

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.484 of 2013

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Anjani Kumar Singh, S/o Late Hardeo Singh, resident of Village- Hathila,
P.O.- Karai Parsurai, P.S.- Karai, Distt.- Nalanda

... .. Petitioner / Appellant

Versus

The State Of Bihar

... .. Opposite Party / Respondent

=====

with

CRIMINAL APPEAL (DB) No. 479 of 2013

=====

Puja Devi, W/o – Late Mundrika Singh, resident of village- Hathila, P.S.
Karai Parsurai, district Nalanda.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 564 of 2013

=====

Nagendra Singh, Son of Mundrika Singh, Resident of:- Village- Hathila, P.S.
Karai, District -Nalanda.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :
(In CRIMINAL APPEAL (DB) No. 484 of 2013)
For the Appellant/s : Sri Kanhaiya Prasad Singh, Senior Advocate
Sri Pratik Mishra, Advocate



Sri Prakash Tiwari, Advocate
Sri Anand Tiwari, Advocate
Sri Mahesh Kumar, Advocate
Sri Hiralal Sharma, Advocate
For the U.O.I. : Sri S.D. Sanjay, Addl. Solicitor General
Sri Manoj Kumar Singh, C.G.C.
Mrs. Priya Gupta, Advocate
(In CRIMINAL APPEAL (DB) No. 479 of 2013)
For the Appellant/s : Dr. Anjani Prasad Singh, Advocate
Sri Pratik Mishra, Advocate
For the U.O.I. : Sri S.D. Sanjay, Addl. Solicitor General
Sri Manoj Kumar Singh, C.G.C.
Mrs. Priya Gupta, Advocate
(In CRIMINAL APPEAL (DB) No. 564 of 2013)
For the Appellant/s : Dr. Brahmdeo Prasad, Advocate
For the U.O.I. : Sri S.D. Sanjay, Addl. Solicitor General
Sri Manoj Kumar Singh, C.G.C.
Mrs. Priya Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 27-03-2019

01. Appellants -Anjani Kumar Singh [Cr. Appeal (D.B.)

No. 484 of 2013], Nagendra Singh [Cr. Appeal (D.B.) No. 564 of 2013] and Mundrika Singh, husband of Puja Devi, who was substituted as appellant in Cr. Appeal (D.B.) No. 479 of 2013 after death of Mundrika Singh were tried together and by a common judgment all the three accused were convicted and sentenced in Special Case No. 12 of 1996, and as such, all the aforesaid three appeals were taken up together under the heading “For Hearing” and are being disposed of by this common judgment.

02. After the judgment of conviction dated 5th April, 2013 passed in Special Case No. 12 of 1996, three convicts



namely: Anjani Kumar Singh, Nagendra Singh and Mundrika Singh preferred Cr. Appeal (D.B.) No. 484 of 2013, Cr. Appeal (D.B.) No. 564 of 2013 and Cr. Appeal (D.B.) No. 479 of 2013 respectively. During pendency of appeal, Mundrika Singh [sole appellant in Cr. Appeal (D.B.) No. 479 of 2013] died on 19.04.2016 while he was in custody and under treatment in P.M.C.H. Subsequently, an interlocutory application vide I.A. No. 3216 of 2018 was filed on behalf of the appellant- Mundrika Singh by his wife for allowing her to pursue the appeal since deceased appellant besides being sentenced to undergo imprisonment was also imposed fine. The said interlocutory application was allowed on 10.12.2018 and name of widow of Mundrika Singh namely Puja Devi was substituted as appellant after expunging the name of Mundrika Singh. Appellant -Anjani Kumar Singh, Nagendra Singh and Mundrika Singh (husband of Puja Devi) by judgment dated 05.04.2013 were convicted under Section 20(b)(ii)(c) and Section 29 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act”). Appellant- Anjani Kumar Singh [Cr. Appeal (D.B.) No. 484 of 2013] and Mundrika Singh [Cr. Appeal (D.B.) No. 479 of 2013] were further held guilty and convicted for offence under Section 25 and 27 of the NDPS Act. By order dated- 08.04.2013 under Section 20(b)(ii)(c) of the



NDPS Act all the three convicts were sentenced to undergo rigorous imprisonment for fifteen years and to pay a fine of Rs. 1,50,000/- each. In case of default in payment of fine all the three convicts were further directed to undergo rigorous imprisonment for three years. Under Section 29 of the NDPS Act all the three convicts were sentenced to undergo rigorous imprisonment for five years. Under Section 25 of the NDPS Act convicted -appellant / Anjani Kumar Singh and Mundrika Singh were sentenced to undergo rigorous imprisonment for fifteen years and to pay a fine of Rs. 1,50,000/- each. In case of default in payment of fine they were directed to further undergo rigorous imprisonment for three years and under Section 27 of the NDPS Act both were directed to undergo rigorous imprisonment for one year and to pay a fine of Rs. 20,000/- each. In case of default in payment of fine both were directed to further undergo rigorous imprisonment for one year. All the sentences were directed to run concurrently. After their conviction and sentence aforesaid three appeals were preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C."). Cr. Appeal (D.B.) No. 479 of 2013 filed by Mundrika Singh was admitted on 27.05.2013. Cr. Appeal (D.B.) No. 564 of 2013 preferred by Nagendra Singh was admitted on 28.06.2013 and Cr. Appeal (D.B.) No. 484 of



2013 filed by Anjani Kumar Singh was admitted on 30.05.2013. During pendency of appeal appellant -Nagendra Singh [Cr. Appeal (D.B.) No. 564 of 2013] was extended the privilege of bail by order dated 22.02.2016 passed by a Co-ordinate Bench of this court on interlocutory application filed by the appellant vide I.A. No. 1793 of 2015, however, prayer for bail of remaining two co-convicts namely: Anjani Kumar Singh and Mundrika Singh was repeatedly rejected. During pendency of appeal Mundrika Singh in Cr. Appeal (D.B.) No. 479 of 2013 died and thereafter his widow namely: Puja Devi was allowed to pursue the appeal. The judgment of conviction and sentence was passed by Sri D.P. Singh, learned Additional Sessions Judge VII, Patna -cum -Special Judge, NDPS Act (hereinafter referred to as the “trial judge”) in Special Case No. 12 of 1996.

03. Short fact of the case is that on 27.02.1996 Narcotics Cell of Central Excise, Patna intercepted an Ambassador Car at Chandmari Road, Kankarbagh, Patna. From the said car 80 Kg. of Charas was recovered which was concealed beneath the rear seat and the space behind the back of the rear seat. The Ambassador car bearing registration no. URD- 2626 was intercepted near the rented house of Anjani Kumar Singh [appellant in Cr. Appeal (D.B.) No. 484 of 2013] at Chandmari Road, Kankarbagh, Patna.



The Central Excise team at the time of interception had noticed that four accused persons namely: Anjani Kumar Singh (appellant), Mundrika Singh (since dead), Sidheshwar Singh (P.W. 13) and Nagendra Singh [appellant in Cr. Appeal (DB) No. 564 of 2013] were about to board the said car. However, Anjani Kumar Singh and Nagendra Kumar managed to escape from the place of interception but Sidheshwar Singh and Mundrika Singh were apprehended and brought to the office /premises of Central Excise, Patna for interrogation where both of them accepted their guilt. Mundrika Singh accepted that he was the brother of Anjani Kumar Singh and his name was in the owner book of the car in question. Subsequently, interrogation of Mundrika Singh and Sidheshwar Singh revealed that Sidheshwar Singh had gone to the house of Anjani Kumar Singh for the said car which he had hired on rent and had paid Rs. 500/- in advance to Anjani Kumar Singh few days back. He was to take the car to Dariyapur in connection with a marriage ceremony. They suggested that Sidheshwar Singh was not involved in trafficking of Charas. On 28.02.1996 itself accused- Mundrika Singh was forwarded and produced before the learned Additional Sessions Judge VII, Patna and a case was initiated vide Special Case No. 12 of 1996. After conducting detailed enquiry and collecting necessary reports finally a



complaint petition was filed under Rule 36 of the NDPS Act on an allegation of violation of Section 8 of the NDPS Act.

04. The complaint was filed against three accused namely- Mundrika Singh, Anjani Kumar Singh and Nagendra Kumar. The complaint was filed by Sri Shailendra Kumar, Inspector, Central Excise, Bokaro who has been examined as P.W. 1 during the trial. In the complaint petition it was disclosed that on 27.02.1996 at about 8.00 Hours a secret information was received that Charas brought from Nepal in bulk quantity was concealed in a secret cavity beneath the rear seat of car No. URD 2626 which was parked in Chandmari Road, Kankarbagh. Acting on the above referred secret information, the officers of Narcotics Cell of Central Excise, Patna intercepted the Ambassador Car bearing registration No. URD2626 on 27.02.1996 at 9.00 hrs. parked near the house of Anjani Kumar Singh, Chandmari Road, Kankarbagh, Patna. At the time of interception of above said car, four persons were found near the alleged car who were about to board the car and on being asked one person namely Anjani Kumar Singh presented himself as the owner of the alleged car, second person namely Mundrika Singh presented himself as the own brother of Anjani Kumar Singh , the third person namely Nagendra Kumar presented himself as the driver of the alleged car, and the last



person namely Sidheshwar Singh presented himself as the client, who had gone there to take the alleged car on hire for marriage purpose. After disclosing the identify, the officers of Narcotics Cell of Central Excise, Patna expressed their desire to conduct the search in the alleged car. On being asked to open the dickey of the car, Nagendra Kumar and Anjani Kumar Singh went inside the house of Anjani Kumar Singh on the pretext to fetch the key of the car but both of them escaped away. Sidheshwar Singh and Mundrika Singh were taken in custody and were brought to the office premises of Central Revenue Building along with the alleged car no. URD 2626 in which the contraband Charas was reported to be concealed. In presence of independent witnesses as well as in presence of Sidheshwar Singh and Mundrika Singh the alleged Ambassador car bearing Reg. No. URD – 2626 was thoroughly searched and some packets of black substance wrapped in plastic were recovered from the secret cavity made behind the back of the rear seat and from beneath of the rear seat of the car. On examination, the recovered black substance was found to be Charas and on weighment (on the portable weighing scale) the total weight of the recovered Charas came to 80 Kg. (gross). After observing all necessary formalities, recovered 80 Kg of Charas and the alleged Ambassador Car No. URD 2626 were seized for the



violation of Section 8 of the N.D.P.S. Act. Panchnama and seizure memo were prepared and the signature of Sri Sidheshwar Singh and Mundrika Singh besides other witnesses was obtained on such documents in taken of proof of recovery of contraband Charas.

05. In course of search of the alleged car, besides contraband Charas weighing 80 Kg the registration certificate of the alleged car was also recovered which showed that the same had been transferred from Kanpur to Patna D.T.O. The Registration certificate was in the name of one Abdul Hamid of Kanpur and his local address was shown as C/o Mundrika Singh, Patrakar Nagar, Kankarbagh, Patna. The statement of Sidheshwar Singh and Mundrika Singh was recorded and both of them were interrogated. In course of interrogation both of the above named person confirmed that the owner of the car no. URD – 2626 was Sri Anjani Kumar Singh who had purchased the alleged car two years back and the car was being plied on hire by Anjani Kumar Singh. They also confirmed that Nagendra Kumar was the driver of the said car. In course of interrogation Sidheshwar Singh stated that few days back he had a talk with Anjani Kumar Singh regarding taking his car on hire for his relatives marriage and according to their agreement Sidheshwar Singh had gone to the house of Anjani Kumar Singh on 27.02.96 at Chandmari Road,



Kankarbagh for taking the car for the purpose. The statement of Sidheshwar Singh was duly corroborated / confirmed by Mundrika Singh who was brother of Anjani Kumar Singh.

06. During investigation no corroborative evidence was brought on record regarding involvement of Sidheshwar Singh and as such he was not forwarded as accused. After forwarding the Central Excise investigated the matter. Accordingly, on the prayer of complainant warrant of arrest against Anjani Kumar Singh and Nagendra Kumar was issued but it could not be executed by the Police Officer of Karai Police Station since they were reported to be absconding however subsequently Anjani Kumar Singh and Nagendra Kumar surrendered before the court below on different dates and after only being bailed out Anjani Kumar Singh appeared before the complainant and flatly denied all the allegation. Even he denied the ownership of the alleged car. He also denied that he was residing at Chandmari Road, Kankarbagh, Patna. However he accepted that on 27.02.1996 he was present in the same house which belonged to his elder brother. Appellant- Nagendra Kumar did not appear before the complainant. In course of investigation it was found that alleged Ambassador car bearing Registration No. URD- 2626 was purchased by Mundrika Singh from one Abdul Hamid of 105/61 Chamanganj, Kanpur on



13.01.1994 and no objection certificate in this regard was taken by Abdul Hamid from D.T.O. Kanpur. The registration certificate of the alleged car was found also corroborative of the aforesaid facts.

07. In course of investigation the sample of seized Charas weighing 80 Kg. was got tested in Forensic Science Laboratory, Patna from where the same was confirmed to be Charas. In a bid to dispose of the seized Charas weighing 80 Kg. learned Special Court was requested to depute a Magistrate for the purpose of issuance of certificate under Section 52 A of the NDPS Act and on direction of learned Special Court same was got certified by learned Judicial Magistrate, Civil Court, Patna who physically verified the seized Charas and found to be 83 Kg. (gross) including the weight of wrapper of the seized Charas. Along with the complaint petition relevant documents, such as: (1) Panchnama; (2) Seizure Memo; (3) Statement Of Mundrika Singh, (4) Statement Of Sidheshwar Singh, (5) Letter of Abdul Hamid, (6) Delivery letter of Car, (7) No objection certificate, (8) Registration Certificate, (9) Letter of Karai Police Station, (10) Statement of Anjani Kumar Singh, (11) Test Report, (12) Certification of seized Charas were filed and twelve persons were cited as prosecution witnesses; namely:- (01) A.K. Singh, Superintendent, Central Excise, Patna; (02) Samrendra Singh,



Inspector, Central Excise, Patna; (03) Shailendra Kumar Singh, Inspector, Central Excise, Patna; (04) Mithlesh Kumar Singh, Sepoy, Central Excise, Patna, (05) Shyam Bihari Singh, Sepoy, Central Excise, Patna; (06) K.K. Sharma, Sepoy, Central Excise, Patna; (07) Bharat Paswan, Sepoy, Central Excise, Patna, (08) Dina Nath Kumar, Sepoy, Central Excise, Patna, (09) B.B. Pandey, Driver, Central Excise, Patna; (10) Nand Kishore Thakur, S/o Village – Mehnore, P.O. - Tungi, District – Nalanda; (11) Kamal Nayan Sharma, S/o Vill. – Rajpur, P.O. - Neuora, Distt. – Patna; (12) Sidheshwar Singh, S/o -Late Mahabir Singh, Vill. – Hathila, P.O. - Karai- Parsurai, P.S. - Karai, Distt. - Nalanda.

08. It appears that since the accused persons were absconding and necessary steps were taken to apprehend them some delay occurred in filing the complaint petition and finally it was filed on 15.03.2002. Thereafter, on 16.08.2005 charge was jointly framed against all the three accused persons under Section 20(b) (ii)(c) and Section 29 of the NDPS Act and against the appellant -Anjani Kumar Singh and Mundrika Singh further charge under Section 25 and 27 of the NDPS Act was framed.

09. During the trial to establish its case from the prosecution side altogether thirteen witnesses were examined. Out of them, Shailendra Kumar, Inspector, Central Excise, Bokaro and



complainant is P.W. 1; Sri Ajay Kumar Singh, Superintendent, Narcotics Cell and Team Leader is P.W. 2, P.W. 3 [Samrendra Singh, Inspector, Central Excise, Patna], P.W. 4 (Mithilesh Kumar Singh, Constable, Central Excise, Patna), P.W. 5 [Shyam Bihari Singh, Constable, Central Excise, Patna], P.W. 6 [Krishna Kumar Sharma, Head Constable, Central Excise, Patna]; P.W. 7 [Bharat Bhushan Pandey, Driver, Central Excise Patna], P.W. 8 [Dinanath Kumar Constable , Central Excise, Patna] and P.W. 9 [Bharat Paswan, Constable, Central Excise, Patna] all were members of the raiding team whereas P.W. 10 – Nand Kishor Thakur [Daily Wager in Central Excise, Patna] and P.W. 11 (Kamal Nayan Sharma, Daily Wage Labour in Custom Department, Patna) were also witness to the seizure list and Panchanama. P.W. 12 (Sri Birendra Kumar Singh, learned Judicial Magistrate, Patna) had done certification of the seized Charas whereas P.W. 13 (Sidheshwar Singh) who was initially intercepted since did not support the prosecution case he was declared hostile by the prosecution however he proved his writing and signature on his interrogatory statement which was marked as Ext. 5.

10. After completion of prosecution evidence the accused persons were questioned with incriminating circumstances and evidences brought during the trial against them and their



statement under Section 313 of the Cr.P.C. was recorded in which they claimed to be innocent however from the defence side neither oral nor documentary evidence has been brought on record.

11. After placing entire evidence, Sri Kanhaiya Prasad Singh, learned senior counsel assisted by Sri Pratik Mishra, learned counsel who has appeared on behalf of the appellant -Anjani Kumar Singh has argued that the said Ambassador car which was shown to be seized was not seized while it was inside the premises of the appellant rather it was found in the lane, and as such, it was not a case of recovery of Charas from conscious and exclusive possession of the appellant. He submits that there is no explanation as to why Panchnama and seizure list was prepared at 12.00 noon on 27.02.1996 whereas it was case of prosecution that the said car was intercepted at 9.00 A.M. on 27.02.1996. He further submits that no reason has been assigned as to why Panchnama and seizure list was prepared in the office of Central Excise. He further submits that there is no explanation as to why complaint petition was filed in the court after about six years. He submits that the car in question was intercepted on 27.02.1996 but in the case complaint was filed on 15.03.2002. He submits that there are serious inconsistencies in the evidences particularly on the point of noticing the appellant at the place where the vehicle



was seized. He submits that in the evidence of P.W. 1 - Shailendra Kumar there is serious inconsistency in paragraph nos. 41 and 43 of his cross- examination. As per Sri Singh, learned senior counsel evidence of P.W. 1 suggests that the appellant was not present at the place of occurrence. He has also argued that P.W. 2 (Ajay Kumar Singh, Superintendent of Central Excise, Patna) in paragraph no. 12 of his cross examination has stated that while they reached near the car in question in Chandmari Road he had seen four persons near the car. Thereafter, female inmates had provided the key of the vehicle whereupon the vehicle was unlocked however, P.W. 6 (Krishna Kumar Sharma, Head Havaladar, Custom) in paragraph no.4 of his cross examination has stated that he reached with the team at the place of occurrence and thereafter door of the vehicle was opened by breaking the door. Sri Singh has also argued that prosecution has failed to establish that appellant – Anjani Kumar Singh was the owner or joint owner of the car in question. He submits that P.W. 1 - Shailendra Kumar in paragraph no. 10 of his examination in chief has stated that during enquiry it transpired that the car in question was lying in the name of Mundrika Singh as per record available in the DTO Office. He has also argued that the appellant was not questioned



regarding incriminating circumstances and evidences at the time of recording his statement under Section 313 of the Cr.P.C.

12. Dr. Brahmdeo Prasad, learned Advocate appearing on behalf of the appellant – Nagendra Singh in Cr. Appeal (D.B.) No. 564 of 2013 has argued that only on presumption the appellant was made accused otherwise there is no evidence that he was on the driving seat or having the key of car rather it was the case of prosecution that subsequently female inmates of convict -Anjani Kumar Singh and Mundrika Singh had produced the key of the vehicle.

13. Dr. Anjani Prasad Singh, learned counsel appearing on behalf of convict -Mundrika Singh in Cr. Appeal (D.B.) No. 479 of 2013 adopting the argument of Sri Kanhaiya Prasad Singh, learned senior counsel has further argued that in the case nothing was recovered from the car in question and as such according to learned counsel for the appellant the learned trial judge without any cogent evidence has passed judgment of conviction and sentence which is required to be interfered with. He submits that since the husband of Puja Devi, whose name has been substituted in Cr. Appeal (D.B.) No. 479 of 2013, was incorrectly sentenced and imposed fine, even after death of Mundrika Singh since



conviction was itself incorrect the fine imposed may not be realized and judgment of conviction is liable to be set aside.

14. On the contrary, Sri S.D. Sanjay, learned Additional Solicitor General assisted by Sri Manoj Kumar Singh, learned Central Government Counsel in all the aforesaid appeals has argued that prosecution has proved its case beyond all reasonable doubts and judgment of conviction and sentence does not require any interference. He submits that following entire statutory provisions contained in the NDPS Act search and seizure was conducted, sampling was done and even in presence of learned Judicial Magistrate, who has been examined as P.W. 12 certification of the seized Charas was done. He submits that it is a case in which there was recovery of huge quantity of Charas to the tune of 80 Kg. which was concealed beneath the rear seat and the space behind the back of the rear seat of the Ambassador car in question. He submits that prosecution has established its case that the vehicle in question was registered in the name of convict- Mundrika Singh. He further submits that the vehicle in question was lying just near the house of appellant -Anjani Kumar Singh and at the time while the raiding party reached near the vehicle appellant -Anjani Kumar Singh and appellant – Nagendra Singh on one pretext or the other made good their escape and for a long



period despite issuance of processes they could not be apprehended and this was the reason for delay in filing the complaint petition. Those facts have already been elaborated in the complaint petition itself and reiterated during the evidence. According to Sri S.D. Sanjay, learned Additional Solicitor General the complaint was filed after thorough enquiry and investigation in consonance with the provisions of the NDPS Act. He further submits that during enquiry interrogatory statement of convict- Mundrika Singh and P.W. 13 – Sidheshwar Singh was recorded in which convict- Mundrika Singh had accepted his guilt and it disclosed that he along with his brother – Anjani Kumar Singh and driver of the vehicle- Nagendra Singh, S/o Mundrika Singh were involved in trafficking huge quantity of Charas to the tune of 80 Kg. According to Sri Sanjay interrogatory statement recorded under Section 67 of the NDPS Act is admissible in evidence. Such evidence may not be discarded treating it as confession before Police. Besides this, it has been argued by Sri S.D. Sanjay, learned Additional Solicitor General that Section 54 of the NDPS Act prescribes for drawing a presumption of guilt unless it is proved contrary. He submits that it is not the case of the defence that they were falsely implicated or they have alleged any malafide against the official witnesses. Sri Sanjay, learned Additional Solicitor



General placing reliance on the constitution bench judgment of the Hon'ble Supreme Court in a case reported in (2009) 8 SCC 539 Karnail Singh v. State of Haryana corresponding to 2009 AIR SCW 5265 has argued that substantial compliance of provision under Section 42 of the NDPS Act is required to be done which has been elaborated in the evidence of the prosecution. He submits that in view of the facts and circumstances it was compliance of provision under Section 42 of the NDPS Act relating to search. Sri Kanhaiya Prasad Singh, learned senior counsel had also argued that the case is based only on the evidence of official witnesses and as such the case appears to be doubtful. Replying to this submission of Sri Kanhaiya Prasad Singh, learned senior counsel for the appellant, Sri S.D. Sanjay, learned Additional Solicitor General has placed heavy reliance on a judgment of the Hon'ble Supreme Court in a case reported in AIR 2013 SUPREME COURT 2068 Ram Swaroop v. State (Govt. NCT) of Delhi and submits that evidence of official witnesses may not be brushed aside only on the ground that they are official witnesses. He submits that in the particular facts and circumstances of a case conviction based only on the evidence of the official witnesses may not be interfered with. Accordingly it has been argued that learned trial judge on the basis of cogent evidence has passed



judgment of conviction and sentence which requires no interference.

15. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same prima facie we are of opinion that the learned trial judge has rightly passed judgment of conviction and sentence which requires no interference. However, before proceeding it would be necessary to succinctly refer to evidence of witnesses. In the case P.W. 1 (Shailendra Kumar) is the complainant and he was Inspector of Central Excise, Bokaro. In his evidence he stated that on 27.02.1996 he was posted in Narcotics Cell, Central Excise (Patna Headquarter) as Inspector. On the said day he got an information that in an Ambassador car lying in Chandmari Road Charas had been concealed. This information had come from the Superintendent of Central Excise (Headquarter) Preventive Patna. On the order of Superintendent, Central Excise (Headquarter) Preventive Patna a team was constituted. In the said team besides him there was another member namely Sri Ajay Kumar Singh, Superintendent Narcotics Cell who was the leader of the team. Besides Superintendent and the complainant (P.W. 1), P.W. 3- Samrendra Singh (Inspector, Central Excise, Patna) and five-six Constables were the members of the team. The team reached



Chandmari Road at about 8.30 Hours (morning) where he found one white colour Ambassador car bearing Registration No. URD -2626 standing there. The vehicle was standing opposite a house in Chandmari Road at some distance from a temple. This witness further stated that at that very time two persons were present near the car. One disclosed his name as Mundrika Singh and another disclosed his name as Sidheshwar Prasad. Thereafter the complainant and other raiding team members disclosed their identity. In the meanwhile, two other persons also arrived there. This witness was not aware about the name of those two persons. In paragraph no. 5 of his examination in chief P.W. 1 further stated that Mundrika Singh told that he was the owner of the car and the car was being sent on hire basis in a marriage ceremony. On inspection inside the car beneath the seat the complainant noticed that Charas concealed in packets were kept. The two other persons who had arrived in the meanwhile had already fled away. Thereafter both the apprehended persons were put on the vehicle and they were carried to Headquarter. The said Ambassador car was also brought to the Headquarter where in presence of two independent witnesses the car in question was thoroughly searched and from beneath the seat of the car Charas kept in plastic packets were recovered. Weighment was done and it was noticed that the



Charas was weighing about 80 Kg. Weighment chart , seizure memo and also Panchnama was prepared. Thereafter statement of both the accused persons was recorded. Sampling of seized Charas was done. It was sent for its examination to the Forensic Science Laboratory, Patna. Subsequently, report of Forensic Science Laboratory was received. As per report the seized article was Charas. This witness was cross examined at length however nothing could be extracted to create any suspicion on his evidence save and except some immaterial inconsistency from the facts disclosed in the complaint petition. This witness during his evidence has proved the complaint petition which was in four pages marked as Ext. 1, Panchnama marked as Ext. 2, seizure memo marked as Ext. 3, statement of Mundrika Singh recorded under Section 67 of the NDPS Act marked as Ext. 4, statement of Sidheshwar Singh (P.W. 13) marked as Ext. 5, letter of one Abdul Hamid, who was the earlier owner of the vehicle in question marked for identification as X, forwarding letter of the test report marked as Ext. 6 and Forensic Science Laboratory report marked as Ext. 6/a.

16. P.W. 2 (Ajay Kumar Singh, Superintendent , Central Excise, Patna and leader of the team) in his evidence has reiterated the facts stated by P.W. 1 and he further proved the interrogatory



statement of Mundrika Singh, marked as Ext. 7, interrogatory statement of Anjani Kumar Singh marked as Ext. 7/1, certification in respect of Charas (Ext. 8), certification in respect of Ambassador car (Ext. 8/1). This witness in paragraph- 12 of his cross examination stated that key of the vehicle was provided by female inmates and thereafter the car was opened. He further stated that while the accused was asked to open dickey then driver - Nagendra Singh (S/o Mundrika Singh) and Anjani Kumar Singh fled away. In sum and substance this witness has corroborated the prosecution case. Though some inconsistencies have come but they are negligible.

17. P.W. 3 (Samrendra Singh, Inspector, Central Excise, Patna) and member of the raiding party has almost stated in similar manner and P.W. 4 (Mithilesh Kumar Singh, Constable, Central Excise, Patna), P.W. 5 (Shyam Bihari Singh, Constable, Central Excise, Patna), P.W. 6 (Krishna Kumar Sharma, Constable, Central Excise, Patna), P.W. 8 (Dinanath Kumar, Constable, Central Excise , Patna) and P.W. 9 (Bharat Paswan, Constable, Central Excise, Patna), all Constables, Central Excise, Patna and member of raiding party have supported the prosecution case. P.W. 7 (Bharat Bhushan Pandey) was the driver of the vehicle of the raiding team. He too has supported the prosecution case. P.W. 10



(Nand Kishore Thakur) is a witness to the seizure list and he proved his signature on the seizure list marked as Ext. 3/1. He is also witness to the Panchnama and proved his signature on Panchnama marked as Ext. 2/1. P.W. 11 (Kamal Nayan Sharma) is also one of the seizure list witness. Whereas P.W. 12 (Birendra Kumar Singh, Additional District Judge, Patnacity who at the relevant time was Judicial Magistrate) has done certification and he deposed that certification was done by him and he has also prepared weighment chart; inventory, certification of sample. He deposed that same was done as per his dictation and typed and it was in his signature. He identified his signature on the weighment chart marked as Ext. 9 and inventory (Ext. 8/2). He proved weighment chart, marked as Ext. 9, inventory (marked as Ext. 8/2) and certification of sample (marked as Ext. 8/3). In paragraph no. 2 of his cross examination he stated that in his presence weighment of seized article was done and on weighment it was found 83 Kg. which was with wrapper. Sampling was prepared for sending the same to the Lab.

18. P.W. 13 (Sidheshwar Singh) was apprehended on 27.02.1996 from near the Ambassador car in question but since he had disclosed that he had hired the vehicle for marriage purpose which was corroborated in the statement of Mundrika Singh he



was not made accused instead he was made witness to the prosecution and he was examined as P.W. 13. During his evidence he proved his writing and signature on his interrogatory statement, which was marked as Ext. 5. However, since he did not support the prosecution case, he was declared hostile but fact remains that his interrogatory statement recorded under Section 67 of the NDPS Act is an admissible evidence. In his statement recorded under Section 67 of the NDPS Act which has been marked as Ext. 5 he stated that on 27.02.1996 he went to the house of Anjani Kumar Singh which was situated in Chandmari Road side of the temple in Kankarbagh, Patna for hiring vehicle bearing registration no. U.R.D. 2626. He further stated that Anjani Kumar Singh was his co-villager. It may be indicated that Sidheshwar Singh had disclosed that he was resident of village: Hathila, P.S. - Karai, District Nalanda. He further stated that Anjani Kumar Singh was using to lend his vehicle i.e. U.R.D. 2626 on rental basis. Regarding hiring the vehicle in question earlier he had discussion with Anjani Kumar Singh who had assured that after eight days he will provide the vehicle and on the same day i.e. on 27.02.1996 he had gone there for getting the vehicle on rental of Rs. 800/- for two days i.e. 27th & 28th February, 1996. He also stated that he had already given advance of Rs. 500/-. On the same day at about 8.45



in the morning he had reached the house of Anjani Kumar Singh where Anjani Kumar Singh and his driver- Nagendra Kumar Singh (both appellants) were present and vehicle was lying there. While he reached there within ten minutes brother of Anjani Kumar Singh namely, Mundrika Singh also arrived there and all the four persons were near the vehicle and having discussion. In the meanwhile, officials of Central Excise, Patna arrived there and enquired from Anjani Kumar Singh however after some time Anjani Kumar Singh and driver- Nagendra Kumar Singh hoodwinking the officials of Central Excise fled away. However Mundrika Singh and Sidheshwar Singh were apprehended by the Excise Officials thereafter disclosure was made. On the basis of facts disclosed in Ext. 5 there was no reason to disbelieve the version of other prosecution witnesses even though P.W. 13 - Sidheshwar Singh was declared hostile. Similarly, Mundrika Singh and Anjani Kumar Singh also disclosed the facts showing their involvement in concealment of huge quantity of Charas in the vehicle in question.

19. On examination of entire evidence on record, there is no reason to consider the case of prosecution as doubtful rather the case appears to be fully proved and Sri S.D. Sanjay, learned Additional Solicitor General has rightly argued that in absence of



any defence of false implication evidence of official witnesses may not be ignored. Moreover, only on the ground that the case is based on evidence of official witnesses conviction and sentence cannot be interfered with if the case is otherwise credible. On going through entire evidence, we are of considered opinion that prosecution has proved its case and there is no evidence to show any apparent violation of statutory provisions of the NDPS Act, rather considering the oral evidence, documentary evidence as well as admission of accused persons which is admissible under Section 67 of the NDPS Act and provision contained in Section 54 of the NDPS Act which suggests that presumption would be against accused persons unless specifically disapproved by them, we are of opinion that there is no need to interfere with the judgment of conviction and sentence.

20. Accordingly, the judgment of conviction dated 5th April, 2013 and sentenced dated 08.04.2013 passed by Sri D.P. Singh, learned Addl. Sessions Judge VII, Patna -cum - Spl. Judge, NDPS Act passed in Special Case No. 12 of 1996 is hereby upheld and all the aforesaid three appeals are dismissed.

21. Appellant – Nagendra Singh is on bail and since judgment of conviction has been upheld and appeal stood dismissed, his bail bond stands canceled with a direction to



surrender forthwith, failing which, the learned court below may take appropriate steps for securing his attendance for serving the sentence.

22. Similarly, the court below may take appropriate steps for realization of fine from the legal heir of deceased convict - appellant /Mundrika Singh.

(Rakesh Kumar, J)

Prakash Chandra Jaiswal, J: I agree.

(Prakash Chandra Jaiswal, J)

praful/-

AFR/NAFR	AFR
CAV DATE	30-01-2019
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