

Krishna Rai Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 23, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 313
Narcotics Drugs and Psychotropic Substances Act, 1985 " Section 21, 22, 25, 41, 42, 43, 50, 55, 57

Hon'ble Judges: Ananda Sen, J; Gautam Kumar Choudhary, J

Bench: Division Bench

Advocate: S.Thakur, Ruby Pandey

Final Decision: Allowed

Judgement

Ananda Sen, J

1. These criminal appeals are directed Against the Judgment of conviction dated 14.06.2002 and order of sentence dated 15.06.2002 passed by

Additional Sessions Judge-II, Bokaro in GR No.262 of 1994 in respect of Appellant in Cr.A.(SJ) 431 of 2002 and judgment of conviction dated

12.08.2009 and order of sentence dated 13.08.2009 passed by the learned Addl. Sessions Judge-I, Bokaro in G.R. No.262 of 1994 (Suppl) in respect

of appellant in Cr. A.(SJ) No.1112 of 2010 whereby and whereunder, both the appellants having been found guilty of charge under Section 21 of the

Narcotics Drugs and Psychotropic Substances Act, 1985 (in short NDPS) have been sentenced to undergo rigorous imprisonment of 10 years and to

pay a fine of Rs.1,00,000/- and in default of payment of fine, the appellants have to undergo further rigorous imprisonment of two years.

2. Learned counsel for the appellant submitted that the judgments and orders of sentence passed by the learned Trial Court are bad in law and are

based upon surmises and conjectures. There was no independent witness at the time of search, nor the search was conducted in the presence of any

Gazetted officer or the Executive Magistrate and the same was done in violation of Section 50 of the Narcotic Drugs and Psychotropic Substances

Act. Neither the Investigating Officer nor any official of the raiding party were authorised to search and seize, therefore, the same is in violation of

Sections 41, 42, 43, 55, and 57 of the Narcotic Drugs and Psychotropic Substances Act. He argued that the seized materials were not weighed before

sending them to Malkhana. As per him, appellant Nidhan Singh has been convicted merely on the basis of facts and circumstances of an earlier case.

He lastly submitted that the entire process of investigation, search and seizure was in violation of the provisions of the Narcotic Drugs and

Psychotropic Substances Act which caused prejudice to the appellants. Thus, he prays for the acquittal of the appellants.

3. Counsel for the State defended the judgment of the learned Trial Court and submitted that there is no procedural irregularity committed by the

persons who conducted the search and seizure of this case. In NDPS cases there is presumption against the accused of committing the offence and it

is the accused who has to prove the contrary. In this case the prosecution was fully able to prove its case beyond shadow of reasonable doubt, thus,

these appeals need to be dismissed.

4. The prosecution case is at the instance of the Informant R.C. Ram who was the inspector incharge of the B.S City Police Station. He in his written

statement has stated that on 28.02.1994 at about 2.00 P.M he got information that an illegal business of Brown Sugar is operating in the Khatal of

Krishna Rai which is situated at Dudibagh. He formed a raiding party consisting of S.N Chaudhary, Officer-in-Charge, Sector-IV Police Station,

Shailendra Kumar Singh who was Incharge of Sector-VI Police Station and Sub Inspector Phooldeo Singh amongst others and raided the said place at

about 2.30 P.M. When the police party raided the place, appellant Nidhan Singh tried to flee from the spot and on being chased he was caught by the

team and when he was searched sixteen packets of brown sugar was recovered from his right pocket. On further search of Khatal six more packets

were found but Krishna Rai was not present there. He further stated that the seizure list was prepared in the presence of two independent witnesses

namely Triveni Singh and Pradeep Rai. He further stated that appellant Nidhan Singh could not satisfactorily explain as to how he got the brown sugar

and therefore he was arrested. He further stated that appellant Nidhan, on query, admitted that he along with Krishna Rai was involved in the business

of selling brown sugar. He stated that the appellant Nidhan Singh also admitted that he got the brown sugar from Baij Nath Prasad, who is a whole

seller and a constable of Excise Department from Bhojpur colony.

On the basis of the written report, B.S. City Police Station Case No: 84 of 1994 was registered under Sections 21/22/25 of the NDPS Act.

After investigation, the police submitted chargesheet, against both, the appellants. Accordingly, cognizance of the offence was

taken by the Court of Sessions where charge was framed under Section 21 of the NDPS, Act and trial proceeded.

5. During the course of trial appellant Nidhan Singh did not appear on and from 12.01.2000 due to which, trial in respect of him was separated from

that of Krishna Rai on 21.12.2000. Before that two witnesses namely Shailendra Kumar Singh and Phooldeo Singh were already examined by the

prosecution on 27.08.1996 and 15.09.1997 respectively. After separation of the trial, in Krishna Rai's trial one more witness was examined

namely Gopal Jee Jha as P.W.3.

6. Appellant Nidhan Singh was arrested and was produced in Court on 18.02.2009, whereafter, in supplementary record in Sessions Trial No.262 of

1994(S) one witness, namely, Kirti Mahto was examined in the Case of Nidhan Singh as P.W.3.

7. Several documents were also exhibited, which are as follows:-Ext.1-Written Report Ext.2- Formal FIR Ext.3-Seizure List Ext.4&4/1-Signature on

the Seizure List Ext.5- Carbon Copy of F.S.L report

8. For proper disposal of both these criminal appeal, I am dealing with the prosecution witnesses hereinafter:-

P.W.1, Shailendra Kumar Singh, has stated that on the date of occurrence he was the incharge of Sector-VI police station. He got a secret

information that business of brown sugar is going on in Sector-IV. He further stated that he had formed a raiding party and raided the khatal of

Krishna Rai. He stated that from there they apprehended Nidhan Singh, who was found in possession of sixteen packets of brown sugar and 6

packets of brown sugar were also found hidden in matchbox. He said that seizure list was prepared there. In his cross examination he stated that the

witnesses to the seizure list were not the members of the raiding party.

P.W.2, Phooldeo Singh, stated that on 28.02.1994, he went to khatal as a member of raiding party along with informant (R.C. Ram), inspector

Shailendra Kumar Singh, constable Baidnath Prasad, constable Birendra Kumar Tiwari among others. He stated that when they raided, a person tried

to escape and he was caught on being chased. On interrogation, the person disclosed his name as Nidhan Singh. He further stated that during raid two

independent witnesses namely Triveni Singh and Praveen Rai came there and the appellant Nidhan Singh was searched in front of them who was

found possessing 16 packets of brown sugar in his pocket and on further search of khatal, 6 packets of brown sugar were also found hidden in

matchbox. He stated that Nidhan Singh admitted that he was involved in selling of brown sugar along with Krishna Rai. He identified the formal FIR

(Ext.2). He stated that seizure list was prepared there and signed by independent witnesses (Ext.4 & 4/1).

In his cross examination he stated that he was not authorised to investigate under the NDPS Act. He also admitted that he did not inform any gazetted

officer before search. He did not weigh the material seized. He stated that khatal was open from all four sides.

P.W.3, Gopaljee Jha (examined as witness in the Trial in respect of appellant Krishna Rai) was Assistant Scientist of Forensic Science Laboratory,

Ranchi. He in his statement stated that he received two packets from P.S.- B.S City for forensic examination. He further stated that on examination,

the packets were found to be of "heroin". He identified the signature of Yaswant Poddar in the FSL Report which was marked as exhibit -5 in

the Trial in respect of appellant Krishna Rai.

PW-3, Kirti Mahto (examined as witness in the Trial in respect of appellant Nidhan Singh) identified the signature of Yaswant Poddar in the FSL

Report which was marked as exhibit -5 in the Trial in respect of appellant Nidhan Singh.

9. After closure of the prosecution evidence, appellants were examined in terms of Section 313 of the Code of Criminal Procedure, wherein they

pleaded innocence. Appellants did not adduce any evidence in defence.

10. The Trial Court, after hearing the arguments and appreciating the evidences on record, by the Judgment of conviction dated 14.06.2002 and order

of sentence dated 15.06.2002 passed by Additional Sessions Judge-II, Bokaro in GR No.262 of 1994 in respect of Appellant in Cr.A.(SJ) 431 of 2002

and judgment of conviction dated 12.08.2009 and order of sentence dated 13.08.2009 passed in G.R. No.262 of 1994 (Suppl) in respect of appellant in

Cr.A.(SJ)1112 of 2010) convicted and sentenced the appellants for offences under Section 21 of the Narcotics Drugs and Psychotropic Substances

Act, 1985 in the manner as stated in paragraph 1 hereinbefore.

11. From the evidence led by the prosecution, we find that the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act have not

been followed. There was no sampling done nor the alleged contraband materials were sealed. There are serious lacunas in conducting search and

seizure. Even the samples of seized contraband materials were not sealed in presence of the Magistrate nor the inventory was duly certified by the

Magistrate.

12. The Hon'ble Supreme Court in the case of Yusuf @ Asif versus State reported in (2023) SCC OnLine SC 1328 at paragraphs 15, 16 and 17

thereof, while referring to the judgment in the case of Union of India versus Mohanlal [(2016) 3 SCC 379] has held as under: -

"15. In Mohanlal's case, the apex court while dealing with Section 52A of the NDPS Act clearly laid down that it is manifest from the said provision that

upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53

who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness

certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute

primary evidence for the purposes of the trial.

16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the

inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would

not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated.

17. Accordingly, we are of the opinion that the failure of the concerned authorities to lead primary evidence vitiates the conviction and as such in our opinion,

the conviction of the appellant deserves to be set aside. The impugned judgment and order of the High Court as well as the trial court convicting the appellant

and sentencing him to rigorous imprisonment of 10 years with fine of Rs.1 lakh and in default of payment of fine to undergo further imprisonment of one year is

hereby set aside.

13. In this case also, no sampling, admittedly was done in presence of the Magistrate nor there was any inventory or certification. Thus, the entire trial

is vitiated. Considering the overall materials and evidence available on record, we, are inclined to allow this appeal. Accordingly, the Judgment of

Conviction dated 14.06.2002 and Order of Sentence dated 15.06.2002 passed by the Additional Sessions Judge-II, Bokaro in GR No.262 of 1994 in

respect of Appellant in Cr. Appeal(SJ) 431 of 2002 and Judgment of Conviction dated 12.08.2009 and Order of Sentence dated 13.08.2009 passed by

the learned Additional Sessions Judge-I, Bokaro in G.R. No.262 of 1994 (Suppl) in respect of appellant in Cr. Appeal (SJ) No.1112 of 2010 are hereby

set aside. As the appellants are already on bail, they are discharged from the liabilities of their bail bonds so are the bailers.

14. Both these criminal appeals are, accordingly, allowed. Pending interlocutory applications, if any, stand disposed of.

15. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment.