

MAN SINGH  
v.  
STATE OF U.P.  
(Criminal Appeal No. 1441 of 2011)

JULY 19, 2011

**[HARJIT SINGH BEDI AND GYAN SUDHA MISRA, JJ.]**

*Uttar Pradesh Excise Act, 1910: s.60(2) – Conviction under – Appellant arrested and half bottle of illicit liquor alongwith implement for manufacturing liquor seized from him – Courts below convicted him u/s.62 and sentenced him to undergo one year's rigorous imprisonment alongwith fine – On appeal, held: Contention of appellant that large number of incriminating circumstances were introduced by the prosecution but the statement of the appellant recorded u/s.313 Cr.P.C. was completely perfunctory is not acceptable at this belated stage – Incident occurred in 1979 and the appellant had faced trial and other liquor proceedings for almost 32 years and that too for being in possession of only half a bottle of liquor – Appellant has already undergone 5½ months of sentence – In the interest of justice, order of courts below set aside and he is ordered to be acquitted.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1441 of 2011.

From the Judgment & Order dated 30.11.2010 of the High Court of Judicature at Allahabad, Uttar Pradesh n CrI. Revision Petition No. 2203 of 1983.

Ravi Kumar Tomar for the Appellant.

Ratnakar Dash, Shekhar Raj Sharma, Anuvrat Sharma for the Respondent.

A The following order of the Court was delivered

**O R D E R**

1. Delay condoned.

B 2. Leave granted.

3. We have heard the learned counsel for the parties.

C 4. The appellant was arrested on the 11th August, 1979 at about 9:15a.m. and half a bottle of illicit liquor along with lahan and other implements for manufacturing liquor were seized from him. On the completion of the investigation, he was brought to trial for an offence punishable under Section 60(2) of the U.P. Excise Act, 1910. The trial court relying on the evidence of the members of the police party and the Excise Inspector convicted D him under the aforesaid provision and sentenced him to undergo one year's rigorous imprisonment and to payment of fine as well. This conviction and sentence has been confirmed by the first appellate court as well as the Revisional Court vide E judgments dated 22nd October, 1983 and 30th November, 2010 respectively. The matter is before us in this background.

F 5. During the course of arguments, the learned counsel for the appellant has raised primarily one submission before us. He has pointed out that though a large number of incriminating circumstances had been introduced by the prosecution during the course of the evidence but the statement of the appellant recorded under Section 313 of the Code of Criminal Procedure was completely perfunctory and did not satisfy the tests laid down by this Court in a string of cases and in this view of the matter grave prejudice had been suffered by the appellant as G all incriminating circumstances had not been put to him. It has been submitted that this flaw in the trial required that he should be acquitted of the offence charged.

H 6. We have considered the argument and find merit in it. Section 313 postulates that all incriminating circumstances

must be put to an accused so that he is in a position to explain the circumstances against him. We reproduce the statement in extenso herein below: A

"Q1 You have heard the statement of accused which are against you what you have to say? B

Ans. They are deposing in enmity.

Q2 Will you lead the defence evidence?

Ans. No. C

Q3 Is there anything else you want to say?

Ans. I was sitting at the shop of Brijbhan at Shishgarh Town and I was apprehended by the police persons during the crime week." D

7. Faced with an obvious difficulty, Mr. Ratnakar Dash, the learned Senior Counsel for the State of U.P. has submitted that in this view of the matter, the trial court should be asked to record the statement under Section 313 of the Code of Criminal Procedure yet again so that any lacunae that has crept in can be filled up. We are not willing to accept this submission at this belated stage. The incident occurred way back in the year 1979 and the appellant has been facing trial or other legal proceedings for almost 32 years now and that too for being in possession of only half a bottle of liquor. We are also told that he has undergone five months and 15 days of the sentence that had been imposed on him. We find that the ends of justice require that this appeal should be allowed. We, accordingly, set aside the orders of the courts below. The appellant is ordered to be acquitted. He is said to be in custody. He shall be released forthwith if not wanted in connection with any other case. E

D.G.

Appeal allowed. F

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