

IN THE COURT OF THE 1ST ADDL. DISTRICT &
SESSIONS JUDGE-CUM-SPECIAL JUDGE(VIGILANCE),
BHUBANESWAR.

P R E S E N T : Shri N.Sahu, LL.B.,
1st Addl. District & Sessions Judge-cum-
Special
Judge(Vigilance),Bhubaneswar.

T.R.No.2/58 of 2004/2003

(Arising out of Capital P.S.Case No.378,
dt.12.10.2003 u/s.20(b) of N.D.P.S. Act).

S T A T E
Prosecution.

-Versus-

1. Gobardhan Naik, aged about 47 years,
S/o.Sambari Naik, Vill.Katarajhari,
PS-Sarankul, Dist.Nayagarh,
A/P. Radhakrushna Basti, Unit-6,
Bhubaneswar, PS-Capital, Dist.Khurda.
2. Niranjan Naik, aged about 45 years,
S/o.Ganga Naik, of Vill.Godipalli,
PS-Odagaon, Dist.Nayagarh,
A/P.-Radhakrushna Basti, Unit-6,
Bhubaneswar, PS-Capital, Dist.Khurda.
3. Hadibandhu Behera, aged about 40 years,
S/o.Dinabandhu Behera, Vill.Chitalpur,
PS-Delanga, Dist.Puri, A/P. Sahar Basti,
Unit-6, PS-Capital, Bhubaneswar.
4. Sameer Kumar Roy, aged about 28 years,
S/o.Banambar Roy, Vill.Nuahat,
PS-Gop, Dist.Puri.

..... Accused
persons.

For the Prosecution : Sri S.K.Barik, Addl.P.P.

For Accused Nos.1 & 2 : Sri S.K.Sahoo & Associates.

For Accused Nos.3 & 4 : Sri B.N.Panda, SDC.

Date of argument : 5.2.2014

Date of judgment : 13.2.2014

Offence u/s.20(b) of NDPS Act.

J U D G M E N T

1. The aforesaid accused persons stood charged for committing the offence punishable u/s 20(b) of NDPS Act.

2. Briefly stated the prosecution case is that on 12.10.2003 evening while the IIC of Capital Police Station with his staff were performing evening patrolling duty at Unit-VI, Bhubaneswar received credible information that the accused persons were carrying on Ganja business jointly in a wooden cabin at Radha Krushna Basti. The IIC reduced the report into writing and informed the S.P. through Havildar K.C.Behera and proceeded towards the cabin. He arranged two independent witnesses on way, reached near the cabin and found the accused persons were present in the cabin. After disclosing his identity and giving them option to give their personal search before Gazetted Officer or Magistrate, he obtained their willingness, called for the Additional S.P. over VHF to the spot. In presence of the Additional S.P., he took personal search of the accused persons, but nothing incriminating was found. On search of the cabin, 350 grams of Ganja kept in a polythene packet and a cash of Rs.52/- were recovered and seized. The accused persons could not produce

any authentic document in support of possession of the Ganja. Two packets of sample Ganja each containing 25 grams were drawn there from and a seizure list was prepared and the accused persons were arrested and the IIC drew an FIR at the spot and directed one S.I. P. K. Singhmanaki to take up investigation. Sample of Ganja was sent for chemical analysis and after completion of investigation, chargesheet was submitted against the accused persons resulting this trial.

3. Defence plea is one of complete denial.
4. Prosecution has examined seven witnesses whereas the accused—Hadibandhu Behera has examined himself as sole witness.
5. Points for determination are :-
 - (i) Whether on 12.10.2003 the accused persons were found in possession of 350 grams of Ganja ?
 - (ii) Whether they are liable for the offence ?
6. PW-1, a Constable of Capital P.S. stated that on 12.10.2003 at 6 PM he had accompanied the patrolling party and they proceeded near the spot i.e. a wooden cabin claimed by one Gobardhan Naik as his own and found sale transaction of Ganja was going on in the cabin and gheroed the cabin. He also stated that the Inspector(PW-3) reached there and the Addl. S.P. also reached there. The house was searched and he(PW-1) went and called a weigh man namely, Bamadev Jena(not examined). He also stated that in his presence the house was searched and a polythene containing Ganja was recovered from the cabin which was kept at the extreme

corner. On weighment the quantity of Ganja was found to be 350 grams. Sample of 25 grams of Ganja were drawn in two separate packets and the accused persons were arrested. In cross-examination he stated that the Inspector had not verified any document with regard to the ownership of the cabin. He also stated that he did not put his signature on any document including the seizure list.

Pws-2 and 4, the Constables attached D.P.O., Khurda stated about the seizure of two reports under Ext.1. But both of them in their cross-examination could not say the contents of those reports. PW-5, an independent witness stated that he knows the accused-Gobardhan and Niranjan only, but does not know other accused persons and on 12.10.03 he put his signature on a paper vide Ext.8/2. In cross-examination, he has stated that he had signed on a blank paper in the P.S. at the instance of police. PW-7 stated that he knows the accused Gobardhan, Niranjan and Hadibandhu Behera, but does not know other accused and once he had been to the police station to bring the above three accused persons as police had taken them. At the police station as per the direction of police, he had signed on some papers vide Exts.7/4 and 8/3. In cross-examination, he categorically stated that police had not read over the contents of the papers to him and more specifically stated that no Ganja was ever seized from the accused persons. Both these witnesses were declared hostile by prosecution, but nothing substantial was elicited in their evidence to incriminate the accused

persons. Thus, the evidence of these two independent witnesses does not advance the prosecution case.

7. PW-3 stated that on 12.10.03 during evening patrolling duty receiving reliable information he proceeded to the spot i.e. a wooden cabin where accused persons-Gobardhan, Sameer, Hadibandhu and others were very much present. He gave them his identity and purpose of raid, sent intimation to the S.P. vide Ext.2 and on being asked, the accused persons gave him writing expressing their willingness vide Exts.3 to 6 to be examined by Magistrate or Gazetted Officer. PW-3 has also stated that on his requisition, Addl. S.P. came there and in his presence he took personal search of the accused persons, but nothing incriminating was found. He further stated that during search he found one Ganja packet kept in the north-west corner of the cabin and the same along with a cash of Rs.52/- was recovered and the accused persons failed to produce any authority in support of such possession. PW-3 seized the same, called for a weighmen who came with weighing machine and on weighment the quantity of Ganja was found to be 350 grams. PW-3 proved the weighment list vide Ext.7. He drew sample of two packets each containing 25 grams of Ganja and seized the same vide Ext.8 and gave copy of the same to the accused persons, collected the seal impression of the brass seal used in sealing the articles in a separate paper vide Ext.9, left the brass seal in zima of PW-7 vide Ext.10 and thereafter he drew plain paper FIR at the spot vide Ext.11 and sent the same for registration and directed the S.I. to take up investigation. PW-3 has further stated that on

the next day he sent the detail report to S.P.,Khurda vide Ext.12.

In cross-examination, PW-3 stated that he sent the intimation(Ext.2) to the S.P. through Havildar-K.C.Behera from the spot who went in a motor cycle by arranging the same from the spot. That K.C.Behera has not been examined nor any other witness including Pws-1 and 6 stated that Havildar Behera had taken Ext.2 in a motor cycle by arranging the same from the spot. Admittedly, nothing incriminating was recovered from the accused persons on their personal search. PW-3 stated that he had not examined the owner of that wooden cabin and he had not asked anyone about the ownership of that cabin.

8. PW-6, the then S.I. of Police stated that he had accompanied PW-3 in an evening patrolling duty and getting reliable information regarding illegal sale transaction of contraband Ganja by the accused persons at the spot and they went to the spot i.e. a wooden cabin belonging to Gobardhan Naik and they found the accused persons sitting there. There from the IIC sent requisition through Havildar to S.P. for deputation of Executive Magistrate. It is pertinent to mention that PW-3 in his evidence stated that it was Sunday and there was remote chance of availability of any Magistrate, so he sent requisition to Addl.S.P., Khurda, Bhubaneswar over VHF. As such, the evidence of Pws-3 and 6 are contradicting to each other in this regard. PW-6 further stated that the option of the accused persons to be searched in presence of Police Officer or Executive Magistrate was obtained vide Exts.3 to 6

and on personal search of the accused persons, no incriminating material was found, but on search of the wooden cabin, a polythene paper packet containing Ganja was recovered from the north-west corner along with sale proceed of a cash of Rs.52/-. One Constable called a weighman who came with weighing machine, weighed the Ganja and found to be 350 grams and then the IIC seized the same vide Ext.8 and two sample packets each containing 25 grams of Ganja were drawn and copy of the same was given to the accused persons and the IIC drew plain paper FIR at the spot and directed him to take up investigation.

PW-6 further stated that he examined the complainant, witnesses, prepared the spot map vide Ext.13 and brought the accused persons and the seized articles to the Police Station and forwarded them to Court on 13.10.03. He moved the SDJM to send the sample Ganja to DSFL and he proved the forwarding report of SDJM vide Ext.14. PW-6 further stated that the rest articles were sent to Court Malkhana vide Ext.15 and he seized the Malkhana Register and Station Diary vide Ext.16 and released the same in zimanama vide Ext.17. PW-6 also stated that he seized the intimation u/s.42(2), vide Ext.2 and the detail report u/s.57 vide Ext.12 under the seizure list Ext.1 and after completion of investigation, submitted chargesheet.

9. During cross-examination, PW-6 stated that during search some persons were passing through the road, but they had not called any of them to witness the search or seizure. He also stated that he does not know as to who prepared the

zimanama vide Ext.10. It is significant to note here that Ext.10(Zimanama) contains the P.S.Case reference as 378, dt.12.10.03. PW-3 specifically stated that after execution of zimanama, he drew FIR and sent the same to PS for registration and directed PW-6 to take up investigation. If that be so, how the zimanama contains PS Case reference as 378, dt.12.10.03 which number ought to have been assigned at the PS after registration. No explanation has been adduced by prosecution in this regard. The brass seal has not been produced in the Court. Moreover, PW-6 stated that his case diary does not reveal if he had examined the weighman and the detail name and address of the weighman is not available in the C.D. It may be mentioned here that no weighman has been examined. Though PW-3 claimed that the name of the weighman was Bamadev Pradhan, the signature of one Bamadev Jena finds place in the weighment list vide Ext.7. Neither any Bamadev Jena nor Bamadev Pradhan has been cited as a chargesheeted witness. These factors taken together create a doubt if in fact, any weighman was called there or if the Ganja was weighed or if any zimanama in respect of any brass seal was executed at the spot.

So far the ownership of the cabin, PW-6 stated that no document was verified with regard to the ownership of that cabin and he also stated that none of that locality had told if the cabin belongs to the accused persons. The seized articles have also not been produced before the Court. No chemical examination report has been proved which is fatal to the prosecution. There is no evidence on record as to in what

condition and under whose custody, the seized articles were kept in P.S. till it was produced before the Magistrate. The Malkhana Register has not been produced to show as to what articles were received in Malkhana and in what manner it was preserved. Since nothing incriminating has been recovered from the possession of the accused persons, Exts.3 to 6 are not materials for the purpose of this case.

10. It is seen that Ext.2 intimation u/s.42(2) is of dated 12.10.03 and office seal dated 12.10.03 of SP,Khurda has been put thereon with date and signature of 12.10.03. PW-3 in his cross-examination admitted that he has not mentioned on Ext.2 as to at what time, he prepared the same, but he has stated that he prepared Ext.2 at the spot and also claimed that from the spot he directly sent the Havildar to the SP and he went in a motor cycle. No other witness nor even the official witnesses including the I.O. have stated so. The Addl. S.P. has not been examined. These facts read together create doubt about time of preparation of Ext.2. Apart from this, PW-1 stated that he with PW-6 and Havildar- K.C.Behera proceeded to the spot, gheroed the cabin and PW-3 reached at the spot. But, PWs-3 and 6 stated that all of them were in the patrolling duty and getting reliable information, they went to the spot. As such, the evidence of the witnesses is contradicting to each other.

11. Fact remains that there is no independent corroboration to the version of the police officials. Of course, an accused can be convicted basing on the testimony of police officials, but the same should be clear, clinching and credible. But in

this case as discussed above, the version of the police officials is contradictory to each other which does not inspire confidence. The seized articles have not been produced before the Court. For non-citing of the so called weighman as a chargesheeted witness doubt arises, if in fact there was any such weighment. There is no conclusive evidence on record as regards the ownership of the wooden cabin. No chemical examination report has been produced by the prosecution. These factors taken together create a doubt about the prosecution case. Adding to this, PW-6 who is the I.O. of this case was a witness to the raid, search and seizure. The rule of law makes it unthinkable to allow a witness to a crime to himself becoming the I.O. into the said crime. As such, the investigation of this case by PW-6 who was a witness to the occurrence renders the prosecution case vulnerable. Such view finds support from a decision of our own Hon'ble High Court reported in **(2009), Vol.43, OCR, 141, State of Orissa-Vrs.-Managobinda Sahoo.**

12. Therefore, after analyzing the evidence on record and for the reasons discussed above, it is held that the prosecution has not been able to prove its case against the accused persons beyond all reasonable doubt and the benefit of such doubt should be extended in their favour.

In the result, the accused persons are found not guilty of the offence u/s.20(b) of N.D.P.S.Act and acquitted u/s.235(1) of Cr.P.C. Their bail bonds be cancelled and sureties discharged.

The seized Ganja and a cash of Rs.52/- be confiscated to the state. Order regarding disposal of property shall take effect four months after expiry of the appeal period if no appeal is preferred and in case of appeal subject to the decision of the Appellate Court.

1st Addl. District & Sessions Judge-cum-
Special
Judge(Vigilance),Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 13th day of February,2014.

1st Addl. District & Sessions Judge-cum-
Special
Judge(Vigilance),Bhubaneswar.

List of witnesses examined for the prosecution :

P.W.1 Pratap Chandra Pradhan.
P.W.2 Bhagaban Patro.
P.W.3 Rahas Bihari Pani.
P.W.4 Banambar Nayak.
P.W.5 Magi Naik.
P.W.6 Prafulla Kumar Singhmanaki.
P.W.7 Iswar Chandra Pattnaik.

List of witnesses examined for the defence :-

D.W.1 Hadibandhu Behera

List of exhibits marked for the prosecution :-

Ext.1 Seizure List.
Ext.1/1 Signature of SI P.K.Manaki on Ext.1.
Ext.1/2 Signature of PW-2 on Ext.1.
Ext.2 Letter No.468,dt.12.10.04.
Ext.2/1 Signature of PW-3 in Ext.2.

Ext.2/2	Signature of S.P.,Khurda.
Ext.3	Willingness of accused.
Ext.4	Willingness of accused.
Ext.5	Willingness of accused.
Ext.6	Willingness of accused.
Exts.3/1 to 6/1	Signatures of PW-3 in Exts.3 to 6.
Exts.3/2 to 6/2	Signatures of accused persons in Exts.3 to 6.
Ext.7	Weighment list.
Ext.7/1	Signature of PW-3 in Ext.7.
Ext.8	Seizure List.
Ext.8/1	Signature of PW-3 in Ext.8.
Ext.9	Specimen Seal.
Ext.9/1	Signature of PW-3 in Ext.9.
Ext.9/2	Signature of Addl.SP.
Ext.9/3	Signature of witness.
Ext.10	Zimanama.
Ext.10/1	Signature of PW-3 in Ext.10.
Ext.10/2	Signature of Zimadar Iswar Ch.Pattnaik.
Ext.11	Plain paper FIR.
Ext.11/1	Signature of PW-3 in Ext.11.
Ext.12	Report of PW-3 in D.R.No.4691, dt.13.10.03.
Ext.12/1	Signature of PW-3 in Ext.12.
Ext.12/2	Signature of SP, Khurda.
Ext.1/3	Signature of PW-4 on Ext.1.
Ext.1/4	Signature of P.K.Mohanty on Ext.1.
Ext.8/2	Signature of PW-5 on Ext.8.
Ext.13	Spot Map.
Ext.13/1	Signature of PW-6 in Ext.13.
Ext.14	Forwarding Letter of SDJM.
Ext.14/1	Signature of PW-6 in Ext.14.
Ext.15	Mal Challan vide CMR 61/031.
Ext.15/1	Signature of PW-6 in Ext.15.
Ext.16	Seizure List.
Ext.16/1	Signature of PW-6 in Ext.16.
Ext.17	Zimanama.
Ext.17/1	Signature of PW-6 in Ext.17.
Ext.17/2	Signature of Fakir Mohan Jena, IIC.

List of exhibits marked for the defence :-

Nil.

List of M.Os. marked for the prosecution :-

Nil.

List of M.Os. marked for the defence :-

Nil.

1st Addl. District & Sessions Judge-cum
Special Judge(Vigilance),Bhubaneswar.