

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.57 of 2014

Against the judgment of conviction, dated 16.12.2013, and order of sentenced dated 20.12.2013, passed by Mr. Atul Kumar Srivastava, Additional Sessions Judge, III, West Champaran at Bettiah, in Tr. No. 36 of 2009, G.R. No. 2275 of 2009 arising out of Purshottampur P.S. Case No. 24 of 2006

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1. Ramdeo Dom S/O Late Yugal Dom Resident of Village Tihuki, P.S. Banjari, District Parsa (Nepal) Appellant

Versus

1. The State Of Bihar Respondent

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Appearance :

For the Appellant : M/S Ram Adya Singh & Arjun Prasad No. 1, Advs.

For the Respondent : Mr. Bipin Kumar, APP,

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

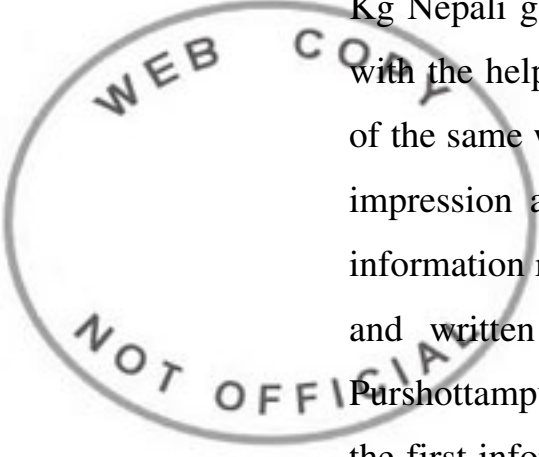
ORAL JUDGMENT

Date: 30-10-2015

Heard the learned counsel for the petitioner and the State.

2. The sole appellant has been convicted under Sections 20B(ii)c, 22© and 23(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, 'the Act') and has been sentenced to undergo rigorous imprisonment for ten years and a fine of rupees one lakh for each offence and for non-payment of fine to undergo simple imprisonment for two years.

3. The prosecution as alleged in the first information report by the informant Naseeb Singh, Inspector, Sashastra Seema Bal, Mediharva, 27th Battalion, Narkatiyaganj, that on 31.08.2009 at about 23.15 hours he received secret information that some Nepalis are bound to smuggle Nepali ganja in the territory of India crossing the Indo-Nepal border and, then, he constituted an armed force (raiding party) and at about 03.50 A.M. they saw 5-6 persons coming from Nepal towards India and then raiding party asked the persons to stop then all the persons started fleeing away and on chase one of them was caught and others managed to escape taking advantage of the darkness. The person, apprehended, disclosed his name as Ramdeo Dom and disclosed that the said Nepali ganja belongs to Ramchandra Mahto and Mahipal Mahto.



The accused was searched before two independent witnesses, Bulai Thakur and Parmeshwar Yadav, 12 big bundles each containing about 10 Kg and 13 small bundles each containing about 2½ Kg in total about 150 Kg Nepali ganja was recovered which was weighed on the balance rod with the help of the local public and seizure list prepared and one copy of the same was given to accused, Ramdeo Dom, who put his left thumb impression and on the fardbeyan of Nasib Singh, informant, the first information report was drawn. The seized article along with the accused and written report was handed over to the Officer-in-Charge of Purshottampur Police Station and on the basis of the said written report the first information report was lodged at the instance of P.W. 6 and on the written report by the informant an endorsement was made and P.W. 6 himself being the Officer-in-Charge of the Police Station assumed the investigation, recorded the statement of the informant and the witnesses, inspected the place of occurrence as well as recorded the statement of the seizure list witness and, thereafter, on 07.10.2009 went to the Court along with the seized article for permission to send the representative sample of the seized article and as per the direction of the Court he produced the ganja before Sri Rajiv Kumar, Judicial Magistrate, 1st Class, and sent the representative sample for examination to the Forensic Science Laboratory, Patna, and, thereafter, obtaining the permission of the superior officers, submitted the charge sheet. On submission of the charge the cognizance was taken and, thereafter, after framing of the charge the trial proceeded.

4. During the trial six witnesses were examined. P.W. 1 is Parmeshwar Yadav and P.W. 2 is Bulai Thakur, who are seizure list witnesses who have proved their signatures on seizure list, marked as Exhibits 1 and 1/A respectively. However, they have not supported the seizure list and have been declared hostile by the prosecution. P.W. 3 is Tej Mani Prasad, a Constable, who was the member of the raiding party. P.W. 4 is Jitendra Biswas. P.W. 5 is Navjoti Nath is also a Constable. P.Ws. 3, 4 and 5 though have supported the prosecution case regarding the raid having been conducted and they were members of the raiding

party and they had concealed themselves at pillar no. 411 and when saw the accused persons entering in the territory of India from Nepal along with gunny bags then the raiding party raided and on raid the accused persons flee away throwing away their bags, but, out of 5-6 persons, one person was apprehended, who disclosed his name as Ramdeo Dom, the appellant. However, P.Ws. 3, 4 and 5 though have supported the prosecution case alleging the apprehension of one appellant and others managed to escape, but, P.W. 3 has stated that 12 bundles of 10 Kg ganja were recovered and 13 bundles of 2½ Kg of ganja were recovered. P.W. 5 has also supported this version. However, P.W. 4 has stated that the appellant was apprehended with bundles of 25 Kg of ganja on his head and also 5 bundles of ganja were found thrown away, each of them containing 25 Kg each, hence, there is variation in the evidence of P.Ws. 4 and 5 regarding the bundles seized, but, there is evidence to the effect that about 150 Kg of ganja was recovered. However, the informant has not been examined in this case and P.W. 6 is the investigating officer, who is the Officer-in-Charge of Purshottampur Police Station and he has supported that accused along with ganja was produced on 01.09.2009, however, he has stated that on 07.10.2013 he took the seized ganja to the Court though he has stated that one hundred and half quintals of ganja was kept in malkhana of Police Station and they have also produced one and half quintals of ganja kept in three white plastic gunny bags. However, one polythene bags was packed, which has been marked as material Exhibits 1, 1/A, 1/B and 1/C.

5. The defence has also adduced two witness, who are D.W. 1 Prabhu Raut and D.W. 2 Dulli Mian, who have come to depose that Ramdeo Dome has falsely been implicated as the real culprit has been left away and the appellant has been caught and put behind the bar. However, the defence of the accused person is the false implication as the real culprit has been left away.

6. Taking into consideration, both, the oral and documental evidences, the trial Court convicted the appellant on the ground that the witnesses supported the prosecution case regarding recovery of articles

and the investigating officer has sent the sample to the Forensic Science Laboratory and the report of the Forensic Science Laboratory that the sample, sent, confirms that the article, seized, was ganja, hence, convicted the appellant.

7. The learned counsel for the appellant, however, contends that the informant of the case has not been examined to support the prosecution case. It has, further, been contended that the seizure list witnesses have not supported the prosecution case regarding the seizure. It has, further, been contended that as per the evidence of the witnesses it is contended that five persons entered into the territory of India from Nepal with bundles of ganja on their heads and, thereafter, the raiding party, raided, but, only the appellant was apprehended and the rest accused persons flee away throwing away their bundles and the case of the prosecution that ganja was seized containing ten packets of 10 Kg each and 13 packets of 2½ Kg each and out of 5-6 persons, except the appellant, others managed to flee away throwing their gunny bags. However, it is asserted by P.W. 4 that the appellant was caught hold along with 25 Kg of ganja, hence, recovery was 25 Kg from the possession of this appellant. However, the seizure list has not been prepared separately and the weight of the article, seized, was not mentioned separately. It has, further, been contended that though there are several packets recovered, but, the investigating officer who sent the sample from the seized article has stated that he can not say, from which gunny bags or packets the representative sample was taken for chemical examination. Hence, it is apparent that sample was not taken from each packet and it is also not clear from which packet the sample was taken to hold that sample taken from the representative sample. It is contended that the sample was not taken from each of the packets and it is also not specific whether the sample taken from the packet seized from the possession of this appellant, hence, it is not proper to record conviction on the basis of Forensic Science Laboratory report regarding the ganja as it is not certain that the sample sent was the sample from the bundle seized from the possession of the appellant.

8. The learned counsel for the State, however, submitted that non-examination of the informant is not fatal as the prosecution has produced the witnesses P.Ws. 3, 4 and 5 who have supported the prosecution case regarding the apprehension of the appellant and recovery of gunny bag from his possession and, further, the sample sent for chemical examination confirmed that the article seized was ganja, hence, the prosecution has been able to prove the charge beyond reasonable doubt.

9. Having regard to the respective submissions, it is apparent that the prosecution though has established that they apprehended the appellant along with gunny bag, however, the others threw bundles of alleged ganja and flee away. However, the seizure list does not contain any separate account of ganja or the gunny bag recovered from the possession of the appellant and the ganja seized was even produced in the Court in four bundles which has been marked as material Exhibits 1, 1/A, 1/B and 1/C. However, there is no specification that out of several bundles, recovered, which bundle was recovered from the possession of this appellant nor there is evidence that sample was taken from that bundle. The investigating officer in his deposition has deposed in paragraph 17 that he did not remember that from which of the gunny bags sample was taken. There is no evidence that the sample was taken from each of the gunny bags rather the evidence is that he does not remember that from which of the gunny bags he sent sample, hence, having regard to the facts and circumstances of the case there is no specification of the bundle which was recovered from the possession of this appellant and there is no mention or evidence that from which of the gunny bags the sample was taken, hence, it is not safe to rely that the article seized from the possession of the appellant or the gunny bag which was seized from the possession of the appellant was gunny bag from which the sample was taken, hence, it can not be said in certainty that the article seized from the possession of the appellant which was ganja.

10. Hence, in the facts and circumstances of the case, the

appellant is entitled to benefit of doubt and I give the appellant benefit of doubt and hold that the prosecution has not been able to prove the charges beyond reasonable doubt. I acquit the appellant of all the charges and consequently the order of conviction and sentence recorded by the trial Court recorded **is set aside**. The appeal is **allowed**.

11. Since, the appellant is in jail, he is directed to be released forthwith, if not wanted in any other case. He is discharged from the liability of bail bond.

(Gopal Prasad, J)

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