

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 504 of 2012

- Santosh Naik s/o. Triveni Naik, aged about 28 years, occupation Driver, r/o. Jaidev Bihar Basti, Bhuvneshwar (Orissa).

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station – Kondagaon, District Bastar (CG).

---- Respondent

For Appellant	:	Mr. Hemant Kesharwani, Advocate.
For Respondent/State	:	Mr. Ajit Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on 01-09-2015

Per I.S. Uboweja, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 05-03-2011 passed by the Special Session Judge, constituted under Narcotic Drugs and Psychotropic Substance Act, Jagbdalpur in Special Case No.29/2009, whereby and whereunder, the trial Court, after holding the appellant guilty for illegal possession of Ganja in quantity of 449.700 kilograms in Tata Sumo Victa bearing registration No. CG-04/H/3733, convicted the appellant under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, "the Act, 1985") and sentenced him to undergo R.I. for 14 years and to pay fine of Rs1,00,000/-, in default of payment of fine to undergo additional R.I. for two years.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. The case of the prosecution, in brief, is that on 03-06-2009 at about 8.05 a.m., Vikas Chandra Rai (PW/5), Assistant Sub-Inspector received a secret information that one Tata Sumo bearing registration No. CG 4/H/3733 coming from Jagdalpur was carrying Ganja illegally. Upon this information Vikas Chandra Rai (PW/5) called the witnesses and recorded the information in Rojnamcha Sanha No.4 vide Ex.P/20-C and the same was sent to superior officer vide Ex.P/21. He rushed to spot along with staff members where they chased Tata Sumo bearing registration No. CG 4/H/3733, stopped the vehicle and caught hold of the accused who was driving the said vehicle. Thereafter, notice under Section 91 of the Cr.P.C was served on the accused/appellant, he was not in a position to offer any explanation as to how he came to be in possession of such contraband. Notice under Section 50 of the Act, 1988 was also served on appellant vide Ex.P/9 for search and he agreed for search vide Ex.P/9. Appellant and witnesses searched the Investigating Officer vide Exp.P/10. Thereafter, vehicle was searched in which Ganja was found. Recovery panchnama was prepared vide Exh.P/11 and Exh.P/12, seized article was identified to be Ganja vide Exh.P/13, weighing machine was

called vide Ex.P/14, Ganja was weighed vide Ex.P/15, samples of Ganja were taken vide Exh.P/17, Ganja was sealed and seized from the exclusive possession of accused/appellant. The vehicle used in carrying the contraband and the documents were seized from the appellant vide Ex.P/5. Accused/appellant was arrested vide Exh.P/19, Rojnamcha Sanha was recorded vide Exh.P/20 to Exh. P/24-C. First information report was lodged vide Exh.P/25. Seized articles were deposited in Malkhana vide Exh.P/4-C. Sample of the seized article was sent to Forensic Science Laboratory, Raipur for chemical examination vide Exh.P/27 and a report thereof has been received vide Exh.P/29, affirming to be Ganja.

4. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Special Judge under NDPS Act, Jagdalpur.
5. In order to bring home the guilt of the accused/appellant, the prosecution examined as many as seven witnesses. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. He has not presented any defence witness.

6. After providing opportunity of hearing to the parties, learned Special Judge, Jagdalpur has convicted and sentenced the appellant as aforementioned.
7. We have heard learned counsel for both the parties and perused the judgment impugned including the record of court below.
8. Mr. Hemant Kesharwani, learned counsel appearing for the appellant has confined his argument to the question of sentence only and he is not disputing the conviction part. According to him, a bare perusal of record shows that accused/appellant is an ordinary driver, he has no status to purchase huge quantity of Ganja and sell out the same in another place and he was being used by his owner and his owner was not implicated as an accused in this case. He further submits that the accused is not a peddler, he was 28 years old young person at the time of incident, basically he is a car driver and is not a criminal. He further submits that the appellant has no antecedent record of any type of crime, but in fact he might have been allured by somebody to become a carrier to earn some more money. He further submits that the appellant is in jail since his arrest, he is following all rules and regulations of jail and is not creating any problem to jail authorities. Therefore, he prays for reducing the sentence to the minimum prescribed by law.

9. On the other hand, learned State counsel opposing the appeal submits that looking to the huge quantity of Ganja the prayer made by the learned counsel for the appellant is liable to be rejected.
10. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
11. In the present case, the evidence of PW/5 Vikas Chandra Rai has been substantially corroborated by the evidence of panch witnesses i.e. Naresh Kumar Mandal (PW/1), Samay Lal Pandey (PW/2), Ravish Kenwat (PW/3), Parvej Khan (PW/4), Raju Tiwari (PW/6) and Kamlesh Dubey (PW/7) who proved the documents vide Exhs.P/1 to P/24-C. As per unchallenged evidence of the aforesaid witnesses, the appellant was found in illegal possession of Ganja in quantity of 449.700 kilograms in a Tata Sumo bearing registration No.CG4-H/3733 which was being driven by accused/appellant, at the relevant time.
12. A bare perusal of the evidence of the aforesaid witnesses goes to show that the appellant was transporting Ganja in quantity of 449.700 kilograms by Tata Sumo, he was in conscious and was in exclusive possession of the contraband. After appreciating the evidence available on record, the trial Court has held the appellant guilty for offence punishable under Section 20(b)(ii)(C) of the Act, 1985. On close scrutiny of the evidence, there appears

to be compliance of mandatory provision of the Act, 1985 and we do not find any illegality in convicting the appellant as aforementioned.

13. Considering all the facts and circumstances of the case, further considering the prayer made for reducing the jail sentence awarded to the appellant before us and taking into consideration the huge quantity of Ganja which was seized from the possession of the appellant, we are of the considered opinion that ends of justice would meet if the jail sentence of 14 years awarded to the appellant is reduced to the period of 10 years while maintaining the fine amount of Rs.1,00,000/-.
14. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 20(b)(ii)(C) of the Act, 1985 is maintained. The substantive jail sentence of 14 years awarded to the appellant is reduced to the period of 10 years which is minimum sentence under this Section. However, the fine amount of Rs.1,00,000/- and the default sentence imposed upon the appellant are maintained.
15. It is stated that the appellant is in jail. Let him remain inside till completion of the remaining sentence.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE