

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.416 of 2015

Arising Out of PS.Case No. -3 Year- 2011 Thana -SATHI District-
WESTCHAMPARAN(BETTIAH)

=====

Guljar Ram, son of Late Ghoghi Ram, resident of village- Vrindaban, P.S.- Sathi,
District- West Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 458 of 2015

Arising Out of PS.Case No. -3 Year- 2011 Thana -SATHI District-
WESTCHAMPARAN(BETTIAH)

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Sharma Chaudhary, Son of Sri Badan Chaudhary, resident of village - Gajna, P.S.
Yogapatti, District - West Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 612 of 2015

Arising Out of PS.Case No. -3 Year- 2011 Thana -SATHI District-
WESTCHAMPARAN(BETTIAH)

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Bharan Yadav, Son of Late Suraj Yadav, resident of Village- Balua, Brahmpura,
P.S. Yogapatti, District- West Champaran at Bettiah.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.416 of 2015)

For the Appellant/s : Mr. Umesh Chandra Verma-Advocate

For the Respondent/s : Mr. Binod Bihari Singh-A.P.P.

(In CR. APP (SJ) No.458 of 2015)

For the Appellant/s : Mr. Umesh Chandra Verma-Advocate
Mr./s Rashmi Jha-Advocate

For the Respondent/s : Mr. Sujeet Kumar Singh-A.P.P.

(In CR. APP (SJ) No.612 of 2015)

For the Appellant/s : Mr. Umesh Tiwari-Advocate

For the Respondent/s : Mr. Binod Bihari Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI



ORAL JUDGMENT**Date: 17-11-2017**

Cr. Appeal (S.J.) No.416 of 2015 wherein Guljar Ram is the appellant, Cr. Appeal (S.J.) No.458 of 2015 wherein Sharma Chaudhary is the appellant and Cr. Appeal (S.J.) No.612 of 2015 wherein Bharan Yadav is the appellant arise out against the common judgment of conviction dated 26.05.2015 and order of sentence dated 28.05.2015 passed by the Additional Sessions Judge-6th, West Champaran at Bettiah in connection with Sathi P. S. Case No.03 of 2011, N.D.P.S. Case No.09 of 2011, Trial No.60 of 2011, whereby and whereunder all the appellants have been found guilty for an offence punishable under Section 20(B)(II)(c) of the N.D.P.S. and has been directed to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.10,000/-, in default thereof, to undergo R.I. for six months additionally, under Section 20(c) of the N.D.P.S. and sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo R.I. for six months additionally with a further direction to run the sentences concurrently along with a direction that the period already undergone by the appellants during course of trial could be set off in terms of Section 428 of the Cr.P.C.

2. PW-7 Nagendra Paswan, S.I. of Sathi P.S. recorded his self-statement to the effect that on 24.01.2011, while he



along with other police personnel, armed constable, homeguards, Chaukidar were on day patrolling on account of Chehallum and reached at village-Vrindaban, he was confidentially informed regarding concealment of Ganja in huge quantity in the hip of straw lying west to the house of Guljar Ram in a bamboo cluster whereupon, he took Shashi Kumar Singh, Umesh Yadav to be the witnesses, gone to the place, removed the straw and then, found sixteen (16) bundles of Ganja each weighing 16 k.g. that means to say, totaling 256 k.g. It has also been alleged that Bharan Yadav, Sharma Chaudhary were found keeping watch over the same and were apprehended. Accordingly, seizure list was prepared, recorded his self-statement and then thereafter, returned back to the police station where after registration of the substantial case bearing Sathi P. S. Case No.03 of 2011, investigation commenced and concluded by way of submission of chargesheet on the basis of which, trial commenced and concluded in a manner, subject matter of instant appeal.

3. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither oral nor documentary evidence has been adduced on behalf of appellants.

4. The learned counsels for the appellants are very methodological in challenging the judgment of conviction and



sentence whereunder they submitted that on account of non-compliance of mandatory provisions of law as well as non-production of material exhibit, samples, if any, prepared in terms of Section 52(A) of the N.D.P.S. Act coupled with deficiency at the end of the prosecution on account of non-preparation of sample at the spot, non-sealing of the seized articles at the spot, degenerated the whole prosecution and that happens to be reason that judgment of conviction and sentence would not survive.

5. On the other hand, learned Additional Public Prosecutor though unsuccessfully tried to defend, but on query, fairly submits that mandatory provisions of law have not been properly complied with by the informant as well as by the Investigating Officer and on account thereof, there happens to be certain lapses at their end, but those are not so severe to give jolt to the prosecution version.

6. In order to substantiate its case, prosecution had examined altogether 11 PWs viz. PW-1 Umesh Yadav, PW-2 Shashi Kumar Singh, PW-3 Dhruv Yadav, PW-4 Binod Yadav, PW-5 Aklu Yadav, PW-6 Suresh Yadav, PW-7 Nagendra Paswan, PW-8 Krishna Chauhan, PW-9 Langtu Sahni, PW-10 Bipin Bihari Singh and PW-11 Ram Narayan Singh. Side by side, had also exhibited viz. Exhibit-1 series, signature of witnesses over the seizure list, Exhibit-2 seizure list, Exhibit-3 fard-bayan, Exhibit-3/1 endorsement over the fard-



byan, Exhibit-4 formal F.I.R., Exhibit-5 copy of an application filed by the I.O. for allowing the sample to be sealed as well as for its transmission to the F.S.L. and Exhibit-6 F.S.L. Report.

7. Now, coming to the status of the witnesses in consonance with the nature of the evidence having adduced at their end, it is apparent that PW-1 and PW-2 seizure list witnesses, though admitted their presence over the seizure list, but prosecution to reason best known to it, did not attempt to explicit from their mouth with regard to search and seizure having in their presence. During cross-examination, they completely demolished the case of the prosecution disclosing that nothing was recovered in their presence nor the accused were apprehended. PW-3 is the driver of a jeep. During his examination-in-chief, it is evident that though he had supported the case of the prosecution, but again the prosecution happens to be at fault as his attention has not been drawn with regard to identification of the appellants in dock and so, had gone useless. Moreover, at Para-4 of his cross-examination, he had stated that he deposed on the basis of hearsay basis. PW-4 Binod Yadav, one of the Chaukidar, who also deposed in similar fashion and again, the prosecution treated this witness in same manner than that of PW-3, as prosecution had not cared got the accused identified in dock.

8. So far status of PW-5 Aklu Yadav, a Chaukidar,



PW-6 Suresh Yadav, a Chaukidar, PW-9 Langtu Sahni, a Home Guard Constable are concerned, they all have gone volte-face to the prosecution, whereupon were declared hostile. Now, coming to remaining witnesses that means to say, PW-7 Nagendra Paswan, informant, PW-8 Krishna Chauhan, one of the member of the raiding party, PW-10 Bipin Bihari Singh, one of the member of the raiding party as well as PW-11 Ram Narayan Singh, one of the raiding party as well as the Investigating Officer, from their evidences, it is crystal clear that they have tried to substantiate the prosecution case stating that on getting confidential information, they gone to the bamboo cluster, removed the straw and then, found sixteen bundles of Ganja each containing 16 k.g. and further, with regard to apprehension of Sharma Chaudhary as well as Bharan Yadav on the pretext that they were apprehended while keeping watch over the aforesaid articles, but from their evidence, it is apparent that none had disclosed with regard to preparation of sample, sealing of the seized articles at the spot. One of the witness (PW-8) had stated that only one bundle was torn by means of Chhura and was found to be Ganja. Furthermore, it is also evident that none of them had stated that after entrustment of investigation to PW-11, the seized articles were handed over to the PW-11, who kept it at Malkhana and in likewise manner, PW-11 failed to say that he received custody of the seized articles, deposited



in Thana Malkhana under proper head and further, there from it was taken out and produced before the Court in order to prepare samples. Moreover, in accordance with Section 55 of the N.D.P.S. Act, it happens to be the Officer-in-Charge before whom the article has to be deposited, who after putting his seal, will have to deposit in same Malkhana. Such exercise is found completely lacking. Apart from this, from Exhibit-6 F.S.L. Report, it is evident that the requisition in examination of seized articles by the District & Sessions Judge (Special Judge) happens to be dated 20.10.2011, but the same was received at the end of the F.S.L. Office on 09.11.2011. Apart from this, the mode of sampling has also not been narrated by the I.O. (PW-11) whether from all the packets, sample was taken out or it was from single bundle. Not only this, during course of trial, neither the I.O. had deposed that seized articles were destroyed after having inventory in presence of the Magistrate in terms of Section 52(A) of the Act. Had there been, then in that event, one of the sample should have been an exhibit of the record otherwise the material would have been before the Court during course of trial as well as should have been the material exhibit. That being so, there happens to be serious lapses at the end of the prosecution, whereupon instant trial has become mockery. Irrespective of the fact that copy of so many judgments have been served upon the prosecution in order to give a sermon to a



prosecuting agency so that in spite of presence of ample material, the defect should not exist as prosecution under N.D.P.S. Act happens to be not for the safety of youngsters rather it is for protection of the generation forbidding them being victimized on account of addiction. Apart from this, it is also apparent that none of the witnesses have stated that they have served information to their superior officials in terms of Section 42(2), 57 of the N.D.P.S. Act. Delay to some extent has been condoned by the Constitution Bench in ***Karnail Singh vs. State of Haryana reported in (2009) 8 SCC 539***, but prosecution has not been exonerated to discharge its obligation.

9. In ***Vijay Jain vs. State of Madhya Pradesh with Nilesh Suryakant Shah vs. State of Madhya Pradesh reported in (2013) 14 SCC 527***, it has been held by the Apex Court:-

“9. Paragraph 96 of the judgment of this Court in Noor Aga's case (2008) 16 SCC 417, on which learned Counsel for the State very strongly relies is quoted herein below:

“96. Last but not the least, physical evidence relating to three samples taken from the bulk amount of heroin was also not produced. Even if it is accepted for the sake of argument that the hulk quantity was destroyed, the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged Under Section 52-A of the Act.”



Thus, in paragraph 96 of the judgment in Noor Aga's case, (2008) 16 SCC 417, this Court has held that the prosecution must in any case produce the samples even where the bulk quantity is said to have been destroyed. The observations of this Court in the aforesaid paragraph of the judgment do not say anything about the consequence of non-production of the contraband goods before the Court in a prosecution under the NDPS Act.

10. On the other hand, on a reading of this Court's judgment in Jitendra's case (2004)10 SCC 562, we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in the case of Ashok (2011)5 SCC 123, this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its non-



production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the Appellant.

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12. We are thus of the view that as the prosecution has not produced the brown sugar before the Court and has also not offered any explanation for non-production of the brown sugar alleged to have been seized from the Appellants and as the evidence of the witnesses (PW 2 and PW3) to the seizure of the materials does not establish the seizure of the brown sugar from the possession of the Appellants, the judgment of the trial court convicting the Appellants and the judgment of the High Court maintaining the conviction are not sustainable.”

10. The infirmity as pointed out hereinabove did not justify the judgment impugned. Consequent thereupon, same is set aside. All the three appeals are allowed. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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