

Kalawati Devi Vs. State of Bihar

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Court : Patna

Decided On : Dec-11-2001

Judge : I.P. Singh, J.

Appeal No. : Criminal Appeal No. 41 of 2001

Appellant : Kalawati Devi

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

I.P. Singh, J.

1. The sole appellant has been convicted under Section 20(b)(ii) of Narcotic Drugs and Psychotropic Substances Act and were sentenced to undergo R.I. for ten years and pay fine of Rs. 1 lakh under Section 21 of the N.D.P.S. Act in default of payment of fine to further undergo R.I. for five years.

2. The prosecution case in short is that on 15-10-1995, the informant of this case got confidential information about charas and he started checking of the vehicles and during checking the informant searched Kalawati Devi and he found the appellant was having 1 kg. 500 gm. of charas in a plastic bag on a Tumtum. The informant arrested the appellant and he prepared relevant papers and reported the

matter to the Sessions Judge, Motihari. The appellant was remanded to judicial custody on 16.10.1995. The learned Sessions Judge, Motihari took cognizance and subsequently, the trial of the case was concluded and the appellant was convicted as stated above. The appellant pleaded not guilty and have stated that she has been falsely implicated in this case.

3. The prosecution in support of his case examined altogether four witnesses. P.W.1 is Shambhu Sharan Sinha. P.W. 2 is Harendra Kumar Mahto. P.W.3 is Harendra Pandey and C.W. 1 is Subarto Gupta. He is Assistant Director of Forensic Science Laboratory.

4. P.W.I Shambhu Sharan Sinha has stated that on 15, 10.1995, when he was on duty at Awakari Gate, during checking, he found a lady carrying a bag containing charas and sent it to expert for chemical examination, who found the seized material to be charas. He has fully supported the case of the prosecution. In paragraph-6 of his cross-examination, he has stated that he was having authorised to search the appellant and it was not necessary to produce her before a Gazetted officer.

5. P.W. 2 Harendra Kumar Mahto is a constable of Excise Department. He has proved the material exhibit, which has been marked as Ext.1 He has also fully supported the version of the informant P. W. 1.

6. P.W.3 Harendra Pandey is another witness of Excise Department. He has fully supported the case of the prosecution.

7. C.W. 1 Subarto Gupta has stated that on 7.2.1999, he was posted as Assistant Director in Forensic Science Laboratory, Patna and on that day, he examined with his team the sample sent to him in connection with Raxaul P.R. No. 56 dated 10.10.1995 and on examination, he found that the sample was containing Treta Hydro Cannibal (T.N.C.). He has proved his chemical examination report which has been marked Ext. 2. According to him, the sample which has been sent was to be charas.

8. Learned Counsel appearing on behalf of the appellant submitted that the appellant is a lady and there is provision under Section 50(4) of the Narcotic Drugs and Psychotropic Substances Act that the search and seizure of a lady should have been done by a female and not by a male person. It has been also submitted that the person who searched and seized the contraband substance was himself informant and has also investigated the case, which has prejudiced the case of the defense. It is well settled that the person who is himself and informant should not have investigated the case. However, in the present case, there is nothing to investigate since after the recovery of contraband substance, it was sent for chemical examination and C.W.1, the Assistant Director in Forensic Science Laboratory, Patna and he had confirmed that it was a Narcotic Drugs and Psychotropic Substances Act as such, the case of the defense has not been prejudiced even if the charge-sheet is submitted by the informant on available Information. So far as the search of the appellant by a male person is concerned, it is true as per the provision of Section 50(4) of the N.D.P.S. Act that no female shall be searched by anyone excepting the female. However, in this case, no personal search has been undertaken by the I.O. as such, there is no breach of Section 50(4) of the N.D.P.S. Act.

9. All the witnesses P.Ws. 1 to 3 have supported the recovery of charas weighing to 1 Kg. 500 gms. from a poly thin bag which was taken from the hand of the appellant, who was traveling on a Tumtum. C.W. 1 has also supported the case of the prosecution by testing the sample sent to him for chemical examination.

10. Taking into consideration the facts and circumstances of the case, the Court below has rightly found the appellant guilty under Sections 20(b)(ii) and 21 of Narcotic Drugs and Psychotropic Substances Act. I do not find any reason to interfere with the judgment under challenge. The conviction and sentence passed by the Court below is up held and this appeal is dismissed.