

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.59 of 2013

=====

Mirjaur Rahman @ Mijanur Rahman S/o Late Abdul Wahat R/o Vill-Takkagachh,
P.S.-Kotwali, Distt-Koch Bihar(West Bengal)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Md. Qumrul Hoda.

For the Respondent/s : Mr. A.K. Sinha, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 22-07-2016

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

2. This appeal is directed against the Judgment of
Conviction/Order of Sentence, dated 28.06.2011/07.07.2011
whereby 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 12 years and fine of Rs. 1,00,00/-, in default to
undergo further Rigorous Imprisonment of one year, by the Court
of Special Judge, Katihar in connection with G.R. Case No. 170
of 2006 arising out of Katihar Rail P.S. Case No. 124 of 2006.

3. The prosecution case, as set out, in the written



report (Exhibit-3) of Jay Prakash Maurya, Inspector R.P.F., Katihar (P.W. 7) addressed to the Officer-in-Charge, G.R.P.S. Katihar, N.F. Railway is that on 03.10.2006 at about 6:15 pm, on the basis of the secret information received through V.K. Gupta, ASI, RPF, Katihar to the effect that some unknown person was carrying narcotic item in AS-3 (AC-III Tier Coach) of 2435 Rajdhani Express, he along with other officials of the R.P.F. reached on Platform No.8 at 5:15 pm., and entered in the said Coach and found one person sitting on Upper Berth No. 59 with ticket, bearing P.N.R. No. 826-3591131. On enquiry, he said that he is going to New Delhi and that an Ash colour Safari suitcase and black-red airbag, lying underneath the Lower Berth, belonged to him, which are to be entrusted to a person at New Delhi. On further interrogation, he declared that the suitcase and airbag probably contain Ganja, which he opened with a bunch of key kept in his pocket. With the help of staffs and T.S. of the train, he de-boarded the person along with bag and suitcase. On checking, 2 packets each wrapped with plastic sheet were found in both bag and suitcase, totaling 29 Kg. in weight. Thereafter, the accused with seized Ganja was produced before the In-charge, G.R.P.S., Katihar for institution of the case.

4. During trial, the prosecution altogether examined

7 witnesses. Out of which, P.W. 1 Surendra Prasad Singh, P.W. 2 Hari Kishore and P.W. 3 Dinesh Kumar Paswan are members of the Raiding Party. P.W. 4 Arvind Kumar Jha is Officer-in-Charge of Railway G.R.P. Katihar. P.W. 5 Mahendra Ram is the Investigating Officer of the case and P.W. 6 Shiv Narayan Ram is another Investigating Officer, who only submitted the charge-sheet. P.W. 7 Jay Prakash Maurya is the informant of the case.

5. P.W. 1 Surendra Prasad Singh in his evidence stated that he was a member of raiding party in AS3 of Rajdhani Express. He supported the prosecution case regarding search and seizure of Ganja. He, however, stated that 4 packets of Ganja each were recovered from the airbag and attaché.

6. P.W. 2 Hari Kishore has stated in his evidence that on 06.10.2006, he was posted at R.P.F. Post, Katihar as a Constable. He was one of the members of raiding team constituted for raid in AC-3 Coach, Rajdhani Train No. 2435 on Platform No. 8 of Katihar Railway Station. In course of raid, one person on Berth No. 59 admitted that airbag and suitcase lying underneath the Lower Berth belonged to him. He handed over their keys. On opening the bag and attaché, 4 packets wrapped in plastic were found. The passenger was de-boarded on Platform No. 8 and was taken to R.P.F. Help Centre, where seizure list was

prepared. This witness stated in his cross-examination that only one of the four packets was opened at that time, but samples were not drawn. All the four packets were forwarded along with the apprehended person to G.R.P. Katihar.

7. P.W. 3 Dinesh Kumar Paswan is also one of the members of raiding team. In his evidence, he stated that on 03.10.2006, he was posted as Constable in R.P.F. Post Katihar. On secret information, he along with Inspector of R.P.F. and others had gone to Platform No. 8 to conduct raid. When the Train No. 2435 Rajdhani Express arrived at Platform No. 8, all of them entered into Coach No. AS-3. One person was found sitting on Berth No. 59, who on query, claimed that bag and one suitcase lying beneath the lower berth belonged to him. On opening the bag and suitcase, 2 packets of ganja each were found. The person was de-boarded from the train and seizure list was prepared. The accused along with the seized Ganja was handed over to the Inspector G.R.P. Katihar. He has further stated in his evidence that he did not open the packet but Inspector, R.P.F. told him that the packets contained Ganja.

8. P.W. 4 Arvind Kumar Jha is the Inspector of G.R.P. Katihar. He has proved the endorsement of P.W. 7, Jai Prakash Maurya on the written report, as Exhibit- 3. He has also



proved the formal F.I.R. of Railway G.R.P. Case No. 124 of 2006 as Exhibit-2. He proved the production-cum-seizure list as Exhibit-4 which was prepared by him on which the accused-appellant had put his signature. He stated that the case was earlier investigated by Mahendra Ram, Sub-Inspector (P.W. 5). He stated that 29 Kg. Ganja was recovered from two bags. A Railway ticket and a bunch of key were seized. The copy of the seizure list was handed over to the accused on which he had put his signature. In cross-examination, he stated that he saw the seized materials by opening the suitcase and airbag. However, he did not take out any material from the packets as he knew it would be Ganja as it was smelling foul. The materials were wrapped in plastic. On physical verification, the Ganja weighed 29 kg. He stated that the weight of Ganja was measured at Rail P.S. Katihar with aid of Small Spring Balance in his presence. He stated that he neither sealed the railway ticket nor the bunch of keys, recovered from the appellant. The bags were not weighed. He subsequently drew 250 gm. of Ganja from each packet and had mixed the same, but had not mentioned these details in the production-cum-seizure list. The sample was not sealed.

It, thus, appears from the evidence of this witness that though sample were drawn from the four seized packets but

the same was not sealed.

9. P.W. 5 Mahendra Ram is the Investigating Officer of the case. He was posted as Sub-Inspector, Katihar G.R.P. on 03.01.2006. He stated that on the said date, the investigation of Katihar Railway P.S. Case No. 124 of 2006 was handed over to him by the Officer-In-Charge, Arvind Kumar Jha (P.W. 4). After taking the charge of investigation, he recorded the statement of informant (P.W. 7) and the witnesses and inspected the place of occurrence and got the accused-appellant remanded to judicial custody. The place of occurrence is Platform No. 8 near R.P.F. Help Centre, where Train No. 2435 Rajdhani Express stopped. The Coach No. AS-3 of Rajdhani Express was raided. He did not make any query from any of the passengers of the said coach nor inspected the record of Railway Department with respect to Rajdhani Express bearing Train No. 2435. He further stated that on 15.11.2006 on transfer, he handed over the charge of investigation to Arvind Kumar Jha, P.W. 4. He stated that the seized ganja was not produced before him and due to that reason he did not record the detailed description in the case diary with respect to its seizure. He further stated that it was not mentioned as to in whose presence the sample of the seized ganja was drawn. He further stated that he drew sample from all four packets, but

did not prepare memo with respect to drawing of the samples. The accused was not present at the time of drawing the same and also was informed about it.

10. P.W. 6 Shiv Narayan Ram, Sub-Inspector of G.R.P. Katihar, is a formal witness, who has submitted the charge-sheet.

11. P.W. 7 Jai Prakash Maurya is the informant of the case. He has stated in his evidence that on 03.10.2006, at about 3.30 pm., a secret information was received from the Assistant Commandant, Vijay Kumar about travelling of a person on Berth No. 59 of AS-3 Coach in Train No. 2435, Rajdhani Express with a suitcase and bag containing ganja, with direction to conduct a raid. When Rajdhani Express at about 4:15 pm. reached Katihar Junction, he along with A.S.I., S.P. Singh (P.W.1), constable, Hari Kishor (P.W. 2) and Dinesh Kumar Paswan (P.W. 3) and one more constable reached Platform No. 8. The Assistant Commandant also reached there. They entered into the AS-3 Coach and reached near Berth No. 59. On query, the occupant of the berth disclosed that the suitcase and the airbag lying beneath the lower berth belong to him, which contain ganja and the same was to be handed over to a person in New Delhi. He took out the key and opened the bag and suitcase, in which 4



packets of ganja wrapped in plastic were found. On query, he disclosed his name as Mirjaur Rahman (appellant). He was taken in custody in presence of Assistant Commandant and seizure list was prepared in respect of the suitcase and bag containing 29 Kg. of ganja. The seized attaché and bag were handed over to R.P.F., Post Katihar. The seized ticket, cash totaling Rs. 920 and a bunch of keys were duly mentioned in the Seizure List. He prepared a complaint on the direction of Assistant Commandant and thereafter, the seized material and complaint were handed over to G.R.P. Katihar along with the appellant. He proved the complaint addressed to G.R.P. Railway, Katihar, as Exhibit-6. He further stated that he had only given oral information to the train superintendent about de-boarding of the accused along with his articles. He opened the packets which smell differently.

12. Learned counsel for the appellant submits that it would appear from the evidence of P.W. 4 that the sample was neither drawn before the appellant nor it was sealed after drawing the same from seized packets. As such, it could not be said with all certainty whether the sample sent for examination was the ones which was drawn from the packets, which are said to be seized from the bag and attaché carried by the appellant. Furthermore, the appellant is in custody since 04.10.2006.



13. On going through the evidence of the prosecution witnesses, as discussed above, it transpires that the sample as drawn by P.W. 4 Arvind Kumar Jha was not sealed. The sample was not drawn even in presence of the accused. It also appears from the Report of Forensic Science Laboratory (Exhibit-5) that the sample, as sent on 05.12.2006, was received on 12.12.2006 and the report was prepared after 4 years i.e. on 25.11.2010.

14. We would agree with the submission of learned counsel for the appellant that since the sample was not sealed at the time of drawing nor the same was taken in presence of the accused appellant, it cannot be said whether the sample was drawn from the packets which are said to be seized from the bag and attaché carried by the appellant.

15. Having considered the facts and circumstances of the case, we find that the prosecution has failed to prove its case beyond reasonable doubt. In the result, this appeal is allowed. The Judgment of Conviction dated 28.06.2011 and Order of Sentence dated 07.07.2011 passed by the Special Judge, Katihar in connection with G.R. No. 170 of 2006 arising out of Rail Police Station Case No. 124 of 2006, against the appellant is set aside. He is acquitted of the charges. The Appellant, above named, is in

jail custody. Therefore, he is directed to be released forthwith, if not wanted in any other case.

(Samarendra Pratap Singh, J)

(Rajendra Kumar Mishra, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2016
Transmission Date	19.08.2016