

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.439 of 2012

Arising Out of PS.Case No. -17 Year- 2005 Thana -null District-
SASARAM (ROHTAS)

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Imran Sheikh @ Raju Sheikh S/O Inayat Sheikh R/O Mohalla- Sajlapir,
Khirkighat, Sasaram, P.S.- Sasaram (Town), District- Rohtas, Sasaram

.... Appellant/s

Versusz

The State Of Bihar

.....Respondent

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Appearance :

For the Appellant/s : None.

For the Respondent/s : Mr. Mayanand Jha

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-04-2015

This appeal is directed against the judgment dated 03.04.2012 and the order of sentence dated 10.04.2012 rendered by the court of learned Additional Sessions Judge- Vth, Rohtas at Sasaram in Tr. No. 45 of 2009 arising out of Sasaram Rail P.S.Case No.17 of 2005 (N.D.P.S.). The trial court convicted the appellant and another for the offence under Section 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'Act') and sentenced them to undergo rigorous imprisonment for twelve years with a fine

of rupees one lac and in default they have been directed to undergo simple imprisonment for two years. Hence this appeal.

2. The case against the appellant is that Raj Kumar, Officer Incharge of G.R.P. Railway Post, Dehri Station, P.W.2, was on duty on 26.04.2015, he was keeping a close watch on platform No. 4/5 of Dehri Railway Station and at about 20.05 hour, 2308 DN. Jodhpur Howrah Express Train stopped on the platform and he was closely observing the passengers. One person is said to have began running away on seeing the police party. He is said to have apprehended that person and thereafter the crowd in the station had assembled around. Two persons by name Shivji Pandey and Jai Ram Ojha are said to have assisted in conducting the search of the apprehended person. P.W.2 further stated that when the search was conducted on the apprehended person, nothing was recovered and thereafter the second search was conducted on his person and in that search, live cartridge and some quantity of heroine is said to have been recovered. The other co accused is also said to have been arrested in similar fashion.

3. P.W.2 in his complaint, a public report, stated that the appellant and the other co-accused were apprehended and on the basis of their confessional statement 125 grams of Heroin, kept in polythene in the right side pocket and 200 grams of heroin in the left side pocket was recovered. On the basis of the complaint submitted by P.W.2, the case was registered and investigation was

taken up; charge-sheet was filed and the case was tried by the Sessions Court.

4. P.Ws. 1 to 4 were examined on behalf of the prosecution; and Forensic Science Laboratory Report (FSL) and seizure memo were filed and exhibited. The trial court found the appellant guilty of the offence alleged against him and convicted him. The only neutral person i.e. P.W.1, who is said to have attested the seizure Panchnama, was declared hostile at the instance of the prosecution since he did not support their case. The remaining three witnesses are only the police officials. The trial court convicted and sentenced the appellant.

5. Heard learned counsel for the appellant and learned Additional Public Prosecutor.

6. The evidence of police officials cannot be discarded by presuming bias. However, the scrutiny has to be strict. Had there been some evidence, oral or documentary to support the evidence of P.W. 2 and 4. It would have been possible to belief that. Unfortunately in this case, the prosecution did not examine even the analyst who issued the so called FSL report.

7. When the provisions of the Act are invoked, it was incumbent upon the prosecution to establish that what was recovered from the accused was a narcotic substance before it wanted the court to convict the person. The one who analysed it, is required to be



examined as a witness. It is only when the nature of the substance said to have been recovered from the accused is established to be the psychotropic drug, beyond doubt, that the court would be justified to convict a person of the offence under the Act, or for that matter, to impose punishment, if the factum of possession is also established. No effort was made in this case on those lines.

8. Another serious doubt in this case is that even according to P.W.2, there was no prior information or even suspicion against the appellant and when the search was made after apprehending him in the railway station, nothing was recovered from his person. It is just understandable as to how the second search will yield any other result. Things would have been different had there been resistance on the part of the appellant at the time of first search and after overpowering him, second search was made. When there was no recovery in the first search, it is difficult to expect recovery in the second search. Since the sentence of very high order is involved in the matter of this nature, unimpeachable evidence and uncontroverted facts are necessary before a person is convicted. The search to be conducted under the Act is requirement to be on the basis of at least suspicion, if not reliable information. Even that is not pleaded much less established. At any rate, the appellant has undergone imprisonment of almost ten years.

9. The appeal is, therefore, allowed and the conviction and

sentence ordered by the trial court against the appellant is set aside.
He should be set at liberty forthwith.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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