

APPELLATE CRIMINAL.

Before Falshaw, and Kapur, JJ.

THE STATE,—Appellant.

versus

SULAKHAN SINGH,—Respondent.

Criminal Appeal No. 322 of 1954.

Punjab Excise Manual, Volume II, Chapter I—Para 1.2—Lahan—Definition of—Ingredients of Lahan present—No evidence of what stage the process of fermentation had reached, whether mixture is “Lahan”.

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Held, that as all the ingredients of Lahan were present mixed in the vessels recovered from the accused, or in other words the mixture was ready for the fermentation which would inevitably follow, it was immaterial, whether the ingredients had been mixed sufficiently long for the process of fermentation to have advanced very far or not at the time of the recovery. If the mixture had only been water and *gur* the resulting substance could not be said *Lahan*, but once the fermenting agent was added it did not matter how recently the mixture had been made and the substance is *Lahan*.

State Appeal from the order of Shri B. D. Mehra, Sessions Judge, Jullundur, dated the 13th November, 1953, reversing that of Shri Sukhdev Parsad, Magistrate 1st Class, Jullundur, dated the 20th August, 1953, and acquitting the respondent.

HAR PARSHAD, Assistant Advocate-General, for Appellant.

NEMO, for Respondent.

JUDGMENT.

FALSHAW, J. Sulakhan Singh the respondent in this appeal was convicted by a Magistrate at Jullundur under section 61 (1) (a) of the Excise

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Act and sentenced to four months' rigorous imprisonment as well as being ordered to furnish a bond under section 69A of the Act. He was, however, acquitted in appeal by the learned Sessions Judge and the State has challenged this order of acquittal.

The case against Sulakhan Singh was that his house was raided on the 6th of December, 1952, by a Sub-Inspector Jaswant Rai and, after Sulakhan Singh had made a statement that he had buried two vessels containing *lahan* in his courtyard, he pointed out the spot and two large vessels containing 20 seers and one maund of *lahan* respectively were dug up. Some other articles which might form parts of a still are also alleged to have been recovered. The contents of the vessels recovered were transferred to three pitchers which were sent to Excise Sub-Inspector Kartar Singh P. W. who tested them on the 10th of December, four days after the recovery and found them to be *lahan* fit for distillation.

The accused denied his guilt and produced some witnesses who said that the house from which the vessels of *lahan* were recovered did not belong to the accused.

The learned Sessions Judge apparently did not disbelieve the prosecution evidence in this case, but acquitted Sulakhan Singh on two grounds one being that in his examination under section 342, Criminal Procedure Code, he had not been questioned regarding the articles said to be parts of a still, and the other being that it had been stated by the Excise Sub-Inspector who tested the contents of the pitchers that he could not say what stage the process of fermentation in the *lahan* had reached on the 6th December when the *lahan* was recovered.

The first of these grounds appears to be neither here nor there, since the main charge against the accused was the recovery of the *lahan* from his possession, and he was questioned on this point, and so the omission to question him regarding some other articles, which might or might not have been the parts of a still, could not have affected his conviction on the major item in the charge against him.

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The main point on account of which this appeal has been preferred by the State was that if all the ingredients of *lahan* were present mixed in the vessels recovered from the accused, or in other words the mixture was ready for the fermentation which would inevitably follow, it was immaterial whether the ingredients had been mixed sufficiently long for the process of fermentation to have advanced very far or not at the time of the recovery. In my opinion, this contention is quite correct. The Excise Sub-Inspector had deposed that the mixture consisted of water, *gur* and some fermenting agent, and when he tested it on the 10th of December the process of fermentation was well advanced and the mixture was fit for distillation. If the mixture had only been water and *gur* the resulting substance could not be said *lahan*, but once the fermenting agent was added I do not consider that it matters how recently the mixture had been made before it was recovered and the substance is *lahan* and so amounts to liquor within the meaning of the definition contained in Para 1.2, Chapter 1, of the Punjab Excise Liquor Definitions in Volume II of the Excise Manual, I, therefore, consider that the accused was rightly convicted by the trial Magistrate and wrongly acquitted by the learned Sessions Judge on the charge under section 61 (1) (a) of the Excise Act.

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The matter is, however, very old, as the recovery was made in December, 1952, and even the order of acquittal was passed as long ago as November, 1953, and since the appeal has been filed not so much because of the gravity of the offence as in order to obtain a decision from this Court about the meaning of the term *lahan*, I do not think it is necessary to impose any more than a nominal sentence on the respondent. I would accordingly accept the State appeal and convict Sulakhan Singh respondent under section 61 (1) (a) of the Excise Act and sentence him to pay a fine of Rs. 25 or in default to undergo one month's rigorous imprisonment. The respondent must surrender to his bail bond which will be cancelled if he pays the fine. Otherwise he must be sent to jail to serve the term of imprisonment in default.

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KAPUR, J.—I agree.