

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2755 of 2017

Arising Out of PS. Case No.-40 Year-2011 Thana- INARWA District- West Champaran

Mugle Azam, Son of Jumddin Mian @ Jumddin Ansari, resident of Village-
Masihani, P.S.- Pokhariya, District- Parsa (Nepal).

... .. Appellant/s

Versus

1. Union of India through Inspector General, S.S.B., Frontier Head Quarters,
Patna.
2. The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Umesh Chandra Verma, Advocate
For the Union of India	:	Ms. Shail Kumari (C.G.C.)
For the State	:	Mr. Parmeshwar Mehta (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 03-08-2018

Heard learned counsel for the appellant and the
State.

2. The appellant has been convicted under
Section 22(b) of the Narcotic Drugs and Psychotropic
Substances Act, 1985 by judgment dated 26.07.2017
passed by the learned 3rd Additional Sessions Judge, West
Champaran, Bettiah in Trial No. 15 of 2012 arising out of
Inarwa P.S. Case No. 40 of 2011 pertaining to N.D.P.S.
Case No. 74 of 2011; and by order dated 03.08.2017 he
has been sentenced to undergo R.I. for four (4) years, to
pay a fine of Rs. 40,000/- and in default of payment of
fine to further suffer S.I. for a period of six months.



3. The appellant was found to be in possession of 5 Kgs. of Ganja

4. The case of the prosecution is based on the written report of Mukut Sanwal, who has been examined as P.W. 4 at the trial. He has stated that on 17.10.2011, while he was on the patrolling duty, he found one person coming from Nepal side with a black coloured bag. Seeing the police party, the aforesaid person wanted to run away but was apprehended and his bag was searched. Inside the bag, there were two packets of Nepali Ganja which was tied in a polythene bag. The weight of the Ganja was 5 Kgs. In front of two independent persons viz. Ram Pravesh Patel and Sunil Paswan and P.W. 1 and P.W. 2 respectively, the same was seized. The arrested person disclosed his name as that of the appellant.

5. On the basis of the aforesaid written report, a case vide Inarwa P.S. Case No. 40 of 2011 dated 17.10.2011 was registered for the offences under Sections 20, 22 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

6. The police, after investigation, submitted charge sheet whereupon cognizance was taken and the case was committed to the Special Court for trial.

7. The learned trial court, after examining seven witnesses on behalf of the prosecution and none on behalf



of defence, convicted and sentenced the appellant as aforesaid.

8. Learned advocate appearing for the appellant has submitted that none of the mandatory provisions of the N.D.P.S. Act, 1985 have been followed. It has further been argued that neither the sample was drawn from the seized narcotics nor was any sample sent for any forensic examination. There is also no evidence with respect to weighing of the narcotics. In the absence of any forensic report, the article which is said to have been seized from the possession of the appellant could not be established to be a narcotic. Lastly, it has been argued that the provisions with respect to Section 100 of the Code of Criminal Procedure has been completely flouted. The appellant was not searched in front of a Gazetted Officer. The evidence with respect to keeping of the seized narcotics at a proper place of safety is absolutely lacking. It has been urged, therefore, that the appellant was falsely implicated in the present case and the trial court has recorded the finding of guilt without there being any legal evidence against the appellant.

9. From the evidence on record, it appears that though the informant/Mukut Sanwal who has been examined as P.W. 4 has supported the prosecution version but has not been able to prove the case beyond reasonable



doubts. He has stated in his examination-in-chief that the appellant was coming from Nepal side and on seeing the police party he began to run away. After he was apprehended, his bag was searched from where 5 Kgs. of Ganja was recovered. He has further deposed that the aforesaid Ganja was deposited in the police station. In his cross-examination, he has categorically stated that no information was given to the next friend or relative of the appellant regarding his arrest and seizure. The narcotic which is said to have been seized from the possession of the appellant was neither tested by Field Test Kit nor was sent to Forensic Science Laboratory for ascertaining whether it was Ganja. From the deposition of P.W. 4 it becomes very clear that none of the ingredients of the offence under Section 20(B) of the N.D.P.S. Act, 1985 can at all be said to have been made out.

The two seizure list witnesses viz. Ram Pravesh Patel (P.W. 1) and Sunil Paswan (P.W. 2) have not supported the prosecution version and have stated that nothing was recovered from their possession. Though they have put their signature on the seizure list, but that was only on the insistence of P.W. 4, on a printed sheet of paper.

10. Learned counsel for the appellant has therefore argued that in the absence of the supportive



evidence of the seizure list witnesses, the case becomes absolutely doubtful.

One of the members of the team viz. Mahavir Singh who has been examined as P.W. 5 has also, in his cross-examination, stated that the assumption of the raiding team that whatever was seized from the possession of the appellant was narcotic was only on the basis of the disclosure of the appellant. He has stated that the seized narcotic was weighed in the headquarters. He has further stated that he would find it rather difficult to identify the appellant but can do so after intently seeing him. He has, in his cross-examination, further admitted that the packet in which the narcotic was kept was neither ever opened nor was it sent for chemical examination. It was assumed to be Ganja on the statement of the appellant himself.

Similar statements have been made by Constable Raj Kumar and Satendra Kumar who have been examined as P.W. 6 and P.W. 7 respectively.

11. P.W. 7 has stated that nobody from the village was called to be a witness to the search and seizure. The police party had also not offered themselves for being searched prior to searching the appellant. He has also admitted in his deposition that the raiding team had not carried any weighing instrument with them.



12. The I.O. of this case viz. P.W. 4 has not stated anything in his deposition which could lend credence to the prosecution version.

13. Thus, from the perusal of the evidence on record what comes to fore is that it could not be established that any narcotic was recovered from the possession of the appellant. In the absence of any test report, it would be difficult to presume that what was recovered from the possession of the appellant was narcotics. The falsity of the prosecution is further becomes apparent in view of the deposition of P.W. 1 and P.W. 2 who have said that they had signed the seizure list on the asking of P.W. 4.

14. Thus, the evidence with respect to consignment being narcotics, its weight, absence of any material/evidence to indicate that samples were drawn and non-production of the same in court completely demolishes the prosecution version.

15. The case has not at all been contested on behalf of the State in a proper manner.

16. Per force, this Court is left with no alternative but to set aside the judgment and order of conviction.

17. For the reasons aforesaid, the judgment and order of conviction dated 26.07.2017 and order of sentence dated 03.08.2017 passed in Trial No. 15 of 2012



arising out of Inarwa P.S. Case No. 40 of 2011 appertaining to N.D.P.S. Case No. 74 of 2011 is set aside.

18. The appeal is allowed. The appellant is acquitted of all charges.

19. The appellant is in custody. He is directed to be released forthwith, if not required in any other case.

20. A copy of the judgment be communicated to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2018
Transmission Date	07.08.2018

