

Sanjay Kumar Vs. the State of Bihar

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Court : Patna

Decided On : Aug-14-2013

Appellant : Sanjay Kumar

Respondent : The State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.563
of 2010

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Sanjay Kumar, Son of Late Rajeshwar Singh, resident of Village- Naugarh, P.S.-
Hilsa, District- Nalanda. Appellant Versus 1. The State of Bihar.

2. The Union of India (Directorate of Intelligence) Opposite Parties with
Criminal Appeal (SJ) No. 1042 of 2010

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Satmuni Yadav, Son of Late Sarjug Yadav, resident of Mohalla- Pirmuhani, P.S.-
Gandhi Maidan, District- Patna. Appellant Versus The Union of India
Respondent

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Appearance : (In Cr. APP (SJ) No. 563 of 2010) For the Appellant : Mr. Suraj
Narayan Prasad Sinha, Sr. Advocate Mr. Anshuman, Advocate Mr. Rohit Kumar,
Advocate Mrs. Mira Kumari, Advocate For the Union of India : Mr. Satya Prakash
Tripathy, Sr. Panel Counsel For the State of Bihar : Mr. S.N. Prasad, A.P.P. (In Cr.
APP (SJ) No. 1042 of 2010) For the Appellant : None For the Union of India : Mr.

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA ORAL

JUDGMENT

Date:

14. 08-2013 Since both the appeals arise against same judgment preferred separately by two convicts are taken up together and being Patna High Court CR. APP (SJ) No.563 of 2010 dt.14-08-2013 2/13 disposed of by this composite judgment.

2. Before proceeding further it is relevant to mention that in spite of providing sufficient opportunities and adjournments the learned counsel representing the appellant in later appeal (Cr. App. (SJ) No. 1042 of 2010) did not turn up and during the course of the hearing the learned counsels representing the appellant in former appeals (Cr. App. (SJ) No. 563 of 2010) and respondents of both the appeal are present and the entire material have been thoroughly examined. Hence, it was though needless to appoint any Amicus Curiae in the interest of appellant of later appeal (Cr. App. (SJ) No. 1042 of 2010) in view of the decision of Honble Apex Court in a case of K.S. Panduranga Vs. State of Karnataka reported in

201. (2) PLJR 27 (SC).

3. Both the appellants have been preferred these appeals against their conviction for the offence punishable under Section 23 of the Narcotic Drugs and Psychotropic Substances Act and have sentenced to undergo rigorous imprisonment for 10 years and further to pay a fine of Rs. 1,00,000/-, in default, to further suffer simple imprisonment for 1 year as awarded by 7th Additional Sessions Judge, Muzaffarpur vide judgment of conviction and order of sentence respectively dated 13th & 17th Day of May, 2010 passed in D.R.I. Case No. 15 of 2004. Patna High Court CR. APP (SJ) No.563 of 2010 dt.14-08-2013 3/13 4. The prosecution case as reveal from the official complaint lodged by P.W.- 1, R.K.

Srivastava, Intelligence Officer, D.R.I., Muzaffarpur, is that on the basis of specific information he intercepted a truck bearing Registration No.- B.H.I. 1191 along with the driver (appellant in later appeal, namely, Satmuni Yadav) and cleaner (appellant in former appeal, namely, Sanjay Kumar) at 16.05 hours on 02.09.2004 near Mograhi Bazar at N.H. 28, P.S.- Motipur, District- Muzaffarpur, Bihar and on search of the above truck, before independent witnesses P.Ws.- 7 & 8 and the appellants, recovered 51 packets of Ganja wrapped in plastic/polythene kept in a cavity made in the hood of the truck which on being weighing found 260 kilograms. Thereafter, the contraband article as well as the truck bearing Registration No.- B.H.I. 1191 were seized. Further, the appellants in their voluntary statements, recorded under Narcotic Drugs and Psychotropic Substances Act, in the presence of independent witnesses confessed their guilt of carrying the article from Raxaul for delivery at Patna in lieu of Rs. 20,000/- at the instigation of Laxman Sharma, Md. Nasarullah and Md. Mokhtar Mian to deliver the same to a person, namely, Pratap Rai of Jethuli, Patna. The said Ganja was smuggled from Nepal before being lodged on the truck at Amodai at 23.00 hours on 01.09.2004. Both the appellants were arrested and sample of seized article (Ganja) was sent Patna High Court CR. APP (SJ) No.563 of 2010 dt.14-08-2013 4/13 for chemical examination to Ghazipur and it was proved to be Ganja (Cannabis). Notices were issued to owner of the truck and others, but proved in vain and after completion of entire investigation a complaint was being lodged.

5. Before charge, P.W.- 1, R.K. Srivastava, and P.W.- 2, Kamal Singh were examined and, thereafter, the appellants were charged for the offence under Section 23 of the Narcotic Drugs and Psychotropic Substances Act. P.Ws.- 1 & 2 were further produced for cross-examination and remaining witnesses i.e. P.Ws.- 3 - 8 were also produced besides producing the following documentary evidence:- (1.) Ext.- 1 : Seizure list. (2.) Ext.- 2 : Panchnama. (3.) Ext.- 3 : Recovery memo. (4.) Ext.- 4 : Test memo. (5.) Ext.- 5 : Examination report. (6.) Ext.- 6 : Signature of Satmuni Yadav. (7.) Ext.- 7 : Signature of Sanjay Kumar. (8.) Ext.- 8 : Certification. (9.) Ext.- 9 : Writing and signature on destruction certificate.

6. There is no oral or documentary evidence on behalf of the appellants in defence, but their defence is total denial of their complicity and false implication

just to exonerate the real culprits. However, the trial court on consideration of the materials available on the record convicted and sentenced the appellants in the manner Patna High Court CR. APP (SJ) No.563 of 2010 dt.14-08-2013 5/13 aforestated.

7. Out of total eight prosecution witnesses examined, P.W.- 1, R.K. Srivastava, has almost stated the prosecution version in examination-in-chief, but omitted the information allegedly received from the appellants about the contraband article being smuggled from Nepal before being loaded in the truck and, further according to him, on apprehension of the said truck all required papers and formalities were completed at the spot. He proved Exts.- 1, 2 and 3, but in cross- examination in paragraph- 9, he says that seizure list and Panchnama were being prepared at the place of occurrence. Though, there is some controversy during course of argument regarding a sentence JAPTI SUCHI TATHA PANCHNAMA WAHI BANA, whereas, according to learned counsel representing the respondents, in fact, it is the word NAHI, but if this interpretation is accepted, seizure list and Panchnama were never prepared, though, it is on the record, whereas, the word WAHI appears more plausible and consistent with the entire statement of this witness which further indicated that at the place of occurrence only Panchnama and seizure list were prepared. It is more consistent with his statement recorded in paragraph- 11 of the cross-examination indicating that he brought the witnesses from there to D.R.I. Office for obtaining their signatures etc. on recovery memo, but at the same time, this witness has offered no explanation as to Patna High Court CR. APP (SJ) No.563 of 2010 dt.14-08-2013 6/13 what led him to prepare incomplete papers as required at the place of apprehension, but for remaining he had to come to his office at Muzaffarpur.

8. No doubt, under compelling circumstances the prosecution has right to depart from established principle of completing all such formalities at the place of recovery etc. itself, but it is for the prosecution to explain the circumstances leading for such departure which is lacking here. Further, in paragraph- 12, he states that for preparation of sample he collected materials from three packets, but immediately got himself corrected by saying that from all such packets sample was taken and three packets were prepared.

9. P.W.- 2, Kamal Singh, Head Hawaldar, D.R.I., Muzaffarpur, is one of the members of raiding party tried to support the prosecution case likewise P.W.- 1, but as regard to completion of paper work in paragraph- 1 towards end he rightly says that all such things were completed by his superiors, but in cross-examination, he says that the truck was not checked at the place of occurrence rather it was brought to D.R.I. Office, Muzaffapur where every formality was completed vide paragraph- 10 also which is entirely against the prosecution version.

10. P.W.-3, Indra Deo Ram, is another Hawaldar and member of raiding party in cross-examination is silent about place of Patna High Court CR. APP (SJ) No.563 of 2010 dt.14-08-2013 7/13 completing all such formalities, but in cross-examination, he contrary to prosecution version, but inconsonance with P.W.- 2, started saying that weighing of contraband recovered article was not done where the truck was apprehended and in paragraph- 6, he says that the witnesses etc. were taken from the place of occurrence to D.R.I. Office, Muzaffarpur where sample etc. were also taken only from three packets not from all such packets as said by P.W.- 1. Further, according to him in paragraph- 8, the statements of the appellants were also taken in the office where Panchnama was prepared.

11. P.W.- 4, Deepak Kumar, Superintendent, Central Excise, Patna, at the relevant time posted as Senior Intelligence Officer, D.R.I., Muzaffarpur, is also one of the members of the raiding party tried to state the prosecution version as said by P.W.- 1 in examination-in-chief (omission regarding smuggling continued). He further proved Exts.- 4 & 5 and in cross-examination in paragraph- 6, contrary to P.Ws.- 2 & 3, he says that contraband recovered article was weight there at the place of occurrence by weighing measures taken by a local shopkeeper, but in how many numbers it is completed he is unable to say. Similarly, in paragraph- 7, he could not say about the exact numbers of packets from where the sample was taken and when transmitted for chemical examination.

12. P.W.- 5, Rakesh Ranjan, Inspector Intelligence, is Patna High Court CR. APP (SJ) No.563 of 2010 dt.14-08-2013 8/13 one of the members of raiding party stated the prosecution case in a bit shape of P.Ws.- 1 & 4 and accepted Ext.- 3

and doing sample etc. Further, he proved Exts.- 6 & 7 and in paragraph- 11 of cross- examination though he has stated about the statements of the appellants regarding loading of contraband articles on the truck at Raxaul, but again he is also silent about the same before being loaded earlier smuggled from Nepal. In cross-examination in paragraph- 16, inconsonance with the statement of P.W.- 1, he says about preparation of sample from taking out the materials from all the packets. In paragraph- 17, he says about completion of all paper work at the place of occurrence itself, whereas, P.W.- 1 has said a different story in cross-examination without offering any explanation.

13. P.W.- 6, Rajendra Prasad Singh, Superintendent Custom Godown, said about certification of inventory etc. by Judicial Magistrate, Muzaffarpur (not examined) and proved Exts.- 8 & 9. P.W.- 7, Surendra Kumar, is the scribe of the statements said to be given by the appellants and accepted Exts.- 6 & 7 and said recording of such statements at D.R.I. Office, Muzaffarpur. He expressed his inability to say even one single content/word of such statements unless goes through. P.W.- 8, Karan Mahto, is one of another independent witness before whom the said truck was apprehended and seizure list was prepared. He accepted Ext.- 1, but is completely Patna High Court CR. APP (SJ) No.563 of 2010 dt.14-08-2013 9/13 silent about any statement of the appellants, weighing and sampling etc.

14. It is contended by learned counsel for the appellants that mandatory requirements of law as laid down in Sections 42, 52 A, 55 and 57 of the Narcotic Drugs and Psychotropic Substances Act have not been complied with. From perusal of complaint petition as well as statements of P.W.- 1 and P.W.- 4, another officer of same rank, there appears absolutely nothing to show exactly what sort of information was received by P.W.- 1 and he recorded the same in writing and forwarded to his superior. True it is, such sort of act is directory as held by Honble Apex Court in a case Gurbax Singh v. State of Haryana reported in AIR 200.SUPREME COURT 1002