

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 829 of 2010

1. Sher Khan, S/o Late Shri Shattar Khan, Aged about 55 years, Caste-Muslim, Profession-Driver, R/o 36/1, Behind Malhar Paltan Middle School, Thana Malhar Ganj, Indore (M.P.)
2. Sahajad Khan, S/o Ahmed Hussain, Aged about 29 years, Caste-Muslim. Profession-Truck Cleaner, R/o. Malhar Paltan 2/2, Thana-Malhar Ganj Indore, (M.P.)

---- Appellants

Versus

- State Of Chhattisgarh

---- Respondent

For Appellants	:	Ms Nirupama Bajpai, Advocate.
For Respondent	:	Mr.Ramakant Pandey, Panel Lawyer

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

Judgment On Board

T.P.Sharma:-

17/04/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 3.9.2010 passed by the Special Judge constituted under the NDPS Act, Jagdalpur in Special Case No.9/2009, whereby & whereunder the Special Judge after holding the appellants guilty for transporting 22.97 kg. of contraband article ganja by truck bearing registration number M.P.09 H.F.6194 without any propriety convicted them under Section 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the Act of 1985) and sentenced to undergo R.I. for twenty years and fine of Rs.2,00,000/-, in default of payment of fine to further undergo R.I. for three years.
2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed an illegality.

3. As per case of prosecution, Inspector Ashok Sharma (PW-9) was posted as Station Incharge, Police Station-Bodhghat. On 2.3.2009 he received information at 8.10 a.m. that two persons were transporting contraband article ganja by truck bearing registration number M.P.09 H.F.6194, they were going towards Jagdalpur. He recorded rojnamcha vide Ex.P/22, he called two witnesses and recorded rojnamcha vide Ex.P/23. Panch witnesses came whom information was explained vide Ex.P/3. On the ground of paucity of time, search warrant was not obtained. Panchnama Ex.P/19 was prepared and information was recorded vide Ex.P/18. Information was sent to superior officers vide Ex.P/26. He proceeded for spot along with police force after recording rojnamcha vide Ex.P/27. The appellants were coming by truck, which was intercepted by this witness. Right to search was intimated to them vide Ex.P/4, the appellants consented for search by him, police force was searched vide Ex.P/5. Truck was searched and 74 bags ganja was found. Panchnama was prepared vide Ex.P/6. Contraband article was recovered vide Ex.P/7 and same was examined vide Ex.P/8. Article was made homogenous vide Ex.P/9. Weighment article was verified and panchnama was prepared vide Ex.P/15, it was weighed and total 22.97 kg. of article was found. Samples were taken. Weighment panchnama was prepared vide Exs.P/10 and P/28. Impression seal was prepared vide Ex.P/11. Article was seized vide Ex.P/12. Accused were arrested vide Ex.P/14. Spot map was prepared by investigating officer vide Ex.P/13. Written rojnamcha was recorded vide Ex.P/29. Intimation was sent to superior officer vide Exs.P/21, P/31 and P/32. Packets A-1 to Z-1, A-3 to Z-3 and A-5 to V-5 were sent to FSL vide Ex.P/33 and as per report of FSL Ex.P/34 samples were found ganja. F.I.R. was registered vide Ex.P/30.
4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'Code'). After completion of investigation, charge-sheet was filed in the Court of Special Judge constituted under NDPS Act, Jagdalpur.
5. In order to prove the guilty of the accused/appellants, the prosecution has examined as many as eleven witnesses. Accused/appellants were examined under Section 313 of the Code, in which they denied the circumstances appearing against them and claimed innocence and false implication in crime in question.
6. After providing opportunity of hearing to the parties, the trial Court has convicted and sentenced the appellants as aforementioned.
7. We have heard learned counsel for the parties, perused the judgment impugned

and record of the trial Court.

8. Learned counsel for the appellants vehemently argued that this is Special Act which provides stringent punishment, therefore, burden to prove the offence by strict manner was upon the prosecution, but the prosecution has failed to prove the ingredients of the offence against the appellants, therefore, their conviction is not sustainable under the law. Learned counsel further argued that panch witnesses have not supported the case of the prosecution. Ashok Sharma (PW-9) was interested witness and his alone evidence is not sufficient for proving the guilt of the appellants. The prosecution has failed to comply with the mandatory procedure, which is fatal to the prosecution.
9. On the other hand, learned Panel Lawyer for the respondent/State opposed the appeal and argued that evidence of the prosecution witnesses is sufficient to prove the fact that huge quantity of ganja i.e. 22.97 kg. was found in truck bearing registration number M.P.09 H.F.6194, which was driven by appellant Sher Khan and appellant Sahajad Khan was sitting inside the truck. They have failed to offer an explanation that how they were transporting the aforesaid huge quantity of ganja. This alone fact is sufficient to prove the guilt of the appellants.
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. Inspector Ashok Sharma (PW-9) has deposed in detail that he has received information from the informant, he called panch witnesses, prepared panchnama and thereafter proceeded to spot. Intimation was sent to the superior officer. Appellant Sher Khan was driving the truck and appellant Sahajad Khan was sitting inside the truck, which was intercepted, it was searched and aforesaid contraband article ganja was found inside the truck. After following the procedure, samples were taken, article was seized and samples were sent to FSL and as per FSL report it was found ganja. His evidence finds support from documentary evidence and evidence of Buddhuram Kashyap (PW-1), Atmaram Rathor (PW-2), Lokesh Kumar (PW-3), R.C.Dutta (PW-4), Gourav Tiwari (PW-5), Prakash (PW-6), Lukuram Nagraj (PW-7) and Sukal Singh Gawande (PW-8). They have also corroborated the documents prepared on the spot. Their evidence clearly reveals that appellant Sher Khan was driving the truck in which 22.97 kg. of contraband article ganja in 74 bags were found inside the truck. The appellants have failed to offer an explanation that how it came into their possession. This evidence is sufficient to prove the fact that the appellants were found in possession of 22.97 kg. of contraband article ganja in 74 bags without

any explanation, which is the offence punishable under Section 20 (b) (ii) (C) of the Act of 1985.

12. Considering the huge quantity of contraband article ganja in truck, the trial Court has awarded the aforesaid sentence.
13. On close scrutiny of the evidence, we do not find any illegality and infirmity in the judgment impugned.
14. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed.

JUDGE

JUDGE

B/-