

**IN THE COURT OF THE SESSIONS JUDGE-CUM-
SPECIAL JUDGE UNDER N.D. & P.S. ACT, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.

Dated, Bhubaneswar the 13th June'14.

T.R. Case No.16 of 2008.
(Arising out of P.R. No.14/2008-09.)

S T A T E

-V e r s u s-

Bikram Das, aged about 42 years, S/o. Fakira Das of Vill. –
Chanagiri, P.S. – Jankia, Dist. – Khurda.

... **Accused.**

Counsel :

For prosecution	--	Shri B.B. Mohanty (P.P. in charge).
For defence	--	Shri S.K. Patra & Associates.

Offence under section 20(b)(ii)(A), N.D. & P.S. Act, 1985.

Date of argument : 04.06.2014.

Date of judgment : 13.06.2014.

J U D G M E N T

The accused stands charged for the offence punishable under section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act").

2. Factual matrix leading to the case of the prosecution is that on 21.06.2008 at about 12.30 P.M., while the S.I. of Excise, along with other staff, were patrolling at Chanagiri Gada Sahi, suspecting possession of contraband article by the accused

guarded his house. An outside witness was called. Then, the S.I. of Excise called the accused from his house and informed that his house would be searched. After giving personal search, they entered the house of the accused and found a plastic jari bag containing Ganja, which was kept in his kitchen room. After taking smell, they came to know that the same was Ganja. Then, the S.I. of Excise sealed the bag by paper seal and brass seal after taking weight of the same, which became 600 grams. He prepared seizure list. The contents of the seizure list were read over and explained to the witnesses and the accused. They put their signatures on the seizure list. A copy of the same was given to the accused. Witnesses were examined. After completion of investigation, Prosecution Report was filed. Hence, the case of the prosecution.

3. Plea of the accused is squarely denial to the charge levelled against him.

4. The main point for determination is :

Whether the accused was in unlawful possession of 600 grams of contraband Ganja (Cannabis), in contravention of section 8 of the Act ?

5. Prosecution, in order to prove the charge against the accused, has examined three witnesses, out of whom P.W.1 is an Excise Constable; P.W.2 is an A.S.I. of Excise; and P.W.3 is an outsider. Prosecution could not procure the attendance of S.I. of Excise in spite of repeated summons issued by the Court. Defence has examined none.

6. It is well settled law that a conviction can be maintained basing on the sole evidence of a single witness if his evidence is cogent, clear and above reproach. It is also well

settled law that the Court should separate the grain from the chaff and the evidence of an official cannot be discarded solely because he is an official witness. On the other hand, the evidence of official witnesses should be equally appreciated like other witnesses.

7. P.W.2, who is the A.S.I. of Excise, stated that as per instructions of S.I. of Excise Laxmidhar Mohapatra, they cordoned the closed house of the accused. On being called by the S.I. of Excise, the accused came out. Then, the S.I. of Excise informed that his house would be searched. Afterwards, they entered the house of the accused and, on search, found a jari bag containing 600 grams of Ganja. By smell, they came to know that it was Ganja. Then, the S.I. of Excise sealed the same with paper and brass seal. The S.I. of Excise prepared seizure list and read over and explained the contents thereof to them. They all signed the seizure list. He proved the seizure list vide Ext.1 and his signature vide Ext.1/2. He has not been cross-examined by defence. Of course, the evidence of P.W.2 does not disclose as to how they came to know that the same was the house of the accused. It is also not known from his evidence whether the weight of Ganja was taken. He has also not explained about his experience that out of smell, he could know that the contraband article was Ganja. Nothing is found from his statement that sample of Ganja was taken for chemical examination. Thus, the evidence of P.W.2, even if remains unrebutted, does not prove the formalities of search and seizure under the Act to show that Ganja was seized from the house of the accused. Hence, his evidence is not clear, cogent and

consistent to prove that as per norms of the Act, 600 grams of Ganja was seized from the house of the accused.

8. P.W.1, who is an Excise Constable, stated that on suspicion, they searched the kitchen room after observing all formalities of search and recovered 6 grams of Ganja kept in a plastic jar under some goods. The S.I. of Excise seized the same. He proved the seizure list vide Ext.1 and his signature vide Ext.1/1. The seized Ganja was weighed at the spot and it was found as 6 grams. He has been cross-examined vividly. In cross-examination, he explained the location of the house of the accused; but he could not prove whether the accused had ownership over the house, as he, for the first time, visited that house. His evidence is also not consistent with the seizure list inasmuch as he has stated about seizure of 6 grams of Ganja, whereas seizure list indicates 600 grams of Ganja. Not only this, but also his evidence does not disclose how they came to know that the seized property was nothing but Ganja. His evidence is also silent about giving personal search by the Excise Officials while entering the house of the accused. Thus, the evidence of P.W.1 is inconsistent as to the exact quantity of Ganja seized. His evidence is also crippled for not identifying the Ganja (Cannabis). On the other hand, the evidence of P.W.1 is not consistent, clear, cogent and above reproach to prove the proper search and seizure of 600 grams of Ganja from the house of the accused.

9. P.W.3, who is an outsider, simply stated that the occurrence took place about two and half years back; but he did not state a single word about search and seizure of 600 grams of Ganja (Cannabis) from the possession of the accused. On the

other hand, he has not supported the evidence of P.Ws.1 & 2 in any manner. He has not been cross-examined by the prosecution also. So, he has sidetracked the case of the prosecution.

10. From the aforesaid analysis, it is found that prosecution has not proved by cogent, clear, consistent and trustworthy evidence that the house of the accused was searched by observing all formalities and there was seizure of 600 grams of Ganja (Cannabis) from his house. Adding to this, it is found that prosecution has not produced the seized property in the Court to form opinion. No chemical examination report is also forthcoming to prove that the seized property is nothing but Cannabis i.e. Ganja.

11. In the long run, I find that the prosecution has failed miserably to establish charge against the accused beyond all reasonable doubts. Accordingly, I hold the accused not guilty of the offence punishable under section 20(b)(ii)(A) of the N.D. & P.S. Act and I acquit him under section 235(1) of the Cr. P.C. He be discharged from his bail-bonds.

12. The seized Ganja be handed over to the Superintendent of Excise, Khurda for destruction in accordance with law; and the broken seal, etc. be destroyed on expiry of four months of period of appeal if no appeal is preferred; in case of appeal, the same be dealt with as per the orders of the Hon'ble Appellate Court.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.
13.06.2014.**

Dictated, corrected by me and pronounced in the open Court this day the 13th June, 2014.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.
13.06.2014.**

List of witnesses examined for prosecution.

P.W.1 -- Gurubari Jena,
P.W.2 -- Parsuram Nayak &
P.W.3 -- Susil Kumar Rath.

List of witnesses examined for defence.

Nil.

List of documents admitted in evidence for prosecution.

Ext.1 -- Seizure list,
Ext.1/1 -- Signature of P.W.1 on Ext.1,
Ext.1/2 -- Signature of P.W.2 on Ext.1 &
Ext.1/3 -- Signature of P.W.3 on Ext.1.

List of documents admitted in evidence for defence.

Nil.

List of M.Os. marked for prosecution and defence as well.

Nil.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.
13.06.2014.**