in the present case, it is not only the absence of public witnesses which raises a doubt on the prosecution version but there are other circumstances too, as discussed in the later part of the judgment, which raise suspicion over the prosecution case.

14. Perusal of the record further reveals that there is a delay of about twenty days in sending the samples to the Excise Control Laboratory for examination. The Hon'ble High Court of Delhi in a case titled *Rishi Dev @ Onkar Singh v State* (Crl. A. No. 757/2000) decided on 01.05.2008 has observed that to prevent the possibility of tampering with the samples, it is desirable that the samples are sent to the CFSL at the earliest. The relevant paragraph of the said judgment runs as under:

"The sample that is kept in a police malkhana, under the seals of the police officers themselves, is still definitely under the control of those police officers. There is every possibility that the samples could be tampered and again re-sealed by the very same officers by again affixing their seals. It is to prevent this from happening that earlier the sample is sent for testing to the CFSL the better."

15. In the instant case, alleged recovery was made on 28.08.2022 yet the samples were sent to the Excise Control Laboratory for examination on 20.09.2022, i.e., after about twenty days. No explanation has been given by the IO for the said delay. The possibility of tampering with the samples cannot be ruled out especially keeping in mind the fact that the seal after use was not handed over to an independent witness and remained in the possession of police only. Thus, it creates a doubt on the prosecution version.

16. Perusal of tehrir Ex. PW4/C prepared by IO HC Devender Kumar reveals that he (the IO) had first prepared the seizure memo of the case property Ex. PW-1/A and Form M-29 Ex. PW4/B and after that rukka was prepared and sent to the police station for registration of FIR and thereafter, present FIR was registered. It is, therefore, clear that the seizure memo of the illicit liquor and Form M-29 were prepared before the rukka was handed over to the police official for registration of the FIR. The FIR was thus, registered after the preparation of the seizure memo of the case property Ex. PW-1/A and Form M-29 Ex. PW4/B, however, surprisingly, seizure memo of the case property Ex. PW-1/A and Form M-29 Ex. PW4/B bear the FIR number and it is thus, amazing since the number of the FIR could have come to his knowledge (PW-4) only after a copy of the FIR was brought to the spot. The number of FIR in no circumstances could have been mentioned by HC Devender Kumar on seizure memo and Form M-29, which came into existence before registration of the FIR. However, as discussed above, the seizure memo of the case property Ex. PW-1/A and Form M-29

Ex. PW4/B bear the FIR number and case details. In this context, Hon'ble High Court of Delhi in one of the case titled Pawan Kumar v. The Delhi Administration, 1987 SCC OnLine Del 290, has observed as under in paragraph 6:

"... Learned counsel for the State concedes that immediately after the arrest of the accused, his personal search was effected and the memo Ex. PW11/D was prepared. Thereafter, the sketch plan of the knife was prepared in the presence of the witnesses. After that, the ruqa EX. PW11/F was sent to the Police Station for the registration of the case on the basis of which the FIR, PW11/G was recorded. The F.I.R. is numbered as 36, a copy of which was sent to the I.O. after its registration. It comes to that the number of F.I.R. came to the knowledge of the I.O. after a copy of it was delivered to him at the spot by a constable. In the normal circumstances, the F.I.R. No. should not find mention in the recovery memo or the sketch plan which had come into existence before the registration of the case. However, from the perusal of the recovery memo, I find that the FIR is mentioned whereas the sketch plan does not show the number of the FIR. It is not explained as to how and under what circumstances the recovery memo came to bear the F.I.R. No. which had already come into existence before the registration of the case. These are few of the circumstances which create a doubt, in my mind, about the genuineness of the weapon of offence alleged to have been recovered from the accused."

(Emphasis supplied)

17. In another case titled Mohd. Hashim v. State, 1999 SCC OnLine Del 859, the Hon'ble High Court of Delhi while dealing with an appeal under the Narcotic Drugs and Psychotropic Substances Act, 1985 has also observed about the discrepancy, i.e., appearance of FIR number on seizure memo and other documents before registration of FIR and it runs as under:

"... Surprisingly, the secret information (Ex. PW7/A) received by the Sub-Inspector Narender Kumar Tyagi (PW-7), the notice under Section 50 of the Act (Ex. PW5/A) alleged to have been served on the appellant, the seizure memo (Ex. PW1/A) and the report submitted under State v. Om Prakash Section 57 of the Act (Ex. PW7/D) bear the number of the FIR (Ex. PW4/B). The number of the FIR (Ex. PW4/B) given on the top of the aforesaid documents is in the same ink and in the same handwriting, which clearly indicates that these documents were prepared at the same time. The prosecution has not offered any explanation as to under what circumstance number of the FIR (Ex. PW4/B) had appeared on the top of the aforesaid documents, which were allegedly prepared on the spot. This gives rise to two inferences that either the FIR (Ex. PW4/B) was recorded prior to the alleged recovery of the contraband or number of the said FIR was inserted in these documents after its registration. In both the situations, it seriously reflects upon the veracity of the prosecution version and creates a good deal of doubt about recovery of the contraband in the manner alleged by the prosecution."

(Emphasis supplied)

18. Let this court now analyse the evidence appearing on record keeping in mind the above judgments of the Hon'ble High Court of Delhi. In the present case, PW-4 HC Devender Kumar (the IO), who had prepared the documents in question, has categorically mentioned in the tehrir Ex. PW4/C prepared by him that he had prepared the seizure memo of the case property Ex. PW-1/A and Form M-29 Ex. PW4/B before the tehrir was prepared. In such a scenario, it remains unexplained as to how the FIR No. and its details figure on the top of the documents Ex. PW-1/A and Ex. PW4/B. This creates serious doubt on the prosecution version and alleged recovery of illicit liquor and it leads to only one conclusion that either the said documents were prepared later on or that the FIR was registered earlier in point of time. In both the aforesaid eventualities, a reasonable doubt has been raised on the version of the prosecution.

19. Thus, in light of the above discussion which throws doubt on the authenticity of the prosecution version, this court is of the opinion that prosecution has failed to prove its case beyond reasonable doubt that a katta which contained illicit liquor was recovered from the possession of the accused. The accused Bimla is, therefore, acquitted of the offence u/s 33 Delhi Excise Act.

20. This judgment contains 14 pages and the same has been pronounced by the undersigned in open court today and each page bears my signatures.

21. Let a copy of the judgment be uploaded on the official website of District Courts, Dwarka forthwith.

Digitally signed by DEEKSHA ANNOUNCED IN THE OPEN COURT DEEKSHA SETHI SETHI
Date:

TODAY, i.e., ON 17.05.2025 2025.05.17 15:23:30 +0530 Deeksha Sethi Judicial
Magistrate First Class-08 South-West District/New Delhi 17.05.2025