

(1964) 11 AHC CK 0050
In the Allahabad High Court
Case No : Criminal Rev. No. 1653 of 1963

Narain Singh and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-11-1964

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 60

Uttar Pradesh Restaurant (Consumption of Liquor) Rules, 1952 — Rule 10

Citation : (1965) 35 AWR 792

Hon'ble Judges : S.D. Khare, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.D. Khare, J.—This is an application in revision against an order dated 23rd September, 1963, passed by the Addl. sessions Judge, Barcilly, dismissing the appeal filed by all the three applicants teapot their conviction u/s 60 if the U.P. Excise Act, read with the U.P. Restaurant (Consumption of Liquor) Rules, 1952, and the sentence of Rs. (sic)00/- awarded to each applicant.

2. The revision application so far as the applicant Satyapal Singh is mcernedhas already been dismissed (sic)t the summary hearing, and in this (sic)se I am now concerned with the revision application of the remaining (sic)o applicants, namely, Narain Singh and Autar Singh only.

3. The facts of the case as found by the two courts, below are that on the evening of the 10th of November, 1961, Sri. S.N. Srivastava, Junior Excise Inspector, received information that foreign liquor was served In Allien Hotel and Restaurant, Civil Lines, Barcilly, without the requisite license. On receipt of this information he organized a raid to detect the crime Sri. V.N. Pradhan, Senior Excise Inspector, also went with him. They sent the witnesses, namely, S.P. Raizada, H.D. Saxena, Madan Singh and T.P. Srivastave inside the Restaurant to demand the sale of liquor from the Manager. The witnesses were taken upstairs to room. No. 3 where bearer Bhagat Ram served them Hayararil Whisky. The

Manager of the Restaurant was Satyapal Singh and he was present at the counter. It was the Manager who had taken the customers, upstairs. Narain Singh and Autar Singh applicants are the proprietors of that Restaurant.

4. It was held by the courts below that upon a search of the hotel being made by the Excise Inspectors in the presence of witnesses the whisky bottle, liquor served in glasses mixed with soda and soda water bottles were found in room No. 3. Whisky and whisky mixed with soda were tested and found to be liquor. The rest of the hotel and Restaurant was also searched and one empty bottle of Dry Gin and three, empty bottles of Rum smelling with liquor were recovered.

5. I have heard learned Counsel for the applicants and also the counsel appearing for the State. The first point urged on behalf of the applicants is that liquor had been served in a room on the first floor, which was generally used as a residential room and could not be considered to be a part of the Restaurant. There is no force in this contention because the finding of the, learned Sessions Judge who heard the appeal is that room No. 3 where liquor had been served, was unoccupied at the time the offence was committed and that by the act of the Manager of the establishment in taking the customers to that room for serving liquor it had become a part of the Restaurant. In my opinion no exception be taken to that finding.

6. Next it was contended on behalf of Narain Singh and Autar Singh that they should not be held liable for the offence because they were not present in the Restaurant at the time the offence was committed and it could not be said with any amount of certainty that they had not taken due and reasonable precaution to prevent the presence of such liquor in the premises of the Restaurant, particularly when they were not in the Restaurant at the time of the occurrence and could not possibly take any precaution. It is also contended that the probability that Satyapal Singh had been serving liquor to customers for his private gain without the knowledge of the proprietors could not be ruled out.

7. The learned Additional Sessions Judge had inferred the knowledge of the proprietors from the fact that the proprietors were living in the same town, the concern was not a big one and Satyapal Singh Manager and Autar Singh proprietor were real brothers. These circumstances, in my opinion, are not sufficient to establish that Autar Singh and Narain Singh, the proprietors of the Restaurant, must have had knowledge that liquor used to be sold in that Restaurant.

8. Absence of knowledge of the proprietors could not be a complete defense under the provisions of the U.P. Restaurant (Consumption of Liquor) Rules, 1952. Rule 10, reads as follows:

The presence of any quantity of country or foreign liquor within the premises of a restaurant irrespective of the limit of individual possession shall be sufficient to raise a presumption u/s 71 of the Act (U.P. Excise Act, against the proprietor or the manager of the Restaurant for illegal possession of such liquor and he shall

be liable to punishment u/s 60 of the Act unless he establishes that all due and reasonable precautions were exercised by him to prevent the presence of such liquor in the premises of his restaurant

9. The defense of Autar Singh and Narain Singh, was that they were not present in the hotel at the time of the occurrence and did not know whether foreign liquor was served there.

10. The circumstances of the case in their favor are:

1. that they were not present at the time of the occurrence ;

2. that no liquor was served on the ground floor which was normally used as a restaurant ;

3 that the liquor was served on the first floor under the personal direction of Satyapal Singh ;

and

4. that on a search being made of the premises of the restaurant on the ground floor no liquor could be found there.

11. In my opinion the circumstances of the case are such that it cannot be said beyond reasonable doubt that the proprietors had knowledge that liquor used to be served in the Restaurant or that they had not taken due and reasonable precautions to prevent the presence of such liquor in the premises of their restaurant. Narain Singh and Autar Singh are, therefore, entitled to the benefit of doubt and acquittal.

12. The revision application of Narain Singh and Autar Singh is allowed, their conviction and sentence u/s 60, Excise Act read with U.P. Restaurant (Consumption of Liquor) Rules, 1952, are set aside and they are acquitted of the charge brought against them. The fine, if already paid, shall be refunded to them.