

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.405 of 2018

Arising Out of PS. Case No.-74 Year-2016 Thana- SIKTI District- Araria

1. Gulabi Singh @ Gulab Chandra Mandal @ Gulab Chand Mandal, S/o Sri Jhabbi Singh @ Jhabbi Mandal,
2. Pappu Kumar @ Pappu Mandal @ Pappu Singh @ Pappu Kumar Singh, S/o Gulabi Singh @ Gulab Chandra Mandal @ Gulab Chand Mandal, Both R/o Village- Kari Tola, Balbari , P.S. - Bardha Sikti in the District- of Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Thakur, Advocate Ms. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 25-07-2024

Heard Mr. Ajay Thakur, learned Advocate for the appellants and Mr. Abhimanyu Sharma, learned APP for the State.

2. Both the appellants, who are father and son amongst themselves, have been convicted under Sections 20(b)(iic), 22C and 23C of the Narcotic Drugs and Psychotropic Substances Act, 1985 vide judgment dated 06.01.2018 passed in Trial No. 30/2016, CIS No.



79/2016, Special (N.D.P.S.) Case No. 18 of 2016, arising out of Sikti (Bardaha) P.S. Case No. 74 of 2016 by the learned 1st Additional Sessions Judge-cum-Special Judge, N.D.P.S. Act, Araria. By order dated 08.01.2018, the appellants have been sentenced to undergo R.I. for 20 years each and to pay a fine of Rs. 2 lakhs each for the offences under Sections 20(b)(iic), 22C and 23C of the Narcotic Drugs and Psychotropic Substances Act, 1985. In the event of non-payment of fine, the appellants have been directed to suffer S.I. for six months on each of the counts.

3. However, the sentences have been directed to run concurrently.

4. 28 kgs. of Ganja is said to have been recovered from the house of appellant/Gulabi Singh. The other appellant viz. Pappu Kumar is his son. Rama Shankar, officer-in-charge of Bardaha police station (P.W.

2) had lodged his self-statement that on 09.05.2016 at



about 8.00 P.M. he learnt on secret information that the appellant/Gulabi Singh is dealing in narcotics/ganja.

5. The aforementioned information was transmitted to the S.P., Araria, who constituted a raiding team comprising him, Dhananjay Kumar, Sunil Kumar (P.W. 7), Vikash Kumar Azad (P.W. 9) and some constables. On the oral orders of the S.P., Araria, the raiding team proceeded from the police station at about 3.30 in the morning and reached the village of the appellant by around 4.45 A.M. Appellant/Pappu Kumar was apprehended and on whose showing, the house of the appellant/Gulabi Singh was raided. In the raid, 28 kgs. of ganja kept in two packets (14 kgs. each) was recovered from a room of the house of appellant/Gulabi Singh. The narcotics was seized in the presence of Pramod Rajak and Dilip Rajak, two independent witnesses, who have curiously not been examined. A seizure list was prepared. Both the appellants were arrested and were made accused in Sikti (Bardaha) P.S. Case No. 74 of 2016 dated 09.05.2016 for the



offences under Sections 20, 22, 23 and 24 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

6. The police after investigation submitted chargesheet whereupon cognizance was taken and the case was committed to the learned Special Court for trial.

7. The Trial Court, after having examined nine witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

8. Mr. Thakur, learned Advocate for the appellants has argued that there is nothing on record to indicate that after the seizure of the narcotics, any sample was drawn. None of the members of the raiding team who have come to the witness-stand have spoken about any sampling having been done. He has further argued that there is no information on record as to where the seized narcotics was kept. Though the seized narcotics have tested positive for cannabis plant but in the absence of any information about the sampling and its dispatch to the



F.S.L., the report submitted by the laboratory is rendered absolutely suspect.

9. He has further submitted that the prosecution story itself is too vague.

10. Two of the witnesses who were members of the raiding team viz. P.W. 7 and P.W. 9 have also alleged that ganja was found in the Scorpio vehicle of appellant/Pappu Kumar and therefore, he was arrested. Since Pappu Kumar is the son of appellant/Gulabi Singh, Pappu Kumar was asked for the location of his house whereafter the raid was conducted in the house of appellant/Gulabi Singh.

11. It appears that with respect to the narcotics recovered from the Scorpio vehicle belonging to appellant/Pappu Kumar, a separate case was registered in which, according to Mr. Thakur, all the accused persons have been acquitted.

12. Lastly, it has been submitted that both the seizure list witnesses have not supported the prosecution



case and have only said that they were made to sign on blank piece of paper and that they were not aware of the contents of the same.

13. The informant/P.W. 2 though has supported the prosecution version but has not stated about the process of weighment of the seized narcotics or its sampling. Neither have P.Ws. 7 and 9 viz. Sunil Kumar and Vikash Kumar Azad stated anything about sampling. All that these witnesses have stated is that the narcotics was seized from one of the rooms of the house of appellant/Gulabi Singh which weighed 28 kgs.

14. We find from the record that there is no disclosure about the process adopted by the raiding team for weighing the narcotics or for drawing any samples.

15. However, we find from the F.S.L. report (Ext. 3) that the two samples marked as 'A' and 'B' were received in the laboratory on 26.08.2016 and the test was undertaken on 22.09.2016. The alleged seizure is dated 09.05.2016. We have not been able to find out from the



record as to where was the narcotics kept in the meanwhile and when was it dispatched to the F.S.L. There is a possibility of the sample having been tampered in the meanwhile. There is no evidence of the same having been kept in *Malkhana*. That apart, with the absence of any material as to when samples were drawn and when permission was taken from the Special Court for the samples to be dispatched to the F.S.L., the entire process appears to be shrouded in doubt. The two samples which were in the form of flowering tops, consisting of leaves, seeds and stalks, no doubt, responded to the chemical and chromatographic test for cannabis, having characteristics of ganja but the absence of the details referred to above would make it unusable for the purposes of saddling the appellants with the charge of trading in narcotics and storing the same.

16. As already noted above, the two seizure list witnesses have deposed before the Trial Court as defence witnesses and have stated that they did not know the



contents of the paper that they signed upon. Thus, there does not appear to be any material for us to conclusively hold that the narcotics viz. ganja was recovered from the house of the appellants and that that the samples drawn from the said seized narcotics tested positive.

17. Regrettably, we find that the investigation of this case has been conducted in a very shoddy manner.

18. There is no way in which the judgment and order of conviction and sentence can be sustained in the eyes of law.

19. The judgment and order of conviction and sentence, therefore, is set aside.

20. The appeal stands allowed.

21. Appellant/Gulabi Singh @ Gulab Chandra Mandal @ Gulab Chand Mandal is in jail for the last eight years. He is directed to be released from jail forthwith, if not wanted in any other case.



22. Appellant/Pappu Singh is on bail. He is discharged of his liabilities and obligations under the bail bonds.

23. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

24. The records of this case be returned to the Trial Court forthwith.

25. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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