
(2010) 05 PAT CK 0054
In the Patna High Court

Maruti Ranjan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0054

Final Decision : Dismissed

Judgement

Gopal Prasad, J.—The appellant convicted u/s 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and has been sentenced to undergo rigorous imprisonment for twelve years and a fine of Rs. 1,20,000/- and in default of fine has been ordered to serve a sentence of two years.

2. Prosecution case, as alleged in the self statement of the informant, Chandra Shekhar Gupta, that on 12.10.2002 at 11.00 a.m. the informant along with the Sub Inspector of Police, Constables Shambhu 2 Bahadur Singh (not examined), Constable, Havildar Ramdas Sah (not examined), Constable, Anil Kumar Tuddu (not examined), Constable, Munna Kumar (not examined), Constable, Phuleshwar Yadav and the driver, Constable, Nagendra Jha proceeded for night patrolling in law and order duty on the occasion of Durga Puja and when the patrolling party, during patrolling, reached at Baisi whereas on National Highway No. 31 at about 03.15 a.m. and got stationed and was walking along the road then one Maruti Van was seen coming from the side of Dagarwa at about 03.30 a.m. When the Maruti Van reached near the patrolling party then one of the Constables lighted the torch towards the van and on this the driver of the said Maruti Van driven away his Maruti Van at recklessly high speed which gave doubts about some crime and then the patrolling party chased the van, but, the driver of Maruti Van could not drive it out as the road was in dilapidated condition and so the driver stopped the Van and tried to flee away towards the petrol pump and the informant and his party also chased and caught hold all the three persons and brought them near Maruti Van and interrogated, they disclosed about the ganja in the dicky of the said Maruti Van. The apprehended three

persons disclosed their name as Maruti Ranjan Singh, Mohan Sah and Dinesh Kumar Bhagat. Maruty Ranjan disclosed that he is the driver of the van and the vehicle belongs to one Rajendra Singh, his relative. Some people colleted there, one person disclosed that the ganja loaded in the Maruti Van belongs to Hari Shankar who after unloading the ganja from a truck send the ganja in this van and impressed that he will meet at Raiganj. Further, case is that the person assembled at the place of occurrence, out of them two persons, Ashok Mahto and Mahtu Mahto, were chosen as independent witnesses and the ganja recovered in seventeen packages from a gunny bag was kept in a ten box. The seizure list was prepared which was signed by the witnesses as well as the accused persons and a copy of the seizure list was handed over to them.

3. On the basis of the self statement of the informant, the first information report was lodged on 13.10.2002 at 05.45 a.m. and after investigation, charge sheet submitted, cognizance taken and the charges framed on 22.08.2003 u/s 20(b)(ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, against the three accused persons, Maruti Ranjan Singh, Mohan Sah and Dinesh Kumar Bhagat. However, after grant of bail Mohan Sah and Dinesh Kumar Bhagat found absconding and since one accused has not been granted bail and by order, dated 08.05.2008 the case of two accused, Mohan Sah and Dinesh Kumar Bhagat bifurcated and separated and the trial of Maruti Ranjan Singh proceeded.

4. However, during trial six witnesses were examined on behalf of the prosecution. They are P.W. 1, Ashok Mahto, a seizure list witness, P.W. 2, Chiku Thakur, he has turned hostile, P.W. 3, Shri Prasad Baosak, P.W. 4, Mantu Mahto, P.W. 5, Chandra Shekar Gupta, the informant and P.W. 6, Md. Yasin, the investigating officer. The documentary evidence adduced in the case are Exhibit 1, the signature of Ashok Mahto on the seizure list, Exhibit 1/1, signature of Mahtu Mahto on the seizure list, Exhibit 2, the seizure list, Exhibit 3, self statement of the informant, Exhibit 4, the letters sent to the Forensic Science Laboratory, Patna, for examination of the seized article, Exhibit 5 is the report of the Forensic Science Laboratory.

5. On considering the oral and documentary evidence and submission of parties the learned trial Court convicted the appellant, as stated above.

6. The learned Counsel for the appellant contends that the search and seizure are not in accordance with law and, hence, is in violation of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

7. The learned Counsel for the State, however, submits that ganja seized, properly sealed and even seizure proved by the witnesses and the sample has been send by due process of law and seized and sealed ganja send to Forensic Science Laboratory and the report received.

8. Hence, I proceed to consider the evidence of the witnesses in the light of the submissions. The prosecution case as alleged in the self statement of the informant and the evidence adduced that while he was in patrolling saw a Maruti

Van and then one of the Constables lighted the torch and then the driver of the said Maruti Van started fleeing away at a high speed and then the police smelling some foul play chased and caught three persons and these three persons disclosed about ganja in the van and in presence of two independent witnesses seventeen packages of ganja were recovered which weighed about eighty kilogram which was seized, seizure list prepared, the signature of the witnesses and the accused taken and, thereafter, sample from each packets was taken and sent to Forensic Science Laboratory and report received that the seized article was ganja.

9. P.W. 5 is the informant and he has stated in his deposition that he was posted as Officer-in-Charge of Baisi Police Station. On 12.10.2002 he along with Yasin Khan, Shambhu Bahadur Singh and armed force was on patrolling on N.H. 31 and about 03.30 a.m. a Maruti Van seen coming from the side of Dagarua and one Constable lighted the torch then the driver of the said Maruti Van, at once, started fleeing away at a very high speed and then smelling doubt the informant along with his party chased and then the Maruti Van was stopped near a petrol pump and three persons, including the driver started fleeing away and then three persons were chased and caught. In the meantime, several villagers collected and on enquiry it is disclosed about the ganja in the van and then in presence of two independent witnesses, Ashok Mahto, P.W. 1, and Mantu Mahto, P.W. 4, the dicky of the Maruti Van was opened and those three persons disclosed their names as Maruti Ranjan Singh, Mohan Sah and Dinesh Kumar Bhagat. Maruti Ranjan Singh disclosed that the vehicle belongs to his relative, Rajmangal Singh, and during the search seventeen packages of ganja recovered from a gunny back kept in the tin box in the vehicle and they disclosed that ganja was being taken to Raiganj. The said ganja was seized in presence of both independent seizure list witnesses, P.W. 1 and P.W. 4). P.W. 5 has proved the seizure list in his pen and signature and the signature of Ashok Mahto and Mantu Mahto on the said seizure list and the accused persons also got a copy of the said seizure list and also signed on the said seizure list, which has been marked as Exhibit 2. The Maruti Van was also seized. He has, further, stated that at the spot he written his self statement. The ganja was about eighty kilogram. He has proved his self statement, which has been marked as Exhibit 3 on the basis of which the case was lodged and investigation was handed over to Yasin Khan. He has proved his endorsement on his self statement, which has been marked as Exhibit 3/A. He has, further, stated that he took the weight of seventeen packets of ganja seized from the van separately. However, the seizure list, Exhibit 2, itself mentions the weight of seventeen packets separately. The weight of the seized ganja was eighty kilogram in all though the weight of each packets has separately been written as 17 items as apparent from the seizure list. P.W. 1 is a seizure list witness though he has proved his signature on the seizure list, which has been marked as Exhibit 1 and P.W. 4 is another seizure list witness, who has also proved his signature on the seizure list and though has stated that the police has got his signature on the seizure list. However, they have not supported the

prosecution case regarding the seizure of the article, but, proved or admitted their signatures on seizure list.

10. P.W. 2, Chiku Thakur, though an independent witness, however, has turned hostile as he did not support the prosecution case and attention has been drawn with regard to his oral statement and denied his statement before police about the fleeing away by the said Maruti Van and chase by the police to catch hold of the Maruti Van and regarding the catching hold of three persons being arrested by the police. However, he has stated his Tea Stall is about a distance of ten lagi from the petrol pump.

11. P.W. 3 has also turned hostile has not supported the prosecution case. However, his attention has been drawn with regard to his oral statement and denied to have support the prosecution case about the chase by police on jeep to the Maruti Van and on it's fleeing away at a high speed and about this recovery of ganja from the said Maruti Van. However, in cross examination by the defence he said that his shop is by the side of the shop of Chiku Thakur.

12. P.W. 6 is the investigating officer and he has stated that was on patrolling along with the Officer-in-Charge and during the patrolling reached Baisi Chowk and has stated that a Maruti Van was coming from the side of bye pass and was on patrolling along with the Officer-in-Charge and during the patrolling reached Baisi Chowk and has stated that a Maruti Van was coming from the side of Baisi and on their meeting the van started fleeing away at a high speed then they smell a doubt and chased. The said Maruti Van after stopping three persons started fleeing away and then the police chased to catch hold the three persons and brought them near the vehicle and there they disclosed about the ganja in the dicky and also disclosed that the said ganja was being smuggled from Nepal and being taken to Raiganj and then on search the ganja was seized, seizure list prepared which bear the signature of the witnesses and the accused persons and then the said ganja was brought to the Police Station. The case was lodged and investigation handed over. He has, further, mentioned the description of the place of occurrence on N.H. 31 which east-west and to the south there is petrol pump and there is a ditch, which is at a distance of 100 yards east to Baisi Chowk. He has, further, stated that he filed petition for the chemical test of the sample and as per the order of the Court, the sample sent to Forensic Science Laboratory. He has also proved the letters sent for the test of the sample in his writing, which has been marked as Exhibit 4. The sample was sent in sealed packets which were packed before the Court. In his cross examination he has stated that how much packets were there in the box he can not say. However, he has stated that he opened the packet and there was smell of the ganja, but, he can not say that the ganja was dry or wet. He has stated that he sent the ganja for chemical examination to Forensic Science Laboratory, Patna, and received the report also.

13. Hence, from the evidence of the witnesses it would apparent that the Maruti Van was coming from Dagerua and then torch lighted by a Constable on which the van started fleeing away at a very high speed, which smell some foul play

about crime and then the vehicle was chased. The accused persons stopped the van near the petrol pump and started fleeing away and then the police party chased and arrested them and from the vehicle the ganja was seized, the seizure list, which bears the signature of seizure list witnesses as well as the accused persons and, thereafter, the ganja was sealed. The seizure list is Exhibit 2. During investigation, by the order of the Court, the samples were taken out and sealed under the supervision and direction of the Magistrate, as per the order of the District Judge and were sent to Forensic Science Laboratory for examination and he has also proved the letter sent for chemical examination of the sample and has stated that in the letter the details of the sample has been mentioned. However, from perusal of Exhibit 4, it is apparent that the sample has been taken from all the seventeen packets seized separately and three samples from each packets were taken in three different envelopes and envelopes each contains the sample from each packets was sent to the Forensic Science Laboratory, Patna, for examination. Exhibit 5 is the report which also mentioned about seventeen packets marked as 1 to 17 and it has been reported that the received contain sample of ganja seized from van in the possession of accused and has reported that they were found to be ganja containing tetra hydro cannabin.

14. The learned Counsel for the appellant, however, contends that compliance of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985, has not been observed. However, having regard to the fact that there is neither prior information and it is a chance recovery and, hence, there is no question of compliance of Sections 41 and 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

15. It has further been contended that the offence alleged to be at about 03.30 a.m. and, hence, the recovery is in between the sun set and sun rise. Having regard to the fact that the ganja recovered from the van while the accused persons were fleeing away on road, i.e., a public place, hence, the compliance of proviso (2) of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985, is not required for search and seizure as is covered u/s 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The accused persons were fleeing away and they were chased and caught on the road and, hence, the recovery is from public place on road is no violation of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985, as covered u/s 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and this view has been supported by the decision reported in State of Haryana Vs. Jarnail Singh and Others, .

16. The learned Counsel for the appellant, further, contended that the seizure list witnesses though proved their signatures, but, they have not been declared hostile by the prosecution and it was stated that the ganja was not seized before them and no independent witnesses have come forward to support the prosecution case and, hence, the seizure of ganja ought to have been disbelieved. Having regard to the fact that two witnesses, P.Ws. 1 and 4, who are seizure list witnesses have proved their signature on the seizure list and since

they have not denied the signature rather accepted their signatures and once the signature of the witnesses have been established there is no question to disbelieve merely because they have not support the prosecution case about seizure. However, once the seizure list when accepted then signature on seizure lists the seizure is deemed to have been made before them, this view is supported in decision reported in 2006 (2) S.C.C. (Cr.) 444 (Surendra Singh v. State of Haryana) Further, the police witnesses, P.Ws. 5 and 6 have proved the search and seizure from the vehicle and merely because independent witnesses have not supported the prosecution case and when the official witnesses having support the prosecution their evidence may not be rejected outright merely because they are official witnesses, however, on strict scrutiny of the evidence of the official witnesses there is nothing in their evidence to disbelieve their testimony and once the testimony found to be reliable and trust worthy their evidence can not be rejected merely because the independent witnesses have not supported the prosecution case. However, it appears that there is reason that these independent witnesses are tea stall owners on the high way (N.H. 31) as it has come there that may have not chosen to depose against the persons accused in Narcotic Drugs and Psychotropic Substances Act, 1985 and, hence, the prosecution evidence about the recovery of seized article can not be disbelieved.

17. The learned Counsel for the appellant, however, contends that the articles were seized, but, the sample was not taken on the spot. It has further been contended that there is violation of the instruction issued by the Narcotic Control Bureau about the taking of the sample on the spot and, hence, contends that there is violation of the instruction issued by the Narcotic Control Bureau or the Narcotic Control Bureau Standing Orders, dated 22.02.1979, for the procedure mentioned for sampling and search. It has further been contended that the article was seized on 13.10.2002, but, the sample was taken and sent to Forensic Science Laboratory on 25.12.2002, after two months, and further the report of the Forensic Science Laboratory was received on 11.11.2004 after long delay. However, it is well settled that merely because there is violation of the Standing Instruction of the Standing Order of the Narcotic Control Bureau has been violated the trial can not be said to be vitiated and evidence collected thereby is not inadmissible rather is admissible if no serious prejudice has been cause to accused. This version supported in decision reported in Khet Singh Vs. Union of India (UOI), .

18. Here under the facts and circumstances, the ganja was seized and seizure list was prepared on the spot with the signature of the accused and seizure list witnesses and further the said seized article was sealed on the spot on the date of occurrence as apparent from the evidence of P.W. 5, the informant. paragraph 8 of evidence of P.W. 5 states that after sealing the seized ganja it was kept in malkhana and further a petition was filed before the Court of the District Judge and it was ordered on 24.12.2002 that a requisition has been filed by Sub Inspector of Police, Md. Yasin Khan, the investigating officer of Baisi P.S. Case No. 66 of 2002 giving rise to Special Case No. 22 of 2002 praying therein that

the sample of ganja is required to be sent to Forensic Science Laboratory for chemical examination and so necessary orders be passed and, thereafter, the Chief Judicial Magistrate directed to depute a Magistrate for getting a sample of aforesaid seized ganja in accordance with law for sending the same to Forensic Science Laboratory and thereby under the order of the Chief Judicial Magistrate, Radhe Shukla, Judicial Magistrate, 2nd Class, Purnea, was deputed to prepare the sample of the packets to send it to Forensic Science Laboratory, Patna, and the order sheet shows that the learned Magistrate under his presence got the sample prepared from the said seized packets and Exhibit 4 is the letter showing that the sample of seventeen packets were prepared and sent for chemical examination and a report received after chemical examination, which has been marked as Exhibit 5 showing that the article is to be ganja. Hence, if the articles were seized and sealed on the spot, but, the sample was not taken on the spot, but, was taken thereafter following the procedure by the order of District Judge under the supervision of Judicial Magistrate, which has not been challenged, no prejudice can be said to have been caused to the accused persons if there is delay of two months in taking out the sample when the ganja was properly seized and sealed before the witnesses and seizure list prepared with the signature of the witnesses and accused, the mere delay in taking the sample and further the plea that there are delay in sending for chemical examination and in receiving report of the Forensic Science Laboratory is of no help as the Forensic Science Laboratory receives various samples from the entire State of Bihar to comply and the reports are sent in preference to the receipt of the articles on it's term and when the sample was sealed and mere delay in sending the reports by Forensic Science Laboratory hardly cause any prejudice to the accused as it will neither change the nature of the substance seized or sealed nor anything has been suggested to show that mere delay in sending the reports has caused any prejudice to the appellant.

19. Further, it has been stated that the ganja was weighing about eighty kilogram, however, each packet has mentioned the weight, however, the weight of ganja has been measured and mentioned in the seizure list. The report also shows that the weight of the ganja, which has been taken in presence of the Magistrate at the time of taking sample, and the investigating officer, at the time of preparing seizure list found to be eighty kilogram and both the investigating officer and the Magistrate have mentioned the weight in the order and hence, there is nothing to suggest that there was any confusion in the weight.

20. However, the offence has not been challenged at all that the weight of the ganja was not proper and that the procedure has been adopted in seizing or sealing the ganja.

21. Having regard to the facts and circumstances, since the prosecution the prosecution has been able to prove the charges that the three persons caught while fleeing away from the Maruti Van and after they having been apprehended disclosed about the ganja and the ganja recovered and the seizure list prepared

before the independent witnesses having their signature on the seizure list and the accused persons and, thereafter, the seized ganja was sent to Forensic Science Laboratory for chemical examination under the supervision of the Magistrate under the orders of the District Judge and the sample having been taken from each packets and send to the Forensic Science Laboratory and the report received about the seized article being ganja and, hence, I find and hold that the prosecution has been able to prove the charges beyond reasonable doubts and hence, there is no merit in this appeal.

22. The Criminal Appeal is dismissed.

Shyam Kishore Sharma, J.

23. I agree.