

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1891 of 2017

Arising Out of PS.Case No. -26 Year- 2014 Thana -KANGALI
District- WESTCHAMPARAN(BETTIAH)

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Budhiya Devi W/o Dhrup Ram @ Dhrupnarayan Sah Resident of
Village - Mehnor Kala, P.S. - Gaunaha, District - West Champaran,
Presently residing at Hardiya Chowk, Narkatiaganj, Dist. West
Champaran.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Advocate
Mr. Uday Pratap Singh, Advocate
For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 09-04-2018

The appellant/Budhiya Devi has been convicted under Section 22(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 by judgment dated 15.04.2017 passed by the learned 2nd Additional District & Sessions Judge, Bettiah, West Champaran in Trial No. 40 of 2014, arising out of Kangali P.S. Case No. 26 of 2014 and by order dated 21.04.2017, she has been sentenced to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 1,00,000/-(one lakh) and in default of payment of fine, to further suffer rigorous imprisonment for one year.

2. The appellant was found to be in possession of 2



Kgs of *Charas* while she was trying to cross the border from Nepal to India.

3. The prosecution case is based on the self statement of Jitendra Kumar Suman, the then Officer-in-charge of Kangali Police Station and informant of Kangali P.S. Case No. 26 of 2014, lodged on 07.07.2014. He has been examined as P.W. 1 at the trial. In his self statement referred to above, he has alleged that on the same day i.e. on 07.07.2014, he received information through his Superior Officers that some persons are coming with *Charas* from Nepal to India. The aforesaid information was reduced in writing in the Station Diary and after constituting a team, he proceeded towards the border at about 7:55 A.M and spotted, near Canal Pillar No. 406, that a woman from the side of Nepal is coming with a bag in her hand. On being asked about the aforesaid bag, the woman started running away but she was nabbed. She disclosed her name as that of the appellant and was searched by a lady Constable. In front of two independent witnesses viz. Bhola Yadav and Radha Yadav, the bag which was being carried by her, was searched and it was found that it contained *Charas*. For her inability to accord any reason for carrying the aforesaid narcotic, the appellant was arrested, a seizure list was prepared. On the basis of the aforesaid self statement, a case vide Kangali P.S. Case No. 26 of 2014 dated 07.07.2014



was instituted for investigation for the offences under Sections 22, 22, 23, 24, 27(a), 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

4. The police, after investigation submitted charge-sheet whereupon cognizance was taken and the appellant was tried for the offences.

5. The learned Trial Court, after examining five witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellant as aforesaid.

6. From the deposition of the informant/P.W. 1, it appears that the information which was received by him regarding transportation of narcotic from Nepal to India was not reduced in writing and sent to the Superior Police Officers as mandated under Section 42(2) of the Narcotic Drugs & Psychotropic Substances Act, 1985.

7. It further appears from the deposition of the aforesaid witness that the appellant was not made to know that she had an option/right of being searched in presence of a Gazetted officer. That apart, there is nothing in the deposition of the P.W. 1 which can lead this Court to ascertain that the Police Team had offered themselves for being searched before conducting search of the person or belongings of the appellant. Admittedly, the consignment of *Charas* was not sealed at the time of its search. It also does not clearly appear from the F.I.R



as also from the deposition of P.W. 1 as to how the sample was drawn from the said recovered narcotic and where was that consignment kept in the interregnum.

8. Similarly, Rinku Kumari, the lady Constable, who has been examined as P.W. 2, has though, supported the prosecution version of the appellant having been arrested on the day of the occurrence and her having been found in possession of 2 Kgs of *Charas*, but she also has not stated that she had offered herself for search before searching the belongings or the person of the appellant. She has stated during her deposition that she had not opened the packet of *Charas*.

9. Similar statements have been made by Abhay Kumar/P.W. 3 and Dinesh Kumar Paswan/P.W. 4 who have only spoken about the appellant having been nabbed at the border of Nepal and India with *Charas*.

10. Navin Sharma/P.W. 5 is the Investigating Officer of this case who claims to have taken the statements of the members of the Police Team. He has clearly stated in his deposition that the consignment of narcotic was not seized in his presence.

11. Learned counsel appearing for the appellant has, therefore, submitted that none of the mandatory provisions of the Narcotic Drugs & Psychotropic Substances Act, 1985 have



been complied with while effecting the arrest of the appellant and preparing the seizure list. He further submits that neither of the two independent witnesses, before whom the seizure list was effected, have been brought to the witness box to affirm the factum of recovery from the appellant. No explanation also has been offered by the prosecution for the same.

12. The fact that the Police Party did not offer themselves for search by the appellant before putting her to search; not informing the appellant of her right to be searched in presence of a Gazetted Officer and secret information on which the raid was made, not having been reduced into writing and transmitted it to the Superior Officers, render the prosecution case absolutely doubtful.

13. This Court has no idea as to how the *Charas* was weighed the time of search or seizure.

14. In the absence of any sealing or sampling at the place of occurrence, it is not certain as to for possession of what article, has the appellant been tried and convicted. It further appears from the record that the sample of the *Charas* was sent to the Forensic Science Laboratory after two months i.e. on 15.09.2014. There is nothing on record so as to know as to where was the sample or the consignment of *Charas* kept in the meanwhile.

15. In that view of the matter, even the report of the



Forensic Science Laboratory loses its relevance.

16. It appears that the Court below/Trial Court has very casually handled the matter and has not taken care to know as to where was the consignment of *Charas* kept in the meanwhile, before the sample was drawn and sent to the Forensic Science Laboratory. Even the mode in which the parcel was found to be packaged on receipt and description of the seal has not been clarified in the report of the Forensic Science Laboratory.

17. Thus, for the aforesaid reasons, viz. non-compliance of the mandatory provisions of the Narcotic Drugs & Psychotropic Substances Act, 1985 and the prosecution of the appellant appearing to be doubtful at all stages, this Court is left with no option but to set aside the order of conviction and sentence.

18. Accordingly, the judgment and order of conviction and sentence dated 15.04.2017 and 21.04.2017 respectively passed by learned 2nd Additional District & Sessions Judge, Bettiah, West Champaran in Trial No. 40 of 2014, arising out of Kangali P.S. Case No. 26 of 2014, corresponding to N.D.P.S. Case No. 11 of 2014 is set aside.

19. The appeal is allowed.

20. The appellant is acquitted of all the charges.

21. The appellant is in custody. She is directed to be



released from jail forthwith, if not wanted in any other case.

22. Let a copy of this judgment 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	10/04/2018
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