

REVISIONAL CRIMINAL.

Before Mr. Justice Harrison.

KUNDA SINGH, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 285 of 1927.

1927

May 20.

Punjab Excise Act, 1 of 1914, section 61 (1) (A)—Illicit Liquor—onus probandi—Evidence to show strength of liquor found and that issued by authorised distilleries.

In a case under section 61 (1) (A) of the Excise Act the Chemical Examiner's report contained the following passage:—“The suspected liquor, however, is *not definitely distinguishable from the refined pot-still spirits made at the Karnal Distillery.* Hence in my opinion the suspected liquor is of illicit origin, *supposing that Karnal Distillery spirits have no possible access to the place of seizure*”. (i.e., Ferozepore).

Held, that until and unless the Crown had shewn that the liquor, on which this open verdict had been returned, could not in the ordinary way of business have come from the Karnal Distillery, the *onus* did not shift on to the accused of shewing that that was where he got it from.

Held also, that another method of showing that liquor is illicit is that of proving the strength and showing that it is above that at which liquor is issued from an authorised distillery. That method was of no value in this case as the strength of the liquor was extremely low, being only 40 per cent. of proof while the distillery liquor is 80 per cent.

Application for revision of the order of G. C. Hilton, Esquire, Sessions Judge, Ferozepore, dated the 14th January 1927, affirming that of Bawa Jhanda Singh, Magistrate, 1st class, Ferozepore, dated the 23rd December 1926, convicting the petitioner.

DUNI CHAND, for Petitioner.

MUHAMMAD RAFI, for Government Advocate, for Respondent.

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HARRISON J.—Kundha Singh, a *Jat* of the Ferozepore District, has been convicted under section 61 (1) (A) of the Excise Act, of being in possession of 10 *chhitaks* of illicit liquor and $9\frac{1}{4}$ seers of *lahan*. His appeal has been dismissed by the Sessions Judge and his revision is before me. I am not impressed in any way by any of the points urged by counsel, nor by any of the grounds entered in the petition. I am of opinion that the Sessions Judge has rightly held that these articles were found in the possession of the accused.

As regards the liquor, however, a point arises which I have raised myself and which is in my opinion of considerable importance, namely, whether it is or is not shown to be illicit. The report of the Chemical Examiner is as follows :—

“ The contents of the exhibit are, by analysis, pot-still spirit essentially different from the refined licit patent-still spirit as sent under the advice of your letter No. 474-Ex., dated the 12th July 1926. The suspected liquor however is *not definitely distinguishable from the refined pot-still spirits made at the Karnal Distillery*. Hence in my opinion the suspected liquor is of illicit origin, supposing that Karnal Distillery spirits have no possible access to the place of seizure. The alcoholic strength is 40.2 per cent. prf.”

In other words, as an expert, all that the Chemical Examiner can say is that the liquor in question is either pot-still of the Karnal Distillery or illicit liquor. Speaking as an ordinary rational man and not as an expert, he adds the natural conclusion that, if Karnal Distillery can be excluded on it being

shown that liquor therefrom had no access to the Ferozepore District, it follows that the liquor is illicit. The Sessions Judge merely recites that the liquor was illicit for the point was not urged before him. The trial Court disposes of the question by saying that the liquor was sent to the Chemical Examiner, "who has certified that it is of illicit origin." The Chemical Examiner says nothing of the sort as I have explained above. It was therefore necessary that the Crown should show that in the ordinary way of business liquor from the Karnal Distillery does not find its way into the Ferozepore district and probably when the comparative distances of the rival distilleries of Karnal and Amritsar from Ferozepore are remembered, it would have been easy enough to do so. Until and unless, the Crown had shown that the liquor, on which this open verdict has been returned, could not in the ordinary way of business have come from the Karnal Distillery, the *onus* did not shift on to the accused of showing that that was where he got it from. Had the Crown produced such evidence the *onus* would doubtless have shifted. A second method of showing that liquor is illicit is that of proving the strength and showing that it is above that at which liquor is issued from an authorised distillery. In this case we find that the strength of the liquor was extremely low, being only 40 *per cent.* of proof or 60 *per cent.* below proof. The strength at which liquor is issued from the Distilleries as explained in Article 588 of the Punjab Excise Manual is 80 *per cent.* of proof and 20 *per cent.* below proof. This test, therefore, is of no value. I am not prepared to hold that the liquor is illicit and I should like to point out that in similar cases it is most desirable that evidence such as I have described above should be led on the subject and that

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it would be quite enough to show that ordinarily the Karnal Distillery which, I understand, distils the whole of the pot-still licit liquor to be found in the Punjab, does not ordinarily send that liquor to the district in question.

Had the only article found in possession of the accused been this liquor I should have accepted the application and acquitted him. He was, however, found to be in possession of $9\frac{1}{4}$ seers of *lahan*. "*Lahan*" has been declared by Notification No. P. G. N. 25, dated 5th January 1915, to be liquor, and just as liquor cannot be strengthened, so it cannot be dissolved into its component parts and there can be no such thing as licit *lahan*, this being the term used for describing the material while in the process of manufacture. I find therefore that in virtue of the *lahan* the guilt of the accused is established.

In addition to six months' rigorous imprisonment the accused was ordered to pay a fine of Rs. 100 or in the alternative to undergo three months' further rigorous imprisonment. The amount of *lahan* found in his possession was not great and as no implements of distilling were discovered, he presumably was not conducting these operations on a big scale. I think under the circumstances and taking into account the fact that he has been sentenced to pay a substantial fine in addition to imprisonment, the amount of imprisonment already undergone together with the fine may be treated as sufficient punishment. Except for this reduction of sentence I dismiss the application for revision.

N. F. E.

Revision accepted in part.