

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.320 of 2011

Arising Out of PS.Case No. -40 Year- 2006 Thana –Kishanganj, District- KATIHAR

- =====
1. Manik Chandra Roy Son of Sri Manindra Nath Roy, resident of Village- Kishmar Karola-II, P.S. Dinhata, District- Kuch Bihar (West Bengal).
 2. Mala Roy, Daughter of Suren Roy, resident of Village- Foketri-I, P.S. Dinhata, District- Kuch Bihar (West Bengal).

.... Appellants

Versus

The State of Bihar

.... Opposite party.

=====

Appearance :

For the Appellants : Mr. Sanjeev Kumar Singh, Advocate.

For the Opposite party : Mr. A. K. Sinha, A.P.P.

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 20-01-2016

The appellants have been convicted under section 20 B of the N.D.P.S. Act and sentenced to undergo R.I. for 12 years and fine of rupees two lakhs and in default of which to undergo R.I. for two years, by the judgment and order dated 21.01.2011/04.02.2011 passed by the Sessions Judge-Cum- Special Judge, Katihar in G. R. No. 157 of 2006 arising out of Kishanganj Rail P.S. Case No. 40 of 2006.

2. The case of the prosecution according to P.W.1 Banarsi Prasad, who was posted in G.R.P. Kishanganj, is that on 15.09.2006 he received secret information that somebody was

traveling on a particular train on certain seat number carrying ganja to Delhi. He constituted a raiding team and searched the train and he found under the seat of the Appellants a bag and attaché case and on opening three bags were found carrying 14 kgs, 10 kgs and 12 kgs ganja respectively in those bags. They seized those bags in presence of other witnesses and first information report was instituted on the statement on 15.09.2006.

3. The short point which has been raised on behalf of the appellants is that there is no sanctity of the procedure in drawing samples which was tested four years later and thus no conviction should be sustained. In order to appreciate the aforesaid argument we would like to go through the evidence.

4. P.W.1 Banarsi Prasad, the informant of the case, has stated that the appellants were caught in the train and under their berth a attaché case and bag was recovered and on search 30 kgs ganja were recovered which belong to them but they did not have any explanation. In cross-examination he did not say anything of relevance.

5. P.W. 2 Ramrati Devi was Havildar at the relevant time in G.R.P. Kishanganj and on the date of occurrence she being the member of raiding team searched the train and found the two appellants lying on the berths and recovered a brief case and two bags containing ganja under the berth. She also did not say anything of

reliance in her cross-examination.

6. P.W. 3 Veer Prakash Yadav was posted in the booking office at Kishanganj also supports the fact of search and seizure of ganja and arrest of these two appellants. In cross-examination he stated that bags were opened by the investigating officer in his presence and it was weighed in his presence and the sample was also sent for testing before him.

7. P.W. 4 Bahadur Shyamnandan Rai is a formal witness who has merely submitted the charge-sheet.

8. P.W. 5 Surendra Kumar was posted in the intelligence wing of B.S.F. Kishanganj and on the date of occurrence he had received information that some persons were traveling to Delhi with ganja and a raiding team was constituted. Thereafter, the appellants were arrested from the train along with 36 kgs of ganja which was seized by the G.R.P. He signed on the seizure list which was Ext. 3. In cross-examination he stated that he has seen the articles when it was brought to the platform and the bag and attaché both were opened by the G.R.P. people. He was also informed by the G.R.P. about the exact weight.

9. P.W. 6 Arvind Kumar is the investigating officer of the case who was A.S.I in Railway police station, Kishanganj on the date of occurrence. He stated that on the said date i.e. 15.09.2006 the appellants were arrested on secret information and under their seats



one briefcase and two bags were recovered. The appellants admitted that the articles belonged to them. He stated that he was with the Officer Incharge and all formality took place in front of him. He further stated that from the three bags 14 kgs., 12 kgs and 10 kgs ganja respectively was found of which seizure list was prepared and the appellants disclosed their names. They were all brought to the police station and the investigation was handed over to him on the said date till his transfer on 31.10.2006. To a court question he replied that he did not remember as to whether he had signed any document at the time of seizure and merely identified his handwriting on the seizure list and the signature of P.W.1 on Ext. 2. To a court query he again replied that sample was drawn of the seized articles and kept in one bag but was not sent to the court at that point of time. He further stated that he had not written in the case diary with regard to having prepared the samples nor was there any mention of the sample and the bags in the case diary. To a further court question he stated that he had not mentioned in the case diary with regard to the entries in the malkhana register in respect to the seized articles nor as to when it was entered in the malkhana register. He had also not noted in the case diary as to who was in actual possession of the seized articles. He also stated that he had not signed on the list of seized articles and he was handed over the same after it was prepared. He informed that he was the malkhana incharge.

10. Apart from this oral evidence, we find that the prosecution has brought on record the F.S.L. report, Ext.4 which is dated 29.09.2010. From the F.S.L. report we find that the article was received only on 11.11.2006, i.e. about two months later and was tested on 29.09.2010 yet another four years later and it was opined to be ganja.

11. From the aforesaid evidence we are unable to connect as to whether the F.S.L. report is in respect to the articles which had been seized from the possession of the appellants since the investigating officer has not explained the exact manner in which samples were drawn or sent for testing. In such circumstances, we have no option but to allow the appeal.

12. In the result, the appeal is allowed and the conviction and sentence imposed upon the appellants, by judgment and order dated 21.01.2011/04.02.2011 passed by the Sessions Judge-Cum- Special Judge, Katihar in G. R. No. 157 of 2006 arising out of Kishanganj Rail P.S. Case No. 40 of 2006, is set aside. The appellants are in jail custody. They are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

Abhay/-

(Jitendra Mohan Sharma, J)

U		T	
---	--	---	--