

(2006) 11 PAT CK 0017

In the Patna High Court

Case No : Criminal Appeal No. 285 of 2006 (DB)

Yadunandan Singh and Another

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 23, 50

Citation : (2007) 1 PLJR 296

Hon'ble Judges : Shiva Kirti Singh, J; Dharnidhar Jha, J

Bench : Division Bench

Advocate : Surendra Pd. Singh II, for the Appellant; Sarva Deo Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Dharnidhar Jha, JJ.—Both the appellants have been convicted for offence under sections 20 and 23 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (NDPS Act) by the impugned judgment and order dated 27.1.2006 and 30.1.2006 passed in Trial No. 19 of 2002 by 1st. Addl. Sessions Judge, West Champaran at Bettiah-cum-Special Judge under the N.D.P.S. Act. For offence u/s 20 of the N.D.P.S. Act they have been sentenced to undergo Rigorous Imprisonment for 20 years and pay a fine of Rs. 1,00,000/- each or in default to undergo Simple Imprisonment for one year. For offence u/s 23 of the N.D.P.S. Act they have been further sentenced to undergo Rigorous Imprisonment for ten years and also a fine of Rs. 1,00,000/- each, failing which they are further sentenced to undergo Simple Imprisonment for one year. Both the sentences have been ordered to run concurrently. According to the prosecution report (Exhibit-7) lodged by Uma Shankar Sharma, Superintendent Customs (Preventive), Circle Bettiah (PW. 5) on the basis of information the Preventive Party of Customs Department headed by P.W. 5 stopped a jeep bearing Registration No. MLS 7997 on 2.4.2002 at about 5.00 hours. As soon as the Jeep stopped two persons jumped and managed to flee away. Person driving

the jeep and another person were apprehended and they disclosed their names as Yadunandan Singh (Appellant No. 1) and Nav Balak Rai (Appellant No. 2). According to prosecution report on search a secret chamber was located in the jeep and from there 100 Kilograms of Ganja and 20 Kilograms of Charas were recovered. The value of Ganja and Charas were assessed as Rs. 2 lakhs and Rs. 6 lakhs respectively and the value of the jeep was assessed as Rs. 50,000/-. The two apprehended accused were taken to Customs Office, Bettiah for further investigation and interrogation where they allegedly made their voluntary statements (Exhibits 1 and 1/1) and their interrogatory statements were also recorded and marked as Exhibits 2 and 2/1.

2. The prosecution case further is that on interrogation names of three other accused were revealed by the appellants but those three remained absconding and could not be apprehended. On verification the address given by the appellants was found to be correct. The sample of the seized Ganja and Charas were sent to Forensic Science Laboratory at Gajipur and the report from the Laboratory was received at a later stage and it was proved by P.W. 5 as Exhibit-6.

3. On the basis of prosecution report Complaint Case No. 8-0.C/2002 was instituted leading to earlier mentioned trial No. 19 of 2002. It appears from the records that the accused persons denied the allegations and pleaded innocent and therefore they were put on trial.

4. The prosecution examined altogether 7 witnesses namely Bhola Nath Upadhaya, Chandrika Sah, Jago Soren, Yadunandan Prasad, Uma Shankar Sharma, Pradeep Prasad and Salam Mian. As noticed earlier PW. 5 is the complainant, Superintendent of Customs. PWs. 6 and 7 are the seizure-list witnesses who have turned hostile and the rest witnesses are members of the raiding party belonging to Customs Department.

5. As noticed earlier the voluntary statements of appellants are Exhibits 1 and 1/1. Their interrogatory statements are Exhibits-2 and 2/1. Exhibit-3 is seizure-list. Exhibit-4 is Panchnama. Exhibits-5 and 5/1 are history sheets of the appellants. They disclosed that none of the two appellants have any criminal history of having indulged in a similar offence or of conviction for any other offence. Exhibit-6 is the Chemical Examination Report of the seized articles. Prosecution report has already been noticed as Exhibit-7. Exhibit-8 is forwarding report of the accused persons and Exhibit-9 is signature of P.W. 7, Salam Mian.

6. PW. 5, Uma Shankar Sharma as head of the raiding party has supported the prosecution case including the factum of interception of the vehicle, seizure of Ganja and Charas from the hidden chamber of the jeep, recording of voluntarily and interrogatory statements of the appellants, sending the seized articles for chemical examination and receipt of report from Forensic Science Laboratory. The other members of the raiding party PWs. 1 to 4 have also supported the interception of the jeep on the date and time mentioned in the prosecution report, the recovery of Ganja and Charas by their senior officer and apprehension

of two persons found in the jeep and disclosure of their names by the apprehended persons. They have also supported the fact that the seized articles were weighed and Ganja was found to be 100 Kilograms while Charas was 20 Kilograms.

7. From the statements of the accused persons u/s 313 Cr.P.C. it appears that their only defence is that they have been falsely implicated or in other words that the entire prosecution case is false.

8. Learned counsel for the appellants has submitted that since the independent seizure-list witnesses PWs. 6 and 7 have not supported the factum of seizure before them hence the prosecution case must fail and the entire claim of seizure must be disbelieved. We have given serious consideration to this submission and find no merit in it. There is no good reason why the evidence of PW. 5 as well as other members of the raiding party belonging to the Customs Department should be disbelieved. The very huge quantity of contraband items seized by the Customs officials in this case and the existence of secret chamber in the vehicle in question from where it was seized rules out the submissions of the counsel for the appellants that seizure itself should be dis-believed. Further voluntary statements of the appellants as well as their interrogatory statements contained in Exhibits 1 and 1/1 and Exhibits-2 and 2/2 support the factum of seizure. At this stage the only defence of the appellants was that they were terrorised or lured. However, this defence has not been taken during trial nor it is to be found in the statements of the appellants made under sections 313 Cr.P.C. There was suggestion that Section 50 of the N.D.P.S. Act providing for safeguard of the accused persons have been violated. Learned counsel appearing for Union of India has rightly submitted that in this case the search and seizure was from a vehicle and therefore Section 50 of the N.D.P.S. Act had no application.

9. Having given full and anxious consideration to all the relevant materials on record we find no legal infirmity in the judgment recorded by the trial court for offence under sections 20 and 23 of the N.D.P.S. Act. However, one aspect remains to be considered because learned counsel for the appellants has strongly submitted that for the offence u/s 20 of the N.D.P.S. Act the award of 20 years rigorous imprisonment to each of the appellants is excessive and there is no good reason why they should have been awarded maximum penalty of 20 years rigorous imprisonment when there is no material to show that they have indulged in similar offence in the past or have been convicted earlier for any offence. It was also highlighted by learned counsel for the appellants that as per prosecution case itself, which relies upon voluntary statements of the appellants, the appellants had been hired or lured and did not belong to the higher levels of the gang of smugglers involved in such offence.

10. The punishment provided for offences punishable u/s 20 or 23 of the N.D.P.S. Act are similar and in both the cases when the contraband involves commercial quantity then the imprisonment must be for a term not less than ten years but which may extend to 20 years and liability of fine must not be less than Rs.

1,00,000/- (one lakh) which may extend to Rs. 2,00,000/-. For the offence punishable u/s 23 of the N.D.P.S. Act the appellants have been awarded rigorous imprisonment for ten years only but for offence u/s 20 of the N.D.P.S. Act they have been awarded a maximum penalty of 20 years rigorous imprisonment. We do not find any good reason for awarding maximum penalty of 20 years rigorous imprisonment to the appellants for offence u/s 20 of the N.D.P.S. Act. Considering all the relevant facts noticed above, particularly those relating to the appellants and their conduct at the time of their interception and apprehension when they made no effort to run away and disclosed their true identity, we are of the considered view that the ends of justice will be sufficiently met by awarding Rigorous Imprisonment for ten years in place of Rigorous Imprisonment for 20 years for the offence u/s 20 of the N.D.P.S. Act. We order accordingly. With this modification in the punishment awarded for Section 20 of the N.D.P.S. Act to both the appellants, the appeal of the appellants is hereby dismissed.