

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.284 of 2011

Ramanand Rajput, S/o Baxi Ram Rajput, aged about 36 years, Occupation Driver, R/o Village Sinda, P.S. Sadar, Tahsil & Distt. Bilaspur, Himachal Pradesh.

---- Appellant

Versus

Narcotics Control Bureau, Circle Indore, 109/110, Mahavir Kripa Avenue, Airport Road, Indore, Through Ranveer Singh Nago, Information Officer, Narcotics Control Bureau, Circle Indore, 109/110, Mahavir Kripa Avenue, Airport Road, Indore.

---- Respondent

Criminal Appeal No.355 of 2011

Krishnakant Vallabh @ Bangali Krishna, aged about 41 years, S/o Ramakant Vallabh, R/o M.V. 72, P.S. MV 79, Tah. & Distt. Malkangiri (Orissa).

---- Appellant

Versus

State of Chhattisgarh, through Psychotropic Control Bureau, Indore Regional Unit, 109/110, Mahavir Kripa Avenue, Air Port Road, Indore, through Ranbir Singh Nagi, Adhisuchna Adhikari Psychotropic Control Bureau) Indore Regional Unit, 109/110, Mahavir Kripa Avenue, Air Port Road, Indore.

---- Respondent

Criminal Appeal No.489 of 2011

Gendalal, S/o Mula, aged about 70 years, Occupation Labour, R/o B.T.I. Training School, Gali No.3, Makan No.4, P.S., Tehsil and Distt. Bhind (M.P.)

---- Appellant

Versus

Narcotic Control Bureau, Indore Regional Unit, 109, 110 Mahavir Kripa Avenue, Airport Road, Indore.

Through Ranbir Singh Nagi Information Officer Narcotic Control Bureau, Indore Regional Unit, 109, 110, Mahavir Kripa Avenue, Airport Road, Indore.

---- Respondent

AND

Criminal Appeal No.664 of 2011

1. Karikanka Durga Reddy, S/o Satynarayan Reddy, aged about 46 years, Occupation Health Product Seller, R/o Village Diwancheru, House No.3-17-44, Thana Diwanchuru, Tehsil Rajmundary, District East Godawari (Andhra Pradesh).
2. Durga Mallaiya, S/o Naniya, aged about 27 years, R/o Venkateshwar Apartment, Shantinagar, Kakinada, Thana Do Shahar, Tah. Kakinada, Distt. East Godawari (Andhra Pradesh)

---- Appellants

Cr.A.Nos.284/2011, 355/2011, 489/2011 & 664/2011

Versus

State of Chhattisgarh, Through Narcotics Control Bureau, Indore Region Unit, 109/110, Mahaveer Kripa Avenue, Airport Road, Indore.

Represented by Ranveer Singh Nagi, Intelligence Officer, Narcotics Control Bureau, Indore Region Unit, 109/110, Mahaveer Kripa Avenue, Airport Road, Indore.

---- Respondent

For Appellant Ramanand Rajput in Cr.A.No.284/2011:

Mr. Arun Kochar and Mr. D.N. Prajapati, Advocates.

For Appellant Krishnakant Vallabh @ Bangali Krishna in Cr.A.No.355/2011:

Mr. A.N. Bhakta and Mr. F.S. Khare, Advocates.

For Appellant Gendalal in Cr.A.No.489/2011:

Mr. Avinash Mishra and Mr. A.N. Pandey, Advocates.

For Appellants Karikanka Durga Reddy and Durga Mallaiya in Cr.A.No.664/2011:

Mr. S.K. Dadsena, Advocate.

For State/Respondent:

Mr. Neeraj Jain, Government Advocate.

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board By T.P. Sharma, J

07/05/2015

1. Cr.A.Nos.284/2011, 355/2011, 489/2011 & 664/2011 filed against judgment dated 14-3-2011 passed by the Special Judge under the NDPS Act, Jagdalpur in Special Case No.11/2009 are being disposed of by this common judgment.
2. By filing aforesaid four criminal appeals, the appellants have challenged legality and propriety of the judgment of conviction & order of sentence dated 14-3-2011 passed by the Special Judge under the NDPS Act, Jagdalpur in Special Case No.11/2009, whereby & whereunder learned Special Judge after holding the appellants guilty for possessing illicit contraband article Ganja of 26 quintals 11 Kgs., convicted the appellants under Sections 20 (b) (ii) (C) & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), and sentenced them to undergo RI for 20 years & pay fine of Rs.2,00,000/- each, in default of payment of fine to further undergo RI for three years, on both counts.
3. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants and thereby committed an illegality.

4. As per case of the prosecution, Ranvir Nagi (PW-6) – Information Officer, Narcotics Control Bureau, Zonal Unit, Indore, received information on 4-1-2009 at 10.30 a.m., from one Sunil Gupta, from Mumbai Narcotics Control Bureau, Zonal Unit, that truck No.HP-09/A-0825 is coming with about 25 quintals of Ganja from Jagdalpur towards Raipur and will pass on 5-1-2009. He also received information that appellants Ramanand Rajput, Gendalal, Karikanka Durga Reddy and Durga Mallaiya were transporting the contraband article Ganja. He discussed the matter with Yashodhan Banage (PW-4) of Narcotics Control Bureau, Zonal Unit, Mumbai, and constituted a team. On 4-1-2009, he along with the team proceeded from Indore for Jagdalpur by Indica Car. On 5-1-2009, they reached near Kondagaon where Panch witnesses Sunil Kumar Tiwari (PW-1) and Birjoram were present whom Ranvir Nagi (PW-6) gave his introduction and informed the information which he received. Ranvir Nagi (PW-6) also served notice vide Ex.P-1 and obtained acknowledgement vide Ex.P-2. He also served notice to Birjoram vide Ex.P-30 and Birjoram consented vide Ex.P-31. They proceeded towards Jagdalpur. He saw that the truck bearing registration No.HP-09/A-0825 was standing beside the road and four persons namely Ramanand Rajput, Gendalal, Karikanka Durga Reddy and Durga Mallaiya, the appellants herein, were present near the truck, on being asked, they admitted active possession of the truck with loaded article. Ranvir Nagi (PW-6) examined the documents of truck which show that 68 bags of *kanda* and 18 bags of potato were loaded and the truck was owned by one Shyamlal which was required to be transported from Visakhapatnam to Jaipur which was further interpolated from Jaipur to Rajasthan. Ranvir Nagi (PW-6) primarily inquired the articles loaded in the truck. He noticed pungent smell of Ganja and found Ganja. The truck was not in running condition. Considering the seriousness, he brought the truck along with all the appellants near Police Station Kondagaon where Satish Jaiswal was called with weighing apparatus who weighed 87 bags of Ganja containing 25 Kgs. in each bag. Samples from each bag were taken. Articles were weighed vide Ex.P-12. Sealed impression was taken vide Ex.P-11. Samples and remaining bags were sealed. The appellants were served with notice under Section 50 of the Act vide Exs.P-3 to P-6 and they consented for search. Mobiles were found in possession of the appellants. Spot map was prepared vide Ex.P-14. Truck was seized vide Ex.P-13. Panchnama was prepared vide Ex.P-15. Statements of the appellants were recorded under Section 67 of the Act vide Exs.P-17, P-35, P-36 and P-38. They were arrested vide Ex.P-39. They informed about another accused Krishnakant Vallabh @ Bangali Krishna. Ganja was deposited in Police Station Kondagaon vide Ex.P-42. Articles found from the appellants were deposited vide Exs.P-21 to P-24. Truck was deposited in Kondagaon vide Ex.P-25.

Report was submitted vide Ex.P-44. Samples were sent for chemical examination to the FSL, Sagar vide Ex.P-45. Samples were further sent to the Central Laboratory vide Exs.P-46, P-28 & P-29 and as per report Ex.P-48A, P-48B & P-48C, samples were found Ganja. Statement under Section 67 of the Act of appellant Krishnakant Vallabh @ Bangali Krishna was taken vide Ex.P-50. Arrest was informed to relatives of the appellants vide Ex.P-51.

5. After detailed investigation and recording statements and registering FIR, finally charge sheet was filed before the Court of Special Judge under the NDPS Act, Bastar at Jagdalpur where the trial was conducted.
6. In order to prove the guilt of the accused/appellants, the prosecution has examined as many as 7 witnesses. The accused/appellants were examined under Section 313 of the CrPC in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question. Appellant Krishnakant Vallabh @ Bangali Krishna has examined Maniram (DW-1) who has deposed that Krishna Vallabh has not committed any offence except the present offence.
7. After providing opportunity of hearing to the parties, learned Special Judge convicted & sentenced the appellants as aforementioned.
8. We have heard learned counsel for the parties, perused the judgment impugned and records of the Courts below.
9. Mr. A.N. Bhakta and Mr. F.S. Khare, learned counsel for appellant Krishnakant Vallabh @ Bangali Krishna, vehemently argued that as per case of the prosecution and evidence adduced on behalf of the prosecution, appellant Krishnakant Vallabh @ Bangali Krishna was not present on the spot, he is not owner or driver of the truck, he has been implicated as accused on basis of his own statement under Section 67 of the NDPS Act vide Ex.P-50 which he has not given, he is not a literate person. Ranvir Nagi (PW-6) has deposed that he has obtained the thumb impression of appellant Krishnakant Vallabh @ Bangali Krishna, however, appellant Krishnakant Vallabh @ Bangali Krishna has not given any statement or he has not signed or put thumb impression. Except aforesaid statement, the prosecution has not collected any other material against the present appellant to connect him with the crime in question.
10. Mr. Arun Kochar and Mr. D.N. Prajapati – learned counsel for appellant Ramanand Rajput, Mr. Avinash Mishra and Mr. A.N. Pandey – learned counsel for appellant Gendalal, and Mr. S.K. Dadsena – learned counsel for appellants Karikanka Durga Reddy and Durga Mallaiya, vehemently argued that conviction of these appellants is substantially based on the evidence of Ranvir Nagi (PW-6) who is not resident of the

State of Chhattisgarh, he was working as Information Officer at Narcotics Control Bureau, Zonal Unit, Indore and he has not followed the procedure prescribed. Although four appellants were present near the truck, but the prosecution has failed to prove their involvement, mere presence of the persons near the truck by itself is not sufficient to implicate or connect them with the crime in question. Owner of the vehicle was known to the investigating agency, but for the reasons best known to the investigating agency, they have not implicated the owner as offender. In absence of active and exclusive possession of the appellants upon the truck and the contraband article Ganja, their conviction and sentences are not sustainable under the law. Learned counsel further argued that even otherwise, the trial Court has imposed maximum sentences provided under the law without considering the provisions contained in Section 32A of the Act.

11. On the other hand, learned State counsel opposed the appeals and submitted that evidence of Ranvir Nagi (PW-6) and other witnesses are sufficient for proving the guilt of the appellants. On the basis of statements recorded under Section 67 of the NDPS Act, the trial Court has convicted appellant Krishnakant Vallabh @ Bangali Krishna and other appellants were present near the truck. Evidence adduced on behalf of the prosecution is sufficient to establish the fact that all the appellants are connected and closely associated with the truck, they are not residents of Kondagaon, they were found near Kondagaon near the truck, they are residents of remote places and remote States, and they have not offered any explanation that how they were found near the truck that too which was not in working condition and loaded with huge quantity of Ganja.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.
13. As per evidence of Ranvir Nagi (PW-6) – Information Officer at Narcotics Control Bureau, Zonal Unit, Indore, he received information; he proceeded from Indore to Kondagaon; he contacted the witnesses; they proceeded towards the place of incident; they found one truck standing beside the road; four appellants namely Ramanand Rajput, Gendalal, Karikanka Durga Reddy and Durga Mallaiya, were present near the truck; they obtained the documents relating to truck; truck was searched; and 2,611 Kgs. of Ganja was found in the truck which was weighed, samples were taken, samples were sent for examination and samples were found Ganja. His evidence further discloses that he deposited the samples at Indore Office and the contraband article at Police Station Kondagaon which finds support from the evidence of Paresh Kumar Sahu (PW-7), Head Constable, Police Station Kondagaon

and malkhana register Ex.P-68. His evidence substantially finds support from the evidence of Sunil Kumar Tiwari (PW-1) – Panch witness; Sunil Kumar Gupta (PW-2) – Information Officer, Narcotics Control Bureau, Indore; V.M. Jaiprakash (PW-3) – Inspector, Central Excise, Mumbai; Yashodhan Banage (PW-4) – Narcotics Control Bureau, Zonal Unit, Mumbai; and Subhash Chandra (PW-5) – Constable, Narcotics Control Bureau, Zonal Unit, Indore. Defence has cross-examined these witnesses at length.

14. Ranvir Nagi (PW-6) and other witnesses have specifically deposed that they received information, they proceeded to the spot, they found the truck standing beside the road, aforesaid four appellants were present near the truck, they have inspected the documents of the truck and the said four appellants are closely associated with the truck and with the articles found inside the truck.
15. As per record, appellant Ramanand Rajput is resident of Village Shinda, Police Station Sadar, Tahsil & District Bilaspur (Himachal Pradesh); appellant Gendalal is resident of Bhind (M.P.); appellant Karikanka Durga Reddy is resident of District West Godavari (Andhra Pradesh); and appellant Durga Mallaiya is resident of District East Godavari (Andhra Pradesh). These appellants are residents of different places found near the truck, they have not otherwise offered any explanation that how they were present near the truck within the territorial jurisdiction of Kondagaon which further shows their close association and possession over the truck and its articles found inside the truck.
16. As per para 39 of the evidence of Ranvir Nagi (PW-6), he has recorded the statement of appellant Krishnakant Vallabh @ Bangali Krishna under Section 67 of the NDPS Act as Ex.P-50. Ex.P-50 contains one thumb impression which has been denied by appellant Krishnakant Vallabh @ Bangali Krishna. It did not contain the fact that it was recorded by Ranvir Nagi (PW-6) or it was recorded in presence of any witness. Appellant Krishnakant Vallabh @ Bangali Krishna has been involved only on the basis of alleged statement Ex.P-50 and finally, he has been convicted under Sections 20 (b) (ii) (C) & 29 of the NDPS Act and sentenced to undergo RI for 20 years and pay fine of Rs.2,00,000/- on both counts.
17. The case is under the special Act (NDPS Act) containing stringent provisions and punishment.
18. Considering the seriousness of offence and stringent punishment, heavy duty was cast upon the prosecution to prove the commission of offence and involvement of appellant Krishnakant Vallabh @ Bangali Krishna by clinching evidence, but except Ex.P-50, the prosecution has not collected any other evidence. Appellant

Krishnakant Vallabh @ Bangali Krishna was not present on the spot and he has not admitted the alleged statement Ex.P-50. Ex.P-50 does not contain the signature or any endorsement that statement of appellant Krishnakant Vallabh @ Bangali Krishna has been recorded by Ranvir Nagi (PW-6) or other authorities. This evidence is infirm and not sufficient to connect appellant Krishnakant Vallabh @ Bangali Krishna with the crime in question.

19. While convicting appellants Ramanand Rajput, Gendalal, Karikanka Durga Reddy and Durga Mallaiya under Sections 20 (b) (ii) (C) & 29 of the Act on the basis of aforesaid specific evidence, the trial Court has not committed any illegality, but while convicting and sentencing appellant Krishnakant Vallabh @ Bangali Krishna on the basis of only the evidence of Ranvir Nagi (PW-6) and alleged statement Ex.P-50, which by itself is not sufficient for proving the guilt of appellant Krishnakant Vallabh @ Bangali Krishna, the trial Court has committed an illegality.
20. As regards the question of sentence, considering the huge quantity of contraband article Ganja of 26 quintals 11 Kgs., by sentencing appellants Ramanand Rajput, Gendalal, Karikanka Durga Reddy and Durga Mallaiya to undergo RI for twenty years and pay fine of Rs.2 lakhs each, the trial Court has not committed any illegality.
21. Appellant Ramanand Rajput in Cr.A.No.284/2011 is still absconding.
22. Consequently, Cr.A.No.284/2011 filed on behalf of appellant Ramanand Rajput, Cr.A.No.489/2011 filed on behalf of appellant Gendalal and Cr.A. No.664/2011 filed on behalf of appellants Karikanka Durga Reddy & Durga Mallaiya, being devoid of merit are liable to be dismissed and are hereby dismissed.
23. Cr.A.No.355/2011 filed on behalf of appellant Krishnakant Vallabh @ Bangali Krishna deserves to be and is hereby allowed. Conviction and sentences imposed upon him under Sections 20 (b) (ii) (C) & 29 of the Act are hereby set aside and he is acquitted of the said charge. He be set at liberty at once, if not required in any other case. He be released forthwith.

JUDGE

JUDGE