

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.575 of 2010

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Surendra Pandey son of Late Prayag Pandey R/O Vill.
Pokharahan, P.S. Bagen Gola, Distt. Buxar... Appellant

Versus

The State Of Bihar Respondent

with

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Criminal Appeal (SJ) No. 459 of 2010

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Sujit Rai son of Late Subhash Rai, R/o village- Chapa Guri, P.S.-
Kotwali Chapa Guri, District- Kuch Bihar (W.B.)..... Appellant

Versus

The State of Bihar..... Respondent

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Against the judgment of conviction and order of sentence dated
19/26.03.2010 passed by Shri Ajay Kumar Srivastava, Additional
Sessions Judge I, Bhojpur at Arrah in N.D.P.S. Case No. 5 of 2006

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Appearance :

(In CR. APP (SJ) No. 575 of 2010)

For the Appellant : Mr. Jitendra Kumar Ray, Advocate
Mr. Niki Singh, Advocate
Mr. Sumit Kumar, Advocate

For the Respondent : Mr. A. K. Sinha, APP

(In CR. APP (SJ) No. 459 of 2010)

For the Appellant : Mr. Prashant Kumar Sinha, Advocate
Mr. Ganesh Prasad Singh, Advocate
Mr. Anirudh Kumar Singh, Advocate

For the Respondent : Mr. S. C. Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 02-09-2015

Both these appeals arise out of judgment and order
dated 19/26.03.2010 passed by Additional Sessions Judge-I,
Bhojpur at Ara in N.D.P.S. Case No. 5 of 2006 whereunder the two
accused appellants in these appeals have been convicted for the
offence under Section 20 (b) of the Narcotic Drugs & Psychotropic

Substances Act (hereinafter referred to as the Act) and sentenced to suffer rigorous imprisonment for ten years with further direction to pay fine of Rs. 1,00,000/- and in default of payment of fine to undergo rigorous imprisonment for two years.

2. Prosecution case as set out in the self statement of Officer-in-Charge, S. I. Ram Naresh Prasad Singh of Ara Nawada Police Station on 14.04.2006 at 17:20 hours in Mohalla Sankatmochan Nagar is that on the same day he along with Mithlesh Kumar Jha S.I. of Ara Nawada Police Station and reserve police force of the said police station had proceeded at 15.45 hours on patrolling duty for maintaining law and order in Ramna Maidan area and while he was near Ramna Maidan received information on his mobile around 16:00 hours that in the house of Rajendra Prasad situate in Mohalla Sankatmochan Nagar contraband Ganaj in large quantity has been brought and concealed and is likely to be shifted to some other place. Having received such information, informant along with S.I., A.S.I. of Ara Nawada Police Station and other members of patrolling party reached the house of Rajendra Prasad in Mohalla Sankatmochan Nagar around 16.10 hours. After reaching the house of Rajendra Prasad, entrance door was found closed from inside, residents of the house were called, one person opened the door and told the informant that he is Rajendra Prasad and it is his house. Informant, thereafter, informed Rajendra Prasad about the information received that contraband Ganja is



kept in his house and the house is to be searched. Rajendra Prasad was also informed that if he desired, search operation in his house may be conducted in presence of a gazetted officer. Rajendra Prasad expressed his willingness to get his house searched in presence of a gazetted officer, whereafter, informant informed Sub-divisional Magistrate, Ara Sadar who promptly came to the house of Rajendra Prasad at 16:30 hours and in his leadership, following the search rules, the house of Rajendra Prasad was searched. One person was inside the room on the first floor attempted to run away by jumping from the first floor, he was chased and apprehended as he had suffered injury in his leg as result of jumping from Ist floor. He disclosed his name as Sujit Rai son of late Subhash Rai, resident of village Chapa Guri, P.S.- Kotwali Chapa Guri, District- Kuch Bihar (West Bengal). From the closed room on the first floor of the house, 10 red colour plastic packets was recovered in which Ganja like substance was found kept. In the same room two other persons were also found and they disclosed their name as Bira Sah of Nawanagar and Surendra Prandey of Pokraha, P.S.- Bagen, District- Buxar. The two persons found in the room as also Rajendra Prasad and Sujit Rai were also arrested along with the recovered Ganja. The four were interrogated one by one and each of the four disclosed that they regularly brought Ganja from Kuch Bihar (West Bengal) to undertake its retail sale locally. The apprehended persons also



disclosed that they regularly received supply of Ganja from Sujit Rai and today also they have brought the Ganja from Kuch Bihar along with him which shall be sold by them in the local market. Informant further stated in his self statement that sale of contraband Ganja is a cognizable offence under Section 8 (c) and 20 (b) of the Act. The recovered Ganja was seized after preparing the seizure list in presence of two police witnesses as the locals refused to put their signature because of fear of Rajendra Prasad. The four accused persons, namely, Rajendra Prasad, Bira Sah, Surendra Pandey and Sujit Rai were arrested and observing the rules they are charged with the commission of offence under Section 8 (c) /20 (b) of the Act. In the self statement the informant further stated that after reaching Police Station he shall draw the formal First Information Report. Formal first information report has been drawn on Friday, 14.04.2006, at 18:45 hours but the time of its dispatch required to be stated in paragraph 15 has not been stated. It, however, appears from perusal of the first information report that the FIR along with seizure list prepared on 14.04.2006 at 17:00 hours indicating seizure of one quintal Ganja from the house of Rajendra Prasad situate in Mohalla Sankatmochan Nagar, P.S.- Ara Nawada, District- Bhojpur in presence of A.S.I. Parsuram Singh and Mithlesh Jha was presented before the Judge In-charge on 16.04.2006. Later, sample from the seized Ganja was sent to the Forensic Science Laboratory, Patna on 13.06.2006 as would



appear from the report of Forensic Science Laboratory No. 450/06 dated 24.06.2008. Director, Forensic Science Laboratory in his aforesaid report dated 24.06.2008 confirmed that the sample sent to him under memo no. 09 dated 13.06.2006 of the District & Sessions Judge, Bhojpur at Ara was Ganja. In the light of contents of self statement, seizure list and other connected materials the Investigating Officer of the case submitted chargesheet against four accused persons named in the self statement. On the basis of chargesheet, cognizance was taken and charge framed under order dated 02.11.2006 to which the four accused persons pleaded not guilty and claimed to be tried. The two of the FIR named accused persons namely, Rajendra Prasad and Bira Sah were released on bail by this Court in the year 2008 and thereafter, both of them absconded, then only two FIR named accused persons the appellants herein were put on trial.

3. In support of charge the prosecution examined as many as 7 witnesses. PW 1 Mithilesh Kumar Jha, PW 3 Parsuram Singh at the relevant time served as A.S.I. in Ara Nawada Police Station were members of the raiding party and they also put their signature on the seizure list prepared on 14.04.2006 by Sri Ram Naresh Prasad Singh, S.I. and Officer-in-Charge of ARa Nawada Police Station. PW 2 served as constable in Ara Nawada Police Station and was also a member of the raiding party. PW 4 Ram Naresh Prasad Singh served as Officer-in-Charge in the said Police



Station and under his command the raid was conducted in the house of Rajendra Prasad and from the room at first floor of the said house one quintal Ganja in ten red colour plastic packets of 10 kg. each was recovered. PW 5 Vinay Kumar Singh, PW 6 Sudarshan Singh both served as constables in the same police station and were the members of the raiding party. PW 7 Birendra Singh served as S.I. in Ara Nawada Police Station and was appointed as Investigating Officer of the case by Officer-in-Charge Ram Naresh Prasad Singh. Besides the oral evidence of the members of the raiding party, prosecution has also placed reliance on the seizure list (Ext. 1) and the report received from the Forensic Science Laboratory, Patna (Ext. 4).

4. Learned counsel for the appellants submitted that the conviction of the two accused persons for the offence under Section 20(b) of the Act and the sentenced imposed on them is required to be set aside as before launching such prosecution, the formalities which are required to be conducted in the light of the provisions as contained in Sections 42 to 53 of the Act has not been conducted at all which would appear from the evidence of not only the informant (PW 4) on whose self statement the present case was registered, raid conducted, seizure made but also from the evidence of the Investigating Officer of the case. It is submitted that the signature of the four accused persons of the case was required to be taken on the sample which was drawn from the



seized psychotropic substance but the signature of the accused persons including the two appellants was never taken. It is also submitted that the sample which was drawn was not even produced before the court before sending the same to the Forensic Science Laboratory, Patna on 13.06.2006 as on that date only a petition was filed requesting the court to send the sample without producing the same for its perusal. It is submitted that self statement was recorded on 14.04.2006 at 17:20 hours and as per the provisions of law, the self statement which is part of the formal first information report drawn on the same day at 18.15 hours, was required to be produced before the court concern within 24 hours of its drawl together with the sample taken from the seized psychotropic substance before the court concern so as to ensure the authenticity of the seizure and drawing of sample from the seized substance. In the instant case, the sample having not been produced and only petition was filed that too after about two months of seizure, the entire prosecution suffers from such defect which cannot be condoned and the appellants are required to be acquitted. Learned counsel, in this connection, placed reliance on the evidence of the Investigating Officer in paragraph 21 to 23 and of the informant and submitted that the provisions of law to ensure authenticity of the sample was not observed and thereby the two appellants are required to be acquitted.

5. Learned counsel for the State has supported the



judgment but could not defend the action of the informant (PW 4) and the Investigating Officer of the case (PW 7) as both did not observe the mandatory provisions of law under Sections 42 to 53 of the Act i.e. for drawing the sample within reasonable time of its seizure and producing the same before the court concerned within 24 hours of its seizure. In this connection, we may also notice that the evidence of PWs 5 and 6 the two constables posted in Nawada Police Station did not even support that any raid was conducted in which one quintal Ganja was recovered and the arrest of the four FIR named accused persons in their presence from the room in the first floor of the house of absconder co-accused Rajendra Prasad situate in Mohalla- Sankatmochan Nagar, Ara was made.

6. In view of the rival submissions made by the counsel for the parties, we have considered the findings recorded in impugned judgment. It appears that a raid was conducted around 5:00 pm on 14.04.2006 in the house of absconder co-accused Rajendra Prasad in which one quintal commodity was seized which appeared like Ganja as would appear from the self statement (Ext. 2) and seizure list (Ext. 1). Samples from the seized substance was, however, not drawn as per the provisions of law over which signature of the four accused persons in whose presence the seizure was made from the house of absconder co-accused Rajendra Prasad was obtained, the sample was also not produced before the court before the same was sent to the Forensic Science

Laboratory, Patna on 13.06.2006. In the circumstances, there is no authenticity that the Forensic Science Laboratory report confirming seizure of ganja has been submitted in the light of the samples drawn from the same Ganja which was seized from the house of co-accused Rajendra Prasad in presence of the appellants. The drawn sample from the seized substance is not in accordance with law and there is no explanation as to why the same was not produced before the court within 24 hours of seizure and why was it sent after about two months from the date of the seizure for its test by the Forensic Science Laboratory, Patna. This Court has no option but to acquit the two appellants granting them the benefit of doubt for the failure of the prosecution to observe the formalities provided in law.

7. In the result, the impugned judgment of conviction and order of sentence is set aside and the two appellants are acquitted. They being in custody, are directed to be released forthwith if not required in any other case.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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