

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1109 of 2013

(Against the Judgment of conviction dated 12.09.2013 and Order of sentence dated 16.09.2013 passed by the Additional Sessions Judge-I-cum-Special Judge, N.D.P.S. Act, Vaishali, Hajipur, in Hajipur Sadar (Ganga Bridge) P.S. Case No.53 of 2006).

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Md. Hafiz, son of Late Md. Hazim @ Alim Khan, resident of village- Sherghati, P.S.- Amas, District- Gaya.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : M/s. Ashok Kumar Sinha and Sudhir Kumar Sinha, Advocates.

For the State : Mr. S.C. Mishra, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 14-01-2016

Appellant has been convicted under Section 20(B)(II)(C) of the N.D.P.S. Act and sentenced to rigorous imprisonment for 14 years and fine of Rs.1,00,000/-, in default of which, further rigorous imprisonment for one year vide Judgment of conviction dated 12.09.2013 and Order of sentence dated 16.09.2013 passed by the Additional Sessions Judge-I-cum-Special Judge, N.D.P.S. Act, Vaishali, Hajipur, in connection with Hajipur Sadar (Ganga Bridge) P.S. Case No.53 of 2006.

2. The case of the prosecution, according to the written



statement of the Informant Shashi Bhushan Prasad (P.W.9), is that on the date of occurrence, i.e., 08.02.2006, he received information that a truck would be passing with Ganja on which he formed a raiding team and left for the Ganga Toll Bridge. They started checking the vehicles in course of which one truck bearing no.HR 38 F/4594 was intercepted on which the driver and another person ran away but the Khalasi of the truck was caught while fleeing away. In his presence, the vehicle was checked which was found loaded with 64 packets of Ganja in 9 bags of which seizure list was prepared in presence of the witnesses Umakant Jha (P.W.12) and Nand Kishore Prasad (not examined). The Appellant was then arrested and brought to the Police Station alongwith the seized articles and truck.

3. During trial, the prosecution examined altogether 15 witnesses.

4. P.W.1 Puran Prakash Gupta was posted at Ganga Bridge Police Station and he confirms that on the date of occurrence at about 05.00 A.M. a truck bearing no. HR 38 F/4594 was intercepted which was loaded with nine bags of Ganja in 64 packets. He confirms that the Appellant was caught while fleeing away and he disclosed that the business man Birju alias Bullu and truck driver had fled away. He then states that the articles were seized in presence of the independent witnesses and the seized articles were kept in the

Malkhana. In cross examination, there is nothing to be noted down.

5. P.W.2 Maheshwar Prasad Verma was also posted at Ganga Bridge Police Station. He states that on 09.02.2006 a truck was checked and in course of checking 9 bags having 64 packets of Ganja was seized which was about 6 quintals 40 kilograms, which was kept in the Malkhana after seizure list was prepared in presence of the witnesses. He states that the present Appellant was caught while fleeing away. In cross examination, he stated that the Appellant was caught when he had gone to collect toll tax ticket and was returning to the truck. However, he does not confirm the receipt of toll tax ticket.

6. P.W.3 Barun Chaudhary was also posted at Ganga Bridge Police Station. He states that on the date of occurrence a truck number of which has earlier been disclosed was intercepted by them and one person, namely, the Appellant was arrested and on checking of the truck 9 bags weighing about 6 quintals 40 kilograms of Ganja was recovered of which a seizure list was prepared. He says that the Officer Incharge had taken the packets on the jeep for weighment and that seizure list was not prepared in his presence. He also states that the crowd gathered at the Police Station.

7. P.W.4 Mithilesh Rai was posted as police personnel of Ganga Bridge Police Station and he also says that the truck was

intercepted and 10 packets of Ganja weighing about 6 quintals and 40 kilograms was recovered. He stated that the Ganja was taken to the Police Station and weighed. In cross examination, he stated that till date, there was no verification with regard to the owner of the truck.

8. P.W.5 Ashwini Kumar Singh was also posted as a constable at Ganga Bridge Police Station and he confirms the earlier evidence of the witnesses with regard to the interception of the truck, recovery and arrest of the Appellant. In cross examination, he stated that the bag was not opened in his presence and some bags were already open from which they could detect that the bags contained Ganja.

9. P.W. 6 Parmeshwar Singh stated that the Officer-in-Charge had told him that he was to be involved in checking of the truck and then they noticed a truck approaching at Ganga Bridge and they stopped it and caught the Appellant while fleeing away. From the truck 64 packets, 10 kilograms each, was recovered and total weight of the same was weighed 640 kilograms. He stated that the toll tax ticket had been recovered from the possession of the Appellant of which seizure list was prepared. He also stated that the packets were sealed and covered with a plastic and that it was weighed at the Police Station after the weighing scale was brought from a fruit shop. The Ganja was kept in the Malkhana and the packets were not opened

in his presence.

10. P.W.7 Pramod Kumar Sharma is also an Officer of the Ganga Bridge Police Station. He corroborates the evidence of the rest of the raiding party witnesses. In cross examination, he stated that the Ganja was weighed at the Police Station and the Ganja was sealed at the Ganga Bridge Police Station Malkhana in the same condition. He did not know as to whether Ganja had been tested or not.

11. P.W.8 Radhey Bhagat is a Chowkidar of the Police Station. He stated with regard to the factum of the occurrence. In cross examination, he conceded that he was not the witness of the seizure list. He stated that the truck was stationary and there was no one on the truck and near the toll tax the truck was in queue and there was always a crowd even at the ticket counter. He was not able to detect as to whom the vehicle belonged to. He stated that the articles were weighed by Darogaji on a regular scale. He did not know as to whether it had been sent for testing or not.

12. P.W.9 Shashi Bhushan Prasad is the Informant. He stated what he has stated in the Fardbeyan that on the date of occurrence, he received secret information with regard to the truck bearing certain number with Ganja, at which truck was intercepted at the Ganga Bridge Toll Plaza. He stated that in presence of the



independent witnesses seizure list had been prepared and he proves the Fardbeyan (Ext.2), Seizure list (Ext.1) and the Formal First Information Report (Ext.3/1). He stated that he did not see anyone abandoning the truck and, in fact, it was standing at the toll plaza. No one had been found in the truck when he approached the same. He also stated that the person who was arrested was not found with the ticket and, hence, no seizure list was prepared nor he seized any document of the truck or found out who was its owner. He was the Investigating Officer. He stated that on opening the packets, he could detect that the articles in the packets were Ganja and it was sent for testing through ASI I.A. Nizami. He did not know about the test report and he on speculation had submitted the chargesheet.

13. P.W.10 Jayram Sharma and P.W.11 Birendra Yadav were also police personnels who confirm the manner of occurrence and the arrest of the Appellant from there.

14. P.W.12 Umakant Jha was a seizure list witness, who proves the same as Ext.4. He stated in the cross examination that he was standing at toll plaza when Darogaji approached him and asked him to sign on a prepared document. He denies that Ganja was recovered in his presence.

15. P.W.13 Suresh Paswan stated that on 24.01.2011 when he was posted at F.S.L., he tested the articles received in

connection with the present case and submitted the report (Ext.5).

16. P.W.14 Shivshambhu Rai brought the material exhibits, Exts.1 to 1/9, from the Malkhana.

17. P.W.15 Kumar Amitabh proved the inventory of the Malkhana, which is Ext.7.

18. On going through the evidence of the prosecution witnesses, we find that the Investigating Officer has not stated about following the procedure of drawing the sample from the seized articles. The Test Report (Ext.5) reveals that the sample was tested about five years later. In absence of any positive, cogent and reliable evidence with regard to the connection of the Test Report to the sample drawn from the seized articles, this Court find it difficult to sustain the conviction of the Appellant.

19. For the reason, stated above, this Appeal is allowed. The impugned Judgment of conviction and Order of sentence passed against the Appellants is set aside. Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/Manish Kumar/
A.F.R.**

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