

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.665 of 2015

Against the judgment of conviction dated 29.08.2015 and order of sentence 31.08.2015 passed by Sri Ramakant Yadav, the learned 1st Additional Sessions Judge-cum-Special Judge, Araria in Special Case No. 13 of 2009/Trial No. 06 of 2012, (arising out of Jogbani (Bathnaha P.S. Case No. 90 of 2009)

=====

Ram Charitra Sah Son of Late Gopi Sah, Resident of Village - Bhimpur, P.S. - Bhimpur, District - Supaul (Bihar).

.... Appellant

Versus

The State of Bihar.

.... Respondent

=====

Appearance :

For the Appellant : Mr. N. K. Agrawal, Senior Advocate.
Mr. D. N. Tiwari, Advocate.

For the State : Mr. Z. Hoda, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 29-04-2016

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

2. This appeal arises out of the judgment of conviction dated 29.08.2015 and order of sentence 31.08.2015 passed by Sri Ramakant Yadav, the learned 1st Additional Sessions Judge-cum-Special Judge, Araria in Special Case No. 13 of 2009/Trial No. 06 of 2012, (arising out of Jogbani (Bathnaha P.S. Case No. 90 of 2009) by which the appellant had been convicted for offence under Section 22 of N.D.P.S. Act and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs. 1,00,000/- and in non-payment of

fine further sentenced to undergo simple imprisonment for one year.

3. The prosecution case as alleged in the First Information Report lodged on the basis of written report of informant V. K. Jha, Sahayak Sena Nayak 19th Vahini SSB addressed to S.H.O. Bathnaha (O.P.) has been mentioned that on 12.10.2009, on secret information, the informant V. K. Jha along with Sub Inspector Apurwa Sarkar constable G.D. Benjamin Hembram, Constable K. T. Yamgmasu and Constable Ramdayal Bhagat reached at Bathnaha Chowk at 4.20 P.M. Further case is that at 4.30 P.M. a bus bearing no. BR-A-1-P-9731 which was going from Jogbani to Patna was raided and during the raid, a red and green colours bag was found and Khalasi disclosed that said bag belongs to a person sitting at Seat No. 4 was searched before driver Akhilesh Kumar and Khalasi- Ravindra, P.Ws. 4 and 5 respectively. From the search of the said bag a black colour rexin in which two sealed packets were found which containing 700 grams (each 350 grams) each packet) of Heroin seized and the person who was caught disclosed his name as Ram Charitra Sah and he did not produce any paper. The raiding party brought the driver, khalasi and accused person at the SSB Camp wherein in presence of S.D.O. and B.D.O. seized packets of Heroin sealed which was duly signed by the B.D.O. Thereafter, the said accused person arrested and seized heroin was handed over to the S.H.O. Bathnaha O.P. for needful.

4. After lodging of the F.I.R., investigation proceeded, arrest memo was prepared as well as seizure list was prepared with regard to 700 grams heroin. The police after investigation submitted charge sheet. After submission of the charge sheet, cognizance taken and trial proceeded before the Special Court.

5. During trial, six witnesses were examined on behalf of the prosecution. P.W. 1 was Manish Kumar Singh, Constable in 9th Battalions Gangtok and he had deposed that he along with V. K. Jha have got information about smuggling of heroin. On the said information he reached Bathnaha chowk along with the team and apprehended the bus. From the bus a bag was seized which belongs to the appellant who was sitting at Seat No. 4 and search was made and the person disclosed his name Ram Charitra Sah. Thereafter, the bag along with the driver, khalasi and the appellant was brought in Bathnaha O.P. Thereafter, Officer-in-Charge of Bathnaha camp took the accused and article seized and said article was weight before S.D.O. and B.D.O. and found it was heroin which containing 700 grams. P.Ws. 2, 3, 4, 5 and 6 have also supported the prosecution case regarding information received thereafter, raid was conducted and from the bus a person apprehended and a Zhola containing two packets of heroin was recovered. The seizure list was prepared with regard to seizure of two packets of alleged heroin.

6. From perusal of the record, it appears that, though, investigation conducted by one Narendra Kumar, Officer-in-Charge of Bathnaha O.P. who investigated the case, but has not been examined in this case.

7. However, the trial court taking into consideration the evidence of the witnesses as well report of F.S.L. which has been marked as Exhibit- 3 and two packets marked as A and B which contained heroin which is highly intoxicating narcotic drugs and trial court after taking into consideration the evidence of the witnesses convicted and sentenced the appellant as mentioned above.

8. Learned counsel for the appellant has challenged the order of conviction and sentence recorded by the trial court on the ground that heroin recovered was not in conscious possession of the appellant and bag containing alleged heroin was not recovered from the possession of the appellant. It has further been contended that, though, there was evidence of recovery of two packets of heroin and after seized the same was handed over to Officer-in-Charge, Bathnaha P.S., but neither the said seized article was ever produced before the court nor there is any evidence where article seized was kept. Further, neither there is any evidence whether sample was taken from the seized article nor there is any evidence that seized article was ever produced before the court or before the Magistrate in compliance of



Section 52(A) of N.D.P.S. Act. Furthermore, neither there is any compliance of Section 55 of N.D.P.S. nor article seized was sealed before any Officer-in-Charge of the police station or there is no evidence that who sent the sample and whether the sample was taken from the article seized and particularly the fact that I.O. has not been examined in this case. Hence there was complete violation of Section 52(A), 55 and 57 of the N.D.P.S. Act and it casts a serious doubt for non-compliance of provisions as well as in absence of evidence that whether the sample was taken from the seized article has casted serious prejudice to the appellant.

9. Learned counsel for the State however, contends that, though, there was cognizable evidence that article was seized from the possession of the appellant while travelling in the bus and heroin was recovered in the bag and driver and khalsi disclosed that bag belongs to the appellant and said article was seized and seizure list was prepared which was duly sealed by the B.D.O. and C.O. then handed over to the Officer-in-Charge of Bathnaha O.P.

10. Taking into consideration the fact, from the entire record there is no evidence that where seized article was kept nor there is any evidence who took the sample and sent the same to F.S.L. There is no evidence whether sample sent was taken from the article seized and particularly fact that I.O. of the case has not been examined. Further

when the sample was taken from the seized article and sent the same to F.S.L. Moreover, neither Officer-in-Charge of the police station nor Malkhana In-charge has been examined as apparent from the evidence of P.Ws. 1 to 6.

11. Taking into consideration the respective submissions, it is admitted position and going to the record, it is apparent that P.Ws. 1 to 6, though, have come to depose regarding information received and on the basis a raid was conducted and recovery of bag from the bus which containing 700 grams of alleged heroin for which seizure memo and arrest memo was prepared and seized article was handed over to Officer-in-Charge of Bathnaha O.P. However, there is no evidence that where article seized was kept. Further the I.O. of the case has not been examined in this case. Further, neither Malkhana In-Charge examined in this case nor Malkhana register was brought on record where seized article was kept.

12. Further, the date of occurrence was 12th October, 2009 and from the report of the F.S.L. It appears that sample was sent vide letter no. DR No. 680/09 dated 21.11.2009 received in the office of F.S.L. on 15.12.2009. However, there is no evidence where article seized was kept from the date of occurrence or seizure till the date sample sent to F.S.L. Further, there is no evidence during this period where the sample was kept. Further, there is no evidence who sent the

sample and as to whether sample taken from the seized article. Further, article seized has not been produce before the court nor there is any certification of the article seized by a Magistrate in compliance of Section 52(A) of N.D.P.S. Act had been done or proved. Further, there was no description of the article brought on record and hence, in absence of this evidence or any certification under Section 52(A) has been made, caste a serious doubt regarding seizure and sampling of the article seized. Further, neither sample was proved as alleged heroin nor there was any evidence that whether sample taken from the seized article, hence, it caste a serious doubt that whether report received from the F.S.L. with regard to the seized article which was seized from the possession of the appellant.

13. Hence, I find and hold that prosecution has not been able to prove the charges beyond reasonable doubt. Accordingly, the order of conviction and sentence recorded by the trial court is hereby set aside.

14. As a result the appeal is allowed.

m.p.

(Gopal Prasad, J)

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	16.05.2016
Transmission Date	16.05.2016.