

**(2007) 07 GAU CK 0014****Gauhati High Court****Case No:** Criminal Appeal No. 89(J) of 2004

Indar Yadav

APPELLANT

Vs

State of Assam

RESPONDENT

**Date of Decision:** July 24, 2007**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 20(b)(1)
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20(b)(1)

**Citation:** (2008) 1 GLR 172**Hon'ble Judges:** Aftab H.Saikia, J**Bench:** Single Bench**Advocate:** R.C.Gayan, P.Bhattacharjee, Advocates appearing for Parties**Judgement**

1. Heard Ms. P. Bhattacharjee, learned counsel who has been appointed today as Amicus Curiae as Mr. P. Mahanta, learned counsel appointed earlier as amicus curiae is found absent when the matter is called for hearing though his name has been duly shown in the PartII hearing cause list dated 16th of July, 2007 to 31st August, 2007. Also heard Mr. P.C. Gayan, learned P.P., Assam.

2. This criminal appeal from jail has been directed against the Judgment and Order dated 8.6.2004 passed by the learned Special Judge, Kokrajhar in Special Case No. 2/03 convicting the appellant under section 20(b)(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the N.D.P.S. Act") and sentenced him accordingly to undergo rigorous imprisonment for five years and fine of Rs. 1 lakh in default to further Simple Imprisonment for three months.

3. The prosecution case in brief is that 7.11.2002 the appellant while driving a Zeep No. ORQ7358 on the National High Way 31(c) met with an accident and trapped inside the vehicle. He was rescued by the villagers and immediately sent to the Hospital. The vehicle was recovered and eleven packets of ganja weighing 75 k.g. and 750 gram were found. Accordingly SubInspector of Police, Incharge, Kokrajhar

Police Station lodged an ejahar with the concerned police station and on the basis of such investigation ensued.

4. On completion of the investigation and having found sufficient materials against the appellant, the police submitted chargesheet against him under the above mentioned section of the Act. Thereafter the learned Judge having perused the chargesheet and also upon hearing the learned counsel for the parties found prima facie case against the appellant, framed charge against him under the above mentioned section. However the appellant pleaded not guilty and claimed to be tried.

5. During the trial the prosecution examined as many as six witnesses including the OfficerInCharge (for short "I.O."), P.W.I.

6. The learned Special Judge on appreciation of the material evidence on record both oral and documentary and also after going through the documents so exhibited, found the appellant guilty of the offence above mentioned and accordingly sentence was imposed on the appellant as already indicated above. Hence this appeal from jail.

7. Ms. Bhattacharjee, learned amicus curiae, challenging the impugned conviction and sentence has vehemently argued that the entire finding so recorded by the learned Judge is wholly perverse as according to her the evidences of witnesses mainly RWs 2,3,4 and 5 cannot be accepted in the backdrop of the circumstances. Her contention is that all those witnesses above mentioned were the villagers and according to them they saw the Jeep in question driven by the appellant coming in high speed and in front of them the vehicle met an accident and with the help of the villagers the injured appellant was taken to the hospital. However till the time of taking the appellant to the hospital nobody noticed such quantity of ganja in the vehicle and under such circumstances it is stated by Ms. Bhattacharjee that it cannot be accepted that after coming from hospital they went near to the vehicle and found huge quantity of contraband articles. That being the position, according to her, had there been any such articles of ganja lying in the jeep, they could have easily noticed immediately after the accident. But the prosecution was completely silent in that aspect as to why those articles were not noticed immediately at the time of accident and also how much time required in coming back from the Hospital keeping the appellant therein to the place of occurrence. It is further stated that under such circumstances, those cast doubt as regards the contention of those packets of ganja in the vehicle itself and this would give rise to the benefit of doubt to the appellant as regards his involvement in carrying contraband articles.

8. On the other hand Mr. Gayan, learned P.P. Assam has strenuously submitted that since all the witnesses namely P.Ws. 2, 3, 4 and 5 were eye witnesses, being the poor villagers, they corroborated in testifying that they found those packets ganja inside the vehicle after coming from Hospital attending the injured appellant and as such

the possession of the aforesaid contraband articles within the jeep driven by the appellant was successfully proved by the prosecution and as such the learned Judge was absolutely justified in convicting the petitioner/appellant under the above Act.

9. We have given our anxious consideration to the submissions and contentions made by the learned counsel representing the rival parties and also meticulously perused and appreciated the testimony of all the witnesses so examined before the trial court.

10. After going through the evidences particularly the P.Ws 2, 3, 4 and 5 it transpires that they being the independent witnesses corroborated in their testimony as regards the ganja in question having been found inside the vehicle when they came back from the Hospital after getting the appellant admitted in the Hospital. Accordingly, their testimony appears to be trustworthy and believable. Besides, there is no other convincing evidence to place before this court to dislodge the impugned conviction of the appellant under the Act. That being so, this court is of the view that the impugned conviction and sentence need no interference from this court.

11. At this stage Ms. Bhattacharjee, learned amicus curiae has strenuously contended that since the petitioner/appellant has already completed more than 4 years 8 months in detention including the date of arrest, i.e., 9.11.2002 and also considering his age who is running 45 years presently including his impoverished condition as a driver, his sentence may be reduced to the period already undergone.

12. Having considered the factual premises in its entirety as well as the mitigating circumstances, this court does find enough force in the submission of the learned amicus curiae and accordingly the sentence so imposed upon the appellant as noted above is reduced to the period already undergone.

13. Appellant be set at liberty forthwith if he is not connected in any "other case.

14. In the result, this appeal stands partly allowed to the extent of modification of sentence.

15. LCR be send down immediately.

16. Before parting with the case judgment, we would like to put on record my appreciation to Ms. P. Bhattacharjee, learned amicus curiae for rendering her valuable assistance and help in arriving at the aforesaid decision and accordingly we order that she is entitled to get his professional fees which is quantified at Rs. 3,000.