

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 704 of 2013

Against the judgment of conviction dated 25.09.2013 and order of sentence dated 30.09.2013 passed by Shri Atul Kumar Shrivastava, the learned 3rd Additional District & Sessions Judge, West Champaran (Bettiah) in Trial No. 06 of 2012 arising out of Sathi P.S. Case No. - 31 Year – 2011, N.D.P.S. Case No. 37 of 2011

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Laxman Chaudhary, Son of Late Bhagelu Chaudhary, Resident of Village - Nawalpur Bhawanipur, Police Station - Nawalpur, District - West Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : None

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

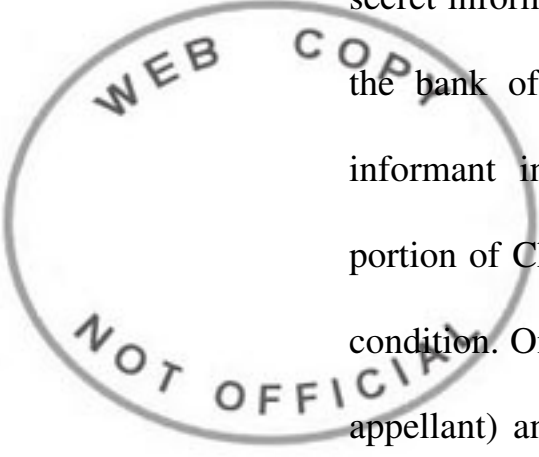
ORAL JUDGMENT

Date: 04-12-2015

Heard learned counsel for the State. Nobody appears on behalf of the appellant.

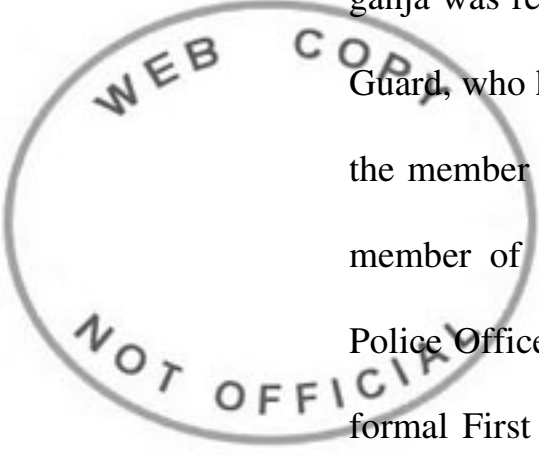
2. The appellant has been convicted under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the “NDPS Act”) and sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.1,00,000/- and in default of payment of fine to undergo simple imprisonment for two years.

3. The prosecution case, as alleged in the self statement of the informant Kamal Kishore Singh, Station House Officer, Sathi Police Station recorded on 10.04.2011 at about 4:30 P.M. at Somgarh village, is that he along with other police personnel proceeded for raid of the illegal liquor and ganja etc. on the occasion of Panchayat Election and when the



police personnel reached Somgarh at about 5:00 P.M. then he got a secret information that in Somgarh at Chhathiya Ghat near Bahircart on the bank of river, the smugglers have concealed illegal ganja. The informant informed the police personnel and reached the southern portion of Chhathiya Ghat then found a person standing in a suspicious condition. On inquiry, he disclosed his name as Laxman Chaudhary (the appellant) and asserted that he was there for the supervision of illegal ganja kept concealed under the sand and at his instance 10 bundles of illegal ganja were recovered. Each packet contained 15 Kg. of alleged illicit ganja. Hence, 150 Kg. ganja was recovered. On inquiry from the resident of the area, it was disclosed that the entire ganja belonged to one Rameshwar Yadav, who was a veteran smuggler and who had concealed the bundle of ganja on the bank of the river under the sand.

4. On the basis of the self written report of the informant, the First Information Report was lodged, investigation proceeded, after investigation charge-sheet submitted marked as Ext.7, cognizance taken and thereafter charge framed against the sole appellant Laxman Chaudhary and trial proceeded. During trial, seven witnesses were examined on behalf of the prosecution. P.W. 1 is Prakash Raut the seizure list witness. Though he has proved his signature on the seizure list but he has stated that his signature was put on the plain paper and no ganja was recovered before him. P.W. 2 is Shashi Kumar Singh who has



also proved his signature on the seizure list but he has stated that no ganja was recovered before him. P.W. 3 is Vijay Kumar Thakur, Home Guard, who has been declared hostile though as per the prosecution he is the member of the raiding party. P.W. 4 is Dhruv Yadav who was also member of the raiding party. P.W. 5 is Nagendra Paswan, a retired Police Officer, who conducted the investigation and has also proved the formal First Information Report marked as Ext.2. He had deposed that Laxman Chaudhary was apprehended before him and forwarding report is marked as Ext.3. He has further stated that during investigation he recorded the statements of the witnesses and inspected the place of occurrence. P.W.6 is Kamal Kishore Singh, the Officer-in-Charge, Sathi, who has deposed that he proceeded for raid and when reached at village Somgarh then got information about concealing of the ganja by the smugglers on the bank of the river and then proceeded and a person, present there was apprehended, who disclosed his name as Laxman Chaudhary and at his instance the psychotropic substance was found concealed under the sand and 2 quintals, 10 Kg. ganja was recovered from different bags and thereafter he prepared the seizure list properly. He proved the seizure list as Ext.5. P.W. 7 is Ram Sewak Safi he conducted the investigation of the case.

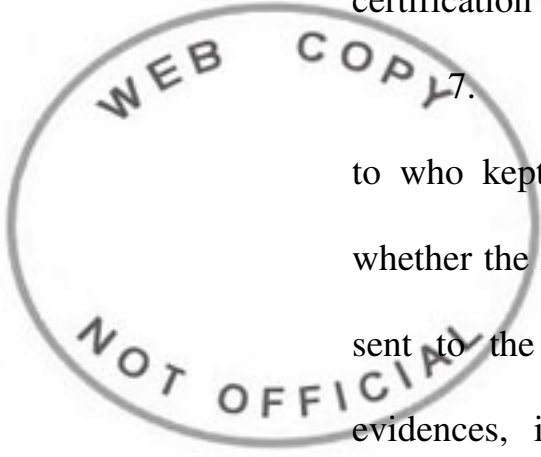
5. The trial Court taking into consideration the evidence of the witnesses, convicted the appellant as mentioned above holding that there

is sufficient evidence to prove the case beyond reasonable doubt but acquitted the accused, Ramesh Yadav from the charge under Section 27A of the NDPS Act.

6. However, the prosecution case as alleged is that when the police proceeded for raid of the illicit liquor and psychotropic substance, he got secret information about the narcotic drugs having been concealed under the sand on the bank of the river and thereafter as per the statement and disclosure by the appellant, the ganja, total 2 quintal 10 Kg. was recovered beneath the sand, which was seized and the seizure list was prepared. Thereafter investigation proceeded and charge-sheet was submitted. The prosecution has also proved the documentary evidence. The FSL report is marked as Ext. 8. However, going through the entire evidence, it is apparent that though there is evidence with respect to the recovery and seizure of the alleged ganja, but there is no evidence either in the evidence of the Investigating Officer or of other witnesses as to where the seized ganja was kept. There is no evidence that the representative sample was taken out of those seized ganja. There is no evidence that the said representative samples were sealed with the seal of the Officer-in-Charge of the police station. There is no evidence as to whether the seized ganja was kept in a sealed cover, nor the seized ganja was ever produced before the Court nor the prosecution has been able to prove or bring on record any material to suggest that the said

ganja was destroyed or ever produced before the Magistrate for the certification of the articles seized or for the destruction of the articles.

7. Hence, having regard to the fact that there is no evidence as to who kept the seized ganja, where the ganja seized was kept and whether the representative sample was taken from the seized article and sent to the Forensic Science Laboratory and in absence of these evidences, it does not proper to rely upon the Forensic Science Laboratory report when there is no evidence where the representative sample was taken out from the seized article and sent to the Forensic Science Laboratory. Moreover, the date of occurrence and date of seizure is alleged to be on 10.04.2011, however, the Forensic Science Laboratory report shows that the sample was received vide Memo No. 525, dated 22.06.2012 on 03.09.2012 and hence, it is apparent that the ganja seized on 10.04.2011 was sent to the Forensic Science Laboratory on 03.09.2012 after more than 14 months, that is much after a year and it is also not clear as to where the said article was kept or where the said article seized in sealed cover and in absence of these evidences and further the evidence that ganja seized was sent to the Forensic Science Laboratory after more than a year and where the said article was kept or who sent the sample, it is not proper to rely on the report of the Forensic Science Laboratory to convict the appellant with the charge under the NDPS Act. It is apparent that there is a clear violation of Sections 52(A),



57 and 55 of the NDPS Act, hence, I find and hold that the prosecution has not been able to prove the charge beyond reasonable doubt and the judgment of conviction dated 25.09.2013 and order of sentence dated 30.09.2013 passed by Shri Atul Kumar Shrivastava, the learned 3rd Additional District & Sessions Judge, West Champaran (Bettiah) in Trial No. 06 of 2012 arising out of Sathi P.S. Case No. - 31 Year – 2011, N.D.P.S. Case No. 37 of 2011 is hereby set aside and the appeal is allowed. Let the appellant, who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

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