

Pappu Kumar Mandal Vs. the State of Bihar

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Court : Patna

Decided On : Feb-05-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 765 of 2013

Appellant : Pappu Kumar Mandal

Respondent : The State of Bihar

Judgement :

1. Appellant Pappu Kumar Mandal has been found guilty for an offence punishable under Section 20 of the NDPS Act vide judgment dated 31.10.2013 and sentenced to undergo R.I. for ten years as well as also fined of Rs.1,00000/- in default thereof to undergo R.I. for two years vide order dated 12.11.2013 passed by Ist Additional Sessions Judge-cum-Special Judge under NDPS Act, Khagaria in Special Case No.02 of 2010 arising out of Naugachhia Rail P.S.Case No.09 of 2010.

2. The case of the prosecution in brief as per self statement of ASI Bhagwan Prasad Singh(P.W.2) drawn on 31.03.2010 is that during course of escort of 322 Dn. along with police personnel they have perceived suspicious activity of a passenger who attempted to conceal a bag and Jhola over which he was interrogated. He disclosed his identity as Pappu Kumar Mandal. On query with regard to bag and Jhola, he became perplexed and tried to flee. In presence of escort party, the bag and Jhola was searched. From bag three packets of ganja

was recovered while from Jhola one packet of ganja weighing total 20 K.G. was recovered. He had further confessed his guilt that he was carrying the same on being provided at Nepal.

3. On the basis of the aforesaid written report, Naugachhia Rail P.S. Case No.09 of 2010 was registered under Section 20 and 22 of the NDPS Act and investigation was taken up whereupon chargesheet was submitted and accordingly, the appellant faced trial getting with ultimate result, the subject matter of instant criminal appeal.

4. From the mode of cross-examination as well as taking into account the statement recorded under Section 313 of the Cr.P.C., the defence of the appellant happens to be complete denial of the occurrence. However, neither any D.W has been examined nor any document has been exhibited.

5. Altogether eight P.Ws. have been examined on behalf of the prosecution, out of whom, P.W.1 is Sheel Baran Sah, P.W.2 is Bhagwan Prasad Singh, P.W.3 is Ganesh Paswan, P.W.4 Lalan Kumar is Jha, P.W.5 is Pittar Horo, P.W.6 is Bhagwan Chaudhary, P.W.7 is Ramakant Upadhyay and P.W.8 is Pramod Kumar as well as also exhibited Ext-1 written report, Ext-1/1, signature of FIR of attesting witness respectively, Ex-2 seizure list, Ext-3 signature of appellant on seizure list, Ext-4 endorsement over written report, Ext-5 formal FIR, Ext-6 FSL report. The material Ext-I happens to be ganja kept in airbag(brown colour), material, Ext-II, ganja kept in plastic bag, material Ext-III bag wherein material Ext-I and II were kept.

6. From Ext-6, it is evident that the samples were examined and the same happens to be identified as ganja. It is also evident therefrom that sample of ganja was sent on 30.04.2010 through special messenger constable no.412 Manoj Kumar however was received at the office of FSL on 03.05.2010. Its repercussion is to be discussed at latter part of the judgment.

7. P.W.1 in examination-in-chief had stated that during course of escort when they got in a bogie at Narayanpur station, they found two bags. One person was near the bag on account of suspicion he was enquired. He also claimed the bags. They

have perceived it to be ganja on smell. Then thereafter the person along with bags was taken to P.s. where O.C. had interrogated, searched the bag, found ganja and then he was taken into custody. All query was made by the O.C. During examination-in-chief at para-7, he had stated that accused was sitting over seat by the side of bag. Ganja was kept below by the side of the gate. About 50 passengers were sitting in that bogie. In para-9, he had stated that at the time of apprehension the accused had claimed the bag. He himself volunteered that the boy happens to be simpleton.

8. P.W.2 had stated in his examination-in-chief that during course of escort they have seen one person concealing the bag over which he was apprehended. He was interrogated. The bags were searched where from 20 K.Gs. of ganja was recovered. He further confessed that he was mere a carrier. He had submitted written report. He had also prepared seizure list at the train itself and got it exhibited. During cross-examination at para-12, he had said that at the time of apprehension of accused about 20-25 persons were in the compartment. Passengers were also sitting at both sides of accused Pappu Kumar Mandal but he is unable to disclose their identity. In para-14, he had stated that bags were kept at upper rekh of the seat whereupon accused was sitting. He had not counted how many bags were kept there. In para-15, he had stated that 2-3 passengers who were sitting by the side of accused were also enquired but they have not replied. In para-18, he had stated that none of the passengers had claimed the bag. He had further said in para-21, that the seizure list was prepared in the train itself and a copy thereof was handed over to the accused. 9. P.W.3 had stated in his examination-in-chief that one boy, who was sitting over seat became perplexed seeing the police and tried to flee after taking out the black bag as well as airbag which was kept beneath the seat and was accordingly apprehended. Then his identity was taken as well as bag was searched where from 20 K.G. of ganja was recovered.

10. P.W.4 had stated that seeing the police one boy having a bag and airbag tried to conceal on account thereof was apprehended and on search 20 KG. of ganja was recovered from the bag. During cross-examination at para-7 had disclosed that at the time of apprehension of accused, he was standing. Bags were kept

over seat. In para-8, he had stated that accused was standing near the bag. 1-2 persons were also standing at that very place.

11. P.W.5 in chief had stated that when they proceeded from Narayanpur station, he found one boy lifting bag from the bogie over which, he was apprehended. On search 20 K.G. of ganja was recovered. In para-5, he had stated that accused was getting down at platform no.2 of Narayanpur station. In para-6, he had stated that paraphernalia were completed at rail police station.

12. P.W.6 had stated in his examination-in-chief that when they boarded in a bogie, he found one boy along with bag and was trying to conceal the same over which he was apprehended, bag was searched and 20 K.G. of ganja was recovered. At para-4 of his cross-examination, he had stated that at about 40 passengers were sitting in that bogie. In para-5, he had stated that accused was in standing posture.

13. P.W.7 happens to be the investigating officer. He had stated that on 31.03.2010 he was posted at Thana Bihpur G.R.P. as O.C. On that day, A.S.I. Bhagwan Prasad Singh (P.W.2) tendered written report, seizure list, articles and accused on the basis of which Bihpur Rail P.S.Case No.09 of 2010 was registered under Section 20/22 of the NDPS Act. Took up investigation. Inspected the place of occurrence which happens to be general bogie of 322 Dn. Recorded statement of other witnesses. Taken print out of Mobile(SIM No.8809708605) having in the name of Dropdi Devi. The Dy.S.P. has supervised the case. Sent the ganja to Forensic Science Laboratory, Patna for test and thereafter submitted chargesheet. During cross-examination at para-12, he had stated that he had seen the seized article. In para-15, he had stated that he had not gone into the concerned bogie as the train had already esteemed of. He was unable to say the distance in between apprehended accused as well as the place from where article were seized.

14. P.W.8 had produced the material exhibit and on account thereof was formal in nature.

15. From the evidence so deposed on behalf of the prosecution witnesses as stated above, it is crystal clear that they are not at all consistent over the location

of the appellant as well as with regard to connectivity of the appellant with the ganja so seized. From the evidence of the P.Ws., as stated above, it is also evident that they also happen to be inconsistent with regard to exact place where the aforesaid two bags were kept. Some of the witnesses have divulged that it was kept at the upper rekh, some had stated beneath the seat, some had stated on the seat and some had stated near the gate, some had stated getting down from the train and in likewise manner, the position of the appellant happens to be. In the aforesaid background, apart from finding other passengers in the bogie more particularly near about the appellant and having no answer at their end on query made by the P.W.2, the informant is another circumstance which creates doubt over genuineness of prosecution version. The second aspect happens to be the perception of the prosecution party with regard to activity of the appellant in conflicting, contradictory manner. Not only this, the I.O. of the case P.W.7 conducted investigation in perfunctory manner as had failed to disclose the process of sampling. He even not cared to say whether sample was taken out from all the packets or was taken out from the two bags wherein it was kept and the most crucial aspect happens to be that prosecution had not explained the delay during transmission/receipt of sample to F.S.L. laboratory in the background of the fact that the Ext-6 itself speaks that letter of Sessions Judge/Special Judge happens to be dated 30.04.2010 while the same was received at the office of F.S.L. on 03.05.2010 as well as keeping of the sample during intervening period. Furthermore, there is no disclosure relating to information, if any, made to superior officer.

16. In *Sukhdev Singh v. State of Haryana* reported in (2013)2 SCC 212 at para-26, it has been held:-

26. Once the contraband is recovered, then there are other provisions like Section 57 which empowered officer is mandatorily required to comply with. That itself to some extent would minimize the purpose and effectiveness of Section 42 of the NDPS Act. It is to provide fairness in the process of recovery and investigation which is one of the basic features of our criminal jurisprudence. It is a kind of prevention of false implication of innocent persons. The legislature in its wisdom had made the provisions of Section 42 of NDPS Act mandatory and not optional

as stated by this Court in the case of Karnail Singh (2009)8 SCC 539.

17. Thus, having the conflicting version with regard to status of the appellant as well as absence of link to connect activity with ganja so seized apart from inconsistent version of prosecution witnesses over inculpatory confessional statement did not inspire confidence to accept reliability to all such event which could at least lent to presumption so prescribed under the N.D.P.S. Act with regard to possession. On account thereof, the conviction and sentence recorded by the learned Trial Court is set aside. Appeal is allowed. The appellant is under custody, hence he is directed to be released forthwith, if not wanted in any other case.

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