

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.304 of 2019

Arising Out of PS. Case No.-321 Year-2013 Thana- BRAHMPUR District- Buxar

DILIP KUMAR SAH Son of Late Sitaram Sah Resident of Mohalla Mogal
Bazar, P.S.- Kotwali, District- Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 163 of 2019

Arising Out of PS. Case No.-321 Year-2013 Thana- BRAHMPUR District- Buxar

SANTOSH KUMAR SAH Son of Shivji Sah Resident of Village - Kathar,
PS- Krishnabraham, Diss - Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 179 of 2019

Arising Out of PS. Case No.-321 Year-2013 Thana- BRAHMPUR District- Buxar

1. SHIVJI SAH @ SHIVJEE SAH AND ANR Son of Late Ramjee Sah
Resident of Village- Kathar, P.S.- Krishnabraham, District- Buxar.
2. Gorakh Sah Son of Late Ramjee Sah Resident of Village- Kathar, P.S.-
Krishnabraham, District- Buxar.



... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 304 of 2019)

For the Appellant/s : Mr.Arvind Kumar Singh, Adv
For the Respondent/s : Mr.Abhimanyu Sharma, Adv

(In CRIMINAL APPEAL (DB) No. 163 of 2019)

For the Appellant/s : Mr. Vikramdeo Singh, Adv
Mr. Sada Nand Roy, Adv
Mr. Shankar Kumar, Adv
Mr. Aquib Khan, Adv
For the Respondent/s : Km. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 179 of 2019)

For the Appellant/s : Mr. Vikramdeo Singh, Adv
Mr. Sada Nand Roy, Adv
Mr. Shankar Kumar, Adv
Mr. Aquib Khan, Adv
For the Respondent/s : Mr, Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 11-05-2023

By the impugned of conviction dated 05.01.2019 and the order of sentence dated 11.01.2019 passed by the learned Additional District & Sessions Judge-2nd cum Special Judge, Excise, Buxar in NDPS Case No. 4 of 2013 arising out of Brahmpur (Krishna Braham) P.S. Case No. 321 of 2013, the appellants have been convicted and sentenced as under:



Appellant Dilip Kumar Sah in Criminal Appeal (DB) No. 304 of 2019

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 20(b)(ii)(C) & 27(A) of the NDPS Act	Rigorous Imprisonment for 20 years	Rs. 2,00,000/-	SI for Six months
Section 25(1-b)a & 27 of the Arms Act	Rigorous Imprisonment for 20 years	Rs. 2,00,000/-	SI for Six months

Appellant Santosh Kumar Sah in Criminal Appeal (DB) No. 163 of 2019

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 20(b)(ii)(C) & 27(A) of the NDPS Act	Rigorous Imprisonment for 20 years	Rs. 2,00,000/-	SI for Six months
Section 25(1-b)a & 27 of the Arms Act	Rigorous Imprisonment for 20 years	Rs. 2,00,000/-	SI for Six months

Appellant Shiv Ji Sah and Gorakh Sah in Criminal Appeal (DB) No. 179 of 2019

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 20(b)(ii)(C) & 27(A) of the NDPS Act	Rigorous Imprisonment for 20 years	Rs. 2,00,000/-	SI for Six months
Section 25(1-b)a & 27 of the Arms Act	Rigorous Imprisonment for 20 years	Rs. 2,00,000/-	SI for Six months



2. Mr. Arvind Kumar Singh, learned counsel for the appellant in Criminal Appeal (DB) No. 304 of 2019 and Mr. Vikram Deo Singh, learned counsel representing the appellants in Criminal Appeal (DB) No. 163 of 2019 and Criminal Appeal (DB) No. 179 of 2019.

3. The State has been represented by Ms. Shashi Bala Verma learned Additional Public Prosecutor in Criminal Appeal (DB) No. 163 of 2019, Mr. Sujit Kumar Singh learned Additional Public Prosecutor in Criminal Appeal (DB) No. 179 of 2019 and Mr. Abhimanyu Sharma learned Additional Public Prosecutor in Criminal Appeal (DB) No. 304 of 2019.

4. The prosecution's case in nutshell, as incorporated in the impugned judgment of the trial court is that Alok Kumar Singh (Sub Inspector of Police) received a secret information from the Superintendent of Police, Buxar on 29.11.2013 to the effect that huge quantity of *ganja* was being brought in the house of the appellant Santosh Kumar Sah at village Kathar. After having recorded the information in the form of *Sanha* he proceeded for the village Kathar where he arrived at about 12:10 pm at the house of the appellant Santosh Kumar Sah. On seeing the police party, three persons attempted to flee away from the house of Santosh Kumar Sah. Two persons were apprehended



on the spot. The persons apprehended were informed about the intended search of the house. It is the prosecution's case that a written consent was given for search of the house in the presence of a Magistrate. The Sub-divisional Police Officer, was informed accordingly and one Executive Magistrate namely Deepak Kumar Srivastava (PW-8) was asked to be present for the purpose of the search. It is also the prosecution's case that in course of the search, in the presence of two independent witnesses namely, Rajendra Singh (PW-3) and Nand Bihari Singh (PW-6), the house was searched leading to recovery of 42.275 Kg of ganja from the ground floor of the house and 63.300 Kg from the first floor of the house. Weighing machine, mobile phone etc., were also recovered from the house. The informant, according to the prosecution's case took out 27 gram of *ganja* for sampling in three packets, for forensic examination which were marked A/1, A/2 and A/3, which were sealed. He sealed the remaining recovered *ganja* and prepared a seizure list. Further, on disclosure made by the appellant Sheojee Sah, raid was also conducted in the newly constructed house of the appellant Santosh Sah after obtaining his written consent for search in presence of a Magistrate. After search the police recovered 159 Kg, 539.85 Kg and 187.805 Kg of *ganja* (total



944.465 Kg) kept at different places of the house. Further, upon search of the Almirah, two country made pistols, five live cartridges of rifle were also recovered. Six live cartridges and one VIP suit case, Saving Pass-book, one Hero Honda Splendor Motorcycle, some LIC bond papers, receipts of Sahara and Seven Lacs cash, ornaments, weapon, weighing machine and other items were also recovered.

5. It is also the prosecution's case that during the interrogation, all the four persons apprehended on the spot disclosed to the police that accused Ranjan Singh was a partner in the business of selling of *ganja* and *ganja* had been supplied by one Lakhan Sah and Vijay Shankar Singh of Bhagalpur, who managed to flee away upon seeing the presence of the police.

6. Based on the written statement of the Sub Inspector of Police Brahmpur (Krishnabrahm) P.S. Case No. 321 of 2013 came to be registered against all the accused persons.

7. After registration of the FIR, the investigation was handed over to Dhirendra Prasad Sah (PW-7), the first investigating officer.

8. From the records, it transpires that the investigation of the case was subsequently handed over to another investigating officer namely, Jamuna Prasad Chaudhary (PW-4)



on 22.02.2014, who submitted the chargesheet on 27.02.2014 for commission of the offences punishable under Sections 20(b)(ii)(C)/22/27A, 29 of the NDPS Act, Section 47A of the Excise Act and Section 25(i-b)a/26/35 of the Arms Act.

9. The court below, based on the said chargesheet took cognizance of the offences punishable under Sections Section 20(b)(ii)(C)/22/27A, 29 and 47A of the NDPS Act and 25(i)(b)(a)/26 of the Arms Act.

10. Before proceeding to notice the provisions under which charges were framed against these appellants, we consider it relevant to mention that from the ordersheet maintained by the court below, it transpires that an application was made by the investigating officer before the learned District and Sessions Judge cum Special Judge, Buxar on 18.02.2014 (nearly three months after seizure) for sending the samples of *ganja* and other seized materials for forensic examination. A report of the office of the Director of Forensic Science Laboratory dated 22.04.2014 is available on record which came to be marked as Exhibit-10 at the trial from which it transpires that the samples were dispatched through Special Messenger to the FSL on 24.02.2014, which were received in the office of the FSL on 25.02.2014. We have mentioned these facts in the



background of the date of filing of the chargesheet i.e 27.02.2014, which was done even before receipt of the result of examination from the Office of the FSL.

11. Be that as it may, the report of the FSL is to the effect that the articles contained in three plastic jars marked as A, B and C in the wooden box containing *ganja*, Tetra Hydro Cannabinol (THC) as their chief intoxicating ingredient. The trial court framed the charges for commission of the offences punishable under Sections Sections 20(b)(ii) (C) and 27 of the NDPS Act for having been found in possession, transporting, harbouring and selling of Cannabis (*ganja*) in commercial quantity without having a valid license and financing them, in contravention of the provisions envisaged under Section 20(b) (ii) (C) of the NDPS Act.

12. Accused Ranjan Kumar was specifically charged with commission of offence punishable under Section 29 of the NDPS Act for being a party to the criminal conspiracy in dealing with *ganja*, a psychotropic substance. There were altogether five persons who were charged of the offences as noted above including these appellants and accused Ranjan Kumar @Ranjan Singh @Rajni Singh. The co-accused Ranjan Singh @ Rajni Singh (accused no. 3) came to be acquitted by



the trial court by the impugned judgment and therefore we need not go into the conspiracy aspect of the matter, in relation to which, he was charged.

13. The appellants denied the charges framed against them and claimed trial.

14. At the trial the prosecution examined altogether 10 witnesses including the informant (PW-5), two investigating officers namely Dhirendra Prasad Sah (first investigating officer PW-7), Jamuna Prasad Chaudhary (2nd investigating officer PW-4), seizure list witnesses namely Rajendra Singh and Nand Bihari Singh (PW-3 and PW-6), respectively. Deepak Kumar Srivastava (Executive Magistrate) came to be examined as PW-8, Seema Patel (PW-9) proved the FSL report dated 22.04.2014 and Ram Babu Singh (PW-10) proved the station diary entry dated 30.11.2013 which contained the description of the seized articles.

15. After conclusion of the evidence of the prosecution's witnesses, statement of the persons put on trial came to be recorded in purported compliance of the provision envisaged under Section 313 of the Cr.P.C. The trial court thereafter questioned them based on the evidence which emerged against them on the basis of the depositions of different



witnesses so as to give them an opportunity to explain the circumstances. The persons put on trial denied the charges. Thereafter, the defence examined four witnesses namely, Balmiki Singh (DW-1), Bablu Kumar (DW-2), Karna Singh (DW-3), Purnawasi Paswan (DW-4).

16. We consider it gainful at this juncture to refer to the documentary evidence adduced at the trial by the prosecution.

“(1) Ext. 1 to 1/1 - Signature of witness Rajendra Singh related to u/s 50 N.D.P.S. Act.

(II) Ext. 1/2 to 1/3-Signature of Rajendra Singh on sample of seal.

(III)Ext. 1/4 to 1/5- Signature of Rajendra Singh on Seizurelist.

(IV)Ext. 1/6 to 1/9 Signature of Rajendra Singh on Arrest Memo.

(V) Ext. 1/10 to 1/82- Signature of Rajendra Singh on Material Ext. 1 toLXXIII.

(VI)Ext. 2 - Self Statement.

(VII) Ext.3 to 3/1-Endorsement.

(VIII)Ext. 4-FIR.

(IX) Ext. 5-Consent letter.

(X) Ext. 6-Notice of u/s 50 NDPS Act.

(XI) Ext. 7 to 7/1-Sample of Seal.

(XII) Ext. 8 to 8/1-Seizurelist.

(XIII)Ext. 9 to 9/3- Arrest Memo.

(XIV)Ext. 1/83 to 1/84-Signature of witness on consent letter.

(XV) Ext. 1/85 to 1/86-Signature of witness on sample of seal.



(XVI)Ext. 1/89 to 1/92- Signature of witness on Arrest Memo.

(XVII)Ext. 1/93 to 1/94-Signature of witness Deepak Kr. Srivastava on Seizure list.

(XVIII)) Ext. 1/95 to 1/96-Signature of witness on sample of seal.

(XIX)Ext. 10- FSL Report.

(XX) Ext. 11-Entry number in Malkhana Register.

(1) Material Ext. I to VIII- Seized bundle of notes and purse (sealed).

(II) Material Ext. IX to X- Seized ornaments etc. in sealed packets.

(III) Material Ext.XI- Seized coin in sealed packet.

(IV)Material Ext. XII to XV-Seized mobile in sealed packet.

(V) Material Ext. XVI- Seized small sealed packet of Ganja.

(VI)Material Ext. XVII to LXIX- Seized sealed packet of Ganja total 53 packets.

(VII) Material Ext. LXIX to LXXIII - Total four packets of Weighing machine and Bat.”

17. Based on appreciation and analysis of the evidence adduced at the trial, the learned trial Court has held these appellants guilty of the offences punishable under sections 20(b)(ii)(C) and section 27(A) of the NDPS Act and after having convicted them of the aforesaid offences imposed the sentence of imprisonment and fine as noted here-in-above. The learned trial court however, acquitted these appellants of the charge of commission of offences punishable under section 25(1-b)a and



27 of the Arms Act by giving them benefit of doubt.

18. Mr. Vikramdeo Singh, learned counsel appearing on behalf of the appellants has submitted that the entire case of the prosecution fails, as the prosecution miserably failed to prove at the trial that the samples of the recovered *ganja* were duly drawn soon after the seizure and the samples which were sent to the Forensic Science Laboratory were the same which were drawn from the seized materials by the police party. It is also his submission with reference to the evidence of the Executive Magistrate (P.W.-8) that the seizure was apparently not done at the places where the recoveries were made and seizure list was prepared subsequently at the police station, which is fatal to the prosecution's case. He has further submitted that the seizure list witnesses have not supported the prosecution's case. In that background, he submits that the failure on the part of the prosecution to draw the samples in presence of a Magistrate and send the samples promptly after the seizure for forensic examination to the FSL creates serious doubt on the prosecution's case. He has heavily relied on the evidence of first investigating officer (P.W.-7) who in his evidence had clearly deposed that he had not received any sample of *ganja* for the purpose of the same being sent to the



Forensic Science Laboratory for examination. He has submitted that it is evident from the deposition of first investigating officer (P.W.-7) that he had not received the samples drawn from the articles seized till he was investigating the case. He contends, with reference to the evidence of second investigating officer (P.W.-4) who had taken over the investigation on 22.2.2014, that he too did not have any occasion to deal with the samples drawn from the seized articles.

19. He has also argued that it would be unsafe to uphold the conviction in the wake of inordinate delay of approximately three months in sending the samples to the Forensic Science Laboratory for examination and absence of any evidence as to where the samples were kept by the police in the meanwhile.

20. It has been argued on behalf of the State on the other hand that though the seizure list witnesses have not disputed factum of seizure at the place of recovery, they have not denied the presence of their signatures on the seizure memo. The proof of their signatures on the seizure memo proves all the contents of the seizure list and, therefore, the seizure list cannot be doubted on the ground of the seizure list witnesses not supporting the seizure.



21. It has also been argued that before entering into the house of the appellants, the necessary safeguard prescribed under section 50 of the NDPS Act was strictly followed. The samples were drawn by the informant himself in presence of the Executive Magistrate as is evident from the order-sheet of the Court below. The Station House Officer (informant) himself had taken steps for sending the samples for forensic examination and therefore, finding of conviction does not require interference on this ground.

22. We have considered rival submissions made on behalf of the parties as noted above and we have carefully gone through the impugned judgment and order of the trial Court as well as the lower courts records. We find substance in the submission advanced on behalf of the appellants that the deposition of the first investigation officer (P.W.-7) in his cross examination in paragraph nos. 17 and 18 is fatal to the prosecution's case which reads as under:

“17.जाँच का नमूना के संबंध में कोई कारवाई मेरे द्वारा नहीं की गई न जाँच का नमूना मुझे प्राप्त हुआ। यह सब कारवाई कृष्णाब्रह्म थानाध्यक्ष के द्वारा किया गया। इसलिए मैं नहीं बता सकता हूँ की कुल कितना जाँच का नमूना तैयार हुआ।

18. जब तक मैंने इस कांड का अनुसन्धान किया तब तक कोई भी जाँच का नमूना मेरे सम्मुख प्रस्तुत नहीं हुआ।”

23. A near English translation of the above mentioned



deposition of P.W.-7 would read as under:

“17. I had neither taken any action with regard to sample for test nor the sample for test was received by me. This action was taken by the SHO, Krishnabraham. Therefore, I cannot say as to how many samples were prepared for test.

18. So long I investigated the case, no sample for test was produced before me.”

24. In this wake, we need to notice the order dated 18.2.2014 passed by the learned Special Judge, wherein, it has been clearly mentioned that it was the investigating officer who had made an application for sending the seized articles marked A-1, B-1 and C-1 and two country-made pistols for forensic examination.

25. We, at this juncture, go back to the order dated 01.12.2013 of the learned Special Judge from which it appears that sealed sample and search cum seizure list was presented before the learned Special Judge. The seized articles were also placed before the learned Special Judge at the time of production of the accused persons after their arrest. The order dated 01.12.2013 reads *inter alia* as under:

" प्रस्तुत शील्ड युक्त नमुना को सुरक्षित भंडारन हेतु थाना मालखाना भेजा गया"

26. A near translation of the said part of the order



would read as under:

“For the safe storage of presented sealed sample, let it be sent to the Malkhana.”

27. As we have noticed hereinabove, according to the first investigating officer, he did not have any occasion to see the samples drawn from the seized materials. The prosecution appears to have completely failed to make out its case that the samples which were sent to the Forensic Science Laboratory were the same which were drawn from the seized articles. It is also manifest that the samples were not drawn in the presence of a Magistrate. Further, it can be easily culled out from the evidence of prosecution witnesses that neither the seized articles nor the seized samples so drawn were kept in safe custody.

28. The Supreme Court has laid much emphasis in the case of *Union of India vs. Mohan Lal* reported in **2016 (3) SCC 379** on safe storage and disposal of such substances. The present case is a glaring example of not following the Standing Order No.1/1989 issued by the Government of India prescribing the procedure for seizure, sampling and safe keeping of samples and disposal of seized drugs, narcotic and psychotropic substances.

29. From the above discussion, we do not find any



other option but to interfere with the impugned finding of conviction recorded by the trial Court.

30. Accordingly, the impugned judgment of conviction dated 05.01.2019 is hereby set aside. Consequently, the order of sentence dated 11.01.2019 is also set aside.

31. These appeals are allowed.

32. Since the appellants are in custody, let them be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

ranjan/ravi-

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