
(2013) 07 PAT CK 0126

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 263 of 2011(Against the judgment of conviction and order of sentence dated 05.01.2011 and 06.01.2011 respectively passed in Trial No. 20 of 2008 arising out of Sugauli Rail P.S. Case No. 12 of 2008 by 1st Additional Sessions Judge

Md. Noor Hassan @ Noor Hassan

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) 3 BLJud 253

Hon'ble Judges : Akhilesh Chandra, J.

Bench : Single Bench

Advocate : Mr. Chittaranjan Sinha, Sr. Advocate, Mr. Anirban Kundu, Mr. K.N. Jha and Mr. Sanjay Kumar Singh, Advocates, for the Appellant; Mrs. Abha Singh, A.P.P, for the State

Final Decision : Disposed Off

Judgement

Akhilesh Chandra, J.— Heard learned counsels appearing on behalf of the parties.

2. This is an appeal preferred against the judgment and order dated 05.01.2011 and 06.01.2011 respectively passed in Trial No. 20 of 2008 arising out of Sugauli Rail P.S. Case No. 12 of 2008 by 1st Additional Sessions Judge, West Champaran, Bettiah, against conviction of the appellant for the offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentence to undergo rigorous imprisonment for ten years besides paying fine worth Rs. 1,00,000/-.

3. It is contended on behalf of the appellant that prosecution has miserably failed in establishing the case against the appellant as none of the mandatory legal requirements even fulfilled nor even alleged recovered article was ever weighted or any sample was prepared and to crown all there is no compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, but the appellant, for

reasons best known, has only been falsely implicated, but also hold guilty. On the other hand, learned Additional Public Prosecutor has vehemently supported the findings of the court below.

4. In short, the prosecution case based on the written report of constable Hari Shankar Prasad (PW-3) is that while he was on duty at railway platform on 25th February, 2008 at about 12.30 a.m. found a person running under suspicious circumstances to catch Train No. 5253 UP Satyagrah Express and tried to conceal himself from the informant, who chased and got hold brought him to police station and on search in presence of two witnesses (PW-1 & PW-2) about one kilogram of Charas was recovered from his (appellant) possession besides railway ticket and some cash etc. The seizure list was prepared and he was taken into custody and on institution of the case and completion of investigation the police submitted charge-sheet and subsequently the trial commenced.

5. To substantiate the prosecution version altogether four witnesses have been examined besides following documentary list :- (i) Exhibit-1 : Signature of Dinesh Ram on seizure list, (ii) Exhibit-1/1 : Signature of Hari Shankar Pd. on fardbeyan, (iii) Exhibit-1/2 : Signature of Raj Kishore Pd. Singh on seizure list and (iv) Exhibit-2 : F.S.L. report.

6. PW-1, Dinesh Ram, is seizure list witness, but in very examination-in-chief he asserted that neither anything was recovered nor seizure list was prepared in his presence and the police officials per forced obtained his signature, which is marked as Exhibit-1. The prosecution has not declared this witness hostile, meaning thereby, his statement is admitted/relied upon by the prosecution. In cross-examination by the accused, this witness has simply said about putting signature on a blank paper.

7. Similar is the position of another witness on seizure list PW-2, Habib Mian, putting L.T.I. and denied any recovery and preparation of seizure list and he too has not been declared hostile or statement was every challenged by the prosecution.

8. PW-3, Hari Shankar Prasad (informant) almost stated the prosecution version and proved his signature, which is marked as Exhibit-1/1, but in cross-examination could not be able to say about any suspicious activity of the appellant compelling to have any doubt and except production of the appellant before his superior by whom search and seizure etc. were made he has said nothing more.

9. Last witness is PW-4, Raj Kishore Prasad Singh (Investigating Officer) before whom PW-3 brought the appellant and on interrogation Charas is said to have been recovered, seizure etc. was prepared and after completion of the investigation he submitted charge-sheet. In cross-examination in paragraph-7, this witness has said that the appellant failed to reply as to why he had made attempt to conceal himself or fled away on seeing the informant, but he could not give any satisfactory reply and this is why suspicion was raised against, but

in paragraph-9 of the cross-examination, this Investigating Officer admits that during interrogation the appellant asserted having Charas with him, but at this stage, this witness without taking any step to comply the mandatory provision, as contemplated under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, which reads as such :-

50. Conditions under which search of persons shall be conducted. -

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by any one excepting a female.

[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973.

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within a seventy-two hours send a copy thereof to his immediate official superior.]

personally proceeded with personal search of the appellant and allegedly recovered the article said to be Charas and in paragraph-13 towards end he further admits that recovered article (Charas) was never weighted. In absence of any weighing it is difficult to accept the quantity of the recovered article which causes variation in nature/gravity of offence. This witness is also silent about preparation of any sample for the purposes of chemical examination of the articles so recovered nor any such article was ever sent for chemical examination since this witness is completely silent on all these vital points. In absence whereof Exhibit-2, the Forensic Science Laboratory Report marked subsequently has no bearing rather appears meaningless.

10. Under the facts and circumstances and materials available as discussed above creates a dark cloud against the prosecution version which at no point of

time could be diluted. Hence, conviction and sentence of the appellant is not at all sustainable rather he deserves the benefit of doubt.

11. In the result, judgment of conviction and order of sentence recorded by the learned trial court is set-aside. The appeal is allowed. The appellant, namely, Md. Noor Hassan @ Noor Hassan, who is in custody, is ordered to be released at once, if at all not required in any other case.