

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.104 of 2011

(Arising out of Judgment and order of conviction dated 21/24.12.2010 passed by the Additional Sessions Judge-XI, Patna, in connection with Special Case No. 38 of 2006)

Rudal Yadav, son of Nago Prasad, resident of village- Jethuli, P.S.- Fatuha, District- Patna.

The State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

Criminal Appeal (DB) No. 143 of 2011

Pankaj Nigam @ Sonu Kumar, s/o Sita Ram Singh, resident of village- Kamta, P.S.- Hilsa, District- Nalanda

The State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

Criminal Appeal (DB) No. 147 of 2011

Sitaram Yadav, s/o late Bal Govind Yadav, r/o village Jethuli, P.S. Fathua, Distt. Patna

The State of Bihar

Versus

.... Appellant/s

with

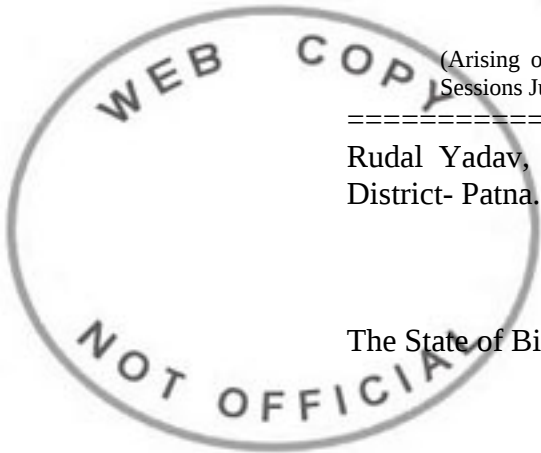
.... Respondent/s

Criminal Appeal (DB) No. 778 of 2011

- 1. Deo Nandan Yadav, s/o late Guru Prasad, r/o village Jethuli, P.S. -Fatuha Distt. -Patna.
- 2. Sheoshankar Yadav, s/o late Maheshwar Ray, r/o village Jethuli, P.S. - Fatuha, Distt. -Patna.

Versus

.... Appellant/s



The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No. 104 of 2011)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.

For the State : Mr. D.K. Sinha, A.P.P.

(In CR. APP (DB) No. 143 of 2011)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.

Ms. Madhuri Kumari, Adv.

For the State : Mr. D.K. Sinha, A.P.P.

(In CR. APP (DB) No. 147 of 2011)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.

For the State : Mr. D.K. Sinha, A.P.P.

(In CR. APP (DB) No. 778 of 2011)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.

For the State : Mr. A. Sharma, 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: 12-01-2016

Heard learned counsel for the Appellants and learned
counsel appearing of behalf of the State.

2. Three Appellants namely, Sheoshankar Yadav, Deo
Nandan Yadav of Cr. Appeal (DB) No. 778 of 2011, Sita Ram Yadav
of Cr. Appeal (DB) No. 147 of 2011 have been convicted under
Section 20 (b) (ii) (C) of NDPS Act and sentenced to rigorous
imprisonment for 15 years and a fine of Rs.1,00,000/- in default of
which further two years rigorous imprisonment, Appellant Pankaj
Nigam @ Sonu Kumar of Cr. Appeal (DB) No. 143 of 2011 and
Appellant Rudal Yadav of Cr. Appeal (DB) No. 104 of 2011 have
been convicted under Sections 20/29 of the NDPS Act and sentenced

to rigorous imprisonment for 15 years and a fine of Rs.1,00,000/- in default of which further two years rigorous imprisonment by a Judgment and order of conviction dated 21/24.12.2010 passed by the Additional Sessions Judge-XI, Patna, in Special Case No. 38 of 2006.

3. The case of the Informant, Ramakant Prasad (PW-1) who was the Officer-in-Charge of Kankarbagh Police Station, is that on 2.8.2006, he arrested Pankaj Nigam @ Sonu Kumar, Appellant of Cr. Appeal(DB) No. 143 of 2011 in connection with another case who confessed his guilt and also that he indulged in sale and purchase of Narcotic products. On his pointing out, houses of Doman Mian, Deo Nandan Yadav, Shiv Shankar Yadav and Sita Ram Yadav were raided and huge quantity of Ganja was recovered from each of the houses. In none of the house, any of the Appellants were present. Three persons who were seen fleeing away from the house of Doman Mian, out of whom the Appellant Rudal Yadav was caught but from his possession, no incriminating article was recovered.

4. During Trial, the Prosecution examined nine witnesses. PW-1, Informant, in his statement in Court, stated that he had arrested Appellant Pankaj Nigam @ Sonu Kumar in connection with another case and on his pointing out, the houses of Appellants Deo Nandan Yadav, Shiv Shankar Yadav, Sita Ram Yadav and one Doman Mian were raided. The search had been conducted after



raiding team was constituted from various Police Stations. He stated that from the house of Doman Mian, 90 Kg. of Ganja, wrapped in a plastic bag was recovered, of which a seizure list was prepared in the presence of two witnesses and the Appellant Pankaj Nigam @ Sonu Kumar. In course of search in the house of Doman Mian, one person was caught fleeing away who disclosed his name as Appellant Rudal Yadav, and that of Pintu Rai and Dharmendra Kumar who succeeded in fleeing away. Further, on the statement of the Appellant Pankaj Nigam @ Sonu and Rudal Yadav, search was conducted in the house of Appellant Deo Nandan Yadav, but none was present there. It was stated that 150 Kg. of Ganja wrapped in a plastic bag from one of the rooms was recovered, of which a seizure list was prepared in the presence of the witnesses and two accused persons. Then the house of Appellant Shiv Shankar Yadav was searched on the statement of these two Appellants and from his house, 180 Kg. of Ganja again wrapped in a plastic bag was recovered, of which, a seizure list was prepared. On the statement of Appellant Pankaj Nigam @ Sonu and Rudal, the house of Appellant Sita Ram Yadav was searched and from his house, 180 Kg. of Ganja wrapped in a plastic bag was recovered of which a seizure list was prepared. It was stated that after the institution of the First Information Report, the investigation was handed over to another Police Personnel. He identified the seizure list as Ext.-1 series and



Fard beyan as Ext.-2. He stated that he had not made any independent enquiry with regard to the ownership of the houses and it was on the statement of Pankaj Nigam @ Sonu that it was believed that the houses belonged to them and were searched. He stated that the sample was sealed in an envelope on which signature of some witnesses were taken. He stated that he had no paper records with regard to the ownership of the house nor they did prepare any record in regard to the sample. Also that the article was weighed with the scales at the place of occurrence itself. He admitted that it was not mentioned in the seizure list that the sample was separately drawn and sealed.

5. PW-2, Ramswarth Paswan was posted at Fatuha Police Station as A.S.I and on the date of occurrence, he was part of the raiding team. He stated about search having been made in the houses of Appellants Deo Nandan Yadav, Shiv Shankar Yadav and Sita Ram Yadav and also about recovery of Ganja from each of the houses and preparation of seizure list. In cross-examination, he stated that he had not signed on the seizure list. He stated that the article recovered from the house of Doman Mian was kept on the floor in small and big bags and there was no weighing scale there. However, he stated that the samples were drawn from the packet but only from one of them. He admitted that nothing was recovered from the possession of Rudal Yadav. He further stated that the Ganja was kept

in the Malkhana after it was weighed at the Police Station and Villagers had helped in weighing the same. He also stated that the packets were closed but not sealed after it was weighed and the key of the Malkhana was kept with the Malkhana In-charge.

6. PW-3 Krishna Kandulna was an Armed Guard of the Kankarbagh Police Station. He stated that on the date of occurrence, he along with the others had raided several houses in village Jethuli from where Appellant Rudal Yadav was arrested. He stated that from the house of Doman Mian, 90 Kg. of Ganja was recovered, of which, a seizure list was prepared and on the pointing out of the Appellants Rudal Yadav and Pankaj Nigam @ Sonu, another house was raided from where 150 Kg. of Ganja was recovered, of which, a seizure list was prepared and 3rd and 4th houses were searched, from which, 180 Kg. of Ganja was recovered from each of them, of which, a seizure list was prepared. In cross-examination, he stated that the Ganja was already weighed for purpose of sale when they seized the same.

7. PW-4, Udhav Ji Singh, is the Investigating Officer, who stated that he instituted the formal First Information Report Ext.-3 and proved the signature as Ext.-2/1. He also stated that he took charge of the two accused persons and on the next day, proceeded to the place of occurrence and inspected the four houses from where the articles had been sealed. He stated that the samples which had been



drawn, was sent for testing on the orders of the Judge. He further conceded that he did not know as to who had signed on the samples and that the articles had been weighed at the place of occurrence itself. He in cross-examination, once again asserted that he did not write as to how much Ganja was there in which bag and he had not signed on the seal and it was the Magistrate who had sealed the samples.

8. PW-5, Md. Firozuddin posted at Fatuha Police Station has stated that on the date of occurrence, search was conducted and one person was caught and Ganja was recovered. However, he did not disclose any names. In cross-examination, he stated that the Ganja was not weighed in his presence.

9. PW-6 Sona Prasad Singh was posted at Kankarbagh Police Station and on the date of occurrence he had assisted PW-1 in conducting the search. He stated that it was he, who had drawn samples from the articles which were recovered and he proved the same as Exts.-1, 1/1, 1/2 and 1/3. In cross-examination, he stated that they had not gone to the place of occurrence nor was it mentioned as to in which bag how much Ganja was there.

10. PW-7 Ram Lakhan Pandit was posted at Fatuha Police Station and was part of the team which had conducted the raids. He stated that from the house of Doman Mian, 7 packets of



Ganja and from the house of Deo Nandan Yadav, 8 packets, from the house of Shiv Shankar Yadav, 13 packets and from the house of Sita Ram Yadav, 12 packets Ganja were recovered, of which, a seizure list was prepared and samples were drawn. However, in cross-examination, he stated that the weight of the article was written on a rough estimate and it is only later at a weighing machine the article weighed but he did not remember as to where exactly it had been weighed. He asserted that none was arrested at the place where the search had been conducted.

11. PW-9 and PW-10 are Muzaffar Imam and Ravindra Kumar respectively, who were the seizure list witnesses but did not support the case of the Prosecution.

12. The Prosecution also proved Ext.-5 which is the FSL Report, according to which, the sample which was collected on 2.8.2006 sent to the FSL on 17.8.2006, was tested on 11.1.2007 and a report was sent on the same day confirming that the four samples contained Ganja. The Appellant Sita Ram Yadav examined himself as DW-1 and stated that he was arrested for no reason at all while he was doing manual work.

13. It has been argued by the Counsel for the Appellants that the Prosecution has failed in its primary duty of proving conclusively that all the packets which had been recovered



from the houses of each of the Appellants, indeed, contained Ganja since separate samples were not drawn from each of the packets which were in large number, nor has the Prosecution anywhere asserted that the contents of all the bags were mixed and, thereafter, samples drawn from the mixture. In such circumstances, evidently, the conviction of the Appellants Deo Nandan Yadav, Shiv Shankar Yadav and Sita Ram Yadav from whose houses the alleged recovery was made, is without any substance. As for Rudal Yadav and Pankaj Nigam @ Sonu Kumar, the admitted position is that there was no recovery from their possession.

14. On a fair discussion of the evidence which we have discussed above, we find that the arguments of the Appellants is well founded and in absence of the Prosecution conclusively bringing on the record, fact of the entire articles being Ganja, the conviction of Appellants Sita Ram Yadav, Deo Nandan Yadav, Shiv Shankar Yadav is unsustainable. We are also quizzed in absence of any conclusive evidence that the houses indeed belonged to the three Appellants. The witnesses have not only brought anything on record to prove this, on the contrary, one of the witnesses has stated that it was only on the statement of Pankaj Nigam @ Sonu Kumar that they formed an impression that the three houses belonged to three Appellants.

15. In view of the above discussions, the Appeals are

allowed and the Judgment and order of conviction dated 21.12.2010/24.12.2010 passed by the Additional Sessions Judge-XI, Patna, in Special Case No. 38 of 2006, are hereby, set aside.

16. The Appellants Rudal Yadav of Cr. Appeal (D.B) No. 104 of 2011, Appellant Pankaj Nigam @ Sonu Kumar of Cr. Appeal (DB) No. 143 of 2011, Appellant Sita Ram Yadav of Cr. Appeal (DB) No. 147 of 2011 and Appellant Shiv Shankar Yadav of Cr. Appeal (DB) No. 778 of 2011, who are in jail custody, are directed to be released forthwith, if not wanted in any other case.

17. The Appellant Deo Nandan Yadav of Cr. Appeal (DB) No. 778 of 2011, who is on bail, is discharged from the liabilities of his bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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