

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 290 OF 2003

The State of Maharashtra,
Through Public Prosecutor,
High Court, Bench at Aurangabad

.. Appellant
(Orig. Complainant)

Vs.

- 1] Raosaheb Yeshwant Jadhav,
Age 55 years, Occu.: Agri.,
- 2] Rajendra Bhanudas Patare,
Age 25 years, Occu.: Agril.,
Both R/o Newasa Khurd,
Tal. Newasa, Dist. Ahmednagar

.. Respondent
(Orig. Accused)

Mr. V.P. Kadam, A.P.P. for the appellant-State
Mr. S.L. Bhapkar, Advocate for the respondents

CORAM : M.T. JOSHI, J.
DATE : 30/04/2015

ORAL JUDGMENT :

1. Heard both sides.
2. As the respondents were acquitted from the offences punishable under section 20, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, by the Special Judge vide judgment and order dated 27/11/2002 passed in Sessions Case No. 57 of 2001, the present appeal is preferred by the State.

3. The prosecution case is that on 14/10/2001, upon information, Police had raided the house of the present respondent at Newasa (Khurd). The information as per provision was sent to the Senior Officer and with his permission and the written report, Police Inspector Shinde has collected two panch witnesses and, thereafter, they went to the house of the respondent at about 15:20 hours. At that time, the door was closed. The door was knocked by giving a call to the present respondent no.1 as "Raosaheb". Respondent no.1 came out of the house, who informed that his son-in-law i.e. respondent no.2 is present in house. He was called from the house. The Police party as well as the panch witnesses has disclosed their identity and informed the respondent about their intention to search. Respondents gave consent for the same. The consent was obtained in writing. Personal search of the respondents was carried. Police staff entered the house and made enquiry with the respondents and directed them to produce stock of ganja. Both the respondents took out stock of ganja weighing 57 kilograms worth Rs.1,14,000/-. The said ganja was in three gunny bags kept in a wooden diwan. The same was

seized according to the general procedure by preparing different samples. The panchanama was prepared and complaint was filed.

4. Before the Special Judge, in all 10 witnesses were examined. The Investigating Officer Mr. Shinde has expired before the trial. The panch witnesses were examined as P.W. 1 and 4. Both of them, however, did not support the prosecution case that in their presence any recovery of ganja was made. In the circumstances, the prosecution relied on the statement of the members of the raiding party i.e. Police Officials P.W. 2, P.W.3, P.W. 6 and P.W. 7. The learned Special Judge therefore appreciated the evidence of these witnesses and found material inconsistencies between their statements, and therefore, the acquittal came to be recorded. Hence, the present appeal.

5. The learned A.P.P. submits that this is a case of substantial seizure of ganja from the house of the respondents. The same could not have been planted or a false case could not have been foisted. If panch witness had turned hostile, the learned Special Judge ought to have believed the remaining witnesses and ought

to have convicted the respondents.

6. On the other hand, Mr. S.L. Bhapkar, learned counsel for the respondents took me through the evidence, the appreciation of the evidence made by the learned Special Judge and submits that a reasonable and probable view has been taken by the learned Special Judge in this regard and, therefore, he submits, in the present appeal against acquittal, no interference is called for.

7. On the basis of this material, following points arise for my determination:-

i) Whether the prosecution has proved that on 14/10/2001 at about 14:20 hours, the present respondents were found in possession of narcotic substance i.e. ganja weighing about 57 kilograms in contravention of the provisions of section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ?

ii) Whether the prosecution has proved that the respondent no.2 has abetted the commission of the said offence ?

My findings to the aforesaid points are in the negative.

The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

8. The evidence on record and more particularly, the reasoning of the learned Special Judge would show that the learned Special Judge was aware that merely because the panch witness has turned hostile it would not be a ground for recording acquittal of the accused and even the other witnesses though Police witnesses can be relied. The learned Special Judge has therefore taken efforts to appreciate the evidence of all the three witnesses as detailed above. Upon appreciation of the evidence, however, the learned Special Judge has found that there is material variance between their depositions and, therefore, by extending benefit of reasonable doubt, the respondents were acquitted.

9. The inconsistencies between statements of the witnesses are highlighted by the learned Special Judge, including the minor as well as major inconsistencies. Even if we ignore the minor inconsistencies, the

material inconsistency is, as to whether the sample was sealed when the same was seized. Further, there is inconsistency between the statements of the witnesses, as to whether the present respondent no.1 himself produced the contraband article or upon giving information, the Police searched and, thereafter, the same was found. Last of the material inconsistency is regarding finding of an amount of Rs.700/-. While some of the witnesses deposed that an amount of Rs.700/- was seized from the person of respondent no.1, some of the witnesses have deposed that the said amount was collected from a nearby drawer. While P.W. 7 did not at all deposed about seizure of any amount as deposed by other three witnesses, i.e. P.W.2, P.W. 3 and P.W. 6 and they have given different versions regarding seizure as detailed supra.

. In the circumstances, the reasoning of the learned Special Judge is based on the material before him. The said reasoning cannot be called as perverse. A reasonable and probable view has been taken. In the circumstances, in the present appeal against acquittal, no interference is warranted. In the result, the

following order:-

10. The appeal is hereby dismissed. Bail bonds, if any of the respondent shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/