

Manik Dey Vs. State of Assam

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Court : Guwahati

Decided On : Feb-01-2007

Judge : P.G. Agarwal, J.

Appellant : Manik Dey

Respondent : State of Assam

Judgement :

P.G. Agarwal, J.

1. Both the appeals have been heard together and disposed of by this common judgment and Order as both the appeals have arisen out of the judgment and Order dated 7-1-2006 passed by the Sessions Judge, Kamrup, Guwahati In Sessions (Spl) Case No. 137(K)/2001 (GR Case No. 2068/2001) whereby the accused appellant Manik Dey was convicted Under Section 20(b)(ii)(B) of the NDPS Act and sentenced to imprisonment for four years and to pay fine of Rs. 20,000/- in default further imprisonment for one year. By the said order the other accused appellant Dulal Saha was convicted Under Section 20(b)(ii)(C) of the NDPS Act and sentenced to imprisonment for 10 years and to pay fine of Rs. 1 lakh in default further imprisonment for 5 years and both the convicts filed two separate appeals.

2. Heard the learned Counsel for both sides.

3. The prosecution case in brief is that on 25-6-2000 around 1-30 p.m. on receipt of tip off, accused appellant Dulal Saha was apprehended while he was proceeding on a bicycle at Sani Mandir, Bamunimaidan carrying 20 kg. of contraband ganja and the said contraband was seized. Therefore, the house of the accused appellant Dulal Saha was searched and another 2 kg. of ganja was found in his house and the same was seized vide another seizure list. During investigation, accused Dulal Saha made a statement that the ganja was procured by him from one Manik Dey, a resident of Routa. Thereafter, the house of the other accused appellant Manik Dey situated near Routa Rail ways was searched in presence of police and other witnesses and 14.5 kg. of contraband ganja was found in his house. The said ganja was found concealed in the ceiling of the house.

4. The sample of the seized ganja was sent to Forensic Science Laboratory, Assam and a report was received to the effect that the sample gave positive test for cannabis ganja. Exts. 1, 6 and 7 are the reports of the FSL and these were proved and exhibited by P.W. 1 and P.W. 6. The report of the FSL has not been seriously challenged and the trial Court held that seized article is cannabis ganja.

5. So far the recovery of the sample from the accused Dulal Saha, there is evidence of P.W. 7 and P.W. 5. P.W. 4 is a vegetable vendor near the Sani Mandir and he has deposed about the accused person carrying the cannabis and the said cannabis was seized and opened in his presence and the said ganja was seized vide seizure list (Ext. 3).

6. As regards the seizure, there is evidence of P.W. 5 who has deposed that the cannabis was found concealed in the ceiling of the house of accused Manik Dey and it was seized vide Ext. 5 and Ext. 5(2) is the signature. P.W. 7 was also present at the time of search and seizure and he has supported the prosecution story and Ext. 5(3) is his signature. P.W. 3 is the next door neighbour of the accused Manik Dey and although the witness has deposed about the search of the house of the accused appellant Manik Dey in his presence, the witness has stated that he had no knowledge about the recovery of any article as such and the Court found that this witness has put his signature on the seizure list (Ext. 5). The

witness has also admitted his signature that Ext. 5(1) is his signature. In the statement Under Section 313, Cr.P.C. both the accused appellants took up the plea of simple denial.

7. On perusal of the evidence of P.W. 5 and P.W. 7, we find that their evidence remained more or less intact as there was no meaningful cross-examination by the defence that these two witnesses are deposing falsely. They had no animus with the accused persons and as a matter of fact, the accused persons were strangers to police and considering the quantity seized, this cannot be a case of planning.

8. Hence, on consideration of the materials and evidence on record, we concur with the finding of the trial Court regarding recovery of cannabis ganja from the possession of the two accused appellants Dulal Saha as well as Manik Dey.

9. So far the finding of the accused appellant Dulal Saha is concerned, his conviction has been challenged on the ground of non-compliance of the provisions of Section 42(2) of the NDPS Act which reads as follows:

Where an officer takes down any information in writing under Sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

10. P.W. 5 was the Inspector of Police working as in-charge of Narcotic Drugs of CID, Assam and he has deposed that the search was authorized by the SSP, CID, Assam and the search team was led by A.K. Sarma, DSP, Assam.

11. We, thus, find when the information was received by the Senior Superintendent of Police and the search was authorized by a senior officer, the provisions of Section 42(2) are not applicable. Moreover, there is positive evidence of P.W. 5 that the search and seizure was made in strict compliance of the provisions of law.

12. The fact that information was given to Senior Superintendent of Police can also be inferred from the fact that after the apprehension of accused Dulal Saha, the name of the other accused Manik Dey was disclosed as a co-accused and thereafter, the police team went to Routa after obtaining necessary permission

from the Senior Officer. We, therefore, hold that there is no noncompliance of the provisions of Section 42(2) of the NDPS Act in the present case.

13. The second submission of the learned Counsel is that alleged contraband was seized from the possession of the accused Dulal Saha on 25-6-2000 and as such the provision of Section 20(b)(ii) as it stood on that day, shall be applicable/shall govern the matter as regards the sentence etc. It is submitted that the provisions of Sub-clause (a) (b) and (c) were subsequently incorporated by the Act of 2001 and hence, the trial Court committed error in convicting the accused Dulal Saha Under Section 20(b)(ii)(C) of the NDPS Act. We find force in the above submission. The provisions of the unamended Act shall apply and it provides for imprisonment for five years. Hence, the appeal filed by the accused appellant Dulal Saha is partly allowed and his conviction is modified to one Under Section 20(b)(ii) of the NDPS Act and the accused is sentenced to imprisonment for three years and to pay fine of Rs. 10,000/- in default further imprisonment for three months.

14. Now coming to the case of the accused appellant Manik Dey, it has been submitted by the learned Counsel that the Sessions Judge, Kamrup, Guwahati, has no jurisdiction to try the case of accused Manik Dey. Admittedly, the offence of alleged possession of cannabis took place at Routa in the District of Darrang and as per the prosecution case, the cannabis was seized from the house of the accused situated near Routa Railway Station. Thus, the Special Judge at Darrang, Managaldo has jurisdiction to try the accused appellant Manik Dey and as a part of the alleged offence took place within the territorial jurisdiction of the Special Judge, Kamrup, Guwahati, the trial Court had no jurisdiction to try the accused appellant Manik Dey. So far the above facts are concerned, there is no dispute at the Bar and in view of the provision of Section 177, Cr.P.C. every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. The fact that the cannabis was recovered on the basis of the statement made by the co-accused at Guwahati is immaterial and the provisions of Sections 179, 180 and 181, Cr.P.C. are not attracted.

15. Section 462, Cr.P.C. reads as follows:

Proceedings in wrong place - No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

16. We, thus, find that holding of trial by the Sessions Judge, Kamrup, Guwahati in respect of the accused petitioner Manik Dey was a mere irregularity which is curable under Chapter XXXV of the Cr.P.C. The accused appellant Manik Dey was afforded ample opportunity and he was defended by the learned Counsel at Guwahati and the defence has failed to show that holding of the trial at Guwahati has occasioned a failure of Justice. The defence has also failed to show that the accused Manik Day was prejudiced in any manner by prosecuting him at Guwahati. We, therefore, hold that in view of the provision of Section 462, Cr.P.C. the conviction of the accused appellant Manik Dey needs no interference.

17. On consideration of the evidence on record, the conviction of the accused appellant Manik Dey Under Section 20(b)(ii)(B) of the NDPS Act is modified to one Under Section 20(b)(ii) of the NDPS Act and accused appellant Manik Dey is sentenced to imprisonment for three years and to pay fine of Rs. 10,000/- in default further imprisonment for three months.

18. Both the appeals stand disposed of as aforesaid.

19. Send down the records.

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