
(1996) 02 OHC CK 0010

In the Orissa High Court

Case No : Jail Criminal Appeal No. 200 of 1994

Shyamsundar alias Rathia Rana

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

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

Citation : (1996) 1 OLR 287

Hon'ble Judges : P.C. Naik, J

Bench : Single Bench

Advocate : G.C. Swain, for the Appellant; Addl. Stg. Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.C. Maik, J.—His conviction u/s 20(b) of the Narcotic Drugs and Psychotropic Substances Act and sentence of rigorous imprisonment for a period of two years and six months passed by the Special Court, Mayurbhanj, Baripada, has been assailed by the appellant in this Jail Criminal Appeal.

2. On 14-4-1993, on receiving reliable information that the accused had concealed narcotic substances in his residence, PW 6 the inspector of Police, Baripada Town police station along with the Executive Magistrate (PW 1) and Sub-inspectors of Police (PWs 2 and 5) proceeded to the house of the accused and on the way the independent witnesses (PWs 3 and 4) were asked to accompany them for the purpose of seizure. During the course of the search, two polythene packets containing 90 grams and 440 grams of ganja kept in a tin box, which was concealed under a wooden cot, were recovered. Samples were drawn therefrom and thereafter the contraband articles and the samples were duly seized and sealed in presence of witnesses. A copy of the seizure list was handed over to the accused. Thereafter, a plain paper FIR (Ext. 3) was drawn up, the articles were forwarded to the Court on 25-4-1993 and the Samples were sent by the SDJM, Baripada that very day for chemical analysis. The report of the chemical examiner indicates that the samples sent for chemical examination

were found to be ganja. After completion of investigation, charge-sheet was submitted against the accused.

3. The defence plea was one of dental.

4. In order to prove its case, prosecution examined six witnesses, of them, PW 1 is the Magistrate in whose presence the search and seizure were made, PWs 2 and 5 are the two Sub-Inspectors of Police who had accompanied the raiding party, PWs 3 and 4 are two focal independent witnesses to the search and seizure and PW 6 is the investigating Officer.

5. On consideration of the evidence and material on record, the Special Court accepted the prosecution case and convicted and sentenced the accused, as aforesaid.

6. Learned counsel for the appellant contends that for non-compliance of the mandatory provisions, the conviction and sentence cannot be sustained. It is submitted that there was an undue and unexplained delay in forwarding the seized articles to the Court, and this is evident from the fact that though the seizure was effected on 14-4-1993, the seized articles were forwarded to the Court on 25-4-1993. It is also contended that there is no material on record to indicate that after seizure the seized articles were under safe custody as contemplated by Section 55 of the NDPS Act. He further submits that there is nothing on record to show that before entering the premises, the members of the raiding party had given their personal search to the independent witnesses. On the contrary, he points out that PW 2 specifically admits that the members of the raiding party had not given their personal search before the raid was conducted.

7. Learned Additional Standing Counsel, on the other hand, submits that the procedure prescribed was duly and faithfully followed and the mere fact that there was slight delay in forwarding the seized articles to Court, cannot be a ground for setting aside the conviction. He further submits that after seizure, the articles were kept in the police station, as stated by PW 6 and, therefore, there is sufficient explanation regarding proper custody of the seized articles. He further submits that there is nothing on record to indicate that any prejudice has been caused to the accused so as to warrant interference by this Court.

8. It cannot be denied that there is no material on record to positively indicate that the seized articles were under proper custody. That there was delay, also cannot be denied. No explanation was offered by the prosecution as to why the seized articles were forwarded to the Court on 25-4-1993 when the seizure was effected on 14-4-1993. Further, in the examination-in-chief, neither the investigating Officer nor any other department witness has stated about safe-custody of the seized articles between the seizure and production in the Court. A stray statement in the cross-examination of PW 6 that the seized articles were kept in the police station is not sufficient. It cannot be denied that under the Police Manual it is provided that when any article is seized and kept in Police Malkhana, certain procedure is to be followed which includes making of an entry

in the relevant register and allotment of a particular number to the seized article. It Is also necessary that when the article is taken out of the Police Malkhana, relevant entry is to be made in the register. If in the instant case the seized articles were in fact kept in the Police Malkhana nothing prevented the prosecution from bringing this relevant material/information on to the record. The fact that these material facts are not brought on record is sufficient to raise an adverse inference against the prosecution.

9. It Is now the settled position that the provisions regarding seizure, custody of seized articles are mandatory provisions and have to be strictly followed. This does not seem to have been done in this case. Therefore, in view of the facts and circumstances on record and in the light of the decisions of this Court reported in 1994 7 OCR 108, Laxmidhar Mohapatra v. State of Orissa (1995) 8 OCR 561, Bidyanath Panigrahi v. State of Orissa, and (1993) 6 OCR 457 (SC), Valsalza v. State of Kerla, the conviction and sentence imposed on the accused/appellant by the trial Court cannot be sustained.

10. In the result, the Jail Criminal Appeal is allowed, the order of conviction and sentence by the Special Court , Mayurbhanj, Baripada, against the accused/appellant in G.R. Case No. 287 of 1993 (T.C. No. 26/93) is set aside. The accused/appellant Shyamsundar alias Rathia Rana be set at liberty forthwith if his detention is not required in connection with any other case.