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Court : Patna

Decided On : Dec-13-1999

Judge : D.P.S. Choudhary, J.

Appeal No. : Cr. Appl. No. 113 of 1999 (S.J.)

Appellant : Shanti Devi

Respondent : State of Bihar

Prior history : D.P.S. Choudhary, J. 1. This appeal has been preferred against the judgment and order dated 15th of February, 1999 passed by the 2nd Additional Sessions Judge, East Champaran, Motihari in Excise Case No. 11/97/49/97 convicting the appellant Shanti Devi under Section 8(c) and 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act') and sentenced here to undergo R.I. for 10 years and also to pay a fine of Rs. 1,00,000/- (one lac) and in default of pa

Judgement :

D.P.S. Choudhary, J.

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Act, 1985 (hereinafter referred to as the 'Act') and sentenced here to undergo R.I. for 10 years and also to pay a fine of Rs. 1,00,000/- (one lac) and in default of payment of fine to undergo further period of sentence for two years.

2. The brief fact of the case is that on 23-3-1997 the informant (Suren Kumar Singh, S.I. of Police-cum-Officer Incharge of Raxaul Police Station (P.W. 7) was on patrolling duty. At about 12.35 p.m. on the order of District Magistrate and the Superintendent of Police, he reached near Dumariya Tola and when arrived near the house of appellant Shanti Devi, saw some persons fleeing away from her house, after seeing the police Party. A suspicion arose, thereafter, the informant and the police party searched the house of the appellant. From a room 100 litres of country-made liquor (wine) was recovered. The informant also detected that appellant Shanti Devi was concealing some articles in her San. On search 18 packets of smack was recovered which was tied in the 'Anchal' of her Sari'. The informant prepared the seizure-list of recovered articles in presence of independent witnesses. The witnesses signed over its after reading its contents. The informant and other police official also gave signature over the same. The seizure list has been marked Ext. 1. The appellant was arrested and forwarded to the Court of Chief Judicial Magistrate. The recovered smack was sent to the Laboratory for chemical examination at Patna. The recovered liquors were also sent for examination.

3. The case of the defence is that nothing was recovered either from her personal possession or from her house and she has been implicated in this case because of enmity with the local police.

4. The prosecution has examined seven witnesses, out of which P.W. 1 (Akhtar Hussain Khan) who is S.I. of Police and was posted at Raxaul Police Station. He was a member of the patrolling party on 23-3-1997. He supported the search and seizure of the house of appellant Shanti Devi and recovery of liquor and 18 packets of smack. The seizure-list was prepared in his presence by the informant (P.W. 7) in presence of the independent witnesses who signed over it and the police official present there also signed over the same. He proved the seizure list (Ext. 1). He further stated that at the place of occurrence some bottles of wine and

other articles suggesting that people were taking wine in the room were seized. The recovered smack was sent for chemical examination. No other person was present in the said house at the time of search and seizure. P.W. 2 (Ram Binay Choudhary) is assistant Sub-Inspector of Police who was member of the patrolling party and has supported the above recovery in presence of informant (P.W. 7), P.W. 1 and other independent witnesses. He further stated that appellants failed to produce any paper or licence to sell wine. He identified the accused-appellant in the Court and stated that recovered wine and smack were sent for chemical examination.

5. P.W. 3 (Anjani Kumar Verma) is Assistant Sub-Inspector of Police and was member of the patrolling party. In his presence, the search and seizure was made in the house of the appellant and the above recovery was made. P.W. 4 (Giraja Pandey), P.W. 5 (Pashupat Prasad) and P.W. 6 (Nasiruddin Mian) are witnesses on the seizure list but they were declared hostile by the prosecution and they stated that nothing was recovered in their presence from the house or possession of appellant Shanti Devi.

6. P.W. 7 (Surendra Kumar Singh) who was posted as Town Inspector at Raxaul Police Station on the date of occurrence. On the order of the District Magistrate and the Superintendent of Police, he was on patrolling duty along with other police personnel. He supported his fardbeyan and stated that while on patrolling duty when the party reached near the house of Shanti Devi some persons started fleeing. They were chased but fled away. On suspicion the house of Shanti Devi was searched. About 100 litres of liquor concealed in a tube and in another jerking two litres of country made wine were recovered. The appellant Shanti Devi was also found concealing 18 packets of smack in the Anchal of her Sari which were also seized and the seizure list was prepared in presence of independent witnesses named above, Appellant Shanti Devi was arrested and forwarded to the Court. The recovered articles were sent for chemical examination.

7. The report of the Chemical Examiner, Bihar, Patna has been received which has been marked Ext. 2. The report dated 14-8-1997 mentions that the packets contained about 190 mgs. of brown powdery substance and on its examination it

was found to be heroin, which is a diacetyl derivative of Morphin and it is highly addictive intoxicant.

8. On behalf of the appellant, the learned lawyer submitted that no independent witness has supported the alleged recovery of liquor and heroin from the house and personal possession of accused-appellant. P.Ws. 4, 5 and 6 who are said to be witnesses on the seizure list have turned hostile and stated that nothing was recovered in their presence either from the house or from the personal possession of the appellant. The only witness on the point of search and seizure are P.Ws. 1, 2, 3 and 7 who are police official and hence interested witnesses.

9. The learned A.P.P. submitted that only because P.Ws. 4, 5 and 6, who are local witnesses, turned hostile and did not support the search and seizure, is no ground to disbelieve the search, seizure and recovery of liquor and smack from the house and personal possession of the appellant. P.Ws. 1, 2, 3 and 7 are police officials, but their evidence are consistent on the material point of search and seizure. There is no vital contradiction in their evidence nor there was any suggestion on behalf of the defence that they had any reason to speak lie to implicate the accused-appellant. The term 'independent witness' is a 'misnomer'. It is the quality of the witnesses that has to be considered either they are police personnel or local people. From the critical analysis of the evidence of the witnesses discussed above I find that though P.Ws. 4, 5 and 6 who are witnesses on the seizure list turned hostile and did not support the prosecution case but the evidence of P.Ws. 1, 2, 3 and 7 are consistent on this point and the evidence of the informant (P.W. 7) has been corroborated in entirety from the evidence of P.Ws. 1, 2 and 3. Therefore, there is no ground to discard the evidence of these witnesses nor on the ground that they are police officials, they should be disbelieved. The prosecution has been able to prove beyond doubt about the search and seizure of the above articles from the Jhopari and from the Anchal of Sari of the accused-appellant, as stated above.

10. It was further submitted on behalf of the appellant that there was no compliance of Section 50 of the Act. Before search P.W. 7 did not inform the appellant that she has a right to be search in presence of a Magistrate or a

Gazetted Officer nor she was brought before them, before her search was made. Non-compliance of this provision has vitiated the conviction of the appellant, reported in a decision of State of Punjab v. Baldeo Singh JT 1998 (4) SC page 595. The learned appellant's lawyer further submitted that search of Shanti Devi was not made by a female constable as provided under Clause (4) of Section 50 of the Act. Therefore, her search was illegal and on this ground also the conviction of the appellant is bad in law.

11. In reply the learned A.P.P. submitted that it is the case of the prosecution that police party was on patrolling duty and when it reached near the house of the appellant some persons started fleeing from her house which cause suspicion and when the police party entered inside her Jhopari, on search, recovered liquor and also country-made wine in large quantity. The police party also found some articles tied in the Anchal of the appellant and when it was opened 18 packets of smack were recovered. Therefore, this search and seizure was made suddenly and in course of routine patrolling duty of the police party. In the above decision of the Supreme Court State of Punjab v. Baldeo Singh it has been held that, the provision of Section 50 of the Act is applicable when the search is made on the prior information and of a person. Its provisions are not applicable when there is a sudden search, in course of routine checking or in search of a place. Therefore, in this case the provisions of Section 50 of the Act is not attracted. Similarly, the provision of Clause (4) of Section 50 of the Act is not applicable because during sudden search the police party which had no female member found that the appellant was concealing in her Anchal some articles and when it was opened 18 packets of smack was recovered. The chemical report of the recovered smack shows that it was heroin. Therefore, there was no violation of the provisions of Section 50 of the Act.

12. From the facts of the case, as mentioned above, I find substance in the contentions made on behalf of the learned A.P.P. It is the case of the prosecution that the search was made in course of routine patrolling duty and it was a sudden search and the search was made in the Jhopari of the appellant and on suspicion her Anchal was opened from where 18 packets of smack was recovered. Therefore, in this case the provisions of Section 50 of the Act were not attracted.

As such, there was no illegality in the conviction of the appellant.

13. The learned appellant's lawyer, in the last submitted that the accused-appellant is a poor lady and her sentence is severe. For the ends of justice, her period of sentence may be reduced. The appellant is a lady but she has been convicted under Section 8(c) of the Act for being found guilty under Section 15 of the Act. The minimum sentence prescribed under this Section is 10 years R.I. and a fine of Rs. 1,00,000/-. The trial Court has awarded the minimum punishment as provided under the Act. Therefore, it is not desirable to reduce the period of her sentence mentioned above.

14. In the result, there is no merit in the appeal which is accordingly dismissed and the conviction and sentence of the accused-appellant is confirmed.

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