

IN THE COURT OF THE SPECIAL JUDGE: BHUBANESWAR.

PRESENT:-

Sri I.K. Das, LLB,
Special Judge, Bhubaneswar.TR Case No. 19/13 of 2002-1999

(Arising out of Laxmisagar PS case No. 131 of 1999)

Date of argument- 07.03.14
Date of Judgment- 19.03.14S t a t e
Vrs.Radhakanta Pattnaik @ Bula Pattnaik, aged about 50 years
S/o: Jagabandhu Pattnaik, resident of : Banapur
PS: Satyabadi, Dist: Puri

....Accused person

Advocate for the prosecution-

Sri N.R. Ray, Addl. P.P. BBSR

Advocate for Accused persons

Shri P.K. Mohanty, Advocate

Offence Under Sections:-

Sec. 20(b) (1) of NDPS Act.

J U D G M E N T

The accused stand charged for the offence u/s 20 (b) (1) of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The prosecution in nutshell as revealed from FIR that Sri A.K. Mohanty, IIC, Laxmisagar PS received information on 7.8.99 at about 6 PM from a reliable source that one Bula Parida was illegally dealing with contraband articles in the betel shop of one Jogendra Parida near Grand Central Hotel situated at old railway station bazar, Bhubaneswar. He was dealing with Bhang, Ganja and Ganja cigarettes and was selling to the public without any authority. He entered the fact in the station diary vide SDE No. 190 dtd. 7.8.99 and intimated S.P., Khurda. He also requested the S.P. Khurda to depute one gazetted officer to remain present at the time of search and seizure. The Sub Divisional Magistrate was also requested by the IIC to depute one Executive Magistrate to be present at

the time of search and seizure. Accordingly, on the next day i.e. on 8.8.99 at about 2.45 AM, the IIC along with other police staff, two independent witnesses and two other weighing persons with the gazetted officer proceeded to the spot. On the way, they enquired one Bijay Mohapatra to ascertain the shop of the accused near hotel Tarini and reached at the suspected shop. Just after their arrival, they found one man aged about 30 to 35 years ran away from the spot towards railway station and although the police party chased him could not apprehend. Thereafter, the raiding party entered into the shop and found one Dhruba Moharana and Bhagaban Dalai were doing some carpentry work inside the betel shop of Bula Parida and on being asked by the police party they admitted that they have been engaged by Bula Parida with the carpentry work in his shop. FIR further reveals that both the carpenters further admitted before police party that the man who ran away seeing the police is none other than Bula Parida. Thereafter, the police party gave their personal search to the witnesses and explaining their purpose to search the shop. They searched the shop and recovered about 550gm of Ganja, 700gm bhang and some Charm cigarettes which were filled with ganja and tobacco. The contraband articles were weighed and seized at the spot and sample was collected for its chemical examination. From the smell and other preliminary test, the IIC ascertained the articles to be contraband articles and hence sealed the sample packets with the remaining articles along with cash of Rs.612/- seized from a steel daba. His personal seal was used for sealing the sample packets and thereafter, it was left in zima of Executive Magistrate. The seizure list having been prepared at the spot was readover and explained to the witnesses and their signatures were obtained thereon. Thereafter, the IIC handed over the seized articles to his S.I to keep in custody and directed him to take up investigation. The S.I during course of his investigation, visited spot, examined witnesses, forwarded the sample packets to SFSL, Bhubaneswar for chemical examination and after completion of investigation submitted charge sheet against the accused u/s 20 (b) NDPS Act and u/s 47 (a) B & O Excise Act.

The court on perusal of materials on record framed charge u/s 20 (b) (i) of

NDPS Act.

3. Plea of the defence is complete denial to the allegation and of false implication.

4. The point for determination in this case is

Whether on 8.8.1999 at about 3 AM, at Old Railway Station Bazar, near Grand Central Hotel, Bhubaneswar the accused was found in illegal possession of 1250 gm of ganja and thereby committed offence punishable u/s 20 (b)(1) of NDPS Act ?

5. Prosecution examined 10 witnesses in support of its case whereas defence did not prefer to adduce any evidence. Out of the prosecution witnesses, P.Ws.1 and 6 are the two most important witnesses who were the carpenters alleged to be engaged by the accused for some carpentry work at the time of search and seizure. P.W.2 is the Executive Magistrate. P.Ws.3 and 4 are the two police officers who were the members of raiding party. P.W.5 and 6 are the witnesses to seizure. P.W.7 is also another witness. P.W.8 is a police havildar, P.W.9 is the IIC, Laxmisagar PS and P.W.10 was the SI of police who took up investigation of the case.

6. P.W.1 said that one Bula Babu engaged him in the shop on the relevant day for some carpentry work when police came and searched the shop. Police also recovered some materials which was told to him that it was ganja. The witness did not support the prosecution case although admitted his signature on the search list. He being declared hostile cross examined by the prosecution and he is completely denied to have seen that ganja was seized from the shop. During his cross examination he categorically stated that the person standing in the accused dock is not Bula Parida who called him for the carpentry work. Similarly, the other carpenter (P.W.6) was examined on 13.12.05 and he also stated that the person standing in the accused dock had not engaged him to work in his shop. He further stated that the shopkeeper who ran away after seeing the police on the relevant day is not the person standing in the accused dock. P.W.2, the Executive Magistrate in his evidence supported the fact that contraband articles were seized from a betel shop in presence of P.Ws.1 and 6. He said only 700 gms of ganja

was detected in a green polythene packet inside the shop. He did not support the fact of seizure of bhang from the said shop. P.W.3 was an SI of police who said that two polythene packets containing total 1250gm ganja was seized from the shop. P.W.4 is another police constable who gave a different story that the accused was apprehended and IIC instituted the case against him which is not at all the prosecution case. P.W.5 and 7 who are witnesses to the seizure completely denied their knowledge regarding seizure of bhang and ganja. Although, P.W.7 declared hostile and cross examined by prosecution, nothing substantial has been elicited from his mouth to believe that he suppressed the truth. P.Ws.9 and 10 being the IIC and IO respectively of the case supported the fact of search and seizure on the relevant day.

7. During the course of argument, learned defence counsel has argued that prosecution has not been able to prove the case against the accused in any manner, rather the evidence is full of suspicion. Moreover, the seizing officer has not complied with the mandatory provisions of NDPS Act which will lead to acquittal of the accused. He argued that P.W.9, the IIC is obliged to intimate to his immediate official superior within 72 hours u/s 42 (2) of the Act. But, he has denied in his cross examination that he had not intimated the fact of the case to his immediate official superior in compliance to the provision of the Act. Again, at para 5 of his cross examination, he said that after seizure of the articles he handed over the same to SI of the same police station to keep in his custody. This is also another violation of the Act as the IIC of the police station is obliged to keep the contraband articles under lock and key in the police station referring the same to the Malkhana register. In the instant case, the said provision has not been complied by the police officers. P.W.10 adduced evidence which is also not sufficient to hold that Bula Parida and Bula Pattnaik is the same person and no investigation is made to that effect.

8. I have perused the evidence on record and the exhibits to test if prosecution has been able to bring home the charge against the accused. Ext.1 is the seizure list prepared by the IIC, Laxmisagar PS examined as P.W.9. Two independent witnesses namely, Akhay Kumar Sahu and Raju Keshi are cited as

independent witness to seizure. Out of the two witnesses, prosecution examined only Akhay Sahu as P.W.5. He said that at the relevant time he was sleeping in his grocery shop and on the request of police he signed on the seizure list. Furthermore, by the time of his signature, it was a blank paper without any writing. The other witness has not been examined by the prosecution during trial. P.W.7 is another independent witness, but he also denied his knowledge about the case. One Krushna Chandra Sahu is stated to be a weighman who came with his weighing balance and weighed the contraband articles in the shop of the accused. But, the said witness is also not examined by the prosecution. The two most important witnesses are two carpenters who were working in the alleged shop on the direction of the shopkeeper. During their examination in the Court, although the accused was present on the same day, the witnesses categorically stated that the man standing in the accused dock was not the shopkeeper nor he engaged them as carpenter in the shop. P.W.8 is the havildar of police who was also a member of the raiding party. He said that the information before them was that Jogi Parida was selling ganja at station bazar and when they reached near the shop, Jogi Parida ran away to whom they chased but could not arrest. I have further noticed that some other witnesses have stated that about 1250 gm of ganja was seized and there was no whisper regarding seizure of bhang from the shop. Thus, I find material contradictions in the evidence of the witnesses which is not in conformity with the prosecution case. Not only the prosecution is supported with the evidence of independent witnesses but also the police personnel who were present at the time of search and seizure have given different version which do not allow to believe that prosecution came with clean hand and investigated the case properly. The offence under NDPS Act are very serious in nature for which the accused is liable to heavy punishment considering the gravity of the offence. At the same time, it is the duty of prosecution to prove the case beyond reasonable doubt in order to make the accused guilty for the offence. Some of the witnesses have declared hostile by the prosecution as they did not support the prosecution case. They have been subjected to cross examination by the learned prosecuting lawyer, but nothing substantial has been elicited from their mouth in

order to hold that the witness suppressed the truth and deposed falsehood in support of the accused. In the instant case, the accused all along claims that his name is Radhakanta Pattnaik @ Bula Pattnaik. In the formal FIR, the name of the accused is mentioned to be Bula Parida. After investigation, IO submitted charge sheet against Bula Parida @ Pattnaik who is the son of one Jagabandhu Pattnaik. Evidence further reveals that one Jogi Parida was the owner of the cabin which was in occupation of the accused who opened betel shop in the said cabin. It is the duty of the prosecution to investigate the case thoroughly to establish that the names as stated by the witnesses and disclosed during investigation belong to one and only person which is not available in the record. The two carpenters being the most material witnesses completely denied that the person standing in the accused dock at the time of their examination was not the person who engaged them for the carpentry work. Evidence further reveals that it is not Bula Parida who has been arrayed as accused but one Jogi Parida was the shopkeeper and he ran away from the spot on seeing the police. Thus, the case becomes doubtful at every stage starting from investigation of the case till the evidence of witnesses. In addition to such inconsistencies in the evidence of witnesses, it has further been argued that the mandatory provision under NDPS Act has not been complied in terms of Sec. 42 (2) of the Act by giving intimation to immediate official superior by the IIC. Learned counsel for the accused relied on a decision reported in **AIR 1995 SC 1157 in the case of Mohinder Kumar vrs. The State of Panaji, Goa**, the Hon'ble Court held that the prior information regarding illicit transaction dealing with narcotic drugs is required to be reduced into writing u/s 42 (1) of the Act and sending a copy thereof to the superior officer is the requirement of law u/s 42 (2) of the NDPS Act. Any case where the mandatory requirements of the proviso of Sec. 42 (1) and Sec. 42 (2) of the NDPS Act has not been adhered to, the conviction of the accused cannot lie.

9. After examining all the materials on record, I came to the conclusion that the prosecution has miserably failed to prove the case against the accused beyond reasonable doubt.

10. In the result the accused is found not guilty for the offence u/s.20(b)(1) of

NDPS Act and is acquitted therefrom in accordance with provision u/s.235 (1) of Code Criminal Procedure. He be set at liberty forthwith. His bail-bond be canceled and surety be discharged.

11. The seized articles if any be destroyed after four months of appeal period if no appeal is preferred or if appeal is preferred the same be dealt with in accordance with the direction of the Appellate Court.

Pronounced in the open Court to-day the 19th day of March, 2014.

Special Judge, Bhubaneswar.

Typed to my dictation and corrected by me.

Special Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1:- Dhoba Moharana
P.W.2:- B. Trinath Rao
P.W.3:- Basudev Swain
P.W.4: Kailash Chandra Rout
P.W.5: Akhay Kumar Sahu
P.W.6: Bhagaban Dalai
P.W.7: Roul Samantarai
P.W.8: Md. Sabir
P.W.9: Arun Kumar Mohanty
P.W.10:Prakash Chandra Jena

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1: Search list
Ext.1/1: Signature of P.W.1
Ext.1/2: Signature of P.W.2
Ext.1/3: Signature of P.W.5
Ext.1/4: Signature of P.W.6
Ext.1/5: Signature of P.W.6
Ext.1/6: Signature of P.W.6
Ext.1/7: Signature of P.W.7
Ext.1/8: Signature of P.W.9
Ext.2: FIR
Ext.2/1: Signature of P.W.9

Ext.2/2: Endorsement and signature of SI of police

Ext.3: Formal FIR

Ext.3/1: Signature of SI of Police

Ext.4: Mal Challan

Ext.5: Chemical Examination Report

List of Exhibits marked on behalf of defence

Nil

List of M.Os. Marked on behalf of Prosecution

M.O.I: Jari Bag

M.O.II: Cartoon in damaged condition

Special Judge, Bhubaneswar.