

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.431 of 2018

Arising Out of PS. Case No.-4 Year-2016 Thana- GOVERNMENT OFFICIAL COMP.
District- Aurangabad

1.

Md. Hadis S/o Late Md. Sharif, R/o Vill.- Garhani, P.S.- Charpokhari , District- Bhojpur @ Ara.
2.

Rekha Devi @ Sunkunvar Vishwakarma W/o Late Vishnu Vishwakarma, R/o Mayapur Road, Gurudwara Ward No. 36, P.S.- Ambikapur, District- Surguja Chhattisgarh.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr. Syed Masleh-Uddin Ashraf, Advocate
For the Respondent : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 06-04-2023

This appeal has been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, putting to challenge the impugned judgment of conviction dated 08.03.2018 and order dated 14.03.2018, passed by learned 1st Additional Sessions Judge-cum-Special Judge (NDPS) Act, Aurangabad, in G.R. No. 04 of 2016/09 of 2016, whereby the appellants have been convicted and sentenced as under:

Appellant Number	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Appellant No. 1 (Md. Hadis)	20(b) of the NDPS Act	R.I. for 14 years	1,25,000/-	S.I. for one year



Appellant No. 2 (Rekha Devi @ Sunkunvar Vishwakarma)	20(b) of the NDPS Act	R.I. for 14 years	1,25,000/-	S.I. for one year
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2. The prosecution's case, in brief, is that based on a secret information, an operation was conducted under the supervision of Superintendent, Excise Department, Aurangabad, by a team of Excise Officials and personnel of Special Auxiliary Police (SAP) for checking the vehicles and in that course, a bus in the name of Baba Bus, bearing registration No. BR-02T-2511 was checked, leading to recovery of 57 kgs of *Ganja* in altogether 32 bundles; 25 bundles containing 2 kgs each and 7 bundles containing 1 kg each and 23 bottles of 750 ml (total 17.250 Liters) illicit Indian Made Foreign Liquor (IMFL for short) were also recovered. The Conductor of the bus, Dharambir Kumar Upadhayay (PW-4), is said to have disclosed to the raiding party that these appellants had, before boarding the bus, on having been asked, told him that those bags contain domestic items and apparels. However, during the course of checking at Erka Excise check-post by the Excise Officials, huge quantity of *ganja* and illicit liquor was recovered and seized by the Excise Officials on 18.06.2016. Based on self statement of the Sub-Inspector Excise, Devendar Singh (PW-6), a case was lodged and seizure list was prepared for the offences punishable under Section 20(b) of the



Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and Section 47(a) of the Bihar Prohibition and Excise Act against these appellants. Cognizance of the offences was taken by the learned District and Sessions Judge-cum-Special Judge, (NDPS) Act, Aurangabad, on 18.08.2016. On 21.09.2016, charges were framed against these appellants for commission of the offences punishable under the aforesaid NDPS Act and the Excise Act.

3. As the appellants denied the charges against them, they were put to trial. During the course of trial, the prosecution examined altogether 6 witnesses, including the conductor of the bus (PW-4) and other members of the raiding team. After closure of the evidence of the prosecution's witnesses, the appellants were given opportunity to explain the circumstances emerging against them in accordance with the requirement of the Section 313 of the CrPC. They denied the circumstances, which, according to the trial court, were against them.

4. Mr. Syed Masleh-Uddin Ashraf, learned counsel appearing on behalf of the appellants has submitted that it is the consistent evidence of all the prosecution's witnesses, who have supported the case of the prosecution and who were members of the raiding party, that the recovery of the *ganja* was from the



dickey of the bus. He has submitted that there is absolutely no evidence adduced at the trial which can suggest that the recovery of any incriminating material was made from the conscious possession of these appellants. He has submitted that as would emerge from the case set out by the prosecution at the trial that it was the conductor of the bus, who had told the members of the raiding party that the bags recovered from the dickey containing *ganja* belonged to these appellants. The Conductor, Dharamvir Kumar Upadhyay, in his evidence, however, has not at all supported the prosecution's case that these appellants had any connection with the bags containing *ganja* recovered and seized by the raiding team from the dickey of the bus. He has submitted that the finding of conviction recorded by the trial court for the offence punishable under Section 20(b) of the NDPS Act is perverse and requires interference by this Court.

5. Learned Additional Public Prosecutor appearing on behalf of the appellant, on the other hand, has submitted that there is no legal infirmity in the finding recorded by the trial court convicting the appellants of the charge punishable under Section 20(b) of the NDPS Act. He has submitted that it appears that under the influence of these appellants, PW-4 did not support the



prosecution's case. The prosecution's case has, however, been duly supported by the other members of the raiding team.

6. We have carefully perused the evidence of the prosecution's witnesses and other cogent materials on record.

7. PW-1, a member of the raiding party and an official of the Excise Department, in his evidence in paragraph -6, deposed that the bags containing *ganja* and illicit liquor was kept in the dickey of the bus.

8. Similarly, PW-2, another member of the raiding party, deposed at the trial that the bags were recovered from the dickey of the bus, which was on the back side of the bus and the dickey was under lock and key.

9. Similarly, PW-5, in paragraph-4 of his deposition, testified that the articles were recovered from the dickey of the bus and there was no mark of identity available on the bags and he was not in a position to say as to whether there was any mark of identification on the said bags or not.

10. The conductor of the bus (PW-4) also deposed that the recovery of the contraband articles was made from the dickey of the bus. It is evident, thus, that PWs-1, 2, 4 and 5 are consistent in their evidence that the recovery of the bags containing contraband articles were made from the dickey of the bus. There is



no evidence adduced at the trial to indicate that any incriminating article was recovered from the conscious possession of these appellants, though their personal search was conducted by the raiding team.

11. The evidence of PW-4, in the Court's opinion, has completely demolished the case of the prosecution of recovery of any contraband article from the possession of these appellants.

12. PW-4, in his evidence, deposed that the said Baba Bus plied from Korba to Sasaram. He further deposed that during the course of search on 18.06.2016, *ganja* was recovered from the bus, but he did not have any knowledge about the baggage of the passengers, which were kept by the helper of the bus. He proved his signature on the seizure list (exhibit-2). In paragraph-6 of his deposition, he stated that there were altogether 45 passengers travelling in the bus on 18.06.2016. Some of such passengers had de-boarded the bus at Hardevganj. The helper of the bus, namely, Chhotu, had also de-boarded the bus at Hardevganj. Referring to the appellant, Md. Hadis, he deposed that he had boarded the bus at Ambikapur Bus-stand, when he was carrying a small bag. Appellant No. 2 had also boarded the bus at Ambikapur and she was carrying something in a polythene bag. In paragraph-9, he clearly deposed that these appellants were not carrying either of



the 6 bags when they had boarded the bus which were subsequently recovered by the raiding party. They were sitting in the bus at their respective seats and they were not interacting with each other. He denied in his evidence that he had disclosed to the police as to who were the owners of the said bags. It is significant that in paragraph-12, PW-4 further deposed that the bus in question would stop at Ramanujganj, where, on the said date 2-4 persons had boarded the bus carrying bags. Those passengers had de-boarded the bus at Erka check-post leaving the bags behind which they were carrying. He denied seizure of said articles from the possession of these appellants.

13. From the evidence of Devendar Singh (PW-6), Sub-Inspector in the Excise Department, it appears that according to him the samples of *ganja* seized during the course of search was sent to the Forensic Science Laboratory, Kolkata, for scientific examination on 14.07.2016. On 23.07.2016, the samples were sent to the Forensic Science Laboratory, Patna. During the course of cross examination, he deposed that the *ganja* was kept in *malkhana*. However, its entry was not made in malkhana register. The *ganja* was produced before the Court at the trial as material exhibit, but the said boxes containing *ganja* were not sealed. The boxes containing *ganja* were not bearing any malkhana number,



the case number or signature of the Excise Officials. According to the own deposition of PW-6, the contraband articles, i.e., *ganja* was not weighed at the place of occurrence immediately after the recovery and seizure. During the course of cross examination, PW-6 was not able to justify the delay in sending the articles seized by the raiding team to Forensic Science Laboratories. The report of the Forensic Science Laboratory dated 16.06.2016 was exhibited at the trial as exhibit-6. The following was the result of scientific examination as mentioned in the report of the Forensic Science Laboratory: -

“Results of Examination

Using suitable Physical (Morphological) tests, Chemical tests and instrumental methods of chemical analysis (Thin Layer Chromatography in two different solvent system techniques), of the exhibit marked here as Chem 320/16, the following results were obtained:

1. The plant materials contained in the Exhibit marked here as Chem 320/16 was identified as Ganja (Cannabis plant product).

2. The following psycho-active ingredients of Cannabis product/ Ganja were detected in the Content of the exhibit marked here as Chem 320/16:

- (i) Tetrahydrocannabinol (THC)*
- (ii) Cannabinol (CBN) &*
- (iii) Cannabidiol (CBD)*



Note: 1. Results relate only to exhibit tested.

2. After examination, the remnants of the exhibit marked Chem 320/16, weighing 56.4 gram (without wooden box), alongwith case/exhibit submission document has been sealed within the said cloth parcel, with the seal impression given below and is being returned herewith.”

14. From the evidence of the prosecution's witnesses, as noted above, we are of the considered view that the prosecution miserably failed to prove recovery of any contraband article from the conscious possession of these appellants. The said articles were recovered from the dickey of the public bus in which 45 passengers were traveling. There is no cogent evidence to bring home the charge against the appellants that they were carrying the contraband articles at any point of time. PW-4 has not been declared hostile by the prosecution and, in such circumstance, it is permissible for the appellants to rely on the evidence of the said prosecution's witness (PW-4). PW-4, in his evidence, has categorically deposed that these appellants were not carrying the bags which were seized by the raiding party.

15. In such view of the matter, we have no hesitation in reaching a conclusion that the finding of conviction recorded by the trial court against these appellants of the commission of the offence punishable under Section 20(b) of the NDPS Act is not



sustainable at all. In order to prove a charge of an offence under Section 20(b) of the Act, it is obligatory on the part of the prosecution to establish that the prohibited articles were in conscious possession of the persons charged of such offence.

16. We do not find any such evidence on record in the present case. Accordingly, the impugned judgment of conviction dated 08.03.2018 passed by learned 1st Additional Sessions Judge-cum-Special Judge (NDPS) Act, Aurangabad, in G.R. No. 04 of 2016/09 of 2016 is set aside. Consequently, the order of sentence dated 14.03.2018 also stands set aside.

17. This appeal is accordingly allowed.

18. Let the appellants be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

Pawan/nishant-

AFR/NAFR	NAFR
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