

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 913 of 2015

1. Chhotu @ Tuleshwar Chaturvedi S/o Shivkumar Chaturvedi, aged about 20 years, R/o Ward No. 13 Village - Lawan, Police Chowki - Lawan, P.S. - Kasdol, Civil & Revenue Distt. Balodabazar Bhatapara Chhattisgarh
2. Basant Dhiwer S/o Ramu Dhiwer aged about 20 years, R/o Ward No. 13 Village - Lawan, Police Chowki - Lawan, P.S. - Kasdol, Civil & Revenue Distt. Balodabazar - Bhatapara Chhattisgarh

---- Appellants

Versus

1. State of Chhattisgarh Through - Police Station - Kasdol, Distt. Balodabazar - Bhatapara Chhattisgarh

---- Respondent

For Appellants – Mr. Anil Singh Rajput, Advocate.

For Respondent – Ms. Pushpa Dwivedi, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

18/08/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 25-07-2015 passed by the Special Judge [under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'the NDPS Act')] and First Additional Sessions Judge, Balodabazar , C.G., in Special Criminal (NDPS) Case No.02/2015 whereby and whereunder learned Special Judge after holding both the appellants guilty for illicitly possessing ganja of 2 kg in the dicky of motorcycle standing in front of the house of appellant Chhotu @ Tuleshwar (A-1), at the time of incident appellant Basant Dhiwer (A-2) was also present along with one Sanju Sen (a person juvenile by the age and a separate charge sheet was filed before the Juvenile Justice Board against him), convicted the appellants for the offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced to undergo RI for 2 years along with fine of Rs. 5,000/-, in default of payment of fine, to further undergo

additional RI for 3 months to each of the appellants.

2. Conviction is impugned on the ground that without there being any iota of evidence, learned court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 17-01-2015, In-charge, Outpost Lawan, PW-12, S.P. Dhritlahare, received an information that the appellants along with one co-accused i.e. juvenile are in joint and conscious possession of contraband substance ganja keeping the same in the dicky of the motorcycle and standing thereby. The Investigating Officer reached to the spot and after performing necessary formalities, interrogated and seized the ganja from the dicky of the motorcycle found along with the appellants. The ganja weighing 2kg. was duly seized, physically identified and all the mandatory provisions of the NDPS Act were complied with. After completion of investigation, FIR was registered and charge sheet was filed against the present appellants before the court concerned. A separate charge sheet was filed for juvenile co-accused before the Juvenile Justice Board for trial of the said juvenile.

4. The learned trial Court framed the charges against both the appellants. Both the appellants denied the charges and prayed for trial.

5. In order to prove guilt of the appellants, prosecution examined 12 witnesses in all. Statement of the appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication in the crime in question.

6. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellants as aforementioned.

7. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.

8. Learned counsel appearing for the appellants submitted that, as instructed, he is not contesting the appeal on merit. He is confining his arguments only on the quantum of sentence. The appellants were at the age of 20 years at the time of incident. For last 7 months they are in jail serving the sentence. The quantity of ganja so seized is 2 kg. only that too it is alleged that all the three were in conscious and physical possession of ganja. Looking to the quantity of the ganja so seized, age of the appellants and no previous criminal history for the same offence, they be given an opportunity; and also there are no any minimum sentence prescribed for the offence, as prayed, they will not commit any similar offence in future, they be adequately sentenced for the act they committed.

9. Per contra, learned counsel appearing for the State opposed the arguments advanced on behalf of the appellants and submitted that the appellants were in conscious and physical possession of contraband substance ganja. Looking to the quantity of ganja, the trial Court has properly convicted and sentenced the appellants. Hence, the appeal may be dismissed on all counts.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution before the trial Court.

11. Learned counsel for the appellants, as directed, is not contesting the instant criminal appeal for conviction part; as instructed, he is contesting this appeal for the sentence part only. Even otherwise, after perusal of the entire evidence, I do not see any illegality or impropriety with the conviction part of the judgment impugned. Therefore, the order of conviction does not require any interference.

12. As regards quantum of sentence, both the appellants are in jail since 7 months, both of them were at the age of 20 years at the time of incident, no any previous conviction and criminal history shown in the charge sheet, looking the quantity of the ganja seized and the other facts, age of the appellants and as they are the first offender, in the considered view of this Court, sentence part of the

judgment impugned requires interference and sentencing the appellants for the period already undergone by them would meet the ends of justice, on the basis of entire facts.

13. Consequently the appeal filed by both the appellants is hereby partly allowed. Conviction of the appellants passed against both the appellants by the trial Court is hereby affirmed. Fine sentence awarded to the appellants is also hereby maintained. However, substantive jail sentence awarded to the appellants is modified and instead of RI for 2 years, they are sentenced to the period already undergone by them.

14. The concerned are directed that after realization of the fine amount, both the appellants be set at liberty forthwith if they are not required in any other case. If the fine amount is not paid, then the appellants be served with default part of the sentence as mentioned in para 25 of the judgment impugned.

15. Appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge