

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 991 of 2015

Arising out of P.S. Case No. -98 Year- 2008 Thana -
PIPRAKOTHI District- EASTCHAMPARAN(MOTIHARI)

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Pramanand Rai @ Parmanand Rai son of Late Ramjee Rai, Resident
of Village- Chandrapura Chainpur, P.S.- Raghapur, District-
Vaishali. Appellant/s

Versus

The State of Bihar. Respondent/s

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Appearance :

For the Appellant/s : Mr. Nityanand Tiwary, Adv.

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

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

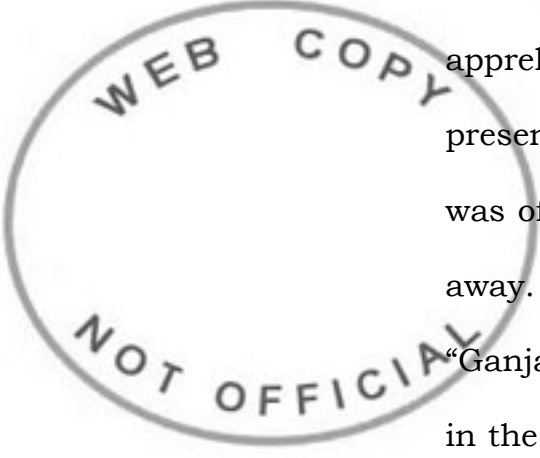
ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 26-04-2016

01. The Appellant has been convicted under Section 20(b)ii(c) of NDPS Act and sentenced to R.I. for fourteen years and fine of Rs. 1,50,000/- in default of which R.I. for six months by a judgment of conviction and order of sentence dated 07/09.09.2015 by the 3rd Additional Sessions Judge-cum-Special Judge, East Champaran in N.D.P.S. P.S. Case No. 111/37 of 2008/2015 arising out of Pipra Kothi P.S. Case No. 98 of 2008.

02. The case of the prosecution according to the Informant, Kamakhaya Narayan Singh (P.W. 3) who was the Officer In-charge of Pipra Kothi Police Station is that on secret information a truck was carrying "Ganja" was intercepted on the date of occurrence i.e. on 26.11.2008. They chased the



truck which dashed against a person on a bicycle and turned turtle. One of the two persons from the truck were apprehended while fleeing away. He disclosed his name as the present Appellant and that the owner of the truck and goods was of Raju Singh and the Khalasi was Akhilesh Rai, who fled away. The truck was found to be loaded with about 170 Kgs. “Ganja” in 14 packets. He also found two number plates kept in the truck and the owner-book being that of Raju Singh who incidentally has not put on trial. The Informant concluded that the truck appeared to be stolen being used for illegal purposes during which the accused had accidentally caused death of unknown person going on a bicycle. The Appellant was thereafter put on trial and convicted as mentioned above.

03. During trial the prosecution examined seven witnesses.

04. P.W. 1, Jai Govind Rai, a Chowkidar and a member of the raiding party has stated that on the date of occurrence the Informant along with others reached on a Jeep near Jivdhara High School and tried to intercept a truck which did not stop so it was chased and thereafter had met with an accident and turned turtle after which they reached there. The Police recovered 170 Kgs. “Ganja” from the truck of which a seizure-list was prepared. He stated that the driver of the truck was brought to the Police Station and he identified the present Appellant.

However, he did not prove any seizure-list and he did not see any documents being prepared in the Police Station nor was it sealed in his presence.

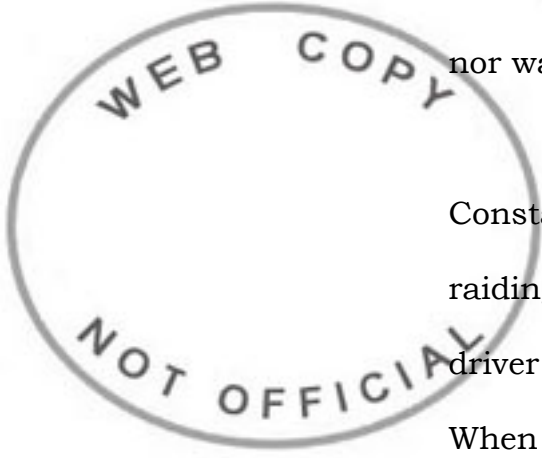
05. P.W. 2, Gyan Chand Patel was posted as Constable at Pipra Kothi Police Station and was part of the raiding party. The raiding party tried to stop the truck but the driver did not stop which hit an old man and turned turtle. When they reached there the old man was found dead. One of the fleeing occupants of the truck was apprehended whereas the second man succeeded in running away.

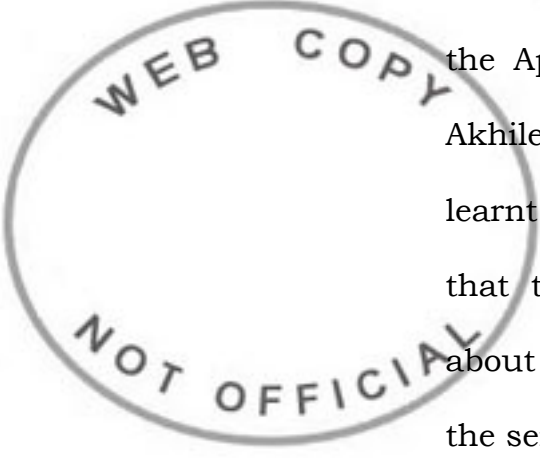
06. The apprehended person disclosed his name as the Appellant and also that the truck owner was one i.e. Raju Singh. He identified the present Appellant in the dock. He further stated that on search of the truck fourteen pockets of "Ganja" totaling to 170 Kgs. was recovered of which seizure-list was prepared in his presence.

However, he has not proved the seizure-list. In cross-examination, he stated that he did not remember as to whether he had ever put his signature on any document prepared by the Officer In-charge.

07. We, thus, find that P.W. 1 and P.W. 2 who are in respect to seizure of "Ganja" from the truck and apprehension of the Appellant do not prove any documentary evidence.

08. P.W. 3, Kamakhya Narayan Singh is the Informant who supported the factum on manner of occurrence and as to





how when the truck met with an accident he directed others to catch hold of the fleeing accused persons in course of which the Appellant was arrested. He disclosed that the Khalashi, Akhilesh Rai fled away whereas the owner of the truck was learnt to be one Raju Singh Paswan and it was at his instance that the “Ganja” was being transported. He further stated about preparation of seizure-list and inquest report. He proved the seizure-list as (Exhibit-1) and the confessional statement of the Appellant as (Exhibit-2). Rameshwar Prasad Singh, P.W. 6 then took over investigation of the case. He stated that the seized “Ganja” was kept at the Police Station, Malkhana. He proved the arrest memo as (Exhibit-3) and the formal First Information Report as (Exhibit-4).

In cross-examination, he stated that it was on confidential information that the trucks were being searched. He further stated that the “Ganja” was brought to the Police Station where it was separately weighed and that he did not find any driving license of the Appellant who was arrested as also that he had opened only one or two bundles out of fourteen bundles and he had not sealed the bundles nor did he take samples from any bundle. He was further given an opportunity to explain as to from what distance of the truck was the Appellant arrested but he stated that he did not enquire about it nor did he remember as to how he was arrested. He conceded that nothing incriminating was

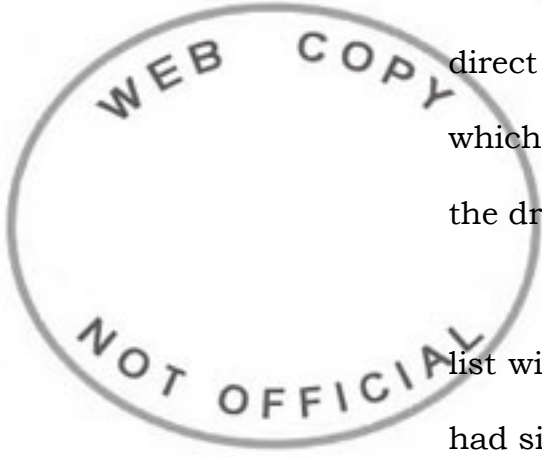
recovered from the person of the Appellant.

09. We, thus, find from his evidence that there is no direct evidence in regard to apprehension of the Appellant from which it could be definitely concluded that the Appellant was the driver of the Truck or had any connection with it.

10. P.W. 4, Rameshwar Prasad Yadav is a seizure-list witness which was marked as (Exhibit-1) who said that he had signed the document at Police Station.

11. P.W. 5, Mahanth Prasad Kushwaha has also stated that he has signed as (Exhibit-4/1) on the direction of the Informant.

12. P.W. 6, Rameshwar Prasad Singh, the Investigating Officer stated that he had done investigation of the said case and inspected the place of occurrence as also examined the seizure-list witnesses. He proved the inquest report as (Exhibit-5) and that he had given an application before the Magistrate for sending the samples for testing. He proved the application as (Exhibit-7) and that an official report is marked as (Exhibit-1) for identification. In cross-examination, he was asked to explain as to whether or not he made an inquiry with regard to owner-ship of the truck but no satisfactory reply was given. He also stated that he had sent the articles before keeping it in the "Malkhana" but he did not furnish the details. In Paragraph 70, he merely stated that the sample was put in a packet and that he had received one



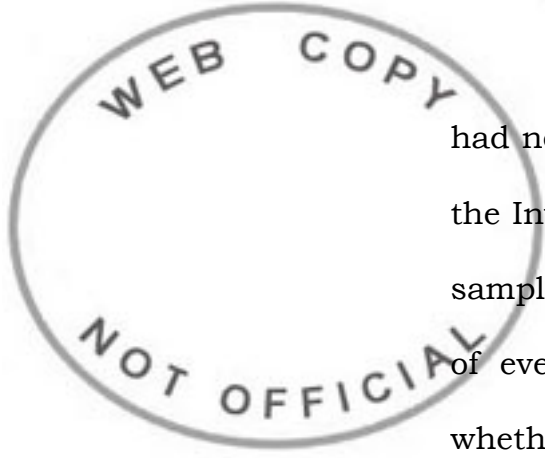
packet of sample which was already sealed. He later on submitted charge-sheet on 06.01.2009.

13. We, thus, find that even though the Informant had not said anything about sampling and sealing the “Ganja” the Investigating Officer stated that he had received the sealed samples of the article which does not fit in with the sequence of events. Nor do any witnesses testify satisfactorily as to whether the prosecution had adhered to the procedure prescribed in the NDPS Act.

14. We, further, find that whereas the date of occurrence is 26.11.2008 the sealed samples were received at the FSL on 05.01.2009 and the same was tested on 26.03.2009. There is no authentic evidence in regard to where the samples were kept before sending it to the FSL. There is no evidence as to how sample was drawn and whether it was kept in a condition where there was no possibility of adulteration.

15. We, further, find that P.W. 2 has stated that a group had gathered at the site of the accident which fits in which the defence of Appellant. As per his statement recorded under Section 313 he was at the place of occurrence and had gone to see the accident out of curiosity and had been arrested on suspicion.

16. We find that the Prosecution has not brought any positive evidence that the Appellant was the truck driver. His arrest while fleeing away from the truck is based on vague



statement of sole witness, P.W. 3 who had merely ordered his apprehension and is thus not satisfactorily proved.

17. In such circumstances, the Appeal is allowed and the judgment of conviction and order of sentence dated 07/09.09.2015 passed by the 3rd Additional Sessions Judge-cum-Special Judge, East Champaran in N.D.P.S. P.S. Case No. 111/37 of 2008/2015 arising out of Pipra Kothi P.S. Case No. 98 of 2008 is, hereby, set aside. The Appellant, Parmanand Rai @ Parmanand Rai is discharged from the liabilities of his bail bonds. The Appellant who is in custody shall be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	X
Uploading Date	17.05.2016
Transmission Date	17.05.2016