

(2002) 02 PAT CK 0121

In the Patna High Court

Case No : Criminal Appeal No. 170 of 2001 (S.J.)

Brijraj Kumar @ Brij Raj Kumar Ram and Rajnayan Ram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-02-2002

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 52, 55

Citation : (2002) 4 PLJR 831

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Prabhakar Singh, for the Appellant; Ashwini Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

I.P. Singh, J.—Both the Appellants have been convicted u/s 18 of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and have been sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs. 1,00,000/- each and in default in payment of fine they will have to undergo rigorous imprisonment for two years.

2. The prosecution case, in short, is that on 13.6.1995 at 11.30 A.M. the informant alongwith the police force arranged a raiding party to make raid of the smugglers of Heroin and he started for the same. When he reached near Village Rasulpur Karmahari, he got a secret information and accordingly he reached at the house of Appellant Ramayan Ram. It has been further alleged that when the police party reached, a boy started running and he jumped from the roof. On chase, he was caught and brought to the house. The villagers also arrived. Out of whom in presence of two independent witnesses the police party interrogated him who disclosed his name as accused Brijram Kumar Ram. During search of his person 2.5 gram of Herion was recovered from his possession. It has been further alleged that his father, namely, Appellant Ramayan Ram was inside the house. The house of the Appellants were also searched in presence of the

witnesses and during search four gram of Heroin was recovered from the house which was kept and concealed in a shoe. On interrogation, Appellant Ramayan Ram admitted that he used to sell Heroin. Thereafter the recovered Heroin was seized and accordingly a seizure list (Ext. 4) was prepared in presence of independent witnesses. Thereafter the recovered Hero and both the Appellants were brought to the police station where the informant prepared the written report. On the basis of the aforesaid written report a formal F.I.R. was drawn up. After completion of investigation the police submitted chargesheet against the Appellants. Thereafter cognisance was taken and finally the trial concluded with the result as indicated above. Hence this appeal.

3. The Appellants pleaded not guilty and have stated that they have been falsely implicated in this case.

4. The prosecution in support of its case has examined altogether five witnesses. PW. 1, Anil Kumar Prasad Singh, is the informant of this case. PW. 2 is Rajesh Kumar Paswan. PW. 3 is Anant Kumar Singh, the Officer Incharge of Durgawati police station. PW. 4 is Lai Muni Ram. PW. 5, Shanker Singh, is a police constable.

5. PW. 1, the informant, has stated that on 13.6.1995 he was posted as S.I. of Police in Mohania Police station. He has further stated that on the same day he arranged a raiding party and started for Village Rasulpur Karamahari. On the basis of secret information, he made raid at the house of Appellant Ramayan Ram. During raid, Appellant Brijram, the son of Appellant Ramayan Ram made an attempt to run away but on chase, he was caught. He has further stated that in presence of witnesses the person of Appellant Brijram Ram was searched and during search 2.5 gram of Heroin was recovered from the pocket of his shirt. Thereafter the house of the Appellants was searched and during search of the house 4 gram of Heroin was recovered from the eastern room kept and concealed in a shoe. Accordingly a seizure list (Ext.1) was prepared in presence of witnesses and the copy of the same was handed over to the Appellants. He prepared the written report (Ext. 2) at the spot.

6. PWs. 2 and 4 are the seizure list witnesses but they have been declared hostile by the prosecution as they did not support the case of the prosecution.

7. PW. 8, Anant Kumar Singh, is the Officer Incharge of Durgawati police station. According to him he was also one of the members of the raiding party. He has further stated that on 13.5.1995 he took the charge of investigation of the case on the order of the Officer Incharge Mohania and started investigation of the case at the place of occurrence. He has further stated that during investigation he re-examined PW. 1 and examined other witnesses also. He has further stated that on 19.6.1995 he sent the sample of Heroin by the special messenger to Director, Forensic Science Laboratory, Bihar, Patna for its chemical examination. On 22.7.1995 on being transferred to hand over the investigation of the case to the Officer Incharge Tufail Ahmad.

8. PW. 5 is also a police constable. He was also one of the members of the

raiding party. He has also supported"the case of the prosecution.

9. Learned Counsel appearing on behalf of the Appellants has submitted that both the seizure list witnesses have been declared hostile and they have not supported the case of the prosecution. He has further submitted that the I.O. in paragraph 12 of his deposition has stated that whether the seized articles were sealed or not is not mentioned in the case diary. He has also stated that the case diary does not mention where the seized articles were kept between 13.6.1995 to 23.6.1995.

10. As far as the submission of the learned Counsel that the seizure list witnesses did not support the case of the prosecution but it is clear from their deposition that they had signed on the blank paper. It is not convincing that a person would sign on blank paper and would not protest for 10 years that the police had taken his signature on blank paper. It appears that the witnesses were supporting the accused persons. The submission of the learned Counsel about the non-compliance of Sections 52 and 55 in which procedure of seizure and keeping so seized articles is concerned, it is clear; that though in this case the person who got the raid conducted was himself I.O. and also incharge of Malkhana where seized articles were kept in Malkhana as such there is no need for compliance of Section 52 of the Act. But this witness in his deposition in paragraphs 11 and 12 has created doubt about proper sealing of the seized articles by stating therein that he did not remember whether he sealed the seized articles or not. Also there is no mention in the case diary where the seized articles and in which condition the seized articles were kept between 13.6.1995 to 23.6.1995. This version of the witness creates doubt and possibility of the tampering of the seized articles which will adversely affect the prosecution case and the Appellants would get benefit of doubt. That apart it has been stated by the I.O. that these Appellants have no criminal history.

11. Taking into consideration the facts and circumstances of the case specially for non-compliance of Section 55 of the Act the trial has been vitiated and the appellants deserve benefit of doubt.

12. Accordingly, the Appellants are acquitted of the charge levelled against them. The conviction and sentence passed by the court below is set aside. It has been stated that the Appellants are in jail. They are directed to be released forthwith, if not required in any other case.

13. In the result this appeal is allowed.