

**Manna Das Vs. State of Bihar**

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**SooperKanoon Citation :** [sooperkanoon.com/124261](http://sooperkanoon.com/124261)

**Court :** Patna

**Decided On :** Nov-08-2006

**Judge :** Ghanshyam Prasad, J.

**Appellant :** Manna Das

**Respondent :** State of Bihar

**Disposition :** Appeal dismissed

**Prior history :** Ghanshyam Prasad, J. 1. The sole accused-appellant has preferred this appeal against the judgment of his conviction and order of sentence dated 24.1.2003/25.1.2003 passed by Sri Ram Niwas Prasad, Additional Sessions Judge, Fast Track Court No. 5, Sitamarhi in G.R. No. 194 of 2000, Tr. No. 10 of 2002. The accused-appellant has been convicted under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for ten years and also to pay f

**Judgement :**

**Ghanshyam Prasad, J.**

1. The sole accused-appellant has preferred this appeal against the judgment of his conviction and order of sentence dated 24.1.2003/25.1.2003 passed by Sri Ram Niwas Prasad, Additional Sessions Judge, Fast Track Court No. 5, Sitamarhi in G.R. No. 194 of 2000, Tr. No. 10 of 2002. The accused-appellant has been

convicted under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for ten years and also to pay fine of rupees one lac and in default to further undergo rigorous imprisonment for three years.

2. The prosecution story in short is that on receipt of a secret information the then Officer Incharge of Pupri Police Station, namely Rajesh Barnwal (P.W.7) along with police party on 20.5.2000 at about 5 PM laid a trap near Madhubani chowk to nab criminals carrying ganza. In the meantime two persons on a Yezdi motorcycle came near the chowk from the side of Sursand-Pupri Road, Police party challenged them upon which one of them managed to flee away. However, the other, the accused-appellant, was caught along with motorcycle having a cartoon/bag tied on carrier. The Officer Incharge (P.W.7) in presence of two local witnesses, namely, Jai Nath Mahto (P.W.1) and Chandeshwar Ram (P.W.2) and police personnel searched the cartoon/packet and seized about 20 kg. of Ganza. A copy of seizure list prepared by P.W.7 was also given to the accused-appellant.

3. P.W. 7 Rajesh Barnwal, lodged fard-beyan on his self-statement (exhibit-3) and sent the sample of Ganza for examination to Chemical Examiner, Government of Bihar. On receipt of report of the Chemical Examiner (exhibit-5) charge-sheet was submitted against the accused-appellant.

4. In course of the trial, the prosecution examined altogether seven witnesses including the informant as P.W.7 and two seizure list witnesses as P.Ws.1 and 2.

5. The defence of the accused-appellant is complete denial of the occurrence. As per suggestion put to prosecution witnesses is that the person who was actually found carrying Ganza was let off by the police and falsely implicated this accused-appellant, who at that time happened to pass through the place of occurrence. However, no any witness has been examined on behalf of the accused-appellant.

6. In course of the argument the learned Counsel for the appellant challenged the judgment in question on several grounds. However, the main submission is that the prosecution has failed to prove the recovery of Ganza from actual possession of the accused-appellant. Other submission is with regard to quantum of sentence.

It was urged that the learned lower Court has wrongly awarded sentence of ten years with fine of Rs. one lac, which is in much excess of the maximum sentence provided in the Principal Act of 1985.

7. The main point which was required to be proved by the prosecution is the recovery of Ganza from the accused-appellant. Exhibit-2 is the seizure list prepared by P.W.7, it would go to show that it has been witnessed by two persons, namely, P.W.1 and P.W.2. It also bears signature of Shyam Sunder Singh (P.W.6). A copy of the seizure list was also supplied to the accused-appellant. Like in any other case of such nature private witnesses have turned hostile in order to help the accused-appellant. However, P.Ws. 1 and 2 in their evidence before the Court have admitted about the genuineness of their signatures on seizure list which are exhibit 1 and 1/1.

8. Apart from maker of exhibit-2, P.W. 7, some other witnesses have also supported about recovery of Ganza from possession of the accused-appellant. It is needless to say that P.W.7, Rajesh Barnwal, the architect of the case has supported the entire prosecution story right from receipt of secret information, arrest of accused-appellant to recovery of Ganza along with a motorcycle from the possession of the accused-appellant. The story has fully been corroborated by other police personnel, P.W.6, Shyam Sundar Singh, who was also one of the members of the police party, which had laid the trap. The seizure list exhibit-2 also bears his signature.

9. There are some other witnesses, who have also supported the prosecution story on material points. They were present at the spot along with the police party at the time of recovery. They are P.W. 3, Shrawan Rai, P.W.4, Satya Narain Paswan and P.W.5, Dasai Paswan. All these witnesses are Chowkidars. They have failed to identify the accused-appellant in Court and accordingly they had been declared hostile but they have consistently stated about laying trap by the police party headed by P.W. 7 near Madhubani chowk and arrest of a person along with A motorcycle and a packet.

10. Thus from above discussions, I have no doubt in my mind that the prosecution has been able to prove the recovery of the cartoon/packet from this accused-

appellant beyond all these reasonable doubt which contained about 20 kg. of Ganza. The report of the Chemical Analyst, which is exhibit-5, conforms the allegation that the article recovered from possession of the accused-appellant was nothing but Ganza.

11. The learned Counsel for the appellant has failed to make out any case for interference in the finding of the guilt recorded by the learned lower Court. Learned lower Court has rightly convicted the accused-appellant under Section 20 of the N.D.P.S. Act, 1985. However, the learned lower Court has committed grave error in awarding sentence of ten years to the accused-appellant. The Ganza was recovered from the possession of the accused-appellant on 20th May, 2000. On that day the Principal Act of 1985 was in vogue. In Principal Act, 1985 the maximum punishment provided under Section 20(b)(i) for such crime is five years only with fine, which may be extended to Rs. 50,000/-.

12. Section 20 of the Principal Act, 1985 was amended and substituted in the year 2001 through Act 9 of 2001, which came into force on, 2nd day of October, 2001. Thereafter, sentence for such crime was enhanced and now according to the amended Act the maximum punishment under Section 20 is ten years with a fine which may extend to Rs. one lac. The applicability of the amended Act of 2001 in pending cases on the date the Act came into being is provided in Section 41 of the Act 9 of 2001, which runs as follows:

41. Application of this Act to pending cases.- (1) Notwithstanding anything contained in Sub-section (2) of Section 1, all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this section shall apply to cases pending in appeal.

(2) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force.

13. Thus from above it is quite clear that in the present case, the principal Act 1985 will be applicable in which the maximum punishment is only five years with a fine, which may extend to of Rs. 50,000/-. The learned lower Court has apparently committed error by awarding sentence of ten years with a fine of Rs. one lac. It appears from the record that this accused-appellant is in jail custody since the date of arrest, that is, 20.5.2000. In other words, this appellant has already suffered imprisonment more than the maximum sentence provided under the Act. Accordingly, the sentence including fine awarded to the appellant is hereby modified to the extent of the period which has already been undergone by the appellant, which is more than six years.

14. Accordingly this appeal is dismissed with above modification in the sentence. The appellant is, hereby, directed to be released forthwith, if not wanted in any other case.

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