

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.184 of 2016

Arising Out of PS.Case No. -23 Year- 2012 Thana -MANPUR
District- WESTCHAMPARAN(BETTIAH)

=====

Noorjahan Khatoon Wife of Noor Mohammad resident of village -
Katti Balua, P.S. Pokhariya, District - West Champaran

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

=====

Criminal Appeal (SJ) No. 198 of 2016

Arising Out of PS.Case No. -23 Year- 2012 Thana -MANPUR
District- WESTCHAMPARAN(BETTIAH)

- =====
1. Khedu Rai son of Late Kishun Rai resident of Village-
Lawker, P.S. Manpur, District- West Champaran.
 2. Dhrup Rai son of Late Kishun Rai resident of Village-
Gadiyani Bhangaha, P.S.- Bhangaha, District- West
Champaran.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

=====

Appearance :

(In CR. APP (SJ) No.184 of 2016)

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

For the Respondent/s : Mr. Z. Hoda, APP

(In CR. APP (SJ) No.198 of 2016)

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

For the Respondent/s : Mr. Binod Bihari Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 12-04-2018

Both the appeals have been heard together and a



common judgment is being passed.

2. The appellants have been convicted under Sections 20(b) (11) (C) and 22 (C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 by judgment dated 05.02.2016 passed by the learned 6th Additional District & Sessions Judge, West Champaran at Bettiah in Trial No. 07 of 2013, arising out of Manpur P.S. Case No. 23 of 2012 and by order dated 10.02.2016, the appellants have been sentenced to undergo rigorous imprisonment for ten years for each of the offences and to pay a fine of Rs. 1,00,000/-(one lakh) each and in default of payment of fine, to further suffer imprisonment for six months each. The sentences have been ordered to run concurrently.

3. The appellant/Noorjahan Khatoon is said to have been found in possession of one and half kilogram of *Charas* whereas from the house of appellant/Khedu Rai, four kilograms of *Charas* was recovered.

4. The case of the prosecution is based on the self statement of Subhash Kumar Singh, the Officer-in-charge of Manpur Police Station, who has been examined as P.W. 5 at the trial. He has stated in his self statement that on 07.08.2012, he received a confidential information that some persons are proceeding towards Biranchi Bazar from village Lauker with contraband/narcotics. On such information, a team was constituted by P.W. 5 and along with other police personnel, he



proceeded towards village Lauker. On approaching a dilapidated bridge, the police party saw a woman with two children and one person moving towards village Biranchi Bazar. Seeing the police party, they made attempts to run away but were nabbed. In presence of two independent witnesses viz. Jahur Mian and Ramesh Paswan, who have been examined as P.Ws. 1 and 4 respectively, a search of the person of Noorjahan Khatoon was made. From her possession, one and half kilograms of Nepali *Charas*, kept in three yellow plastic packets were found kept in her purse. Nothing, except a mobile telephone was recovered from the possession of appellant/Dhrup Rai who was accompanying appellant/Noorjahan Khatoon. On deeper probe, the appellant/Dhrup Rai disclosed that the part of the consignment of contraband was kept in the house of his brother/ Khedu Rai. On such disclosure, the police party along with the arrested appellants went to the house of appellant/Khedu Rai and in presence of two witnesses viz. Vikash Kushwaha and Naresh Sah, who have been examined as P.Ws. 2 and 3 respectively, searched his house. From beneath the firewood kept in the house, four kilograms of *Charas*, kept in eight packets were recovered. A seizure list was prepared and the appellants were arrested. It was disclosed by the appellants that one Bablu Mian of Nepal was the person behind the transportation of the aforesaid narcotics. On the basis of the



aforesaid self statement, Manpur P.S. Case No. 23 of 2012 dated 07.08.2012 was registered for investigation for the offences under Sections 20, 22, 23, 24, 27(A) and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

5. The police, after investigation submitted charge-sheet whereupon cognizance was taken and the case of the appellants were tried. With respect to two other persons whose names were disclosed by the appellants, investigation was kept pending.

6. The learned Trial Court, after examining ten witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellants as aforesaid.

7. Mr. Umesh Chandra Verma, learned advocate for the appellants has submitted that the judgment and order of conviction cannot be sustained in the eyes of law as the prosecution has failed to prove any charge against them beyond reasonable doubt. In support of the aforesaid contention, learned counsel for the appellants has submitted that the seizure list witnesses at two places viz. at the place where the appellant/Noorjahan Khatoon and Dhrup Rai were arrested and at the house of appellant/Khedu Rai, viz. P.W.s 1, 2, 3 and 4 have not supported the prosecution version. It has further been submitted that one of the members of the team, constable Md. Ilyas Hussain (P.W. 9) has also not supported the prosecution



version and has stated that the raiding team did not offer themselves for search before searching the appellants or the house of one of the appellants. He has also stated before the Trial Court that the articles which are said to have been recovered were neither weighed nor sealed.

8. The other ground for assailing the judgment and order of conviction is that despite one of the accused persons/appellants being a lady, no lady constable effected the search which is evident from the fact that no lady Constable has been brought to the witness box to depose that in her presence, the appellant/Noorjahan Khatoon was searched.

9. That apart, it has been submitted that there has been violation of the provisions of Sections 42(2), 50, 55 and 57 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and since these are mandatory provisions, non-compliance of the same has rendered the prosecution version absolutely vitiated and therefore doubtful.

10. A grievance has also been raised with respect to the sampling of the seized articles and sending the same to the Forensic Science Laboratory for ascertaining whether the articles which were seized, were narcotics. It has been argued that only one sample was taken out from one of the packets and the same was sent to the FSL vide Memo dated 24.08.2012, which reached the FSL on 08.10.2012. It is also not known as to where



the seized articles were kept between the period of seizure and drawing of sample as well as before the same was disposed off. The seized articles were not produced before the Court, leading to perhaps the inference that it had been disposed off. In that event, it was necessary for the prosecution to have brought on record the inventory of such seized articles and in the absence of production of even inventory of the seized articles, there was no primary or secondary evidence with respect to the seizure of the aforesaid articles before the Trial Court.

11. In order to test the correctness of the aforesaid submissions, it would be necessary to refer to the deposition of the witnesses.

12. Jahur Mian, Vikas Kushwaha, Naresh Sah and Ramesh Paswan, who have been examined as P.W.s. 1, 2, 3 and 4 respectively have, though, identified their signature but have clearly stated that nothing was recovered in their presence and that they had appended their signature on blank piece of paper on the asking of the Officer-in-charge of the Police Station.

13. The informant of this case viz. Subhash Kumar Singh (P.W. 5), though, has supported the prosecution version but in his cross examination, has stated that the articles were seized by one Satyadeo Singh and the packets which were recovered from the purse of the appellant/Noorjahan Khatoon and from the house of appellant/Khedu Rai were not opened.



The weight of the aforesaid seized item was stated on the basis of guesswork. He has also not clearly stated whether he reduced the information which he received about the transportation of the narcotics in writing and whether he had sent the same to the Superior Police Officer as mandated under Section 42(2) of the Narcotic Drugs & Psychotropic Substances Act, 1985.

14. Thus, from the evidence of P.W. 5, it becomes very clear that the narcotic was not weighed and in fact no effort was made to open the packets and then seal it.

15. In that event, it was very necessary for the prosecution to have either brought on record the inventory of such seized articles before the Court or the seized articles itself for coming to any conclusion regarding the correctness of the prosecution version. It also does not appear to be clear whether the other provisions of the Narcotic Drugs & Psychotropic Substances Act, 1985 were complied with.

16. Though the aforesaid witness has admitted of there being a lady Constable in the team which had effected the search but non-examination of the aforesaid lady Constable as a witness makes the statement of P.W. 5 highly doubtful. In that event, there appears to be a serious violation of Section 50 (4) of the Narcotic Drugs & Psychotropic Substances Act, 1985 which mandates that a lady accused shall not be searched in the absence of a lady Constable. The statement of P.W. 5 regarding



the presence of a lady Constable in the raiding team is further rendered doubtful on the statement of Navin Kumar, a constable and another member of the raiding team who has been examined as P.W. 6. He, in his cross examination has clearly stated that there was no lady Constable in the entire raiding team.

17. Similarly Rajiv Kumar Deepak and Manoranjan Kumar, two other Constables, who were part of the raiding team, have clearly stated that P.W. 5 or other members of the raiding team did not offer themselves for being searched before conducting the search on the person of the appellants.

18. Thus, from the deposition of the aforesaid witnesses, it becomes very clear that many of the mandatory provisions of the Narcotic Drugs & Psychotropic Substances Act, 1985 have been totally flouted and ignored.

19. Satyadeo Prasad Singh, the Investigating Officer of this case, who has been examined as P.W. 10 has also affirmed the fact that the sample of the narcotic was taken only from one packet and the weight of the aforesaid narcotic was stated only on the basis of guesswork. There was no weighment of the narcotics either at the place of seizure or in the Police Station. His deposition also does not provide any clue as to where was the narcotics kept after its seizure. No inventory appears to have been made with regard to the seized articles. The moharir of the



Malkhana, if at all the narcotics were kept in the *Malkhana*, has not been examined.

20. The sample was sent to the Forensic Science Laboratory after about two months of the seizure but it had reached to the Forensic Science Laboratory after four months i.e. on 08.10. 2012.

21. The learned counsel for the appellants, therefore submits that in face of such anomalies, the report of the Forensic Science Laboratory indicating that the sample sent to it was found to be containing *Charas*, is rendered insignificant. There is no evidence with respect to what sample from which stock was sent to the Forensic Science Laboratory, for such report to be accepted.

22. Thus, to tie the strings together, the seizure list witnesses at two places had not supported the prosecution version; the information to P.W. 5 which made him conduct the raid was not reduced in writing and sent to the Superior Police Officer within the time prescribed; and the lady accused/appellant was not searched by a lady Constable. Coupled with all this, the seized narcotics was not produced before the Trial Court and no inventory of the same was prepared. Thus, it cannot even be said that the seized article were disposed off.

23. The Trial Court, therefore did not have any



evidence before it with respect to the search and seizure.

24. In that view of the matter, it is difficult to sustain the conviction and sentence of the appellants.

25. Accordingly, the judgment and order of conviction and sentence dated 05.02.2016 and 10.02.2016 respectively passed by learned 6th Additional District & Sessions Judge, West Champaran, Bettiah in Trial No. 07 of 2013, arising out of Manpur P.S. Case No. 23 of 2012, is set aside.

26. The appeals are allowed.

27. The appellants are acquitted of all the charges.

28. The appellants are in custody. They are directed to be released from jail forthwith, if not wanted in any other case.

29. Let a copy of this order be transmitted to the Superintendent of the concerned Jail for compliance and needful action.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13/04/2018
Transmission Date	13/04/2018

