

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.49 of 2011

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Tilakhdhari Yadav S/O Late Kedar Yadav Resident Of Village and Police
Station- Shahpur, District- Bhojpur

... .. Appellant

Versus

The State of Bihar.

... .. Respondent

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Appearance :

For the Appellant	:	Mr. Ashok Kumar Singh, Advocate Mr. Anant Kumar Pandey, Advocate
For the State	:	Mr. Mukeshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
C.A.V. JUDGMENT

Date : 26.03.2026

Heard learned counsel for the appellant and
learned Additional Public Prosecutor for the State.

2. The present appeal is directed against the judgment of conviction and order of sentence dated 27.12.2010 passed by learned Additional District & Sessions Judge, 3rd, Ara, Bhojpur in connection with N.D.P.S. Case No. 2 of 1998 arising out of Shahpur P.S. Case No. 7 of 1998 (G.R. Case No. 141 of 1998) whereby and whereunder the appellant has been convicted for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”) and has been sentenced to undergo rigorous imprisonment for 10 years along with fine of Rs. 20,000/- under Section 20(b)(ii)(B) of the NDPS Act. In



default of payment of fine, appellant has been further awarded six months simple imprisonment.

3. As per prosecution case, on 20.01.1998, PW-2, Ram Vilas Singh, who was then posted as Awar Nirikshak (Sub-Inspector) at Shahpur Police Station, along with other police personnel, namely Ramakant Mishra, Prabhat Kumar, Arvind Shukla, Md. Junun Khan and driver of police jeep Shiv Kumar Yadav, left the police station at about 9:30 A.M. for the purpose of arresting warrantees and absconders. At about 9:45 A.M., they reached village Shahpur and, during the course of the raid, arrested one warrantee Chittani Singh. Thereafter, PW-2 allegedly received secret information that one Tilakdhari Yadav, son of Kedar Yadav, resident of village Shahpur was illegally selling ganja from a thatched hut (*foos ki marai*) situated at Shahpur Bazar. Acting upon the said secret information and for its verification, PW-2, along with the police force, proceeded to the hut of Tilakdhari Yadav and reached there at about 10:00 A.M. In presence of two local independent witnesses, namely Rajesh Kumar Gupta and Md. Sagir Shah, the search of the said hut was conducted. During the search, one person was found sitting inside the hut. From beneath of his thigh, one blue-coloured jeans cloth bag containing approximately 500 grams of



ganja was recovered. Further, ten plastic packets each containing approximately 2 grams of ganja and two plastic packets each containing approximately 5 grams of ganja were also recovered. Additionally, one iron weighing balance of 500 gram capacity, marked “M.K. Mehal Industries,” was seized from the spot. The person found in the hut attempted to flee away but was apprehended by the police personnel. Upon inquiry, he disclosed his name as Tilakdhari Yadav (appellant), son of Kedar Yadav, resident of village Shahpur, P.S. Shahpur, District Bhojpur. Upon enquiry, the appellant neither produced any licence or valid document authorizing possession of the recovered ganja nor gave any satisfactory reply. A seizure list was prepared in presence of the aforesaid two witnesses upon which the witnesses put their signatures and the recovered articles were seized.

4. On the basis of written statement of the informant/PW-2, Shahpur P.S. Case No. 7 of 1998 dated 20.01.1998 was registered for the offence under Section 20(B) of the NDPS Act. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellant under Section 20(B) of the N.D.P.S. Act. Thereafter,



the learned trial court took cognizance under the aforementioned Section of the N.D.P.S Act. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellant under Section 20(B) of the N.D.P.S Act. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home the guilt of the accused persons, the prosecution has examined all together six witnesses namely, PW-1 Prabhat Kumar, PW-2 Rambilas Singh(informant), PW-3 Chandrika Singh, PW-4 Arvind Shukla, PW-5 Rajesh Kumar Gupta and PW-6 Muhammad Sagir Sah.

6. Prosecution has relied upon following documentary evidences on record:-

Ext. 1- Written application

Ext. 2 – Provisional FIR.

Ext. 3 – Seizure list

Ext. 4 - Signature of witness Rajesh Kumar Gupta on the seizure list

Ext. 4/1 – Signature of witness Md. Sagir Sah on the seizure list.

7. Appellant has not produced any oral or documentary evidence. However, the defence of the appellant as gathered from the line of cross examination of prosecution



witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

8. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the 2nd paragraph of the judgment.

9. Following submissions have been made on behalf of learned counsel for the appellant:-

9.1. Learned counsel for the appellant has submitted that the impugned judgment of conviction and order of sentence is bad in law as well as on facts and circumstances of the present case. He submitted that even if the entire prosecution case is taken to be true, the allegation is that only 530 gram of ganja was recovered from the cottage. The occurrence relates to the year 1998 and, as per the statutory provision applicable at the relevant time, the alleged quantity falls under small quantity. He submitted that the punishment prescribed for such quantity could extend only up to six months' imprisonment or fine up to Rs. 10,000/-, or both. However, the learned trial court has wrongly awarded rigorous imprisonment for ten years along with fine of Rs. 20,000/- to the appellant, which clearly reflects non-application of judicial mind and improper appreciation of the relevant penal provision. Learned



counsel further submitted that the mandatory provision of Section 50 of the NDPS Act has not been complied with. He contended that it was the statutory obligation of the searching officer to inform the accused of his right to be searched in presence of a Gazetted Officer or Magistrate. In absence of such compliance, the alleged search and seizure stands vitiated. He further submitted that the entire prosecution case is based upon the alleged search and seizure, but both the seizure list witnesses, namely P.W.5 and P.W.6, have turned hostile and they have categorically stated that no recovery was made in their presence. He submitted that P.W.6 has stated that police had not even recorded his statement. Learned counsel also submitted that the place of occurrence has not been properly established. He pointed out that P.W.2, the informant, admitted in his cross-examination that he could not specify the boundary of the cottage from where the alleged recovery was made. He further submitted that P.W.4, a member of the raiding party, also admitted that he could not state the boundaries of the said cottage. Thus, the exact place of occurrence remains doubtful. He further submitted that out of six prosecution witnesses, three have not supported the prosecution case. Only P.W.2 and P.W.4 have supported the version of the prosecution story and both are



police personnel. No independent villager has been examined to corroborate the alleged recovery. Therefore, the entire case rests upon interested official witnesses whose testimonies suffer from contradictions. Learned counsel further submitted that the prosecution has failed to establish alleged recovery from conscious possession of the appellant. There is no reliable evidence to show that the cottage exclusively belonged to the appellant or that he had exclusive control over the alleged contraband substance. He further submitted that the investigation was perfunctory and defective. The Investigating Officer admitted that he did not record the statements of witnesses during investigation. Material particulars, including proper documentation of seizure and boundaries of the place of occurrence, have not been proved, thereby causing serious prejudice to the defence. Learned counsel further submitted that no FSL report has been brought on record or exhibited in accordance with law. Though the impugned judgment refers to a letter number, there is no exhibited chemical examination report to establish that the seized substance was ganja. He contended that in absence of chemical examination and proof of proper sampling and sealing, it cannot be presumed that the seized material was contraband. He further submitted that even the



alleged quantity of 500/530 grams has not been properly proved. There is no clear evidence regarding how the quantity was measured, whether proper weighing was done, and whether representative samples were drawn and tested. In absence of scientific corroboration, the prosecution case remains doubtful. He lastly submitted that in view of the non-compliance of mandatory provisions, hostile independent witnesses, absence of FSL report, doubtful place of occurrence, lack of proof of recovery from conscious possession, and contradictions in the prosecution evidence, the prosecution has failed to prove its case beyond reasonable doubt. The appellant, therefore, is entitled to benefit of doubt and consequent acquittal.

10. Learned A.P.P. appearing on behalf of the State has submitted that P.W.2, who is the informant of the case, has fully supported the prosecution story and has clearly stated about the recovery of ganja from the cottage of the appellant and about preparation of the seizure list in accordance with law. He submitted that the statement of P.W.2 is corroborated by P.W.4, who was a member of the raiding party, who has also supported the prosecution case regarding search, seizure, and recovery. He further submitted that the learned trial court has properly considered the evidence available on record and



discussed the material evidence in detail before passing the judgment of conviction. Learned A.P.P. further submitted that merely because some witnesses have turned hostile, the entire prosecution case does not fail, especially when the official witnesses have consistently supported the recovery. In the light of aforesaid facts and circumstances of the case, the judgment of conviction is legal and justified and there is no reason to interfere with the findings recorded by the trial court. However, on the point of sentence, learned A.P.P. fairly conceded that the alleged recovery relates to the year 1998 and involves a quantity lesser than commercial quantity. He submitted that the punishment prescribed under statutory provision of the NDPS Act at the relevant time was up to six months' imprisonment or fine, or both. He conceded that the trial court has awarded ten years' imprisonment, which does not appear to be in accordance with the applicable penal provision considering the quantity involved.

11. The question which arises for consideration is:-

“Whether the prosecution has proved its case under Section 20 (B) of the N.D.P.S. Act beyond reasonable doubt or not?”

12. I have perused the impugned judgment and



trial court records. I have given my thoughtful consideration to the rival contentions made on behalf of the parties as noted above.

13. It is necessary to evaluate, analyze and screen out the evidence of witnesses adduced before the trial court.

14. PW-1/ Prabhat Kumar has stated that he has no knowledge about this case. Hence, his evidence has no significance as he has not supported the prosecution-case while adducing his evidence before the Court and has been declared hostile by the prosecution.

15. PW-2/ Rambilas Singh has stated that on 20.01.1998 he was posted at Shahpur Police Station. At about 9:30 A.M., he left the police station along with police personnel on a vehicle for the purpose of arresting warrant-holders and absconders. At about 9:45 A.M., while he was present at Shahpur Bazar, he received secret information that Tilakdhari Yadav (appellant) was illegally selling ganja from a thatched hut situated at Shahpur Bazar. For verification of the said information and for taking necessary legal action, he proceeded along with armed police force and reached near the thatched hut of Tilakdhari Yadav at about 10:05 A.M. In presence of local witnesses, namely Ramesh Kumar Gupta and Md. Sagir Shah, a



search of the hut was conducted. During the search, one person was found sitting inside the hut. In course of the search, one blue-coloured jeans bag containing approximately 500 grams of ganja was recovered. He has further stated that ten plastic packets each containing approximately 2 grams of Ganja and two plastic packets each containing approximately 5 grams of Ganja along with one small weighing balance, were also recovered from the hut. The said articles were recovered from the place where the person was sitting. The said person attempted to flee, but he was apprehended by the police personnel. On being asked, he disclosed his name as Tilakdhari Yadav, son of Kedar Yadav, resident of village and P.S. Shahpur, District Bhojpur. In para 2 he has stated that in connection with the said occurrence, he submitted a written report to the Officer-in-Charge of the police station, on the basis of which the present case was instituted. He has further stated that the said written report is in his handwriting and bears his signature. The written report has been marked as Exhibit-1. In para 4 he has stated that the formal First Information Report was written by the station writer, Suresh Prasad. He has further stated that it bears the signature of the Officer-in-Charge, Satyendra Kumar Singh, which he identifies. The formal FIR has been marked as



Exhibit–2. In para 2 he has stated that he prepared the seizure list, which is in his handwriting and bears his signature. He has further stated that this is the same seizure list. The seizure list has been marked as Exhibit–3. In para 6 he has stated that the seizure list, the written report, and the arrested accused were sent to the police station. Para 7 he has stated that he can identify the accused, Tilakdhari Yadav, on seeing him.

15.1 In cross-examination, at para 8 he has stated that he was posted at Shahpur from February 1997 to January 1998. He has further stated that Shahpur is a village consisting of approximately 200 houses. He has admitted that he cannot state how many houses in Shahpur he properly identifies. He further stated in para 9 that only one person was present in the said thatched hut. He has further stated that the said hut was situated approximately 500–700 yards to the west of Shahpur Bazar. He has admitted that he cannot specify the boundary of the said hut. He has further stated that the hut was located on the Ara-Buxar road on the Southern side. He further stated that near that hut, there were shops which were open at that time and persons were present in the shop. The police station is located in southern direction at a distance of 100-150 yards from the said hut. At para 10 he has stated that he had apprehended warrantee



Chhikari Singh in Shahpur market and he had no knowledge about his residence. He further stated at para 11 that he found the witnesses of the seizure list near the said hut but he cannot point out regarding the nature of work witnesses were doing at the said place. He has further stated that he prepared the seizure list and obtained signatures of the witnesses on the same. He has further stated that the seized articles are not before him in the court. He denied the suggestion that no ganja was recovered from the possession of accused and that they were falsely implicated in the present case.

15.2. From perusal of evidence of PW-2/ informant, it is evident that he has not pointed out the specific boundary of the place of occurrence from where the alleged recovery of Ganja was made. Though P.W. 2 claims that he is the eye-witness of the alleged recovery, but he is unable to point out regarding the nature of work witnesses, namely Rajesh Kumar Gupta(P.W.5) and Md. Sagir Sah(P.W.6), were doing at the said place. Further, P.W. 5 and P.W. 6 have not supported the prosecution-case and they have been declared hostile. At para- 11 of his cross examination, PW-2 has admitted that the seized articles were not produced before the court at the time of adducing evidence. In this way, the very authenticity of



evidence of PW-2 is doubtful.

16. PW-3/ Chandrika Singh has simply stated that on 17.10.1998 he took the charge of investigation of this case and 24.11.1998, on the instruction of Superintendent of Police, he had submitted the charge-sheet in this case. Further, in his cross-examination he has stated that during the course of investigation he had not recorded the statement of any of the witnesses. Hence, his evidence is of no significance.

17. PW-4/ Arvind Shukla has stated that on 20.01.1998 he was posted at Shahpur Police Station. He further stated that on that day he along with other police officials went to Shahpur market and raided one hut from where approximately half kilogram Ganja, taraju (scale) and batkhara (weights) were recovered. He further stated that Bada Babu prepared seizure list in front of two independent witnesses. He further stated that Ganja was recovered from the accused/Tilak Dhari Yadav. He identified the accused in the court. He further stated that the accused was apprehended and brought to police station along with the recovered articles.

17.1 During the course of cross-examination, in para 2, he has stated that he cannot point out the boundary of the hut. He has further stated that he cannot state the location



and direction of the hut in respect of police station. In para 3, he has stated that on that day, the raid was conducted only with regard to this accused. He has further stated that the recovered weighing scale was made of iron. He has further stated that the recovered weights were small and found about two or three in number and the weights were also made of iron. In para 4, he has stated that at the time of raid, two-three independent witnesses were present as they were intimated about the raid and were instructed to remain present there. He has further stated they had put their signatures on the seizure list. He has further stated that besides appellant, accused Chhitan Dhari was also present in the same hut, but nothing was recovered from the possession of the Chhitan Dhari. He has further stated that the recovered Ganja was not weighed in his presence. He has further stated that he was not knowing the accused prior to the raid. In para 6, he has stated that no member of Shahpur P.S. used to purchase milk. It is wrong to say that accused/Tilak Dhari used to sell milk. In para 7, he has stated that it is wrong to say that no Ganja was recovered from the possession of the accused/Tilak Dhari Yadav. It is wrong to say that accused/Tilak Dhari Yadav used to deliver milk in the Police station and when the accused demanded the money for the same, the accused was



implicated in the false case. In para 8, he has stated that block office is situated near the Shahpur police station. At the time of seizure, BDO and CO had not come and they had come to the police station later on.

17.2. From perusal of evidence of PW-4, it is crystal clear that the statements of PW-2 and PW-4 are quite contradictory on the point of recovery of Ganja from plastic pouches. PW-4 has only stated that 500 gram Ganja was recovered from the said hut along with weighing balance and weights, but on the point of quantity of recovery, PW-2/informant has asserted that besides recovery of 500 gram Ganja, there is recovery of ten plastic packets each containing approximately 2 grams of Ganja and two plastic packets each containing approximately 5 grams of Ganja, along with one small weighing balance from the said hut. In this way, the statements of PW-2 and PW-4 are quite divergent. On the point of place of recovery, PW-4 is unable to point out the specific boundary of hut which is the place of recovery. In this way, his statement is neither convincing nor trustworthy.

18. PW-5/ Rajesh kumar Gupta is a seizure-list witness. He has stated that he identifies appellant Tilakdhari Yadav. He has also identified his signature on the seizure-list



(Ext.-3) which was marked as Ext.-4. He has further stated that neither Darogaji had searched the hut (gumti) of Tilakdhari Yadav in his presence nor was ganja recovered from the hut of the appellant in his presence. He has also stated that he had never given any statement in connection with the present case before the police. This witness was declared hostile by the prosecution. During cross-examination, he has stated that his shop is situated at a distance of 100 yards from the police station and Daroga had taken his signature on a plain paper.

19. PW-6/Mohammad Sagir Sah is also a seizure-list witness. He has stated that he identifies appellant Tilakdhari Yadav. He has also identified his signature on the seizure-list which was marked as Ext.-4/1. He has further stated that neither police had searched the hut (gumti) of Tilakdhari Yadav (appellant) in his presence nor was ganja recovered from the hut of the appellant in his presence. He has also stated that police had not recorded his statement. This witness was declared hostile by the prosecution. During cross-examination, he has also stated that his house is situated at a distance of 1 km from the police station and police had taken his signature on a plain paper.

19.2 From perusal of evidence of PW-5 and 6, it



is evident that though they are witnesses of seizure list but they have not supported the prosecution case on the point of recovery of alleged contraband narcotic substance and they have taken a U-turn from the story of prosecution and stated that neither search of appellant's hut was made in their presence nor was Ganja recovered from the hut of the appellant in their presence. In this way, the very independent witnesses, who are the witnesses of seizure list, have not supported the case of the prosecution. Further, during cross examination P.W. 5 and 6 have stated that Daroga had taken their signature on a plain paper. In this way, their evidence has no significance as they have not supported the prosecution case while adducing their evidence before the court and have been declared hostile by the prosecution.

20. On all counts, from the analysis of evidence of prosecution witnesses, it is clear that PW-1 has not supported the prosecution-case while adducing his evidence before the Court and has been declared hostile by the prosecution. P.W. 2 is the informant of the case. In his cross-examination, he has admitted that he cannot state how many houses in Shahpur he properly identifies. He has admitted that he cannot specify the boundary of the hut from which alleged recovery was made. He



further stated at para 11 that he found the witnesses of the seizure list near the said hut but he cannot point out regarding the nature of work witnesses were doing at the said place. PW-3 is the I.O. of the case. PW-3 in his cross-examination has stated that during the course of investigation he had not recorded the statement of any of the witnesses. Hence, his evidence is of no significance. P.W. 4 at para 2 of his cross-examination has stated that he cannot point out the boundary of the hut. He has further stated that the recovered Ganja was not weighed in his presence. In the present case, seizure list is the gist of the case. Seizure list clearly indicates that one blue-coloured jeans cloth bag containing approximately 500 grams of ganja was recovered. Further, ten plastic packets each containing approximately 2 grams of ganja and two plastic packets each containing approximately 5 grams of ganja were also recovered. Additionally, one iron weighing balance of 500 gram capacity, marked "M.K. Mehal Industries," was seized from the hut of the appellant. The very crux of the prosecution story is based upon the seized items at the place of occurrence. PW-5 and 6 are independent witnesses and witnesses of seizure list, but they have not supported the case of prosecution. In this way, crux of the prosecution story has not been proved and prosecution has



failed to prove its case beyond reasonable doubt on the said ground.

21. From perusal of the record, it is crystal clear that seized item/Ganja was not sent for chemical examination. The question arises how the seized item was alleged to be Ganja without having any FSL report. The very pertinent question arises how the Investigating Officer submitted charge sheet under Section-20(B) of N.D.P.S. Act without having report of FSL regarding Ganja and how the case has been proceeded. It is beyond the imagination that without any examination, the recovered materials were declared to be narcotic substance and the contention of learned counsel for the appellant is quite convincing that the very basis to prove the case of NDPS is doubtful in the absence of FSL report regarding the recovered materials and the prosecution has failed to prove its case on several counts including non-compliance of mandatory provision of Section 50 of the NDPS Act under which it was statutory obligation of the searching officer to inform the accused of his right to be searched in presence of a gazetted officer or a Magistrate and in absence of compliance of said provision, the alleged search and seizure stands vitiated. In the present case, there is nothing on record which reflects that



the above mandatory provision has been complied by the prosecution side. Further, learned counsel for the appellant has submitted that the prosecution has failed to establish alleged recovery from conscious possession of the appellant and there is no reliable evidence to show that cottage exclusively belonged to the appellant or that he had exclusive control over the alleged contraband substance. Even in the criminal jurisprudence, place of occurrence is required to be proved, but in the present case, none of the prosecution witnesses had pointed out the specific boundary of the place of occurrence. A pertinent question arises that in absence of specific boundary of place of occurrence, how the place of occurrence can be established and in absence of place of occurrence, how the prosecution case can be proved. Apart from that, there are several contradictions in the statements of PW-2 and PW-4. PW-2 is the informant of the case and he has stated that besides recovery of 500 gram of ganja from one blue coloured jeans bag, there was recovery of ten plastic packets each containing approximately 2 grams of Ganja and two plastic packets each containing approximately 5 grams of Ganja along with one small weighing balance but PW-4 has only stated about recovery of 500 gram of Ganja along with one weighing balance from the hut, but he is silent about



the recovery of ten plastic packets each containing approximately 2 grams of Ganja and two plastic packets each containing approximately 5 grams of Ganja. Further, PW-2 and PW-4 have not pointed out specific boundary of the place of occurrence. In the light of facts and circumstances of the case, the contention of learned counsel for the appellant is quite convincing that prosecution has failed to prove its case beyond the reasonable doubt.

22. In the result, in my view, prosecution case suffers from several infirmities, as noticed above and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence dated 27.12.2010 is hereby set aside. Accordingly, the appeal stands allowed. Appellant is on bail. He is discharged from the liability of his bail bonds.

23. The interlocutory application(s), if any, shall also stand disposed of.

24. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.



25. The records of this case be also returned to
the concerned trial court forthwith.

(Alok Kumar Pandey, J)

Nilmani/-

AFR/NAFR	A.F.R.
CAV DATE	22.01.2026
Uploading Date	26.03.2026
Transmission Date	26.03.2026

