

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.496 of 2014

Arising Out of PS. Case No.-54 Year-2012 Thana- BARAULI District- Gopalganj

Bhikhari Yadav @ Sukhi Yadav S/O Late Shivchandra Yadav R/O Vill -
Loknathpur, P.S. - Govindganj, Dist.- East Champaran.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Sunil Kumar No.III, Advocate
Mr. Binjendra Kumar, Advocate
For the Respondent : Mr. D.K.Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-08-2022

The sole appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure assailing the impugned judgment of conviction dated 17.04.2014 and order of sentence dated 21.04.2014 passed by the learned Additional Sessions Judge-I-cum-Special Judge, N.D.P.S. Act Cases, Gopalganj, in Barauli P.S. Case No.54 of 2012/Tr. No. 49 or 2012, whereby the appellant has been convicted and sentenced as under:-

Convicted under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
20 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Twelve years	1,50,000/-	Two year simple imprisonment

2. The appellant was charged for commission of offences punishable under Section 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'). After



having noticed the statutory provisions under the Act that Section 20 of the Act provides punishment specifically in relation to the offences pertaining to Ganja (cannabis sativa), no separate sentence has been passed by the trial court for the offence punishable under Section 22 of the Act.

3. We have heard Mr. Sunil Kumar No.III, learned counsel for the appellant and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State.

4. A written complaint of the Officer-in-Charge of Barauli Police Station, camp at Rupanchap Diara Baghar, in the District of Gopalganj, dated 21.02.2012, to the learned Sessions Judge, Gopalganj, set the criminal prosecution in motion. He disclosed in his said report that he, with a team of other officials/police personnel, was engaged in checking vehicles on the said date, i.e. 21.02.2012, when he received a secret information to the effect that some smugglers of hemp were sitting at Rupanchap Diara Baghar and two of them were maintaining vigil over the movement of the police and public, near a temple. He, along with his team, rushed towards the temple and the moment he reached near the temple, two persons started fleeing away upon seeing the police jeep. One of the two persons, the present appellant, was caught on chase. He disclosed the name of the other person also,



who had managed to escape. The appellant, on an intensive interrogation caused by the police party about the reason as to why he had started fleeing away, the appellant is said to have disclosed that he and his accomplices are engaged in smuggling of *ganja*. He disclosed names of his associates also. He further disclosed to the police party that a box containing 14 packets of Ganja was kept in the sugarcane field of one Ambika Chaudhary. Based on the said disclosure said to have been made by the appellant, the police party proceeded towards the sugarcane field of Ambika Chaudhary. The moment they reached the place, situated nearly 300 yards from the cowshed (*bathan*) of Ambika Chaudhary, six persons, sitting in the cowshed of Ambika Chaudhary, started fleeing away on seeing the police force. Though an effort was made to nab them, they managed to escape from the sugarcane field. From the sugarcane field the police recovered the box containing 14 packets of Ganja in the presence of two independent witnesses viz Sadique Mian (P.W. 2) and Mahanth Yadav (P.W. 3). All the 14 packets were weighed. The police party found and following articles :-

- (i) A plastic packet of yellow colour containing 13 kgs. Ganja;
- (ii) A plastic packet of yellow colour containing 12 kgs. Ganja;
- (iii) A plastic packet of yellow colour containing 13 kgs. Ganja;



- (iv) A plastic packet of light green colour containing 13 kgs. Ganja;
- (v) A plastic packet of yellow colour containing 13 kgs. Ganja;
- (vi) A plastic packet of yellow colour containing 13 kgs. Ganja;
- (vii) A plastic packet of yellow colour containing 12.5 kgs. Ganja;
- (viii) A plastic packet of yellow colour containing 12.5 kgs. Ganja;
- (ix) A plastic packet of crimson colour containing 13 kgs. Ganja;
- (x) A plastic packet of green colour containing 13 kgs. Ganja;
- (xi) A plastic packet of green colour containing 13 kgs. Ganja;
- (xii) A plastic packet of yellow colour containing 13.5 kgs. Ganja;
- (xiii) A plastic packet of white colour containing 7.5 kgs. Ganja;
- and
- (xiv) A plastic packet of yellow colour containing 6.5 kgs. Ganja.

5. All the aforesaid 14 packets were marked and samples of 100 gram of Ganja each from the 14 packets were taken in the presence of the two said independent witnesses and the packets were resealed in their presence. The said Ganja was seized by the Officer-in-Charge, the informant, Abhinandan Mandal (P.W. 7), and thereafter arrested this appellant. The two independent witnesses put their signatures on the seizure list voluntarily and willingly. Copy of the seizure list was handed over to the



appellant, who put his left thumb impression on the seizure list in the token of receipt of the seized *ganja*. Upon completion of investigation, the charge-sheet was submitted by the police, whereafter cognizance of offences punishable under Sections 20 and 22 of the N.D.P.S. Act was taken. As has been already noted heareinabove, charges were framed against the appellant for commission of offence punishable under Sections 20 and 22 of the N.D.P.S. Act on 03.12.2012. As the appellant pleaded not guilty, he was put on trial.

6. During the course of trial, altogether eight witnesses were examined. Apart from the oral evidence of the prosecution witnesses, the prosecution proved signature of the seizure list witness Sadique Mian over the seizure list by way of Exhibit-1, signature of another seizure list witness Mahanth Yadav over the seizure list (Exhibit-1/1). The seizure list was proved as Exhibit-2. The written report of the police officer was marked as Exhibit-3. The report of the Forensic Sciences Laboratory, Patna, was exhibited as Exhibit-4. The Laboratory in its report had found the sample sent by the police in examination to be of ganja containing Tetra Hydro Cannabinol (THC) as their chief intoxicating ingredient.



7. The evidence appearing against the appellant on closure of the evidence of prosecution witnesses were explained to the appellant in accordance with the requirement under Section 313 (1) of Code of the Criminal Procedure.

8. The trial court, upon appreciation of the evidence adduced at the trial, held the appellant guilty of the offence punishable under Section 20 of the N.D.P.S. Act.

9. The central issue, which requires determination in the present case, is whether the prosecution can be said to have established beyond all reasonable doubts at the trial the guilt of appellant of commission of offence punishable under Section 20 of the N.D.P.S. Act or not and, whether the impugned judgment of conviction and the order of sentence passed trial court is sustainable or not.

10. Be it noted that out of seven prosecution witnesses examined, P.W. 1 , Akhilesh Prasad Singh, P.W. 4 Niwas Kumar, P.W. 5, Gorakh Chaudhary, P.W. 7, the Officer-in-Charge of the Police Station, Abhinandan Mandal and P.W.8, Ram Hankar Pandey, constable of R.P.F., Katihar, were members of the police party which had conducted search and seizure during the recovery of Ganja. The seizure list witnesses were examined as P.W. 2 and P.W. 3.



11. Learned counsel appearing on behalf of the appellant has argued that except for the so-called confessional statement made by the appellant before the police, which, according to the police, led to recovery of Ganja from open sugarcane field of one Ambika Chaudhary, there is absolutely no evidence, which can be said to be the basis for finding of conviction against the appellant. He has submitted that even the seizure list witnesses have not supported the prosecution's case inasmuch as they declined to identify the appellant in whose presence, according to the prosecution, the seizure was made. They simply proved their signatures on the seizure memo. He has further submitted that it appears that the seizure list was not prepared at the place of seizure, rather the seizure list was prepared subsequently at the police station, which is evident from the evidence of P.W. 6, Sri Niwas Chaudhary. He has further argued that it is not the case of prosecution that the seizure of Ganja was made from the conscious possession of the appellant. The recovery of Ganja was made from the sugarcane field of Ambika Chaudhary. Further, there is no iota of evidence that the appellant was dealing with Ganja in any manner to justify his conviction under Section 20 of the N.D.P.S. Act. Still further, the alleged seizure of Ganja by the police cannot



be said to be in conformity with the statutory requirement under sub-Section (4) of Section 100 of the Code of Criminal Procedure.

12. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the State, *per contra* has contended that confessional statement of the appellant, recorded by the police, in the facts and circumstances of the case is admissible as his confessional statement led to recovery of Ganja, though not from his conscious possession. He has further submitted that as the search and seizure were made by the police in the open sugarcane field, there was no requirement of adhering to the provisions under sub-section (4) of Section 100 of the Code of Criminal Procedure. He has further submitted that even if, for the sake of argument, it is accepted that there has been some irregularities in causing search and seizure, the same cannot be said to be fatal for the prosecution, unless the appellant is in a position to demonstrate that such irregularity caused any prejudice to the appellant.

13. Before we proceed to deal with the rival submissions made on behalf of the parties, as noted above, and the evidence adduced at a trial, we consider it apt to notice at the outset Section 20 of the N.D.P.S. Act, 1985, which lays down punishment



for contravention of the provisions of the Act in relation to cannabis sativa (*ganja*). Section 20 reads as under: -

“20. Punishment for contravention in relation to cannabis plant and cannabis.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,—

[30](#)[(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to [31](#)[one year], or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:



Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees]”

14. It is crystal clear on a plain reading of Section 20 of the Act that a person can be held guilty of an offence punishable under Section 20 of the Act, if he is found to be cultivating any cannabis plant; or producing, manufacturing, possessing, selling, purchasing, transporting, importing inter-State, exporting inter-State or using cannabis.

15. The only evidence against the appellant is that he had disclosed in his confessional statement to the police that he and his companions were engaged in dealing with the cannabis (ganja). He, however, denied. There is no iota of evidence to the effect that the appellant was found selling, purchasing or transporting Ganja. Ganja was not recovered from his possession. A mere vague disclosure, said to have been made by the appellant before the police in his confessional statement, that he and his accomplices are engaged in dealing with Ganja, in our opinion could not be the basis for the appellant's conviction for commission of offence punishable under Section 20 of the N.D.P.S. Act. The evidence of P.W. 6, Chaukidar, that seizure list was prepared at the police station casts serious doubt on the *bona fide* of the manner in which the seizure was carried out by the



police. In our opinion, based on the evidence adduced at the trial, the prosecution cannot be said to have proved commission of offence by the appellant punishable under Section 20 of the N.D.P.S. Act beyond all reasonable doubts. The appellant was entitled to be given benefit of doubt in the wake of the manner in which the seizure was made, the seizure list was prepared and the recovery of said Ganja was said to have been made on the basis of confessional statement of the appellant before the police. Further denied by the seizure list witnesses presence about of the appellant at the place and time of seizure further weakens the prosecution's case.

16. In view of the discussions, as noted above, in our opinion, conviction of the appellant by the trial court of the offence punishable under Section 20 of the N.D.P.S. Act cannot be upheld. The impugned judgment of conviction dated 17.04.2014 and order of sentence dated 21.04.2014 passed by the learned Additional Sessions Judge-I-cum-Special Judge, N.D.P.S. Act Cases, Gopalganj, in Barauli P.S. Case No.54 of 2012/Tr. No. 49 or 2012 deserves interference. The same is accordingly set aside. Consequently, the appellant stands acquitted.

17. This appeal is accordingly allowed.



18. The appellant in custody since 22.02.2012. Let him
be released forthwith, if he is not required in any other case.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Pawan/-

AFR/NAFR	NAFR
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