

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.200 of 2016

Arising Out of PS. Case No.-46 Year-2012 Thana- COMPLAINT CASE District- Araria

Md. Rashidul Haque Son of Late Mofizuddin Sheikh, Resident of Village -
Dighlture, P.S. - Galaganj, District - Dubari Assam.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. V. B. Roy, Mr. Sanjay Kumar Sharma, Advocates.
For the Respondent/s	:	Mr. S.A.Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

05-09-2019

Appellant, Md. Rashidul Haque has been found

guilty for an offence punishable under Section 20(b) (ii) (c) of the NDPS Act and sentenced to undergo RI for 10 years as well as to pay fine appertaining to Rs. Two Lacs and in default thereof, to undergo SI for two years additionally, vide judgment of conviction dated 20.01.2016 and order of sentence dated 21.01.2016 passed by 1st Additional Sessions Judge-cum-Special Judge, Araria in connection with Trial No.05/2013 arising out of Complaint Case No. 46/2012 (Special Case No. 07/2012).

2. A complaint petition, after having duly conduction of an inquiry, has been submitted by Shankar Soren (PW 3) on the facts enumerated therein, in brevity, happens to be that after getting confidential information with regard to passing over a truck carrying Narcotic Substance, a raiding party was constituted by Satyendra Kumar (not examined),



Inspector-cum-Seizing Officer and then, they came to Kishanganj where they stayed waiting arrival of relevant carrier. After perceiving truck bearing registration no. WB71-1929, they signalled to stop but, the driver sped it away, having been chased by them over Govt. vehicle and, then covering approximately 10-15 Kilometres, the driver, all of a sudden, stopped the truck and then, succeeded in his disappearance taking benefit of darkness. The raiding party cordoned the truck. They found one person inside the cabin of the truck who, on interrogation, disclosed his identity as Md. Rashidul Haque and further, claimed to be Khalasi thereof. Till then, the patrolling party of local police station also arrived and in presence of all, the truck was searched out and during course thereof, 28 packets of Ganja weighing 963 Kilograms has been seized from a box having constructed connected with the cabin. There was preparation of sample at the spot itself which was duly sealed and then, the truck was left there while, the seized Ganja along with sample as well as appellant was taken to the office of the Custom as the patrolling party instructed to leave being the place vulnerable one, where statement of appellant was recorded in accordance with Section 67 of the NDPS Act and then thereafter, he was forwarded to judicial custody along with



relevant documents. Subsequently, as is evident, after conduction of an inquiry, the complaint petition has been filed.

3. Defence as is evident from the mode of cross-examination as well as statement of the accused recorded under Section 313 of the CrPC is that of complete denial. However, nothing has been adduced in defence.

4. Altogether five PWs have been examined in order to substantiate its case, who are PW-1, M. N. Beg, PW-2, Binod Kumar Mandal, PW-3, Shankar Soren, PW-4, Pankaj Kumar Singh, PW-5-Rajesh Kumar. Side by side has also exhibited Ext-1, Inventory list, Ext-2, Seizure List, Ext-3, Statement of Rashidul Haque voluntarily and interrogatory marked as Ext-4 and 4/1, Memo of arrest, Ext-5, Panchnama, Ext-6, information report, Ext-7, Signature of Sri P.K. Ratan J.M. On certification, Ext-8, Application for sample test, Ext-9, Signature of Chemical Test Expert, Indrani Mukharjee, Ext-9/1, Signature of Chemical Examiner Dr. Mritunjay Mistry, Ext-9/2, Signature of Ranbir Kumar, SSP, Purnea on the Ganja destroy permission order, Ext-10, copy of complaint petition (Form-F), Ext-11, marked as Exhibits. As stated above, nothing has been adduced in defence.

5. After going through the record, it is evident



that some extra attention is being attracted in order to properly appreciate as to how the trial has been conducted before the learned lower court and the apathy of the learned P.O. who was more mechanical than judicious. From the record, it transpires that on 20.07.2012, there was a prayer on behalf of appellant that he be declared juvenile, more particularly, in the background of the fact that right from inception, the age of the appellant has been estimated approximately 19 years. Furthermore, it is also evident that birth certificate issued by the competent authority was attached with the prayer whereupon, the learned lower court has transmitted the plea of the appellant whereupon supplementary case no. 07/2012 has been registered before J. J. Board, Purnea where the record was received on 24.07.2012. It is further evident that approximately six dates were given for presence of the appellant who was under custody and then thereafter, since 04.10.2012 the order speaks that the case be posted for conduction of inquiry for determination of the age and on that very score, the case remained posted for six dates.

6. On 24.12.2012 there happens to be a direction to the office to issue letter for determination of the age and then awaiting for so many dates. Lastly, on 16.04.2013, the



medical report has been received and on the basis thereof, as well as seeing the physical construction of the body of the appellant, age has been estimated more than 19 years, though, the medical report happens to be in between 19-20 years and that being so, the appellant has been declared major, faced the trial meeting with the judgment impugned.

7. The second episode is visualizing from the fact that in contravention of Section 302 as well as 304 CrPC as no counsel was appointed, appellant remained undefended and carrying such status on 12.02.2015, PW-1 was examined and was discharged as no Advocate was there to cross-examine on behalf of appellant. After having a letter from the Jail on 12.03.2015 one, Vinit Prakash, learned counsel has been nominated to defend the appellant and, irrespective of the same, PW-1 was not recalled.

8. The third incident as evident from the LCR is something which requires an extraordinary attention. From Ext-4, the interrogation as well as 4/1, inculpatory extra-judicial confessional statement of the appellant which happens to be admissible as being recorded by the custom officials divulges that appellant does not know Devnagri (Hindi) rather he is conversant with his mother tongue Bengali only and so, the



Custom Officials have engaged one Dhiraj Kumar as a scribe (interpreter), being conversant with Bangla. That means to say, without ascertaining whether the accused was in a position to understand the niceties of the trial was proceeded and even at the time of statement recorded under Section 313 of the CrPC, as is evident, speaks something otherwise than the normal event, because of the fact that really, it was appellant, who was examined, or merely a paraphernalia has been done in the background of aforesaid eventuality.

9. Under the CrPC, there happens to be specific provision how the trial is to be proceeded, in what manner, the evidence is to be recorded and, the procedure to be followed when the accused is incompetent to understand the language of the court and for that, apart from others, Section 277, 279, 282, 318 are to be taken note of.

10. Section 318 even authorizes the lower court other than the High Court to inflict sentence but, the matter has to be placed before the High Court for proper orders in case accused is incapable to understand. That means to say, these protections have been prescribed as, till then, the legal idiom that the accused is innocent till he is held so, happens to be in his favour and so, the necessary provisions are, apart from



others, to protect interest of an accused so that, he should not be found prejudiced. It is needless to say that had there been attentiveness of the P.O. concern, then in that event, the learned lower court should have perceived the deficiency having at the end of the appellant/accused during course of conduction of trial over unable to understand the language of the court and in the aforesaid circumstances, the Court should have appointed an interpreter in order to facilitate an opportunity to the appellant/accused to understand the proceeding and the incriminating material which, the prosecution was adducing by way of examining the witnesses exhibiting the document. In the background of aforesaid deficiency, the authenticity of statement recorded under Section 313 CrPC is also shrouded under doubt.

11. So far, plea of juvenility is concerned, though the order has met with finality as the same has not been challenged at the end of the appellant but, manner whereunder, Board had conducted the inquiry, appears to be nothing but just completing the paraphernalia in mechanical manner as, there happens to be no disclosure in any of the order-sheet that accused was represented by the counsel and further, even having absence thereof, while having been produced, was intimated that



after bifurcation of the trial, the matter has been sent to the Board for conduction of an inquiry in order to ascertain the status of the accused to be juvenile.

12. That being so, being undefended, as is evident from the order dated 12.03.2015, should have been provided a counsel or the Board on its own (more particularly, Principal Magistrate happens to be a Judicial Officer) acknowledged the accused regarding his right. Apart from this, the Board would have considered that the report is of dated 10.01.2013 while the date of occurrence is 26.05.2012, that means to say, a period of 7 ½ months was to be deducted. The occurrence happens to be before 2016 Amendment and so, having the proper appreciation of Juvenile Justice (Care and Protection of Children) Rules 2007, Rule 12 was very much applicable and during course of consideration of the same, irrespective of conclusive judicial finding that ossification test is to vary plus minus two years, in terms of Rule 12(3)(b)(iv), there happens to be permissibility of acceptance of margin of one year under the lower side and so, the status of appellant would have been that of juvenile as defined under Section 2(k) and further, the status of appellant would have been juvenile in conflict with law, as defined under Section 2(L) of the Juvenile



Justice (Care and Protection of Children) Act. Because of the fact that after deducting, that means to say, 19 years minus 7 ½ month=18 years and 4 ½ months and minus 1 year = 17 years and 4 ½ months.

13. Furthermore, Rule 14 of the Juvenile Justice (Care and Protection of Children) Rules 2007 takes care of undefended juvenile, whereupon, prescribed provision of legal aid.

14. In the aforesaid facts and circumstances of the case, the whole trial vitiates because of the fact that apart from non identification of the appellant as juvenile in spite of finality of the order concerned, the whole event is in nullity and by such activity, the appellant has been deprived of his legal right which he was bound to avail and in likewise manner, the fundamental right because of only in due process of law, the fundamental right of the citizen is to be curtailed coupled with the fact that being ignorant of the language of the court which, the learned lower court failed to perceive properly on account of non sensitization, did not justify the finding so arrived at by the learned lower court.

15. Consequent thereupon, the same is set aside. Appeal is allowed. Appellant is directed to be released forthwith



if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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