

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1014 of 2010

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Guddu Kumar S/o Mahesh Rai Residents of Village- Jethuly, P.S.- Fatuha, District- Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhirendra Kumar Singh, Adv.
For the Respondent/s : Mr. S.N. Prasad, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 30-10-2015

Heard learned counsel for the Appellant and learned counsel for the respondent.

The sole Appellant has been convicted under Section 20 (b) (ii) (c) of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for 15 years and a fine of Rs. 1,50,000/- and in default of payment of fine, he is to undergo 3 years rigorous imprisonment passed by the Additional Sessions Judge-VIIth, Patna vide judgment and conviction dated 29.06.2010 and 06.07.2010 respectively in Special Case No. 04 of 2008 arising out of Bakhtiyarpur Rail P.S. Case No. 03 of 2008.

The case of the informant, Nigam Kumar Verma, P.W.2, who was an Officer-In-charge of Railway Station



Bakhtiyarpur P.S., is that on the date of occurrence at about 11.00 pm. in course of a general inspection, he found the Appellant standing on the platform in a suspicious condition with three bags. On enquiry, he was unable to produce railway ticket at which his bags were checked and it was found full of Ganja. He confessed that he was carrying Ganja. The bags were weighed at the Railway Station and found to be containing 10 kgs., 15 kgs. and 5 kgs. of Ganja respectively totaling to 30 kgs. He stated that he prepared the seizure list and filed the First Information Report.

During the trial, prosecution examined six witnesses. P.W.1, Baleshwar Sah, who was posted at the G.R.P., Bakhtiyarpur Police Station, on 10.01.2008, in the evening at about 11.00 pm. along with informant, Nigam Kumar Verma, Ramesh Singh and M.A. Khan started questioning one unknown boy and from whose possession Ganja was recovered. He disclosed his name being Guddu Kumar. The Ganja was seized and weighed, which totalled to 30 kgs. A seizure list was prepared on which he also signed, which is marked Exhibit-1. One copy was given to the accused person. He stated that other officers were called to be seizure witnesses but they refused. He does not say anything further of any significance.

P.W.2, Nigam Kumar Verma is the informant, who stated that on 10.01.2008 when he was the Officer-in-charge at Rail



Police Station, Bakhtiyarpur, he started making a general inquiry along with Amanullah Khan, constable Ramesh Singh (P.W.3) and Baleshwar Sah (P.W.1), at around 11.00 pm., when they reached at particular spot of the Railway Platform, they found one boy standing in a suspicious condition with bags. He disclosed that he was going to Howrah, at which they asked him to produce tickets but he did not produce the same, which gave rise to further suspicion. Then they started searching and found three bags containing Ganja, which were weighed totaling to 30 kgs. being 15kgs, 10kgs and 5 kgs. respectively. The same was seized and a seizure list was prepared by Amanullah Khan on his dictation on which he himself signed. He proves his signature being Exhibit-1/2 and Exhibit-1/3 and the signature of witnesses, Exhibit- 1/4. He stated that thereafter on his statement and dictation, Amanullah Khan prepared the First Information Report as Exhibit-2 and instituted a case Exhibit-2/1. He proves his endorsement on the self statement being Exhibit 2/2. He stated that he brought the accused along with Ganja to the Police Station and sealed the same and kept it in the Malkhana. The investigation was handed over to Maheshwar Paswan (P.W.6), who sent the sample to the Forensic Science Laboratory, Patna. During cross-examination, he did not state anything which is of significance except that he was not a technical expert and only guessed that the

article was 'Ganja' and it had been sent to the Forensic Science Laboratory for expert opinion.

P.W.3, Ramesh Singh, who was one of the members of the raiding team, stated that on 10.01.2008, he along with informant and P.W.1 Baleshwar Sah found a boy on suspicious condition, who disclosed his name as Guddu Kumar and from his possession, three bags were recovered in which 'Ganja' was packed. A seizure list was prepared on which he signed his signature, which is marked Exhibit-1/4 and was also handed over to the Appellant. The Ganja was thereafter weighed and found to be 30 kilograms. The accused was taken to the Police Station. He does not say anything of his significance in his cross-examination, except that, he did not know as to who had weighed the 'Ganja'.

P.W.4, Jagdish Paswan and P.W. 5, Bijendra Paswan, were initially seizure list witnesses, who denied having been present at the time of recovery/seizure.

P.W. 6, Maheshwer Paswan is the Investigating Officer, who stated that on 10.01.2008, he took over investigation in course of which, he received the documents and recorded the further statement of the informant and took the Appellant in custody. He also examined Ramesh Prasad Singh, Baleshwar Prasad Sah, M.A. Khan, Rudal Paswan, Jagdish Paswan and Bijendra Paswan and inspected the place

of occurrence, which he described. He stated that the sample of 'Ganja' was forwarded to Forensic Science Laboratory on the orders of the Court and after closure of investigation, he submitted the chargesheet. He stated that the seizure list was not prepared in his presence.

It appears that the prosecution proved the F.S.L. Report and marked Exhibit-3 in terms of section 293 of the Cr. P.C. and the opinion was that the sample contained 'Ganja'.

From the analysis of the above evidence, we find that P.W.1, P.W.2 and P.W. 3 are merely on the point of recovery of three packets from the possession of the Appellant and that those bags allegedly contained 'Ganja'. The same was sealed soon thereafter. None of the witnesses have stated as to who took the sample from the recovered articles. Admittedly, only one sample was sent to the F.S.L. Naturally, the query of the Court as to who had drawn the sample, is not satisfied even by the Investigating Officer, who merely states that he sent the sample to the F.S.L. on the orders of the Court.

In such circumstances, evidently when there is complete paucity of evidence in regard to drawing of samples which was the crucial link, it is difficult to connect the report Exhibit-3 with the present occurrence. We have also strong objection to the fact that only one sample was sent to the F.S.L. even though three bags had

been allegedly recovered and procedurally, three samples should have been drawn. When only one sample is drawn, it would be impossible for the Court to conclude as to whether all the three bags contained incriminating articles issue is essential to determine as to whether it was the articles came within the category of commercial quantity or otherwise.

In such a situation, we are inclined to allow the appeal and set aside the judgment of conviction dated 29.06.2010 and order of sentence dated 06.07.2010 passed by the Additional Sessions Judge-VII, Patna in Special Case No. 04 of 2008 arising out of Bakhtiyarpur Rail P.S. Case No. 03 of 2008. The Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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