

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.214 of 2015

Against the judgment of conviction dated 10.03.2010 and order of sentence dated 17.03.2015 passed by Sri Prabhakar Mishra, the learned IIIrd Additional Sessions Judge, West Champaran, Bettiah, in Sessions Trial No. 56 of 2010 (arising out of Bhangaha P.S. Case No. 10 of 2010)

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1. Kalamuddin, Son of Gujarati Mian
 2. Gaurishankar Giri son of Late Narayan Giri.
- Both are Resident of Village- Puraina P.s Mainatand, District west Champaran.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Bimlesh Kumar Pandey, Advocate.

For the State : Mr. S. A. Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 04-09-2015

Heard learned counsel for the appellants and learned counsel for the State.

2. This appeal arises out of the judgment of conviction and order of sentence dated 10.03.2015 and 17.03.2015 passed by Sri Prabhakar Mishra, the learned IIIrd Additional Sessions Judge, West Champaran, Bettiah, in Sessions Trial No. 56 of 2010 (arising out of Bhangaha P.S. Case No. 10 of 2010) by which the appellants had been convicted for offence under Sections 20(b)(ii)(c), 22(c) and 23 (c) of N.D.P.S. Act and sentenced to undergo rigorous imprisonment for ten years each and to pay fine of Rs. 1,00,000/- each and in default of

payment of fine further sentenced to simple imprisonment for two years and both the sentences were run concurrently.

3. The prosecution case as alleged in the written Report by the informant Bishal, Assistant Commandant of C. Company Inarwa, he got secret information on 16.04.2010 that some persons were going to enter into the boundary of Territory of India from Nepal with Ganja at pillar no. 425/19. On the said information, he constituted two teams; Inarwa Company and Nagar Dehi and closed the border by Nakas. At 4.00 A.M. some persons with articles kept in their bags entered into territory of India and when they reached near the raiding party then they learnt about Naka then they tried to flee away towards Nepal, but the Naka Party chased and caught two persons loaded with Ganja on their bags but rest were managed to flee away taking advantage of darkness and bushes to Nepal. Thereafter, on search, 8 bags were recovered from the place which was thrown away by the fleeing persons. Two persons who were apprehended disclosed that articles which were seized are Nepali Ganja and they were taking the Ganja to Puraina village in the house of Zulfikar. The articles were weighted 165 Kilogram Ganja contained in ten bags and persons apprehended disclosed their names as Gaurishankar Giri and Kalamuddin who are the appellants.

4. On the said written report, a case was instituted bearing

Bhangaha P.S. Case no. 10 of 2010 dated 16.04.2010 for offence under Sections 20, 22 and 23 of the N.D.P.S. and investigation was assumed by S.I. Jamuna Prasad Singh, consequently F.I.R. was lodged and investigation proceeded. After investigation, charge sheet submitted, cognizance was taken and thereafter, trial proceeded after framing of the charge against two appellants for offence under Sections 20(b)(ii) c, 22(c) and 23(c) of the N.D.P.S. Act.

5. During trial six witnesses were examined who were P.W.1 Achhelal Mahto, P.W. 2 Sk. Kuraish, P.W. 3 Vishal, P.W.4 Mahitav Singh, P.W.5 Pratap Singh and P.W.6 Dilip Sekiya.

6. The documentary evidence are Exhibit-1 is the signature of informant on production-cum-seizure list of 165 Kg. Ganja, Exhibit-1/2 is signature of witness on seizure list of 165 Ganja, Exhibit-2 is the written report and Exhibit-3 is the F.S.L. report.

7. The Trial Court taking into consideration of the evidence of the witnesses that Ganja was seized and report of F.S.L. that sample received was found to be Ganja, convicted the appellants.

8. The learned counsel for the appellants submits that there is no evidence about sanctity of keeping Ganja and taking the representative sample and sending to the F.S.L. has not been mentioned to rely of the F.S.L. report

9. The learned counsel for the State submits that the

witness has proved that the Ganja was seized from the possessions of the appellants and representative sample sent indicate Ganja.

10. The prosecution case as alleged that on secret information a raiding party constituted and the raid conducted when the appellants were apprehended and Ganja seized. The same was weighed and seizure list prepared and the Ganja with seizure list and production-cum-seizure list prepared and accused produced before the O/C of the Bagaha P.S. and F.I.R. lodged as Bagaha P.S. Case No. 10 of 2010.

11. However, six witnesses were examined in the case. P.W. 1 and 2 are the witnesses on seizure have not supported the prosecution case. P.W. 3 to 6 are the members of the raiding party who have deposed and supporting the prosecution case that on secret information and a raiding party constituted containing witnesses nos. 3 to 6 and they raided and apprehended the two appellants, prepared seizure list and produced them with seizure-cum-production list before the O/C Bagaha where the F.I.R. drawn.

12. However, the O/C of Bagaha p.s. and the I.O. of the case have not been examined, though, there is evidence to the effect that the alleged Ganja was seized and produced before the O/C of Bagaha P.S., but having regard to the fact that I.O. and O/C of Bagaha have not been examined. There is no evidence that when the seized Ganja was produced by the informant then whether the said Ganja was

sealed. There is no evidence where the Ganja was kept. There is no evidence whether the certification of the said Ganja was made by an Magistrate and whether the representative sample of the said Ganja was taken before the Magistrate and there was no compliance of Section 52A of the N.D.P.S. Act. There is no evidence that whether the Ganja produced before the P.S. were sealed or not, by seal of O/C of the police station. There is no evidence where the Ganja was kept. There is no evidence whether representative sample was taken from the seized article and there is no evidence whether the F.S.L. report was the report of the representative sample taken from the seized article. Hence, the evidence regarding the fact as to what happened to seized Ganja and whether the representative sample was taken from seized article. There is no evidence that the matter reported to the Senior Officer regarding seizure. Hence, there is no evidence regarding compliance of Section 52 A, 55 and 57 of the N.D.P.S. Act and this has caused prejudice to the prosecution and hence the report of F.S.L. is not required to be relied. Hence prosecution has not been able to establish that seized article is Ganja. Hence, the order of conviction and sentence recorded by the Trial Court is set aside and appeal allowed. The appellants who are in custody be set at liberty forthwith if not required in any other cases.

m.p.
N.A.F.R.

(Gopal Prasad, J)

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