

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.750 of 2009

[Against the judgment of conviction, dated, 16th April, 2009, and the order of sentence, dated, 21st April, 2009, passed by Shri Umesh Chand Shrivastava, 2nd Additional Sessions Judge, West Champaran at Bettiah, in Sessions Trial No.34 of 2003, arising out of Complaint Custom Case No.20/OC/2003 [N.D.P.S. (Unit)] Case No.39/B.T.H. / 2003]

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Kashi Nath Singh, son of Late Ram Lalit Singh, resident of village Bahuwara, P.O. Sona Gopalpur, District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : NONE

For the Respondent: Mr. Ajay Mishra, Addl. P.P.

Mr. Aruni Singh, learned Counsel, as Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 01-05-2015

Under the judgment, dated 16.04.2009, passed, in Sessions Trial No. 34 of 2003, by learned 2nd Additional Sessions Judge, West Champaran at Bettiah, the accused-appellant, Kashi Nath Singh, stands convicted under Section 20 (b) (C) and 23 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act"). In consequence of his conviction under Section 20 (b) (C) of the NDPS Act, the accused-appellant stands, under the order, dated 21.04.2009, sentenced to suffer rigorous imprisonment for 15 years and pay a fine of Rs.1,00,000/- (Rupees one lakh) and, in default to pay the fine, to undergo

simple imprisonment for a further period of three years. For his conviction under Section 23 (c) of the NDPS Act, the accused-appellant has been sentenced to suffer rigorous imprisonment for 15 years with a fine of Rs.1,00,000/- (Rupees one lakh) and, in default to pay the fine, to undergo simple imprisonment for a further period of three years. Both the sentences have been directed to run concurrently.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) On 26.09.2003, at about 01.00 A.M., the Superintendent of Customs (PW 9), posted at Bettiah, received an information that some narcotic drugs were being carried by a truck on Bettiah-Sugauli Road. On receiving the information, P.W.9 (Alok Kumar Singh) constituted two teams; one for Bettiah-Sugauli Road and the other for Sugauli-Chappawa Road. The Customs Officials accordingly put up check posts at both the places aforementioned and, at about 5 O' clock in the morning, when a truck, bearing registration No. BR 04A/8844, was seen coming, the same was stopped by the Customs Officials. As soon as the vehicle was stopped, one person, who was sitting by the side of the driver, opened the door and fled away, whereas the driver remained inside the truck, accused Kashi Nath Singh being the said driver.

(ii) On examining the truck, smell of Ganja

(cannabis) was found emanating from the materials loaded in the truck, whereupon the truck, along with its loaded materials, was brought to the Customs Office at Bettiah. On search, sacks of paddy husks were found lying on the truck and polythene packets were found lying beneath the sacks of husks. Smell of Ganja was emanating from the said polythene packets.

(iii) The said polythene packets, 47 in number, were found weighing 329 kilograms. The said truck was seized. The Ganja (cannabis), found in the truck, was also seized in presence of the two witnesses. Accused Kashi Nath Singh was arrested, he was interrogated and his statement was recorded. Sample from the Ganja so seized was sent to the Government Opium and Alkaloid Works, Ghazipur (Uttar Pradesh), which reported, vide, its letter, dated 26.09.2003, that the said sample was of Ganja (cannabis). A complaint was, then, made by S.K. Raman (P.W.4), Inspector of Customs at Bettiah.

3. At the trial, charges, under Section 20 (b) (C) and Section 23 (c) of the NDPS Act, were framed against accused Kashi Nath Singh. To the charges so framed, the accused pleaded not guilty.

4. In support of their case, prosecution examined altogether 09 (nine) witnesses. The accused was, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure, wherein the accused denied that he had committed

the offences, which were alleged to have been committed by him, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, found the accused guilty of the offences charged with, learned trial Court convicted him accordingly and passed sentences against him as mentioned above.

6. Aggrieved by his conviction and the sentences, passed against him, the accused, as a convict, has preferred this appeal.

7. We have heard Mr. Aruni Singh, learned Amicus Curiae, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

8. While considering the present appeal, what attracts our attention, most prominently, is that while examining the accused-appellant, under Section 313 of the Code of Criminal Procedure, the learned trial Court did not properly questioned the accused-appellant with regard to various incriminating circumstances, which emerged from the evidence on record. Ordinarily, therefore, we would have set aside the conviction of the accused-appellant and either examined the accused-appellant under Section 313 of the Code of Criminal Procedure ourselves or would have remanded the case to the learned trial Court for appropriate examination of

the accused-appellant under Section 313 of the Code of Criminal Procedure. For the reasons, however, which would appear hereinafter, we are of the view that no useful purpose will be served even if the accused is further examined under Section 313 (i) (b) of the Code of Criminal Procedure.

9. With the limitation, as indicated above, when we come to the evidence on record, we notice that, according to the evidence of P.W.9 (Alok Kumar Singh), on 26.09.2003, while he was functioning as Superintendent, Customs, at Bettiah, he received, at about 1.00 A.M., an information that some narcotic drugs were being transported by a truck at Bettiah–Sugauli Road and, on receipt of the information, he constituted two teams — one meant for Bettiah-Sugauli Road and other for Sugauli-Chappawa Road — and check posts were accordingly set up at both the places aforementioned and, at about 3 O' clock in the morning, the customs personnel noticed a vehicle passing through Bangra Canal, situated at Sugaul-Chappawa Road, and when they gave signal to the vehicle to stop, the vehicle stopped, but, by opening the door of the truck, a person jumped out of the door and fled away, but the driver remained inside the truck.

10. It is in the evidence of P.W.9 (Alok Kumar Singh) that on inspecting the truck, when they found that there were packets of contraband substances, they brought the truck



to the Customs Office at Bettiah and, then, the truck was thoroughly searched in presence of the two independent witnesses and, in course of search, 42 sacks of paddy husks were found kept on the body of the truck and below the said sacks of paddy husks, they found polythene packets of black colour, which were 47 in number, containing Ganja. It is also in the evidence of P.W.9 that weight of 42 packets of paddy husks was found 525 Kilograms and weight of 47 packets of Ganja was found 329 Kilograms and, then, the said Ganja was seized and the statement of the driver of the truck was recorded. It is further in the evidence of P.W.9 that a sample of the said seized Ganja (cannabis) was sent to the Government Laboratory for chemical examination and, on receiving the report of the examination, P.W.4 (Suresh Kumar Raman) filed a complaint.

11. In tune with the above evidence of PW 9, the prosecution witnesses, namely, P.Ws. 2, 3, 4, 5, 6, 7, 8 and 9, except P.W.1, have deposed to the effect that the said truck was intercepted by the personnel of the Customs Department, headed by P.W.9, and, on examining the truck, smell of Ganja was found emanating therefrom and the said truck was, therefore, brought to the Customs Office at Bettiah and, then, on a search being made, they found sacks of paddy husk loaded in the truck and, underneath the said sacks, 47 packets of suspected Ganja were found kept. However, as far as P.W.1 is



concerned, his evidence is that the said truck was found parked by the side of the road. This solitary inconsistency, which has been pointed out by the learned *Amicus Curiae*, does not take away the unshaken evidence on record that the said truck was, indeed, intercepted at Sugauli-Chappawa Road. This apart, though P.W. 9 has deposed that the said truck was intercepted at 3.00 A.M., the remaining witnesses have deposed that it was at 5 A.M. that the truck was intercepted. This discrepancy in the timing of interception of the truck is not, in our view, major and is, therefore, ignored.

12. What is, however, important to note is that according to the evidence of P.W.9, the said truck was seized in the presence of two independent witnesses, namely, P.Ws.5 and 6.

13. As far as P.W.5 (Sanjay Kumar) is concerned, he has been, admittedly, working in the office of the Customs since the year 1997 as a daily-wage earner. By no means, therefore, P.W.5 could have been described as an independent witness. This apart, the uncontroversial evidence of P.W. 5 is that it was at 8.00 P.M. that the said Ganja was seized, whereas the evidence of P.W.9 and other personnel of the Customs Department is that the said seizure was made soon after the truck was intercepted and brought to the Customs office and it was found to have been carrying Ganja.



14. So far as P.W.6 (Ram Prasad Raut) is concerned, his evidence is that he was called by the constable of the Customs office and learnt from them that Ganja had been recovered from the said truck. Though this witness has proved his signature on the seizure list (Exhibit 1) and his signature was marked as Exhibit 1/1, yet his evidence is that he had signed a blank paper and, therefore, as has been deposed to by P.W.6, he had no knowledge about the seized articles.

15. The seizure of suspected Ganja cannot, in the face of distinguishable features of the evidence of PW 5 and PW 6, be readily believed.

16. Coupled with the above, we notice that while, according to P.W.2 (Lal Bahadur Bhagat), sample was drawn from the seized suspected Ganja and the same was divided in 3 (three) parts, each part containing 100 grams of Ganja, the evidence of P.W.3 (Rajendra Das), who was also a constable in the Customs office, at the relevant point of time, is that the sample was divided in 2 (two) parts, containing 100 grams each. This apart, P.W.4 (S.K. Raman) claims that 3 (three) samples of 25 grams each were taken out, from the said seized suspected Ganja, whereas the evidence of P.W.5 (Sanjay Kumar) is that 10 grams of sample was taken out therefrom. Interestingly enough, P.W.9 (Alok Kumar Singh) claims that the sample was drawn; however, he goes to depose that 5-10

grams of Ganja were taken as sample.

17. Apart from the fact that the evidence with regard to the question as to how many samples were drawn from the alleged seized materials and what was the weight of the sample, were contradictory, there being no consistent evidence in this regard, what can also not be ignored is that P.W.9 (Alok Kumar Singh) asserts that 5-10 grams of sample, containing Ganja, was drawn, whereas the report of the Chemical Examiner, Government Opium and Alkloid Works, Ghazipur (U.P.), shows that the said Laboratory had received 26.250 grams of the samples for examination and, upon examination, the said sample was found to be of Ganja (cannabis).

18. Situated thus, it becomes abundantly clear that the evidence, adduced by the prosecution, failed to consistently and convincingly prove that the examination of sample, which had been carried out, was of the sample, which had been sent from the said seized materials. In other words, the report, issued by the Chemical Examiner in respect of the sample, could not be convincingly proved to be the report of examination of the sample of the seized materials.

19. Situated thus, it could not have, therefore, been held, and ought not to have been held, by the learned trial Court that the said seized material was, on examination, found

to be Ganja (cannabis). Without having clinching evidence of the sized materials being Ganja, charges, framed against the accused-appellant, could not have been held to have been brought home beyond reasonable doubt.

20. In terms of Standing Order No.1/88, dated 15.03.1988, issued by the Narcotic Control Bureau, Government of India, 5 grams of sample should be drawn for chemical test in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/Hashish, where a quantity of 24 grams, in each case, is required for chemical test, and the same quantities should be taken for the duplicate sample also, and the seized drugs, in the packages/containers, should be so mixed to make it homogeneous and representative before the same in duplicate is drawn.

21. In the case at hand, however, the evidence of the Superintendent of Customs (PW 9) shows that 5-10 grams of suspected Ganja was drawn and, hence, the same was, therefore, insufficient to carry out appropriate chemical examination.

22. Because of what have been discussed and pointed out above, we are clearly of the view that the evidence, adduced by the prosecution, had failed to prove the charges framed against the accused-appellant beyond reasonable doubt and that the accused-appellant was entitled to be accorded

benefit of doubt.

23. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentences passed against him by the judgment, under appeal, are hereby set aside. The accused-appellant, Kashi Nath Singh, is held not guilty of the offences, which he stood convicted of, and he is hereby acquitted of the same under benefit of doubt.

24. As the accused-appellant, Kashi Nath Singh, is in custody, he is directed to be released forthwith, if not required to be detained in connection with any other case.

25. Let the *Amicus Curiae* be paid a fee of Rs. 5,000/-.

26. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Vikash Jain, J.)

A.I/B.T./
N.A.F.R.

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