
(2011) 11 PAT CK 0029

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 215 of 1999

Lal Kishore Yadav @ Bhuar Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 47(A)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(B)(1),
52A, 55

Citation : (2011) 11 PAT CK 0029

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned counsel for the appellant and learned counsel for the State.

2. The appellant has been convicted u/s 20(B)(1) of the N.D.P.S Act and sentenced to undergo rigorous imprisonment for five years and a fine of Rs. 25,000/- and in default of payment of fine shall further undergo simple imprisonment for one year.

3. The prosecution case as alleged on the written report of the S.I. Shyama Ram is that on 06.02.1997, he got information from the S.P., Bhojpur that in village Masarh illegal Ganja is being unloaded by a truck and if the raid will not immediately be conducted then the said Ganja shall be concealed. On the said information the raiding party was constituted and proceeded for the village Masarh. The raiding party reached at Masarh and there secret information was received that 7-8 persons had fled away with some packets of Ganja towards south of railway line of the village and rest Ganja has been concealed under straw in the Khaliyan of Bhuar Yadav and Basdeo Singh and that the raiding party reached at the Khaliyan of Bhuar Yadav and seized 10 packets of Ganja kept under straw each containing about 15 Kg. which was seized in presence of

the two independent witnesses, Parmeshwar Singh and Raj Kishore Singh and also seized three packets in green plastic each containing 15 Kg. and thereafter reached at the counter of Bhuar Yadav and there seized 3 packets of Ganja each containing 16 Kg., 4 packets of Ganja each containing 14 Kg. and 7 packets of Ganja each containing 11 Kg. were also seized. Thereafter seizure was made in the Khaliyan of Basdeo Singh. On the said written report the First Information Report was lodged, after investigation the charge-sheet was submitted, cognizance was taken during the trial charge was framed u/s 20(B)(1) of the N.D.P.S. Act and 47(A) of the Bihar Excise Act.

4. During the trial 11 witnesses were examined by the prosecution. Two witnesses have also been examined on behalf of the defence.

5. The trial court after taking into consideration the evidence of the witnesses that the seizure list witnesses admitted the signature on the seizure list and P. Ws. 7, 9 and 10 supported the prosecution case about the seizure of the Ganja from the Khaliyan of Bhuar Yadav as well as from the counter of Bhuar Yadav and has proved Exts. 2, 2/1, 2/2 and 2/3 respectively the seizure list and considering the evidence of P. W. 11 the I.O. as well as considering the report of Forensic Science Laboratory and the evidence of the defence convicted the appellant holding that the seized Ganja belonged to the accused persons and the report of the Forensic Science Laboratory that the seized article was Ganja. Taking into consideration the order-sheet dated 12.11.1998 that the sample of the seized Ganja was sent for the Forensic Science Laboratory and hence convicted.

6. The learned counsel for the appellant, however, contended that the prosecution has not proved the place from where the Ganja was seized which was actually and factually the Khaliyan and counter of Bhuar Yadav. It has further been submitted that the articles seized were neither sealed at the place of occurrence nor there is any evidence that the said seized articles were sealed nor there is mentioned that they were sampled nor it has been mentioned that where the said articles were kept after their seizure till the sample was sent to the Forensic Science Laboratory. The occurrence is of the year 06.02.1997 whereas the sample is said to have been sent on 12.11.1998 about one year after the occurrence and there is no mention where the seized article were kept and hence there is violation of Articles 52 and 55 of the N.D.P.S. Act.

7. Learned counsel for the State, however, supported the prosecution case and the fact that the lower court gave a finding. However, unable to point out the evidence where the articles were kept after its seizure or any evidence whether they were sealed and sampled at about the time and place. However, so far the evidence is concerned P. Ws. 1 and 2 are the independent seizure witnesses though have admitted their signature on the seizure list but they have denied any search or seizure before them and have been declared hostile.

8. P. Ws. 3, 4 and 6 have also been declared hostile as not supported the prosecution case.

9. P. W. 5 though have stated in his evidence that Ganja like substance recovered from Khaliyan. However, stated that the said Ganja was recovered from Khaliyan of Bhuar Yadav.

10. P. W. 7 is the informant and has stated that he recovered Ganja from Khaliyan of Bhuar Yadav, the people disclosed the identity of the Khaliyan but he has neither seen any paper nor mentioned the boundaries of the land from which the Ganja was recovered. He has further stated that neither had he put mark of identification on the seized Ganja packets nor he marked that which Ganja packet was recovered. The seized packets were neither signed by him nor by any police officer. He has stated that no person was arrested during raid.

11. P. Ws. 9 and 10 has also come to support the prosecution case about the seizure of Ganja from Khaliyan of Bhuar Yadav and has proved the signature on the seizure list.

12. P. W. 11 is the I.O. and has stated that he had not sent the seized Ganja for examination. No paper was produced about the place of occurrence and he had not sent the sample of the said seized Ganja during investigation.

13. P. W. 8 has submitted charge-sheet against Bhuar Yadav and has stated that on 12.01.1998 he filed the petition in the court for sending the sample of the Ganja to the Forensic Science Laboratory.

14. Hence, from the evidence of the witnesses it is apparent that there is no evidence that the seized Ganja was ever sealed or sampled. There is no evidence where the seized Ganja was kept. There is no evidence that the said seized Ganja was sampled at the time of seizure. However, from the evidence of P. Ws. 11 and 8 who are Investigating Officer that the said seizure was not signed by P. W. 11 the I.O. till 08.01.1998 when he handed over the charge to P. W. 8 of the investigation. However, P. W. 8 has not stated that he ever sealed or sampled or whether he got the sample of the said Ganja packet sealed nor produced before the court. However, Section 52-A of the N.D.P.S. Act provides that the manner of disposal of narcotic drugs and psychotropic substances such as Ganja and others and Section 55 of the N.D.P.S Act provides that an officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the Officer-In-Charge of the police station. However, there is no evidence that where the seized articles were kept in sealed cover. There is no evidence that the said seized articles were sampled. There is no evidence that who take the sample and hence the safeguard provided under the N.D.P.S. Act for keeping the seized narcotics in manner provided and the sample sent said to have been sent after one year of the occurrence without any disclosure where they were kept and without any

evidence that where they were kept in sealed and hence no reliance can be placed on the report of the Forensic Science Laboratory in the facts and circumstances when the articles seized were not kept as per the provision under Sections 52-A and 55 of the N.D.P.S Act and hence the order of conviction and sentence recorded by the lower court is hereby set aside. This appeal is allowed.