

(2006) 10 PAT CK 0063
In the Patna High Court
Case No : Criminal Appeal No. 300 of 2005

Biren Mandal and Another	Vs	APPELLANT
The State of Bihar		RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15

Citation : (2007) 1 BLJR 475 : (2006) 4 PLJR 652

Hon'ble Judges : Jayanandan Singh, J; Chandramauli Kr. Prasad, J

Bench : Division Bench

Advocate : N.K. Agarwal, Amresh Kumar Sinha, D.N. Tiwari, K.C.K. Sinha in 300, M/s D.P. Choudhary and Bindu Kumari in 434, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad and J.N. Singh, JJ.—Both the appeals arise out of the same judgment and, as such, they were heard together and are being disposed of by this common judgment. Appellants in both the appeals being aggrieved by the judgment of conviction and sentence dated 30th of March, 2005 passed by the Special Judge, Purnea in Special Case No. 14 of 2001 (Trial No. 5/2004) holding them guilty of offence u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentencing them to undergo rigorous imprisonment for 12 years and fine of Rs. 1 lakh each, in default to pay the fine to suffer simple imprisonment for one year, have preferred these appeals.

2. According to the prosecution on 25.7.2001 a telephonic message was received in Baisi police station stating that in a Commandar jeep contraband articles are being transported Riyaz Ahmad (P.W. 6), the Sub-Inspector of Police entered the said information in the Station Diary and came alongwith the police force to Amour road-crossing in National Highway 31, awaiting the jeep. According to the First Information Report, the police party saw a jeep coming from the Western side. The driver was signaled to stop but he fled towards the eastern direction

and on chase when the police party reached near Tara Singh Hotel at village Daulatpur, the jeep stopped and three persons fled away from it. They were chased by the police party and apprehended who disclosed his name as appellant Biren Mandal. He is alleged to have further stated that he is involved in business of Poppy Straw Dust and make supply to Tara Singh Line Hotel. Another person apprehended was Ramesh Bishwas the driver of the jeep and he disclosed that he had carried three bags belonging to appellant Biren Mandal from Zero Mile on hire. The third person disclosed his name as appellant Arjun Singh and claimed to be the staff of the jeep. A search of jeep was made from which three bags containing 30 Kilograms of Poppy Straw Dust each were recovered. According to the Sub-Inspector of Police Riyaz Ahmad (PW. 6), in the meanwhile Officer Incharge of the Baisi Police Station, namely, Arti Kumari Jaiswal (PW. 7) came there and prepared the seizure list. According to the First Information Report the accused persons apprehended did not produce any licence justifying the possession of Poppy Straw Dust.

3. Thereafter according to the First Information Report, search was made of Tara Singh Hotel where besides spirit, one plastic bag containing 21 packets of opium like substance were recovered. Investigating Officer sent the spirit, opium and Poppy Straw Dust for chemical examination who submitted its report dated 13.1.2001 and found trace of opium in Poppy Straw Dust.

4. After investigation charge-sheet was submitted and the appellants were put on trial for carrying in jeep and possessing opium punishable u/s 15 of the N.D.P.S. Act. Appellants denied to have committed any offence and pleaded false implication.

5. Prosecution in support of its case had altogether examined eight witnesses and the seizure list and the report of the analyst have also been brought on record as Exhibit II and Exhibit IV.

6. P.W.1 Qamar Alam, PW. 4 S.K. Afzal Alam are witnesses to the seizure but have not supported the factum of seizure and have been declared hostile. However they have admitted their signatures in the seizure list but their plea is that the police officials have obtained their signatures on blank papers. P.W. 2 Manik Chand Basak and P.W.3 Abinash Mittal are also witnesses to the seizure effected in the hotel. The appellants have been charged only for illegally possessing 90 kilograms of Poppy Straw Dust in a jeep bearing registration No. BR11B-9810 and hence those two witnesses have no relevance so far as the present case is concerned. P.W. 5 Haji Abdul Tayab and P.W. 6 Krishna Onkar have also been declared hostile and they have not supported the case of the prosecution.

7. P.W. 7 Arti Kumari Jaiswal, at the relevant time, was the Officer-Incharge of Baisi Police Station and in her evidence she has stated that when she returned to the Police Station she was informed that the Officers of the Police Station have intercepted a Commandar jeep and after getting the said information she went to

the village Daulatpur in the National Highway at Tara Singh Line Hotel and found that the Police Officers had surrounded the jeep. According to her, in presence of two independent witnesses, she made search of the jeep and found Poppy Straw Dust kept in three bags, weighing 30 kilograms each. She prepared the seizure list (Exhibit II) and obtained the signatures of P.W.1 Qamar Alam and P.W. 4 S.K. Afzal Alam. She had further stated in her evidence that at the place of occurrence, in presence of the witnesses, she had prepared samples for chemical examination and sent the same to the Analyst for its examination. She received chemical analyst's report (Exhibit IV) and after investigation submitted the charge-sheet. She had further stated in her evidence that investigation in respect of Tara Singh, owner of the Line Hotel is still going on. She had admitted in her cross-examination that the case diary does not indicate that the sample was taken at the spot.

8. P.W. 8 Reyaz Ahmad, at the relevant time, was Sub-Inspector of Police posted at Baisi Police Station and he had stated that at that time P.W. 7 Arti Kumari Jaiswal was the Officer-Incharge of the said Police Station. According to him, on 25.7.2001 at 2.30 P.M. he received telephonic information that some persons are going on a Commandar jeep bearing registration No. BR11B-9810 carrying contra-band articles. He entered the said information in the Station diary and after leaving a message for the Officer-Incharge of the Police Station, proceeded with the police force towards Baisi crossing at National Highway No. 31. After sometime according to this witness, police party saw a Commandar jeep bearing registration No. BR11B-9810 coming from the western direction and proceeding in a fast speed in the eastern direction. They signaled to stop the vehicle but it did not stop and, therefore they started chasing the jeep, it stopped in front of Tara Singh Line Hotel at village Daulatpur and three persons got down from the jeep and started fleeing away in the eastern direction. According to this witness, they chased and apprehended the three appellants. According to this witness, the apprehended appellants disclosed that appellant Biren Mandal carries on the business of Poppy Straw Dust and others were transporting it on hire. He has further stated that in the meanwhile Officer-Incharge of the Police Station came and in presence of three appellants and the independent witnesses search was made and 90 kilograms of Poppy Straw Dust were recovered from three bags each. He had further stated that the Officer-Incharge of the Police Station had made the seizure list which was signed by the witnesses. He has not stated as to how the sample was taken.

9. The learned Judge on appraisal of the evidence came to the conclusion that the prosecution has proved its case beyond all reasonable doubt and accordingly convicted and sentenced the appellants as above.

10. Mr. N. K. Agrawal, Senior Advocate, appears on behalf of the appellants in Criminal Appeal No. 300 of 2005 preferred by appellants Biren Mandal and Ramesh Bishwas and appellant of Criminal Appeal No. 434 of 2005, namely, Arjun Singh is represented by Mr. D.P. Choudhary.

11. Mr. Lala Kailash Bihari Prasad, Additional Public Prosecutor, appears on behalf of the State.

12. Learned Counsel for the appellants contend that there is nothing on record to show, how the sample was taken, how it was sealed, where it was kept and why it was sent for examination after a long gap on 25.8.2001. They also point out that P.W.7 Arti Kumari Jaiswal, the Officer-Incharge of the Police Station had stated that the sample was taken from the Hotel and the jeep but no separate identification marks have been given on the samples and, as such, it is not proved beyond all reasonable doubt that what was recovered from the jeep is Poppy Straw Dust and, as such the prosecution has not been able to prove its case beyond all reasonable doubt.

13. Mr. Lala Kailash Bihari Prasad, Additional Public Prosecutor, however, appearing on behalf of the State submits that there are overwhelming evidence to support the case of the prosecution that Poppy Straw Dust was recovered from the jeep and the appellants themselves admitting before the Sub-Inspector of Police that they are involved in dealing with Poppy Straw Dust, the conviction of the appellants cannot be faulted with.

14. Having appreciated the rival submission, we find substance in the submission of the learned Counsel for the appellants. P.W. 7 Arti Kumari Jaiswal has effected seizure and according to her evidence she had taken the sample for examination by the Chemical Analyst but she had not disclosed as to how and where she had taken the sample and the manner in which it was sealed. It also remains a mystery where the sample was kept and why it was sent for examination after a long gap. According to this witness sample was taken on the day the seizure was made i.e. 25.7.2001 and from the report of the analyst it is evident that it was sent on 25.8.2001. From her evidence it is also apparent that three samples were taken but none of the samples have any specific mark of identification. The cumulative effect of the aforesaid infirmities lead us to conclude that the prosecution has not been able to prove its case beyond all reasonable doubt that what has been recovered from the appellants is Poppy Straw Dust. Once this is not proved, the appellants are entitled to be given the benefit of doubt and we grant that accordingly. In the result, both the appeals are allowed, impugned judgment of conviction and sentence is set aside. The appellants are in jail, they be set at liberty forthwith if not required in any other case.