

GAHC010051582023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./87/2023

BIPLAB BAIDYA
S/O SRI BALARAM BAIDYA, RESIDENT OF JIRANIA MADHYAPARA,
VILLAGE BANKIMNAGAR, PS JIRANIA, SUB DIVISION SADAR, DIST WEST
TRIPURA, 799045

VERSUS

THE UNION OF INDIA AND ANR.
REPRESENTED BY CUSTOMS HEADQUARTER PREVENTIVE UNIT,
NARCOTIC CELL, GUWAHATI

2:KARAMVIR SINGH
INTELLIGENCE OFFICER
NCB
GUWAHATI UNIT
GUWAHAT

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. M. Biswas,
Advocate.

For the Respondents : Mr. S.C. Keyal,
S.C., NCB.

Date of Hearing : 20.02.2024.
Date of Judgment : 12.06.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. M. Biswas, learned counsel appearing for the appellant. Also heard Mr. S.C. Keyal, learned Standing Counsel, NCB, representing the respondents.

2. This is an appeal under Section 374 of the Code of Criminal Procedure against the judgment and order dated 27.02.2023 passed by the learned Addl. Sessions Judge (FTC) No.3, Kamrup (M), Guwahati in NDPS Case No.75/2018.

PROSECUTION CASE

3. On 06.02.2018 at about 1700 hrs., the respondents NCB, Guwahati received an information that two persons, namely- Biplab Baidya and Swapan Das were travelling from Tripura to Guwahati in a Truck bearing Registration No. NL-01L-4832 with a consignment of ganja and will reach Khanapara Flyover area at Guwahati at about 2130 hrs. on that day. Mr. Kuldeep Tomar, the Intelligence Officer, NCB, Guwahati reduced the information into writing and submitted the same to Mr. Rakesh Chandra Shukla, the Zonal Director of NCB, Guwahati.

4. Pursuant to an order of the said Zonal Director, a team of intelligence officers, namely- Mr. Aram Anth (team leader), Mr. Kuldeep Tomar, Mr. Karamveer Singh, Mr. Atul Giri, Mr. Vipin Kumar, Sandeep Kumar, Jugal Ch. Das, S.C. Jena and Mr. Rajesh Thapa was constituted. Mr. Kuldeep Tomar was authorized to search, seize and arrest in case of recovery of narcotic drugs/psychotropic/controlled substances.

5. Accordingly, the team reached the Khanapara Flyover area on the National Highway No.37 and requested two persons namely- Arup Das and Gulam Uddin who were present there to be witnesses of an impending search and seizure. They agreed.

6. On 2135 hrs., the truck bearing Registration No. NL-01L-4832, reached the spot and the aforesaid team stopped the vehicle. Two persons namely- the appellant Biplab Baidya and another named Swapan Das got down from the Truck. On a thorough search by the team of NCB officials, 44 numbers of brown colour packets

were recovered. After cutting the corner side of each of those packets, the NCB officials found some substances suspected to be ganja. They used a drug detection kit and the test gave positive results for ganja. The total weight of those 44 packets was 447.170 kilograms. The packets were marked as P1 to P44. The ignition key of the truck was seized under Section 43 of the NDPS Act.

7. From the 44 packets, 25 grams each in duplicate were drawn, which were marked as S1 and D1 to S44 and D44.

8. All the 44 packets suspected to contain ganja were packed by wrapping with markin cloths and sealed with NCB brass seal No.03, labelled properly with signatures of independent witnesses and the owners of the said suspected ganja and the signatures of the seizing officers.

9. By 2343 hrs. on 06.02.2018, the search and seizure procedure was complete. The team along with Biplab Baidya and Swapan Das reached NCB office at around 0230 hrs. on 07.02.2018. On reaching the office, the seized goods were deposited in the NCB godown.

10. The statements of Biplab Baidya and Swapan Das were recorded. Both of them confessed their guilt. Therefore, both of them were arrested. They were medically examined at MMC Hospital. Thereafter, on the same day both of them along with the seized articles were produced before the Sessions Judge, Kamrup (M), Guwahati. Thereafter, both Biplab Baidya and Swapan Das were sent to judicial custody and the samples marked as S1 to S44, were sent to the FSL for examination.

11. On 08.02.2018, the case was handed over to the Investigating Officer Mr. Karamveer Singh.

12. Thereafter, the NCB received the chemical examination report No.1199/2018/204/DN-46/2018 dated 12.02.2018, which gave positive result for cannabis (ganja).

13. On completion of investigation, the Investigating Officer filed the complaint against Biplab Baidya and Swapan Das under Sections 20(b)(ii)(C) & 29 of the NDPS

Act. On the basis of the said complaint, the NDPS Case No.75/2018 was registered.

14. Apart from Biplab Baidya and Swapan Das, the complaint was made against another person named Ramu Ghosh. This person could not be traced out. Therefore, the case against him was split.

15. The charge under Section 20(b)(ii)(C) of the NDPS Act was framed against Biplab Baidya and Swapan Das. They pleaded not guilty. Therefore, trial continued.

16. As many as 8 (eight) number of witnesses were examined by the prosecution side. It may be stated that during the period of trial, the other accused person Swapan Das expired. Therefore, the trial continued against Biplab Baidya only.

17. The first witness Gajendra Nath Deka has stated in his evidence that on 08.02.2018, he was working as the Joint Director in the forensic Science Laboratory and on that day, he received a parcel connected to NCB Crime No.03/2018, through the Director, FSL, for examination. The witness has stated that the parcel consisted of 44 number of packets contained in a sealed cloth bag. He said that the facsimile of the seal was found to be of NCB 03. According to Mr. Deka, the samples which he had examined, gave positive results for cannabis. His report was forwarded to the NCB by the Director Mr. K.C. Sarma. The witness Mr. Deka proved his signatures.

18. In his cross-examination, Mr. Deka has stated that the sample was forwarded by NCB vide letter No.07/75/ENF/Ganja/NCB/Ghy./18-357 dated 07.02.2018. He further stated that the sample was sent to FSL through a messenger. He also stated that he did not mention the name of the said messenger in his report. The witness stated that the facsimile which was sent to him by NCB, was in his office.

19. The second prosecution witness was Dilip Robi Das. On 08.02.2018, he was working as Superintendent of NCB, Guwahati. On that day, Mr. Kuldeep Tomar had filed a detailed report in respect of search, seizure and arrest in NCB Crime No.03/2018 before him under Section 57 of the NDPS Act. The witness has stated that he endorsed the said report and forwarded it to his superior Mr. Rakesh Chandra Shukla, the Zonal Director, NCB. In the said report, it was mentioned that 447.170 kilograms of ganja was seized by Kuldeep Tomar and two persons namely, Biplab

Baidya and Swapan Das were arrested in that case. He proved his signature in his report.

20. In his cross-examination, Dilip Robi Das has stated that he did not have any personal knowledge about the said search, seizure and arrest. He stated that he came to know about those facts at a subsequent stage.

21. The third prosecution witness is Rakesh Chandra Shukla. He has stated that on 06.02.2018, he was working as the Zonal Director, NCB, Guwahati and on that day, the Intelligence Officer Shri Kuldeep Tomar informed him about movement of cannabis and submitted the NCB Form-I. According to this witness, the information was that one person namely- Biplab Baidya and one driver were coming from Tripura in a truck bearing Registration No. NL-01L-4832 with a consignment of ganja and will reach Guwahati on that day at about 2130 hrs.

22. On the basis of the said report of Kuldeep Tomar, Rakesh Chandra Shukla has formed a team and Kuldeep Tomar was made the seizing officer of the team. Rakesh Shukla has stated that he issued an order to that effect on the same day. The witness proved the NCB-1 as Ext.5 and his own signature as Ext.5(2). He also proved the office order as Ext.6 and signature thereon. Rakesh Chandra Shukla has stated that the team which he had formed, consisted of Aram Anth, Kuldeep Tomar, Karamveer Singh, Atul Giri, Bipin Kumar, Sandeep Kumar, Jugal Ch. Das, S.C. Jaina and Rajesh Thapa.

23. During cross-examination, Rakesh Chandra Shukla has stated that he received the information from Kuldeep Tomar at 1705 hrs. and therefore, he immediately prepared a team. He has stated that he could not recall the exact time when the team left the NCB office. The witness Mr. Shukla has disclosed that on 07.02.2018, the accused persons were produced before him in the morning hours but he did not remember the exact time.

24. The fourth prosecution witness was Aram Anth. He has stated in his evidence that on 06.02.2018, he was working as the Intelligence Officer, NCB, Guwahati. He stated that on the basis of an office order issued by the Zonal Director, NCB, he was

included in the team constituted for search and seizure of narcotics/contraband drugs. He further stated that at about 9.30 P.M., he along with the team was waiting near the Khanapara flyover and a truck having Nagaland registration, had arrived there. According to this witness, the truck was searched and ganja was seized from the truck. He said that after seizure of ganja, the truck along with the persons who were travelling in the truck was brought to the NCB office for further investigation.

25. In his cross-examination, the witness Aram Anth has stated that the search of the truck started at about 9.30 P.M. and was completed at about 11.30 P.M. This witness has stated that he did not know what procedure was done after seizure of the ganja. The witness Aram Anth has disclosed that never saw the other officers drawing samples from the seized ganja.

26. The fifth prosecution witness was Kuldeep Tomar. He has stated that being the Intelligence Officer, NCB, Guwahati, on 06.02.2018 at about 5 P.M, he had received an information that two persons were coming from Tripura in a truck bearing Registration No. NL-01L-4832 with a load of ganja towards Guwahati. He immediately reduced the said information into writing and placed it before the Zonal Director Sri Rakesh Shukla. According to Kuldeep Tomar, the Zonal Director prepared a team and Kuldeep Tomar was authorized to conduct search and seizure. Ext.5 was the written information having signatures of the Zonal Director and the witness himself. According to Kuldeep Tomar, he and the team arrived at Khanapara area at about 7.50 P.M. and persuaded two persons present in a tea stall to be independent witnesses during the impending search and seizure. The witnesses stated that at about 9.30. P.M. the said truck was stopped on the National Highway. Apart from the driver, there was another person inside the cabin of the truck. They identified themselves as Swapan Das and Biplab Baidya respectively. Kudeep Tomar has stated that on a search of the truck, 44 packets of ganja was recovered from the truck. The witness further disclosed that with the help of a drug detection kit, they ascertained the contents of the packets were ganja. Weight of the packets was taken and it was found that 43 packets contain 10 kilograms and 1 packet contains 9 kilograms and the total weight was 447.170 kilograms.

27. Kuldeep Tomar has stated that they had drawn two samples, each containing 25 gms. from each of the 44 packets. One series of samples was marked as S1 to S44 while the other series was marked as D1 to D44. Each of the samples were of transparent polythene packets and each of the polythene packets was put in a yellow colour envelope and those envelopes was sealed using NCB Brass Seal No.3 in the presence of the independent witnesses. The independent witnesses had put their thumb impression on the envelopes and the accused persons had put their signatures thereon.

28. Kuldeep Tomar has stated that the accused Biplab Baidya had said to him that he was carrying the ganja from Tripura to West Bengal and the same was to be delivered to a person called Rahim Uddin.

29. The driver Swapan Das told Kuldeep Tomar that Biplab Baidya gave him ₹10,000/- to carry those ganja from Tripura to West Bengal.

30. Kuldeep Tomar has stated that at about 11.45 P.M. the search and seizure process was complete and thereafter they brought the accused persons along with the truck to the NCB office at Guwahati. Kuldeep Tomar further disclosed that on reaching the office, the truck and the seized ganja were handed over to the godown in-charge. The godown in-charge Karamveer Singh issued a receipt (P.Ext.26). In the meantime, the statements of the accused persons were recorded.

31. The witness Kuldeep Tomar proved all the documents.

32. The witness Kuldeep Tomar, in his cross-examination stated that Ext.9 Panchnama was prepared by him. The witness stated that on 07.02.2018, he sent the original samples to FSL through a messenger, whose name he does not remember.

33. The sixth prosecution witness was Arup Das. He was one of the independent witnesses before whom the search and seizure was made. He stated in his evidence that he agreed to be a witness. According to Arup Das, he saw the NCB team taking weight of the seized ganja which was recovered from the truck. He further stated that police took his signature at about 11.30 P.M. and 12 A.M. He was allowed to go after that.

34. In his cross-examination, he stated that when he arrived at the spot, police had already stopped the truck. He failed to identify the thumb impression which was reportedly given by him. Arup Das has disclosed that he did not see any ganja at that time.

35. The seventh prosecution witness was Gulam Uddin. He was one of the independent witnesses. He has stated that on 06.02.2018 at about 9 P.M., had seen a truck which was parked under the Khanapara flyover. He saw some leaves like substances were being weighed on a scale. One person had taken the thumb impression of this witness and he was informed that those substances were ganja.

36. Gulam Uddin has stated in his cross-examination, that when he had arrived near the truck, the leaves like substances were already unloaded from the truck and their weight was taken on the street.

37. The eighth witness was Karamveer Singh. He is the Investigating Officer of this case. He was one of the members of the team which seized the contraband goods. He stated in his evidence that at about 9.30 P.M. the said Truck bearing Registration No. NL-01L-4832 was stopped at Khanapara. The two persons inside the truck indentified themselves to be Biplab Baidya and Swapan Das. Karamveer Singh has stated that 44 numbers of packets each containing ganja was recovered from the truck. All the formalities regarding search and seizure was done by Kuldeep Tomar and on completion of seizure, the team arrived at NCB Office along with the accused, the seized ganja and the truck.

38. Karamveer Singh has stated that the seized ganja was given to him by Kuldeep Tomar for keeping the same in the godown. Karamveer Singh has stated that he had handed over the goods to the godown in-charge who had issued the receipt i.e. P.Ext. -26.

39. According to Karamveer Singh, on 08.02.2018, the samples S1 to S44 had come out from the NCB godown for onward transmission to FSL. Ext.P-25 was the acknowledgement issued by Shri Kuldeep Tomar.

40. In his cross-examination, Karamveer Singh has admitted that there are some

overwritings on some documents pertaining to the time shown therein.

41. On the basis of the evidence on record, the trial court convicted the appellant.

42. I have carefully gone through the prosecution evidence.

43. The learned counsel Mr. Biswas had confined his arguments within a short campus. He has pointed out that the messenger who had carried the samples to the FSL and the godown in-charge were not examined by prosecution. Mr. Biswas further submitted that the receipt of the godown in-charge was not proved. The learned counsel Mr. Biswas has summarised his arguments by stating that the prosecution has failed to prove that the samples sent to FSL were a part of the goods recovered from the possession of the accused/appellant on 06.02.2018. He has stated that it is not proved beyond all reasonable doubt that the samples tested by the FSL were a part of the goods recovered from the possession of the appellant.

44. Mr. Biswas has relied upon a judgment of the Supreme Court that was delivered in *Union of India v. Mohanlal*, (2016) 3 SCC 379. Paragraph 31.1 of this judgment is quoted as under:

“**31.1.** No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading “seizure and sampling”. The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.”

45. The learned counsel Mr. Biswas has pointed out that the Ext.21 which is the sample forwarding letter, shows that the samples were sent to FSL on 07.02.2018. Referring to the evidence of witness Kuldeep Tomar, the learned counsel for the appellant has pointed out that this witness has stated in his evidence that the samples came out from the NCB godown on 08.02.2018. On the basis of the said evidence, the learned counsel has stated that the samples which were dispatched to the FSL on

07.02.2018 and the samples which came out from the NCB godown on 08.02.2018, were different.

46. Mr. Biswas has pointed out that in order to ascertain the facts, the messenger who was sent to the FSL to deliver the samples, should have been examined by prosecution.

47. The learned counsel for the appellant has further submitted that the godown in-charge was not examined. Here, in this case, the witness Kuldeep Tomar has stated that he had handed over the goods to godown in-charge Karamveer Singh. But Karamveer Singh has stated in his evidence that after receiving the goods from Kuldeep Tomar, he had handed over the goods to the godown in-charge who issued a receipt. According to Mr. Biswas, the evidence clearly shows that there must be one specific godown in-charge and he was not examined.

48. In order to buttress his point, Mr. Biswas has relied upon a judgment of the Hon'ble Supreme Court that was delivered in *State of Gujarat v. Ismail U Haji Patel*, (2003) 12 SCC 291. Paragraph 5 of the said judgment is quoted as under:

“5. We find that there was really no material brought on record to show as to where the seized articles were kept. The High Court after analysing the evidence on record came to hold that the identity of the articles sent for analysis was not established and it was not established that the articles seized were in fact sent for chemical examination. In view of the judgment of this Court in *Valsala v. State of Kerala* [1993 Supp (3) SCC 665 : 1993 SCC (Cri) 1082] the view of the High Court is in order. It is not the delay in sending the samples which is material. What has to be established is that the seized articles were in proper custody, in proper form and the samples sent to the Chemical Analyst related to the seized articles.”

49. *Per contra*, the learned counsel Mr. Keyal has submitted that the samples sent to FSL were received by the FSL in sealed condition. Mr. Keyal has also pointed out that the samples came out of the NCB godown vide NCB Godown Receipt No.4 on 08.02.2018 and it was received by the FSL on 08.02.2018.

50. Mr. Keyal has relied upon a decision of the Hon'ble Supreme Court that was delivered in *State of Orissa v. Kanduri Sahoo*, (2004) 1 SCC 337. Paragraph 8 of the

judgment is quoted as under:

“8. We find that though there was no specific order of the SDJM, Cuttack for custody of the articles when the accused was produced in the court on 13-5-1994, it was clearly stated in the forwarding report that the seized articles and the sample thereof (MOs I and II) were produced in the court along with the accused. The evidence of PW 1 was categorical to the effect that the articles were kept in the Excise Malkhana from where they were brought and sent for chemical examination. This relevant aspect appears to have been missed by the High Court. In *Valsala case* [1993 Supp (3) SCC 665 : 1993 SCC (Cri) 1082 : AIR 1994 SC 117] it was not laid down that whenever there is delay in sending the samples, the prosecution version would become vulnerable. What was emphasised related to proper and safe custody of the seized articles. In the background of that particular case, when delay of three months was there and there was no clear evidence as to with whom the articles were lying, the decision was rendered. No evidence was led to show that the contraband articles were in proper custody and in proper form. But the factual situation is different here. That being so, the High Court's judgment does not stand scrutiny and is set aside. The conviction as done by the trial court was proper. We direct restoration of the conviction as directed by the trial court along with the sentence imposed.”

51. Mr. Keyal has submitted that the present case falls within the ambit of proviso to Section 106 of the Evidence Act. According to Mr. Keyal, since possession of the contraband articles is established, the burden shifts on the accused to establish that he did not have any knowledge about those goods. The learned counsel has submitted that the prosecution has proved the case against the appellant beyond all reasonable doubt.

52. I have considered the submissions made by the learned counsel of both sides.

53. On 06.02.2018, the contraband goods were found in possession of the appellant. So far as the factum of possession of 447.170 kilograms of contraband goods by the appellant is concerned, the appellant has not submitted any argument.

54. The only argument made by the appellant is that the samples of contraband goods which were sent from NCB godown to FSL, had no connection with those goods which were seized by NCB on 06.02.2018.

55. The prosecution witness Gajendra Nath Deka has stated that on 08.02.2018, he had received the parcel containing samples from the Director of FSL and the parcel contained 44 packets. The parcel was accompanied by a forwarding letter dated 07.02.2018 issued by NCB.

56. Ext.24 is the sample forwarding report dated 07.02.2018. This letter was issued by Kuldeep Tomar.

57. The witness Gajendra Nath Deka has stated in his evidence that he had received the samples on 08.02.2018 from the Director of the FSL, not directly from NCB.

58. Under the circumstances, I find that the plea taken by the appellant, that the samples sent to FSL, do not have any link with the articles that were seized from the appellant on 06.02.2018, does not hold good in the eye of law.

59. I am of the considered opinion that the learned trial court has correctly appreciated the prosecution evidence and arrived at a correct finding. The impugned judgment does not require any interference of this Court.

60. For the aforesaid premised reasons, the appeal is found to be devoid of merit and stands dismissed accordingly.

Send back the LCR.

JUDGE

Comparing Assistant