

Samar Biswas Vs The State of Assam

Court: Gauhati High Court

Date of Decision: Sept. 30, 2013

Citation: (2013) 5 GLT 247

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Advocate: D.K. Kothari, Mr. M. Garodia, Mr. R.K. Mour and Mr. B. Nath, for the Appellant; B.J. Dutta, Addl. P.P., Assam, for the Respondent

Final Decision: Disposed Off

Judgement

I.A. Ansari, J.

This is an appeal against the judgment and order, dated 28.11.2006, passed, in Special Case No. 5/2005, by the learned

Special Judge, Dhubri, convicting the accused-appellant, Samar Biswas, u/s 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act,

1985 (in short, "NDPS Act") and sentencing him to suffer rigorous imprisonment for a period of 4 (four) years and pay a fine of Rs. 1,000/- and,

in default of payment of fine, suffer rigorous imprisonment for a further period of 2 (two) months. The case of the prosecution may, in brief, be

described as under:

(i) On 27.02.2005, PW 4, Deputy Superintendent of Police (Headquarter), Dhubri, having found a person with ganja (cannabis) near Bahadurtari

Kabarsthan, informed Dhubri police station, at about 9.30 PM, that at Bahadurtari Kabarsthan, one person had been detained with ganja. On the

basis of the instructions received by the Officer-in-Charge, Dhubri police station, PW 7, who became the Investigating Officer, arrived at the

place, where accused Samar Biswas was alleged to have been found with ganja. In the presence of witnesses, the substance, surfaced to be ganja,

was seized. Later on, sample from the said substance was sent to the Forensic Science Laboratory (in short, "FSL"), Assam, Guwahati, for

examination, which reported that the said seized material was ganja. On completing, thus, the investigation of the case, a charge-sheet was laid, u/s

20(c) of the NDPS Act, against the accused.

2. At the trial, when a charge, u/s 20(b)(i) of the NDPS Act, was framed against the accused, he pleaded not guilty thereto.

3. In support of their case, prosecution examined altogether 7 (seven) witnesses. The accused was, then, examined u/s 313(1)(b) Cr.P.C. and, in

his examination aforementioned, the accused denied that he had committed the offence, which was alleged to have been committed by him, the

case of the defence being that of denial. No evidence was adduced by the defence.

4. Having, however, concluded that the accused was proved guilty of the charge, which had been framed against him, the learned trial Court

convicted him accordingly and passed sentence against him as mentioned above. Aggrieved by his conviction and the sentence, which has been

passed against him, the accused, as a convicted person, has preferred this appeal.

5. I have heard Mr. R.K. Mour, learned counsel, appearing for the accused-appellant. I have also heard Mr. B.J. Dutta, learned Addl. Public

Prosecutor, Assam.

6. While considering the present appeal, what needs to be noted is that PWs 1, 2, 3 and 5 were, according to the prosecution's case, witnesses to

the alleged seizure of ganja. However, all these witnesses have deposed, in tune with each other, that their signatures were obtained by the police

on blank pieces of paper. In this regard, it may be noted that PW 1 has deposed that, one day, he was asked by the police to give thumb

impression on a piece of paper, which he accordingly gave. PW 2 has deposed that, one day, while he was returning from the place of his work,

3-4 police men asked him to put his signature on a piece of paper, which he did. PW 3 has deposed that, when he was returning from the place of

his work, he was asked by a police man, who was sitting in a vehicle, to give his thumb impression on a piece of paper, which he accordingly did.

Supporting the evidence of PWs 1, 2 and 3, PW 5, too, has deposed that while he was sleeping at his house, police came to his house, called him

out and asked him to put his signature on a piece of paper, which he accordingly did.

7. PW 1, 2, 3 and 5 were cross-examined by the prosecution. Nothing could, however, be elicited from their cross-examination to show that what

they had deposed was untrue or false.

8. Thus, the evidence of PWs 1, 2, 3 and 5 remained completely unshaken and their evidences clearly show that without testing PWs 1, 2, 3 and 5

as to what the state of affairs was. They had been asked to sign, on a piece of paper, by police personnel and they accordingly gave their

signatures on a blank piece of paper.

9. The above discussion of the evidence on record brings me to the evidence of PW 4, who was, at the relevant point of time, Deputy

Superintendent of Police (Headquarter), Dhubri. This witness's evidence is that, on 27.02.2005, while he was serving as Deputy Superintendent of

Police (Headquarter), Dhubri, he received an information that a person had been found with ganja near Bahadurtari Kabarsthan and he,

accordingly, went to the place of occurrence with his staff and saw the accused with materials standing by the side of a pond near Kabarsthan, the

accused was, then, apprehended and the ganja was seized from his possession and that the accused was arrested and taken to police station.

10. A bare reading of the evidence of PW 4 clearly shows that he came to the place, where the ganja was allegedly seized by the police, on

information received that a person had been found with ganja, at Bahadurtari Kabarsthan. The person, who had, allegedly, found the accused with

the ganja, was never examined and no explanation was offered by the prosecution as to why the said person was not produced at the trial and

examined as a witness nor is there any explanation discernible, in this regard, from the evidence on record.

11. Situated thus, it is clear that the evidence of PW 4 does not advance the case of the prosecution.

12. Coupled with the above, the evidence of PW 7 (Investigating Officer) is that, on 27.02.2005, at about 9.30 PM, while he was at Dhubri police

station, he received telephonic information that a person had been detained with ganja, at Bahadurtari Kabarsthan, and, on being directed by the

Officer-in-Charge, he went to the place, where the accused had been caught. Though PW 7 claims to have seized ganja in presence of witnesses,

none of the witnesses has supported his testimony.

13. More over, as has been already indicated above, it is wholly unknown as to who was the one, who had found and caught the accused with

ganja, and the evidence on record does not furnish any reliable or convincing answer to this vital question.

14. So far as the evidence of PW 6, Scientific Officer, FSL, Guwahati, is concerned, his evidence does not improve the case of the prosecution

inasmuch as he has merely proved that, on examination, he had found that the sample, sent to the FSL, gave positive test for cannabis (ganja).

15. The prime question, however, remains as to who was the person from whose possession the ganja had been seized. On this aspect of the case,

prosecution has completely failed to prove that it was the accused-appellant, in whose possession the ganja, in question, was found and it was,

from the possession of the accused-appellant, that the ganja, in question, was seized.

16. The above weakness of the prosecution's case appears to have gone completely unnoticed by the learned trial Court.

17. What emerges from the above discussion is that the evidence on record was grossly inadequate to hold the accused-appellant guilty of the

offence, which he had been charged with. Resultantly, therefore, the accused-appellant ought to have been acquitted.

18. Because of what have been discussed and pointed out above, this appeal succeeds. The impugned conviction of the accused-appellant and the

sentence, passed against him, by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the

offence, which he stands convicted of, and he is acquitted of the same.

19. Let the accused-appellant be set at liberty, forthwith, unless he is required to be detained in connection with any other case.

20. Send back the LCR. With the above observations and directions, this appeal stands disposed of.