

Mohan Parida Vs. State

Mohan Parida Vs. State

SooperKanoon Citation : sooperkanoon.com/535276

Court : Orissa

Decided On : Sep-14-2000

Reported in : 2001CriLJ410

Judge : P.K. Patra, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20

Appeal No. : Cri. Appeal No. 10 of 1995

Appellant : Mohan Parida

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : R.K. Sahoo, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

P.K. Patra, J.

1. The appellant has challenged the judgment dated 20-11-1994 in S.T. No. 51/259 of 1993 passed by Shri N.K.Rajguru Mohapatra, 1st Additional Sessions Judge, Puri convicting the appellant under Section 20(a) of the [Narcotic Drugs and](#)

[Psychotropic Substances Act, 1985](#) (hereinafter referred to as 'the Act') and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs. 20,000.00 (Rupees twenty thousand), in default, to undergo rigorous imprisonment for six months more.

2. The prosecution case briefly stated is as follows :

On 29-4-1992 getting information about large scale cultivation of cannabis plants (hemp plants) in village Padabhuin, P.S. Sarankul in the district of Nayagarh the Sub-Inspector of Excise (Mobile), Nayagarh (P.W. 4) accompanied by his staff and Executive Magistrate and A.P.R. Force went to the village and conducted raids. He could detect cultivation of hemp plants by many inhabitants of that village and the accused had cultivated 800 (eight hundred) hemp plants in his Bari, adjacent to his residential house. The hemp plants were uprooted and bundled and paper seal was put on the bundle. Thereafter the bundle of the plants were seized in presence of the accused and two local witnesses. The appellant was arrested and brought to the office of P.W. 4 along with the seized bundle of hemp plants. On the next day the accused was produced before the S.D.J.M. Nayagarh who took out one hemp plant as sample and sent the same to the Drugs Control Research Laboratory, Bhubaneswar for examination. After receiving the report (Ext. 4) of the Chemical Examiner confirming that the sample plant was cannabis (Indian hemp) and completing the enquiry, P.W. 4 submitted the prosecution report against the accused-appellant who stood his trial.

3. The defence plea is one of denial and false implication by P.W. 4 due to the protest by the appellant to P.W.4 when he was harassing villagers after recovery of hemp plants grown in a nearby hillock.

4. Mr. R.K. Sahoo, learned counsel for the appellant and the learned Additional Standing Counsel for the State were heard at length. It was contended by Mr. Sahoo that the trial Court committed error in holding that the hemp plants were seized from the conscious and exclusive possession of the appellant and urged for setting aside the conviction of the appellant. The learned Additional Standing (Counsel), however, supported the impugned judgment.

5. In order to bring home the charge against the appellant, prosecution has examined four witnesses; out of whom P.Ws. 1 and 2 are two Excise Constables. P.W. 3 is an independent witness to the Seizure and P.W. 4 is the S.I. of Excise who detected this case. P.W. 3 turned hostile and did not support the prosecution case. The defence examined two witnesses.

6. The trial Judge placed reliance on the statements of the three official witnesses and coming to the conclusion that the hemp plants were seized from the exclusive and conscious possession of the appellant, convicted him. The trial Judge held that the statements of the two defence witnesses, were not reliable and acceptable.

7. The Executive Magistrate, any member of the A.P.R. Force and the other independent witness to the seizure, have not been examined by the prosecution. P.W. 4 searched the house of the appellant and nothing could be recovered; but found that the appellant had grown cannabis plants in his adjoining bari and 800 hemp plants from the bari of the appellant were uprooted and measured and the height varied from one foot to four feet. The hemp plants were bundled and a paper seal was put and the same was seized under the seizure-list Ext. 1 and a copy of the same was supplied to the accused-appellant. P.W. 4 has stated to have sent requisition to the Tahsildar to depute a Revenue Inspector for identification of the house and bari of the appellant and the Revenue Inspector submitted his report stating that the house and the bari of the appellant appertain to plot No. 994 of Khata No. 146 of mouza Badabhuin. The said report of the R.I. has not been brought on record. In his statement in cross-examination, P.W. 4 has stated that at the time of search the appellant was alone present in his house and none else and that he did not accompany the Revenue Inspector to the village for the purpose of identification of the house and bari of the appellant and that he did not prepare a sketch map. Though P.Ws. 1 and 2, who had accompanied P.W. 4 to the village, have stated that the Inspector of Excise, Nayagarh had also accompanied them to the village; P.W. 4 is silent about the Inspector. P.W. 1 has stated that the bari adjacent to the house of the appellant had been fenced and hemp plants had been grown. In his statement in cross-examination, P.W. 1 has stated that after detection of two to three cases in the same village regarding

illegal cultivation of hemp plants, they went to the house of the accused-appellant for search whereas P.W. 4 has stated that the excise staff were divided and they undertook simultaneous search in different houses in the village and P.W. 2 has stated that after searching three houses in the same village, they went to search the house of the appellant. P.W. 1 has stated that the appellant was asked to produce the documents relating to his louse and bari; but he could not produce the same, whereas P.W. 2 has stated that P.W. 4 verified the documents produced by the appellant. P.W. 4 has stated that he could get the plot number of the house and bari from the Revenue Inspector after he prayed the Tahsildar for the same. Though P.W. 4 has stated that the bari was fenced by dry trees and green plants, P.W. 2 has stated that the bari was fenced by thorny plants. P.W. 2 has also stated that the accused alone was present in his house at the time of search. It was suggested to P.Ws. 1, 2 and 4 that the accused and his brothers were jointly residing in that house and that the bari in question did not belong to the appellant alone and that the hemp plants found near a hillock were brought and the villagers including the appellant were falsely implicated. P.W. 3, the only independent witness to the seizure examined in this case has not supported the prosecution case and has denied to have knowledge regarding the case. He has stated to have signed in the seizure-list in the excise office at Nayagarh. In his statement in cross-examination he has stated that the appellant was separate from two of his brothers and had his house and bari and that the three brothers were residing in different rooms in the house and had also divided the bari into three parts. Discussing the above evidence of P.W. 3, the trial Court held that P.W. 3 was present at the time of search and seizure. The statements of P.Ws. 1 and 2 have been rejected by the trial Court holding them to be unreliable.

8. As discussed earlier, the statements of P.Ws. 1, 2 and 4 are discrepant with each other on material particulars and prosecution has failed to lead cogent, convincing and reliable evidence regarding the ownership of the bari in question from which the hemp plants were allegedly seized. Nonexamination of the Executive Magistrate, Revenue Inspector and the other independent witness to the seizure in support of prosecution case, can be viewed adversely. There is also no evidence on record that the appellant had cultivated hemp plants in the bari in question. For all these reasons, it will be quite unsafe to place reliance on the

inconsistent and discrepant statements of P.Ws. 1, 2 and 4. It will be hazardous to convict the appellant on such evidence.

9. In the case of *Krushna Dora v. State* (1994) 7 OCR 590, it has been held that it was obligatory on the part of the prosecution to establish by cogent and reliable evidence that the accused was in exclusive and conscious possession of contraband article and when the prosecution evidence in that case was found to be miserably lacking in that respect, the accused was entitled to acquittal.

10. Keeping in view the decision referred to above and for the reasons discussed earlier, the appellant in the present case will be entitled to acquittal and the charge under Section 20(a) of the Act must fail.

11. In the result, the Jail Criminal Appeal is allowed. The impugned judgment dated 29-11-1994 in S.T. No. 51/259 of 1993 passed by the First Additional Sessions Judge, Puri convicting the appellant under Section 20(a) of the Act and the sentence passed thereunder are set aside. The appellant is found not guilty and is acquitted of the charge. The appellant if still in jail custody, be released forthwith if his detention is not required in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com