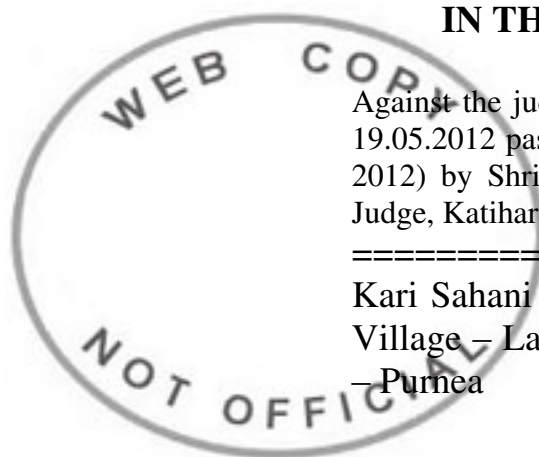




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 577 of 2012

Against the judgment of conviction dated 14.05.2012 and order of sentence dated 19.05.2012 passed in G.R. Case No. 16 of 2012 (Katihar Rail P.S. Case No. 11 of 2012) by Shri Bateshwar Nath Pandey, the learned Sessions Judge-cum-Special Judge, Katihar

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Kari Sahani @ Phagu Sahani, Son of Sri Raghuni Sahani, Resident of Village – Lakari Pati, Jawahar School, Gulabagh, P.S. – Sadar, District –Purnea

.... Appellant

Versus

The State of Bihar

.... Opposite Party

WITH

=====

Criminal Appeal (SJ) No. 558 of 2012

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1. Hriday Kumar Singh, S/o Late Nand Kishor Singh, R/o Naya Tola, Abdula Nagar, P.S. – Sadar, Dist. – Purnea
2. Beni Choudhary, S/o Bindeshwari Choudhary, R/o - Jawahar School, Lakripatti, Gulabbagh, P.S. – Sadar, District - Purnea

.... Appellants

Versus

1. The State of Bihar
2. The Union of India

.... Opposite Parties

WITH

=====

Criminal Appeal (SJ) No. 567 of 2012

=====

Umesh Yadav, S/o Kamleshwari Yadav, R/o - Naya Tola, Abdulla Nagar, P.S. – Sadar (Purnea), Distt. – Purnea

... Appellant

Versus

The State of Bihar

.... Opposite Party

With

=====

Criminal Appeal (SJ) No. 595 of 2012

=====

Praveen Kumar Mandal, S/O Sushil Kumar Mandal @ Gopal Mandal,
R/o – Naya Tola, Kalighat, P.S. – Sadar, Dist. - Purnea

.... Appellant

Versus

1. The State of Bihar
2. The Union of India

.... Opposite Parties

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Appearance:

Cr. APP (SJ) No. 577 of 2012

For the Appellant : Mr. Musowir, Advocate

For the State : Mr. Bipin Kumar, A.P.P.

Cr. APP (SJ) No. 558 of 2012

For the Appellant : Mr. Arun Kumar Mandal, Advocate

For the State : Mr. S.A. Ahmad, A.P.P.

Cr. APP (SJ) No. 567 of 2012

For the Appellant : Mr. Sanjeev Kumar Singh, Advocate

For the State : Mr. Z. Hoda, A.P.P.

Cr. APP (SJ) No. 595 of 2012

For the Appellant : Mr. Arun Kumar Mandal, Advocate

For the State : Mr. Binod Bihari Singh, A.P.P.

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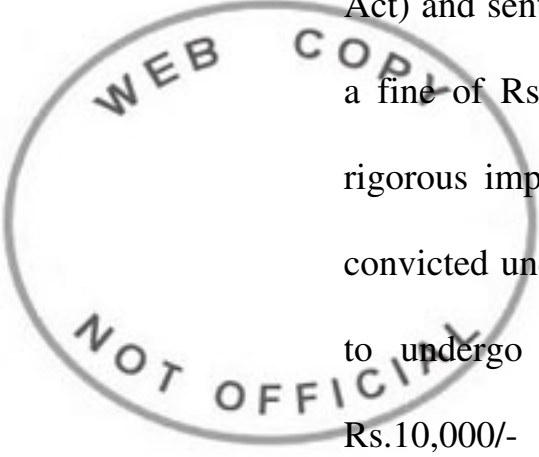
CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 05-07-2016

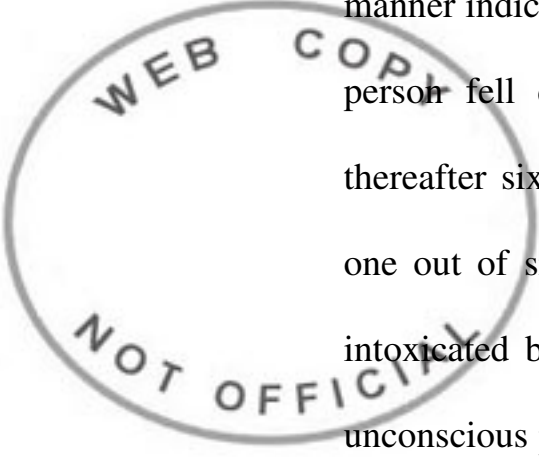
Heard learned counsel for the appellants and learned
Additional Public Prosecutor for the State.

2. The four appeals have been heard together and disposed of
by the common order as all the four appeals arise out of the same
judgment and order dated 14th May, 2012, passed by Sri Bateshwar Nath
Pandey, the learned Sessions Judge-cum-Special Judge, Katihar by
which the appellants have been convicted under Section 22(b) of the
Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the

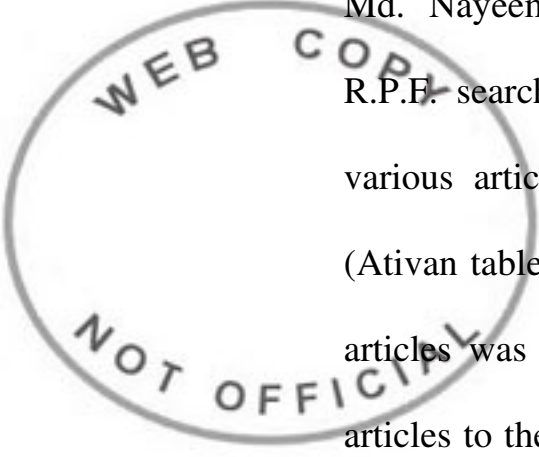


Act) and sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.1,00,000/- and in default of payment of fine to undergo rigorous imprisonment for one year. The appellants have further been convicted under Section 328/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.10,000/- and in default of payment of fine to undergo rigorous imprisonment for one year. They have further been convicted under Section 379/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years with a fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for three months. They have also been convicted under Section 411/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years with a fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for three months. They have also been convicted under Section 414/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years with a fine and in default of payment of fine to undergo rigorous imprisonment for three months.

3. The informant, Lotan Paswan (P.W.1) Officer-in-Charge, Rail P.S., Purnea along with other police personnel while on patrolling duty saw a person getting down from the train and he was moving in a

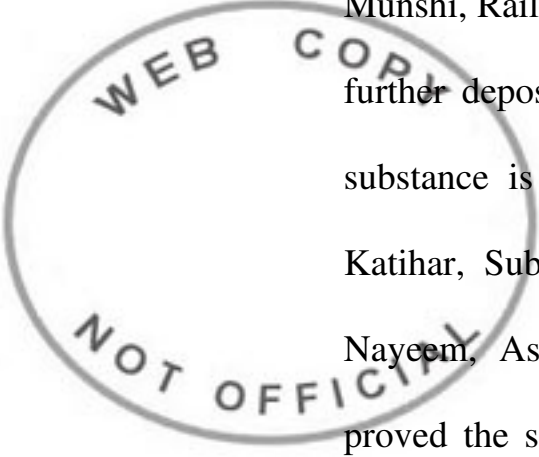


manner indicative to be under the influence of narcotics and then the said person fell down. The said person laid on a cemented bench and thereafter six persons came from the northern side of the platform and one out of six told that this is the person to whom they administered intoxicated biscuit in the train. One person took away bag of the said unconscious person and also took away money from his pocket and tried to flee away towards southern side but in the meantime, the police personnel chased and caught hold of one person out of six. The person who was caught disclosed his name as Hriday Kumar Singh and then the said Hriday Kumar Singh was searched before the two independent witnesses Matuk Deo Rai and Devendra Sahani and from the possession of Hriday Kumar Singh a black bag, Rs.615/- and one PURIA containing cream colour intoxicated powder besides other articles were recovered. Thereafter the seizure list was prepared with regard to the seized articles. Hriday Kumar Singh disclosed that they were the six persons who were member of the group and they are also in possession of the intoxicated substance and it is their business watch the person after administering the intoxicated substance to do illegal act. Thereafter the police personnel proceeded along with Hriday Kumar Singh and caught hold of the five persons at the instance of the accused Hriday Kumar Singh. Thereafter, the accused persons were taken to the police station and in presence of



Md. Nayeem, Gazetted Officer, Assistant Commandant, Protection, R.P.F. searched the other arrested persons and from their possession various articles including a bag containing a psychotropic substance (Ativan tablet) was recovered. The seizure list with regard to the seized articles was prepared. The police during investigation sent the seized articles to the FSL and the report received shows that the articles seized was psychotropic substance LORAZEPAM, a benzodiazepine was detected in the contents of paper packet examined as Ativan. Lorazepam commercially known as Ativan is a sedative and psychotropic drug and induces sleep. The police after investigation, submitted charge-sheet and after submission of the charge-sheet, cognizance was taken. Thereafter the case was committed to the Court of Sessions and after framing of the charge trial proceeded. During trial, eleven witnesses were examined by the prosecution.

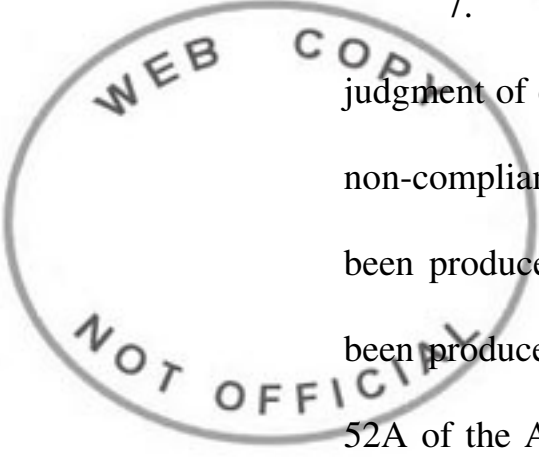
4. P.W. 1 Lotan Paswan, the informant of this case, P.W.2 Md. Jakir, the victim himself, P.W.3 Ram Pravesh Singh Yadav, A.S.I. Rail Police Station, P.W.4 Shailendra Kumar Singh, P.W.5 Nagendra Kumar Singh posted in G.R.P., Purnea, Rail Police Station, P.W.6 Arun Kumar Prasad, member of the rail P.S., P.W.7 is Dr. Bani Kumar examined the victim and has proved the injury report but in cross-examination stated that Md. Jakir was brought by Pradip Kumar Jha,



Munshi, Railway Police Station. The patient came to him on foot. He has further deposed that he cannot say exactly as to whether the sedative substance is opium or not. P.W.8 Rabindra Mohan, Drug Inspector, Katihar, Sub-Division given report regarding the Ativan. P.W.9 Md. Nayeem, Assistant Commandant of Katihar Rail Police Station has proved the seizure list, P.W.10 Ramdeo Paswan, employee of the rail police station also the Investigating Officer of the case though in his evidence deposed that ten Ativan tablets were seized from the accused Ajay Kumar Sah and has deposed that all the recovered Pudia from the accused persons were sent to the FSL and procured the report. P.W.11 Ashok Kumar, S.D.J.M., Katihar Civil Court who recorded the statement of Md. Jakir Mandal under Section 164 of the Cr.P.C.

5. The defence has also adduced four witnesses in support of their case. D.W.1 Ram Gopal Mandal, D.W.2 Manju Devin, D.W. 3 Dhirendra Kumar Sah and D.W.4 Harkeshwar Sharma. The defence of the accused is that nothing has been recovered from their possession and have falsely been implicated in this case as also they were not apprehended at the place of occurrence.

6. The trial Court taking into consideration the evidence of the witnesses convicted and sentenced the appellants as stated at the outset.

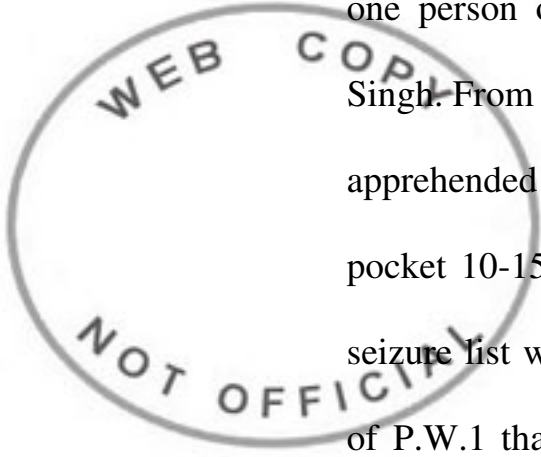


7. Learned counsel for the appellants, however, challenged the judgment of conviction and order of sentence on the ground that there is non-compliance of Section 50 of the Act. Neither the seized articles have been produced in the Court nor the sample of the seized articles have been produced in the Court as also there is non-compliance of Section 52A of the Act. It has been further contended that best evidence of the possession would have been the seized materials which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchnama does not discharge the heavy burden which lies on the prosecution. It has further been contended that except the official witnesses, no other independent witnesses have been examined in the case to prove the seizure. However, P.W.10 has stated in his evidence that all the articles seized have been sent to the FSL. However, it is a violation of Section 52A of the Act as neither the seized articles have been produced before the Magistrate to certify the seizure of seized articles or to take the sample. It has further been contended that the victim at the time of apprehension of the appellants was in unconscious state as alleged in the fardbeyan as it has been shown that he was in unconscious stage and thereafter he was sent to the hospital but no TIP has been conducted to identify the accused persons and hence, the

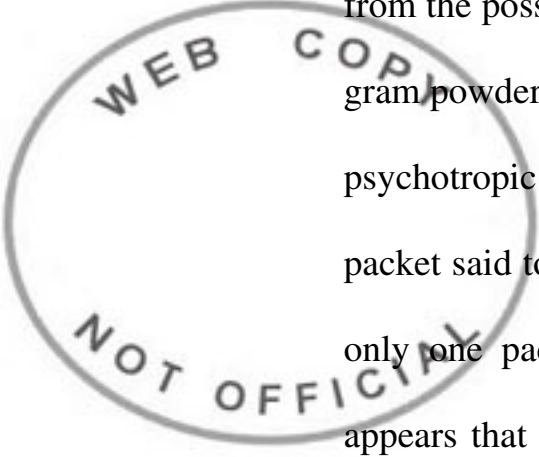
identification of the appellants in Court is misleading and the identification of the appellants in Court without any TIP is not proper and hence, the judgment of conviction and order of sentence is not sustainable in the eye of law and hence, the safeguard provided under the Act has not been adhered to record a conviction.

8. Learned counsel for the State, however, contended that the articles have been seized from the possession of the appellants and the search has been made before the Gazetted Officer and hence, there is no violation of Section 50 of the Act and the victim has identified the accused as also the FSL report suggests that the seized articles were Ativan.

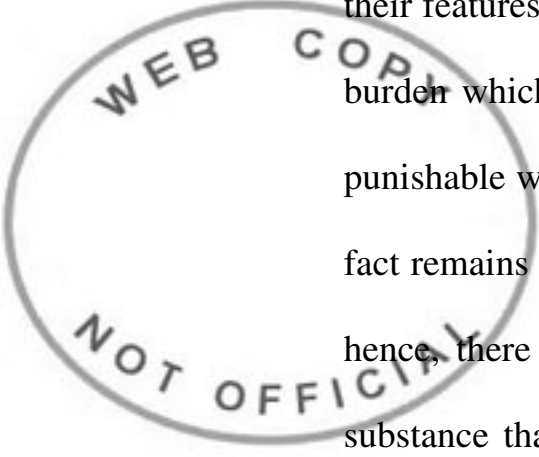
9. Having regard to the respective submissions of the parties, I find that there is substance in the submission made by the learned counsel for the appellants. The prosecution case in the First Information Report itself shows that the informant saw one person getting down from the train who was walking in an irregular manner as was under the influence of narcotics and he was fallen down in unconscious state. He was laid on the bench. Thereafter it is stated that six persons came and one of them whispered that this is the person to whom they administered intoxicated substance and one person took the bag of the said unconscious person. The police chased the six persons and apprehended



one person out of the six who disclosed his name as Hriday Kumar Singh. From the evidence of P.W.1 itself, it is apparent that the informant apprehended one person and on his search a bag recovered and from his pocket 10-15 grams of material powder and money was recovered and seizure list was prepared. However, there is no mention in the evidence of P.W.1 that he ever complied Section 50 of the Act and there is no evidence that the Gazetted Officer was present at the time of the search nor there is any evidence that Hriday Kumar Singh was made aware of his right or being searched of his pocket before a Gazetted Officer or a Magistrate and hence, it is apparent that there is clear violation of Section 50 of the Act and a safeguard provided under the Act has not been complied and on that basis the possession regarding the articles has not been proved. The further evidence is that at the instance of Hriday Kumar Singh a raid was conducted as pointed and thereafter five persons were apprehended and from their possession bag and psychotropic substance was seized and the seizure list prepared. However, P.W.10 though has deposed that ten Ativan tablets have been recovered from the possession of Ajay Kumar Sah and then he called for a report from the Drug Inspector. However, from perusal of the records, it appears that there is no seizure list regarding recovery of Ativan from the possession of Ajay Kumar Sah. However, the seizure list regarding the recovery



from the possession of Ajay Kumar Sah is concerned shows that only ten gram powder recovered. From the possession of six person six packets of psychotropic substance recovered. From the report of the FSL a paper packet said to contain sample of cream colour powder hence, it indicates only one packet was sent to the FSL. However, from the record, it appears that six packets of the powder recovered. However, there is no evidence that the recovered material was ever produced in Court neither there is any compliance of Section 52A of the Act as neither the seized articles were produced before the Magistrate nor there is any certification under Section 52A(4) of the Act. Hence, having regard to the fact neither the seized articles produced in Court nor there is compliance of Section 52A of the Act as neither seizure articles produced before the Magistrate nor there is any certification nor report of distribution nor the representative sample of the seized articles were taken before the Magistrate and further neither the independent witnesses before whom the articles seized has come to depose in the case and hence, in these facts and circumstances of the case as held in the case of **Jitendra And Another Versus State of M.P.** reported in (2004)10 SCC 562 that the best evidence would have been the seized materials which ought to have been produced during the trial and marked as material exhibit. There is no explanation for this failure to produce them. Mere oral evidence as to



their features and production of panchnama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the Act. However, here the fact remains that the independent witnesses have not been examined and hence, there is no material to connect the report of the FSL with the substance that the seized articles from the possession of the appellants and this view finds support in the case of **Vijay Jain Versus State of Madhya Pradesh** reported in (2013)14 SCC 527 as well as in the case of **Ashok Alias Dangra Jaiswal Vs. State of Madhya Pradesh** reported in (2011)5 SSC 123.

10. However, having regard to the facts that the victim P.W.2 though have identified the appellants as the person to have administered intoxicated substance but his evidence regarding the identification is suffered from the vice that the victim has not named the appellants and not identified the appellants by name. The evidence of the victim is only to the effect that six persons asked whether he will go to Maldha and then he disclosed that he will also go to Maldha then one person came and get him seated in the train and with the confidence and then administered him a biscuit by which he became unconscious and thereafter was taken to the hospital where he got consciousness. However, the identification of the appellants by name when no TIP of

the accused who has apprehended in the manner as alleged in the fardebayan and hence, his identification for the first time in Court does not inspire confidence and hence, the evidence that the appellants were present who had been administered intoxicated substance suffers from the infirmity and hence, having regard to the fact that since the identification of the appellants as the person who administered psychotropic substance to the informant suffers from the infirmity and further the physical possession of the intoxicated substance has not been proved and further the material seized has not been produced in Court and in the statement under Section 163 of the Cr.P.C. it is said that he knows the name of the person during the talk as Ajay Kumar Sah, Beni Choudhary, Kari Sahani @ Fagu Sahani and Umesh Yadav and Praveen Kumar Mandal. However, from the perusal of the statement under Section 164 of the Cr.P.C., it is apparent that this fact has been brought to the notice which is apparent. Moreover the identification of the appellants without introducing the name in the Court he has not been identified the appellants by name in the Court also but his identification only to the effect that he identified all the six accused without mentioning their names creates a doubt regarding the identification of the appellants by name and hence, having regard to the fact that the

judgment of conviction and order of sentence recorded by the trial Court is not sustainable in the facts and circumstances of the case.

11. Hence, I find and hold that the prosecution has not been able to prove the charges levelled against the appellants beyond all reasonable doubts and the judgment of conviction dated 14.05.2012 and order of sentence dated 19.05.2012 passed in G.R. Case No. 16 of 2012 (Katihar Rail P.S. Case No. 11 of 2012) by Shri Bateshwar Nath Pandey, the learned Sessions Judge-cum-Special Judge, Katihar, are hereby set aside and the appeals are allowed. Let, the appellants, above named, who are in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

Kundan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	