

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 455 of 2012

Arising out of P.S. Case No. -216 Year- 2009 Thana -Dihri
District- Rohtas

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Gorakh Nath Prasad, Son of Kamta Prasad, Resident of Mohalla-New
Area, P.S.-Dihri, District-Rohtas at Sasaram.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Avanish Kumar Singh, 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: 24-06-2016

01. The Appellant has been convicted under Section 20(b)(ii)(c) of NDPS Act and sentenced to R.I. for fifteen years and fine of Rs. 1,00,000/- in default of which S.I. for three years by a judgment of conviction and order of sentence dated 29.02.2012/03.03.2012 by the 5th Additional Sessions Judge, Rohtas at Sasaram in N.D.P.S. Tr. No. 27 of 2012 arising out of Dihri P.S. Case No. 216 of 2009.

02. The case of the prosecution according to the Informant, Brij Nandan Mehta (P.W. 1), the S.H.O. of Dehri (T) Police Station is that on 16.05.2009 he raided the house of the Appellant on a secret information and from a room which was locked from inside two persons including the present Appellant

and one Baliram Pandey @ Ganja Pandey were arrested. From the room 59 Kgs. of “Ganja” was recovered in different packets.

03. During trial the prosecution examined eight witnesses whereas the defence examined one witness.

04. P.W. 1, Brij Nandan Mehta supported the factum of the raid of the house of the Appellant on secret information and that from the room locked from inside two persons were apprehended one of which was the Appellant. He proves the seizure-list upon which the Appellant also signed which is (Exhibit-2). He also proves the written statement which is (Exhibit-3) and the First Information Report which is (Exhibit-5).

In cross-examination, he stated that a little bit of “Ganja” was drawn from each packets mixed together and thereafter a sample was drawn which was sealed. The same was sent to the FSL for testing.

05. P.W. 2, Chandan Kumar and P.W. 3, Anuj Kumar have been declared hostile.

06. P.W. 4, Prema Nand Choudhary was also a member of the raiding team who corroborated the statement of P.W. 1 that on the appointed date the house of the Appellant was raided and from inside room 59 Kgs. of “Ganja” was recovered and the Appellant was arrested from the house. He also confirmed that a little bit of “Ganja” was drawn out from each packet and thereafter mixed together and was put aside.

In cross-examination, he described the topography of the place of the occurrence and once again confirmed that a little bit of "Ganja" was taken out from each of the packets and kept together.

07. P.W. 5, Upendra Prasad Singh was also a member of the raiding team who stated that on the date of occurrence the house of the Appellant was raided from where 59 Kgs. "Ganja" was recovered. There were other signs to show that there was sale of "Ganja" being carried out in the premises.

In cross-examination, he described the manner in which the raid was conducted as also confirmed that after drawing samples both of them were sealed.

08. P.W. 6, Rajendra Tiwary was also posted as a Havildar at Dehri Police Station along with the rest of the police personnel had got opened the door of a room in the house of Appellant and in a gunny bag 59 Kgs. "Ganja" was found kept. The Appellant was also apprehended there and then. The seizure-list was prepared after which they all came to the Police Station.

In cross-examination, he stated that apart from the one room in which the Appellant had locked himself the rest of the rooms were open. He also gave a graphic description in the manner in which the house was raided and search conducted.

09. P.W. 7, Hemant Kumar took over the investigation of the case after which he recorded the statement of the

Informant as also the rest of the witnesses. He sent the sample for testing after due permission of the Court. He found the place of occurrence being the house of the Appellant and that outside there was a general store in which in one corner there was a small room. He then submitted charge-sheet against the two accused.

In cross-examination, he stated that he had not taken responsibility of the seized articles which was kept in the Police Station "Malkhana" and he had not received the FSL Report.

10. P.W. 8, Suresh Paswan was Assistant Director at the FSL, Patna who proved the report and exhibit of the Chemical Examiner as (Exhibit-8).

In cross-examination, he gave the details of the correspondence between the two ends as also the proceeding of the Chemical Examiner.

11. On behalf of the defence, Yamuna Singh proved the fact of co-accused, Baliram Pandey having instituted a case against Navin Kumar and son and others in which the present Appellant is concerned since Baliram Pandey has been acquitted by the Court below.

12. On fair analysis of the evidence, we find that there is consistent evidence that the house of the Appellant was raided and on which date he was found locked inside a room which when opened was found to be containing a bag with

several packets of “Ganja” weighing altogether 59 Kgs. Samples were properly drawn which was tested and opined to be “Ganja”.

13. The submission of the Appellant that the provision of Section 52 of the N.D.P.S. Act by which notice had to be given to the Appellant not being followed has no meaning since the seizure was not made from the personal possession but from the house of the Appellant.

14. In view of the discussion above, finding no merit in the Appeal, the same is dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Vikash/-

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