

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

CRIMINAL APPEAL No.703 of 2005

JUDGMENT:

This appeal is preferred against the judgment dt.07-09-2004 in S.C.No.10 of 2004 (NDPS) of the Special Judge to try the offences under the N.D.P.S. Act-cum-Metropolitan Sessions Judge, Visakhapatnam acquitting the accused of offences under Section 8(c) read with Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act).

2. This appeal is confined only to accused Nos.3 and 5 since A-1 was found to be mentally ill, A-2 was in jail in connection with another case and A-4 jumped bail.

3. The case of the prosecution is that the five accused persons are residents of State of Kerala. On 19-01-2004 at about 11-15 a.m., during the course of raid at Bennabhupalapatnam village of Rolugunta Mandal conducted by the Prohibition and Excise Inspector and others, the five accused persons were found sitting on one gunny bag each opposite to a place at community hall in the village. On suspicion, they were detained and

questioned. The Inspector, Prohibition and Excise informed the five accused persons about their rights to be searched in the presence of a nearest Magistrate or a Gazetted Officer, and took the said persons along with five gunny bags in their respective possessions to the Mandal Revenue Officer, Rolugunta Mandal. Ex.A-1 mediators report was drafted at the place of apprehension. On reaching the office, the Mandal Revenue Officer was given a requisition by the Inspector requesting him to conduct a search of the five gunny bags in his presence. He then questioned the accused and got opened the five gunny bags. On opening the bags, they were found to be contained ganja. Each bag with ganja was weighed and on such weighment, each bag containing ganja was found to be of weight 25 Kgs. The Inspector, Prohibition and Excise collected two samples each from the ganja in each of the five bags, in all 10 sample packets and then sealed and labeled them. The accused were arrested and the contraband was seized. The samples were sent to the Chemical Examiner for analysis, who gave a report Ex.P-10 dt.13-02-2004 that the substances analysed are ganja belonging to the family 'Cannabinaceae'. Thereafter charge sheet was filed and the case was taken on file as (N.D.P.S.) S.C.No.10 of 2004.

4. The case against A-1, A-2 and A-4 was separated and the case was proceeded against A-3 and A-5.

5. The charges under the Act as well as Section 34 IPC were framed, read over and explained to accused Nos.3 and 5. They pleaded not guilty of the said charges and claimed to be tried.

6. The prosecution examined P.Ws.1 to 3 and exhibited Exs.P-1 to P-10 and M.Os.1 to 15.

7. By judgment dt.07-09-2004, the Court below acquitted the accused.

8. Challenging the same, this appeal is filed.

9. The learned Public Prosecutor contended that the Court below erred in acquitting the accused; that the evidence of prosecution is sufficient to establish the guilt of accused beyond reasonable doubt; and therefore, the judgment under appeal be set aside and respondents be convicted of offences committed under the Act as well as Section 34 IPC.

10. Although notice was sent to accused persons, they were not served since the year 2005. Therefore, the matter was heard on merits since the Public Prosecutor expressed his inability to get the correct

and proper addresses of respondents, and stated that in spite of their best efforts, the prosecution is not able to obtain them.

11. There is no dispute that accused persons are residents of Kerala State. At the time when ganja bags were seized from the accused, P.W.3 had marked in red ink on the five gunny bags with Sl.Nos.1 to 5 in the same order of these five accused persons and served a search notice on all the five of them asking them to exercise their option to be searched either before Magistrate or a Gazetted Officer. Exs.P-3 and P-4 are the carbon copies of the served notices on accused Nos.3 and 5 separately. The said accused signed on the said notices in token of their receipt and allegedly expressed their willingness to be searched before a Gazetted Officer. The proceedings were reduced in the form of mediators report Ex.P-1. When the bags were opened in the presence of P.W.2, they were found to contain dried ganja in the form of flowers, fruits, tops, leaves etc. Samples were collected from each of the gunny bags, they were packed, sealed and labeled. The signatures of accused were taken on the identity slips of the sample packets. A-3 signed on the identity labels of sample packets. M.Os.5 and 6 are the said samples drawn from the ganja in the gunny bag found in his

possession. Likewise A-5 signed on the identity slips affixed to the sample packets M.Os.9 and 10 and the said samples were from the gunny bag found in his possession. Mediators report was again drafted and reduced into writing the above events and procedure, which is Ex.P-2.

12. None of the recitals in Exs.P-1 to P-4 show that accused are acquainted with Telugu language and that they can speak and understand Telugu. Exs.P-1 and P-2 mediator reports are silent on the aspect of acquaintance of A-3 and A-5 with Telugu language. They also do not indicate that the contents were explained to accused persons in English or Hindi or any other language known to them. During the proceedings before the Court below, A-3 stated that he knows Hindi and A-5 pleaded that he knows Malayalam and Tamil. Since the Presiding Officer of the Court below was having working knowledge of Hindi, the questioning of A-3 was done in Hindi and the charges were read and explained to A-3 in both English and Hindi. As far as A-5 is concerned, the charges were got explained to him both in Tamil and Malayalam with the help of local Court staff member who knew those languages. While examining A-3 and A-5 under Section 313 Cr.P.C, the Court below had requisitioned the services of Miss Kala Damodar, a

practicing Advocate of Visakhapatnam Bar and a native of Kerala State, who knows Malayalam, and the said Advocate had acted as an interpreter when A-3 and A-5 were examined under Section 313 Cr.P.C. Thus, there is no proof that A-3 and A-5 are acquainted with Telugu language and can speak and understand Telugu language. Since Exs.P-1 to P-4 are admittedly in Telugu language, which is not known to accused, the accused are seriously prejudiced. Therefore, they are entitled to benefit of doubt on this score.

13. In my opinion, the Court below had rightly concluded that the accused being ignorant of Telugu language, had suffered serious prejudice, since all proceedings were conducted in Telugu language and therefore entitled to benefit of doubt.

14. The scope of interference in appeal under Section 378 of the Code is laid down succinctly in

Chandrappa and others Vs. State of Karnataka^[1], as under :

“(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

15. The above principle was reiterated in **State of Rajasthan v. Mohan Lal**^[2] and recently in **Satvir Singh v. State of Delhi**^[3].

16. Since the conclusion of the Court below appears to be a reasonable conclusion, and no valid reasons have been shown by prosecution to disagree with the same, I am of the opinion that there are no merits in the appeal.

17. Therefore the Criminal Appeal is accordingly dismissed.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-02-2015

Vsv/*

[\[1\]](#) (2007) 4 SCC 415

[\[2\]](#) (2009) 12 SCC 515

[\[3\]](#) (2014) 13 SCC 143