

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.17 of 2009

Arising Out of Akangarsarai PS.Case No. -26 Year- 96 Thana –Akangarsarai (Telhara) District-
NALANDA (BIHARSHARIFF)

- =====
1. Sitab Gope son of Late Deochan Gope
 2. Deonandan Gope son of Charitar Gope
 3. Nathun Gope son of Late Sheochan Gope
 4. Alakh Gope son of Late Yadu Gope, all residents of village-Chandpur, P.S.-
Akangar Sarai (Telhara) and District-Nalanda

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi (Amicus Curiae)

For the Respondent/s : Mr. Bal Mukund Pd. Singh, Addl. P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 08-03-2018

None appeared on behalf of the appellants. Sri Arun Kumar Tripathi, is appointed as Amicus Curiae to assist the Court on behalf of the appellants. However, counsel for the State is present.

By judgment of conviction and order of sentence dated 17th September, 2008, passed by the 1st Additional Sessions Judge, Nalanda at Biharshrif, in G.R. N.110 of 1996/Ekangarsarai (Telhara) P.S. Case No.26 of 1996, all the appellants have been convicted under Section 29(a) of the NDPS Act and sentenced to undergo rigorous imprisonment for six months under Section 20 (a) of the NDPS Act.

Learned amicus curiae has submitted that seizure list witness has not supported the case. There is no signature of the



appellants on the seizure list. There is no valid proof that the land from which the cannabis plants were recovered belonged to these appellants.

Learned A.P.P. has submitted that there is no illegality in the impugned judgment.

The prosecution case as per fard beyan of Syed Naushal Ali (P.W.1) in short is that on 28.01.96 he received written order of Inspector of Police of Ekangarsarai to raid Ganza plantation at village Chandapur with other forces. He made entry in the station diary and proceeded to the house of Sitab Gope. The raid was made in presence of two independent witnesses. From the back portion of the house of Sitab Gope, five green trees of cannabis each of 4 feet height fenced with palm leaves were recovered. Seizurelist of the seized articles were prepared. Thereafter the house of Deonandan Gope was raided. From the Khand of Deonandan Gope, 5 green cannabis trees of five feet height were recovered in presence of independent witnesses. The seizurelist was prepared. Deonandan Gope was absconding. Thereafter the house of Nathun Gope was raided and adjacent east of his house from his Khand four green trees of cannabis of five feet and three feet height respectively were recovered in presence of independent witnesses. The seizure list was prepared. The house of Alakh Gope was raided and searched. Two green plants of cannabis



of three feet height were recovered from the courtyard of Alakh Gope. The seizure list was prepared. The case was registered against all the accused persons. The police after investigation submitted chargesheet u/s 20 (a) of the N.D.P.S. Act against the accused persons.

The Court below after conclusion of trial convicted the appellants for the offence U/s 20 (a) of the N.D.P.S. Act and sentenced them to undergo R.I. for six months.

During the course of trial, prosecution has examined, altogether seven witnesses namely P.W.-1 Saiyed Naushad Ali, A.S.I. of Telhara Police Station, is informant. He was leader of raiding party. He has supported the prosecution case. P.W. 2 Dilip Kumar Yadav was also member of raiding party. PW 3 Deepak Chand was also member of raiding party. P.W.-4 Devendra Prasad was Jr. S.I. He has been tendered. P.W.-5 was also member of raiding party. He has supported the prosecution case. P.W.-6 R.N. Yadav is Investigating Officer. He had sent the seized plants for chemical examination to Excise Inspector and also received the report. P.W.-7 Dinesh Prasad is seizure list witness. He has signed over the seizure list at Telhara school which was not the place of occurrence.

P.W.1 Syed Naushad Ali is the informant of this case. He has stated in his evidence that he received confidential information



from Inspector that in village Chandpur, there is plantation of cannabis. He received instruction to commit raid there. He made entry in the station diary and proceeded for village Chandpur with police force. He raided the house of Sitab Gope in village Chandpur and recovered five green cannabis trees of 4 feet height each fenced with palm leaves. The same was seized in presence of Dhuri Lal and Nasibi Lal. Sitab Gope was arrested. He has proved the seizure list which is marked as Exhibit-1. Thereafter, he raided the house of Deonandan Gope and recovered five green cannabis plant each of 4 feet or five feet height. Those cannabis plants were also seized in presence of independent witnesses and the seizure list was prepared. This seizure list was marked as Exhibit-1/1. Thereafter, he raided the house of Nathun Gope and recovered four green cannabis plants in presence of Satendra Singh and Dinesh Singh. Seizure list was prepared, which was marked as Exhibit 1/2. Thereafter, he raided the house of Alakh Gope and recovered two cannabis plants in presence of witnesses Dhuri Lal and Nasib Lal and prepared seizure list. The seizure list was marked as Exhibit 1/3. This witness has further stated that he recorded his self-statement at 4.30 P.M. in village Chandpur and came to police station with Sitab Gope and handed over recovered cannabis plant to the Officer-incharge. He has further stated that he recorded the fard beyan which is marked as Exhibit-2 in



this case. In his cross-examination, this witness has admitted that the recovered plant was got examined by Excise Inspector. He has also admitted that the seizure was not made in presence of any Gazetted Officer.

P.W.2 was member of raiding party. He has deposed exactly in the same tune as P.W.1. In his cross-examination he has admitted that no person of Excise Department was present at the time of raid. He has stated that his statement was recorded by the I.O., in the police station.

P.W.3 was also member of raiding party. He has supported the recovery of cannabis plant from the field of four accused persons.

P.W.4 is a tendered witness.

P.W.5 was also member of raiding party. He has stated about the recovery of cannabis plant from the possession of four accused persons.

P.W.6 is I.O. of this case. He received the charge of investigation on 27.02.96. He obtained the supervision note, arrested the accused Nathun Prasad. The other accused persons have already surrendered in Court. He sent the cannabis plant for examination to Excise Inspector. He received report of the Excise Inspector. He also proved the report of Excise Inspector which has been marked as Exhibit-3 in this case. He submitted charge-sheet.



P.W.7 is seizure list witness. He has identified his signature on one of the seizure list which is marked as Exhibit-5. In the cross-examination, he has stated that he signed on the seizure list at Telhara School at the instance of Officer-in-charge, Telhara.

In this manner from evidence of prosecution witnesses it appears that seizure list witness has not supported the prosecution case. The recovery was made from the field and not from conscious possession of all these appellants. The prosecution has not brought any evidence on record that land from which recovery was made belonged to these appellants.

The Members of raiding party were not searched before the raid in presence of any Gazetted Officer. The Seizure was not made in presence of Gazetted Officer. There is also no evidence that prior to entry into the place of occurrence, searching Officer had given their own search, which is violation of mandatory provision of law.

Therefore, this Court on the basis of aforesaid evidence of prosecution witnesses come to conclusion that prosecution has not been able to prove the charge beyond all reasonable doubts against the appellants for the offence u/s 20 (a) of the N.D.P.S. Act.

Accordingly, judgment of conviction and order of sentence dated 17th September, 2008, passed by the 1st Additional Sessions Judge, Nalanda at Biharshrif, in G.R. N.110 of 1996/Ekangarsarai



(Telhara) P.S. Case No.26 of 1996 against the appellants, is hereby set aside.

All the four above named appellants are acquitted of the charge levelled against them. The appellants are discharged from liability of their respective bail bonds.

This appeal is, accordingly, allowed.

(Sanjay Priya, J)

Kamlesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.03.2018
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