

Sheopari Devi @ Sunri Kuar @ Malkinia @ Sonpari Devi and Mahendra Prasad Kahar @ Mahendra Kahar Vs The State of Bihar

Court: Patna High Court

Date of Decision: July 20, 2011

Acts Referred: Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 20B, 25

Hon'ble Judges: Anjana Prakash, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Anjana Prakash, J.

Appellant No. 1 has been convicted u/s 25 of the Narcotics Drugs and Psychotropic Substance Act, whereas,

Appellant No. 2 has been convicted u/s 20(B)(I)(II) of the Narcotics Drugs and Psychotropic Substance Act and both of them sentenced to

undergo rigorous imprisonment for five years by the 3rd Additional Sessions Judge, Rohtas at Sasaram in SSM (T) P.S. Case No. 161 of 1994

(Narcotics Drugs and Psychotropic Substance Act).

2. The case of the prosecution according to Harinarain Prasad, the Officer-in-charge of Sasaram Town P.S. is that when he along with Police

Inspector M.K. Paswan was on patrolling duty on the festival day of Holi they received information that some body was selling Ganja, Bhang and

Heroin in the house of Malkiniya, Appellant No. 1. On this information, both of them proceeded along with others and raided the house of

Malkiniya, where they found a boy sitting with four kg. Ganaja, nine kg. Bhang and five grams heroin along with some cash indicating that there

had been sale of those things. The articles were seized and the boy and Appellant No. 1 was arrested and remanded to judicial custody and a

formal First Information Report was drawn in this regard.

3. During trial, the prosecution examined five witnesses in support of its case. PW 1 Harinarain Prasad is the informant, who stated that on

29.03.1994 on the occasion of Holi he received information about the sale of Ganja, Bhang and Heroin in the house of Malkiniya. On this

information, the house was searched and Appellant No. 2 was found present along with some incriminating articles and money. He then prepared

the seizure list and handed over one copy to Mahendra Prasad, who put his LTI on the same. The seizure list has been marked as Ext.1, the

written report in the writing of the informant is marked as Ext.2 and the formal First Information Report is Ext.3. He identified the Appellants in

dock.

4. PW 2 and 3 are seizure list witness but they did not support the prosecution case and, so, they have been declared hostile. However, both the

witnesses have proved their signature on the seizure list which is Ext.4 and 4/1. P.W.4 Anugarahnarain Singh stated that he was ASI at Sasaram

Town Police Station and Investigating Officer of the present case. He deposed that the Officer-in-charge had drawn formal First Information

Report and taken into custody of the seized articles and also sent requisition or formal test of the seized articles. He proved the requisition which

marked as Ext.5 as also the report of the FSL which is Ext.6. PW 5 Sahajanand Sharma deposed that he was Constable in Sasaram Town Police

Station and had brought the seized articles which are material exhibits I to V. Ext.8 is the report of the Forensic Science Laboratory which shows

the presence of Ganja and Bhang, but with regard to heroin, no trace of the same was found.

5. In view of the discussion of the evidence of the witnesses, there is no scope for interfering with the conviction of the Appellant No. 2, who was

allegedly arrested along with incriminating articles and had signed on the seizure list in proof of the same.

6. Accordingly, the appeal of the Appellant No. 2 is dismissed with modification in the sentence to the period already undergone since it appears

that he has remained in custody for about 31/2 years out of the five years sentence he was awarded.

7. With regard to the Appellant No. 1, I find that there is complete want of any evidence that she had participated in sale and purchase and apart

from the bald allegation that the Appellant No. 2 was sitting and selling Ganja, Bhang and Heroin in the house belonging to the Appellant No. 1,

there is no substantive proof of the same. In view of such, appeal of Appellant No. 1 is allowed and she is acquitted of the charge u/s 25 of the

Narcotics Drugs and Psychotropic Substance Act and is also discharged from the liabilities of her bail bond.

8. In the result, the appeal is allowed in part