(10) Thus, it is held that the order of eviction under section 13-A in the present cases exhausted itself after the expiry of the Ordinance, nor is the same executable. In view of this conclusion, all the revision petitions are allowed and the impugned orders are set aside. However, there will be no order as to costs.

K. T. S.

REVISIONAL CRIMINAL

Before S. S. Sandhawalia and J. M. Tandon, JJ.

KARTAR SINGH—*Petitioner*

versus

STATE—*Respondent.*

Criminal Revision No. 639 of 1973

March 29, 1978.

Punjab Excise Act (I of 1914)—Sections 3 Clause 13-A and 61(1)(c)—Indian Evidence Act (I of 1872)—Section 45—Recovery of Lahan from a working still—Evidence of Excise Inspector not elucidating training he received nor specifying how testing of Lahan was a part of his training—Such evidence—Whether can be accepted—Lahan—Whether to be proved to be so by expert testimony.

Held that there is no basis for the assumption that *Lahan* is to be proved to be so by the testimony of an expert and there is no statutory rule or other principle for this proposition. Since neither the mode of proof is prescribed by the Punjab Excise Act 1914 nor is it laid down that it must be so done on the basis of the expert testimony, it cannot be said that the testimony of the Excise Inspector must be brought wiihin the ambit of section 45 of the Indian Evidence Act 1872. It follows that the prosecution has to discharge the burden in the ordinary way to bring the recovered material within the definition laid down by law. Once that is so, one must fall back on the general rule of the appraisal of evidence and the weight attached thereto. Therefore, the prosecution can bring in even an ordinary witness in order to satisfy the requirements of section 3 clause 13 A of the Punjab Excise Act.

(Paras 9 and 10)

Gardawar Singh v. *The State of Punjab*, 1975, C.L.R. 246.

Raghbir Singh v. *The State of Punjab*, 1976, C.L.R. 81.

OVERRULED.

Amar Dutt, Advocate, *for the petitioner.*

D. D. Jain, Advocate, *for A. G.*

JUDGMENT

S. S. Sandhawalia, J.—(1) The correctness of the view expressed in two Single Bench decisions of this Court reported as *Gardawar Singh* v. *The State of Punjab,* (1) and *Raghbir Singh* v. *The State of Punjab,* (2) (both by the same learned Judge) has been challenged before us in this reference primarily on the ground that the observations therein run counter to those made by their Lordships in *Sri Chand Batra* v. *State of U.P.* (3).

(2) Kartar Singh petitioner was brought to trial under section 61(1)(c) of the Punjab Excise Act for being in possession of a working still and was convicted by the Judicial Magistrate I Class, Zira and sentenced to the minimum punishment provided under the law, namely six months rigorous imprisonment, and a fine of Rs. 200 on the 21st of December, 1972. The conviction and the sentence of the petitioner were upheld and his appeal dismissed by the Additional Sessions Judge, Ferozepur,—*vide* his detailed judgment of the 17th of July, 1973. The petitioner thereafter preferred the present revision petition.

(3) It is unnecessary to delineate the facts in any great detail because the issues agitated before us are primarily those of law. The case in hand is typical of the recovery of a working still. In consequence of a secret information received, the petitioner was apprehended by a police party whilst distilling illicit liquor towards the north-eastern side of his village Daulewal. At that particular moment he was feeding the fire under the hearth and was apprehended at the spot and the still was dismantled and cooled. Apart from other instruments of distillation, about 60 Kilograms of *lahan* in a drum are alleged to have been recovered from his possession. P.W. 2 Gurdial Singh, Excise Inspector who was accompanying the raiding party on the 28th of September, 1971 tested this *lahan* and recorded a report which was subsequently proved as Exhibit P.D. during the trial. This deserves notice *in extenso*:—

> "I have tested the contents of the drum boiler recovered from the above-mentioned accused while he was working the still. I find it mixture of gur, water and *kikar* barks. Its

(1) 1975 C.L.R. 246.
(2) 1976 C.L.R. 81.
(3) A.I.R. 1974, S.C. 649.

smell is alcoholic, taste is bitter sour and colour is dark brownish. It is fully fermented *lahan* which has been partly distilled and is still fit for further distillation. The *lahan* is about 60 kgs. After the test the drum boiler is sealed with the seal 'GS'.

I am distillery trained."

(4) Whilst in the witness-box P.W. 2 Gurdial Singh further deposed that he was distillery trained and has an experience of 13 to 14 years and further that he had occasion to test *lahan* in innumerable cases. In a lengthy cross-examination directed against him by the counsel for the petitioner, the competency of the witness to opine about the *lahan* was not even remotely challenged nor was any issue joined regarding the composition or the strength of the liquid allegedly recovered from the petitioner. This was particularly so in the context of the defence taken on behalf of the petitioner that no recovery whatsoever was made from him and that he had been called along with some other persons from his village and falsely implicated in the case. Equally in this context it deserves notice that no contention was raised before the trial court that the contents of the drum did not contain *lahan*. Both in the grounds of appeal before the Additional Sessions Judge, Ferozepur as also in the grounds of revision in this High Court, no such point either expressly or impliedly was raised that the liquid recovered was something other than *lahan*.

(5) However, when the case came up before me sitting singly, learned counsel for the petitioner relying on *Gardawar Singh* v. *The State of Punjab*, and *Raghbir Singh* v. *The State of Punjab* (supra) contended that P.W. 2 Gurdial Singh, Excise Inspector should have elucidated in detail the type of training which he had received at the Distillery and to further specify exactly how and in what manner the testing of *lahan* was part of the training imparted to him. In sum it was submitted that unless all the aforementioned requirements were not only satisfied but deposed expressly in the witness-box the testimony of the Excise Inspector could not be accepted on the point that the liquid recovered from the petitioner was *lahan* and he further contended that it was incumbent on the Excise Inspector to specify in detail regarding the nature of his experience in 13 to 14 years of service and whether the testing of *lahan* was in any way part of that experience. Counsel further contended that it

was not enough to specify that the witness had tested *lahan* in many cases, but he should give further details of those cases with their respective dates and places.

(6) It is undeniable that the aforesaid argument does receive substantial support from the two Single Bench decisions referred to above on which primary reliance was placed by the counsel for the petitioner. However, in view of the strenuous challenge to their correctness raised on behalf of the respondent State based primarily on the observations in *Sri Chand Batra's case* (3 supra), the present reference to the larger Bench became necessary.

(7) Now at the very outset I may highlight that it is not proposed to enlarge the arena of controversy. Here one is concerned primarily with the proof in connection with the recovery of *lahan,* which has been defined in the following terms in clause 13-A of section 3 of the Punjab Excise Act:—

> "lahan" means any solution made from any kind of gur or molasses or both:—
>
> (i) to which a fermentation agent has been added to promote fermentation; or
>
> (ii)which has undergone the process of fermentation; and from which spirit can be obtained by disillation; and—

It is plain from the above that both the ingredients and the nature of the substance styled as *lahan* have been prescribed. One may, therefore, proceed to apply this prescription to the unchallenged testimony of Excise Inspector Gurdial Singh (P.W. 2) on the point, as also his report Ex. P.D. duly proved on the record. It is evident from them that he had specified that the material recovered from the petitioner was a mixture of *gur* and water to which fermenting agent of *kikar* bark had been added. Regarding its condition, he was equally clear that it was fully fermented *lahan* which was partially distilled and was fit for further distillation. Once that is so, it is plain that on the acceptance of the report Ex. P.D. and the absence of any challenge with regard to the testimony of this witness on this point the requisite ingredients of the statutory definition of *lahan* stood obviously satisfied.

(8) I may now proceed to examine the other limb of the argument on the basis of the fair and firm stand taken even by the learned counsel for the petitioner. In face of the clear provisions of the Punjab Excise Act, Shri Jagga conceded that the same do not in any way provide or require that the contents or the ingredients of *lahan* have to be deposed to and proved by an expert and expert alone. Equally he had taken this stand that no particular specified mode of proof has been laid down by the special statute itself or by the general provisions of the Indian Evidence Act.

(9) Viewed in this light, it appears to me that the basic fallacy from which the two judgments relied upon by the learned counsel for the petitioner suffer is the assumption that *lahan* is to be proved to be so by the testimony of an expert. With respect I am unable to discover any statutory rule or other principle or precedent for this proposition. Since neither the mode of proof is prescribed by the statute nor is it laid down that it must be so done on the basis of the expert testimony, with great respect, I am unable to say that the testimony of the Excise Inspector must be brought within the ambit of section 45 of the Indian Evidence Act. It follows that the prosecution has to discharge the burden in the ordinary way to bring the recovered material within the definition laid down by law.

(10) Once that is so, one must fall back on the general rule of the appraisal of evidence and the weight attached thereto. As an abstract proposition, therefore, the prosecution can bring in even an ordinary witness in order to satisfy the requirements of section 3, clause 13-A of the Punjab Excise Act. Nevertheless, in the present case they did bring in a witness well-versed and well trained in the work of testing *lahan*. The significant thing is that neither his capacity nor his credentials on the point of opining about the ingredients of *lahan* was even remotely challenged. The basic rule that where a witness deposing adversely to a party is not at all challenged then his testimony may well be relied upon, consequently comes into play. This is the more so in a case where the whole stand of the petitioner was that, in fact, the incriminating material was not at all recovered from him, but has been subsequently planted. If that be the basic plank of the defence, obviously the Excise Inspector was not at all challenged with regard to either his capacity to opine about the *lahan* in this case or cross-examined to show that, in fact, what was recovered was something other than that.

(11) Apart from principle and rationale, it appears to us that the observations made in the aforesaid two cases run directly contrary to the underlying principle and ratio of *Sri Chand Batra's case* (3 supra). That was a matter of recovery of illicit liquor and therefore, on a stronger footing than the recovery of mere *lahan*. Therein also the same challenge was laid to the testimony of the Excise Inspector at the appellate stage. Their Lordships of the Supreme Court, whilst confining the observations of the earlier case of *State of Andhra Pradesh* v. *Madiga Boosenna and others* (4), to its own facts, observed as follows, with regard to the issue of the stages at which the objection regarding the proof and the nature of the liquid recovered can be raised:—

> "——It is really for the Court of fact to decide whether, upon a consideration of the totality of facts in a case, it has been satisfactorily established that the objects recovered from the possession of the accused included liquor of prohibited strength. We see no reason why an accused person in the position of the appellant, who could be presumed to have enough knowledge about the composition and strength of the prohibited liquor could not raise this question in the Trial Court so that the prosecution may cure whatever weakness there might be in the evidence on that point. We do not think that he should be allowed to raise it at a stage when it may be difficult or impossible to adopt a conclusive test."

and further:—

> "——If his competence to give his opinion of the sufficiency of the tests adopted by him had been questioned in the Trial Court, the prosecution would have been in a position to lead more evidence on these questions. We also find that the objects recovered from the possession of the appellant almost proclaim the nature of his activity and of the liquid which could be in his possession.——"

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(4) A.I.R. 1967 S.C. 1550.

(12) Again, with regard to the weight to be attached to the evidence of the witness deposing to the exciseable material, their Lordships laid down as follows:—

> "——We think that these are also essentially questions of fact. If there is sufficient evidence led by the prosecution to establish its case it becomes the duty of the defence to rebut that evidence. In the case before us, the appellant's counsel cross-examined Shri C. D. Mishra, P.W. 1, Excise Inspector, at considerable length, but the whole of this cross-examination was directed at showing that the recoveries were not made from the possession of the appellant. No question was put to him in cross-examination to suggest that the appellant questioned the composition or strength of the liquid recovered as alcohol of prohibited strength or the competence of the Excise Inspector to give his conclusion on the strength of tests adopted by him. Again, no defence evidence was led to indicate that the liquid could be anything else. These considerations would be sufficient to dispose of the points raised on behalf of the appellant in the case before us. We may, however, observe that we agree with the High Court that the proposition contained in Boosenna's case, (1967)-3 SCR-871-1967 Cr. L.J. 1398 (*supra*) must be confined to its own facts.

(13) I am constrained to hold that both on principle and in view of the observations quoted above from a binding precedent, it must be held that both *Gardawar Singh* v. *The State of Punjab,* (1 *supra*) and *Raghbir Singh* v. *The State of Punjab* (2 supra) do not lay down the law correctly and are, therefore, overruled.

(14) No cogent arguments on merits could be raised on behalf of the petitioner. The revision is, therefore, without merit and is hereby dismissed. The conviction and sentence imposed on the petitioner are maintained.

J. M. Tandon,—I agree.

H.S.B.