

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 391 of 2014

1. Bindugiri @ Vinod Kumar Singh, S/o Late Mohan Singh Rajput Aged About 45 Years R/o.Raipur, P.S. Handiya, Civil & Rev. Distt. Allahabad (U.P.)
2. Roshan Singh, S/o Mahipal Singh Rajput Aged About 22 Years R/o Sultanpur, Police Station Sureli, Civil and Revenue District- Jaunpur (U. P.)

---- Appellants

Versus

1. State Of Chhattisgarh Through: SHO P.S. Farsabahar, Civil & Rev. Distt. Jashpur (C.G.)

---- Respondent

For the Appellant : Shri J.K. Saxena, Advocate.

For the State/Respondent: Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

07/12/2016

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the learned Special Judge(NDPS Act), Jashpur in Special Case No.06/2013 on 02.04.2014, whereby appellant No.1(Bindugiri) has been convicted under Section 20(b)(II)(B) of NDPS Act, 1985 and sentenced with R.I. for five years along with a fine of Rs.5000/-, appellant No.2(Roshan Singh) has been convicted under Section 20(b)(II)(B) of NDPS Act, 1985 read with Section 29 of NDPS Act, 1985 and sentenced with R.I. for a period of five years along with a fine of Rs.5000/-.

2. The facts of the case are these, that on 30.10.2013 Sub-Inspector B.S. Rajput (PW/12) received information from one informer that one Vinod Kumar Singh and one other travelling in Motorcycle U.P. 62AF-0084 from Orisa, are carrying two bags containing Narcotics substance Ganja. A notice Ex.P/5 was served on the witnesses Dutia Ram (PW/9) and Sukhsai (PW/3), whereafter a memo of information was recorded vide Ex.P/6. Immediately information was dispatched to S.D.O. Police Patthalgaon vide Ex.P/26, giving information about proceeding to the spot of raid and vide Ex.P/27 the details of the information received. Motorcycle bearing registration No.U.P. 62AF-0084 was stopped in front of police station-Patthalgaon, in which appellants were found travelling. Notice under Section 50 Ex.P/7 and Ex.P/8 were served on the appellants informing about the search and their rights with respect to search, appellants submitted written consent vide Ex.P/12 and Ex.P/13 and requested to be searched by the Police Officers present on the spot vide Ex.P/9 and Ex.P/10. The members of raiding party were searched by the appellants Bindugiri and no objectionable substance was found in their possession. Thereafter search was made vide Ex.P/11 of person of appellant No.1 Bindugiri and no objectionable substance was found from his possession. On search by person of appellant No.2 Roshan Singh, currency of Rs.5,000/-, one mobile and motorcycle in his possession and the articles found were seized vide Ex.P/18. The bags in possession of appellant Bindugiri were searched, in which 11 polythene bags were found containing narcotic substance Ganja. The recovered item was identified vide memo Ex.P/16 and a seizure of this article along with one mobile and other bags was made vide Ex.P/17. The contents of the packets containing narcotic substance were weighed and it was found to be 11 kg, a panchnama (Ex.P/4) was recorded in this respect. The contents of the packets were taken out and mixed, from this material, two packets of 200gm. Each

were separately prepared and sealed vide Ex.P/19. Spot map Ex.P/21 was prepared. The seized articles were brought to the police-station and deposited in the Malkhana. Entry in Malkhana register was made, copy of which is Ex.P/25(C). FIR (Ex.P/40) was lodged against the appellants under Section 20(b)(II)(B) of NDPS Act, 1985. Seized articles were sent for F.S.L. examination. Vide FSL report Ex.P/42, seized articles were found to be narcotics substance ganja on examination. On completion of investigation, appellants were charge-sheeted.

3. Appellant Bindugiri charged under Section 20(b)(II)(B) of NDPS Act, 1985 and appellant Roshan Singh was charged under Section 20(b)(II)(B) of NDPS Act, 1985 read with Section 29 of NDPS Act, 1985. On denial of charges, trial was conducted and impugned judgment was passed, in which appellants have been held guilty, convicted and sentenced, as mentioned above.
4. The grounds in this appeal are these that the impugned judgment is erroneous, illegal and contrary to law, facts and circumstances of the case. The statement of witnesses for prosecution had been unreliable, which could not have been made the basis of conviction against the appellants. The appellants were not afforded proper opportunity under Section 50 of the NDPS Act, 1985 which vitiates their conviction. On these grounds, it is prayed that the impugned judgment be set aside.
5. Counsel for the appellants submits that the independent witnesses have not supported the case. The conviction is based on the evidence of Investigating Officer alone which cannot be sustained. In the alternative, it is prayed that appellants are in jail since their arrest on 04.10.2013 and they have undergone period of three years and two months in custody. Hence, more than half portion of the jail sentence awarded to them, has been undergone. Looking to these facts, the

sentence part of the impugned judgment may be modified to imprisonment for period of custody already undergone by the appellant/accused persons. Reliance has been placed on **Ramnande Vs. State of Chhattisgarh 2013 (4) CGLJ 52** in which, this Court reduced the sentence of imprisonment on similar grounds.

6. Question before this Court is this, whether the evidence of prosecution had been reliable and beyond reasonable doubt to sustain the conviction against the appellants and whether the technical requirement of law under the provisions 20(b)(II)(B) of NDPS Act, 1985 have been carried out in the investigation procedures? The evidence before the trial Court is perused.

7. S.I. B.S. Rajput (PW/12) is the main witness, who has stated that on 04.08.2013 he received information from one informant, that two persons in a motorcycle bearing registration No.UP 62 AF-0084, are illegally carrying narcotic substance ganja in two bags. He entered this information in Station House Diary and after summoning the witnesses Dutiaran (PW/9) and Sukhsai (PW/3), recorded a panchnama of this information, which was again recorded in Station House Diary vide Ex.P/31(c). Along with staff he proceeded to the spot in front of police station- Pharsabahar, entries of the proceeding was made in Station House Diary. Appellants travelling on motorcycle bearing registration No.UP 62 AF-0084 were stopped and notice under Section 50 was served upon. Appellants gave their consent vide Ex.P/12 and Ex.P/13 that they have no objection to be searched by the Police Officer present. Thereafter, search was carried on by the members of raid party vide Ex.P/9 and Ex.P/10. Appellant Bindugiri was searched vide Ex.P/15 and appellant Roshan Singh was searched vide Ex.P/14. Eleven packets of ganja found in possession of appellant No.1 Bindugiri, which were seized vide Ex.P/17. Currency notes, mobile and motorcycle were found in possession of appellant No.2 were seized

vide Ex.P/18. Seized narcotic substance was mixed and two samples were prepared vide memorandum Ex.P/19. Appellants were formally arrested and brought to the police station-Pharsabahar, where F.I.R. Ex.P/40 was recorded. The samples of the seized articles were sent for F.S.L. examination. in cross-examination, remained consistent with his statement given by him and denied all the suggestions made by the defence. Minor discrepancies regarding the proceedings are of no consequence.

8. The independent witness Sukhsai (PW/3) has stated that he and another witness Dutia Ram (PW/9) were called by the Police-Officer and told that they were proceeding against the appellants regarding the recovery of narcotic substance ganja. He has admitted his signatures on the memos of Ex.P/3 to Ex.P/23 but has not supported that all the proceeding recorded in these memos were done in his presence. He was declared hostile by the prosecution and on suggestion of prosecution, he has admitted that the proceeding took place between 7:00 a.m. till 3:00 p.m. Although, this witness has not supported the investigation in each and every particular of the memos signed by him, but he was alive to this fact that some proceeding with respect to recovery of ganja was going on and for this reason, affixed his signatures on the memos, although, he is not able to narrate all the proceeding taken up before him. Another witness Dutia Ram (PW/9) has simply denied the prosecution case and he has been declared hostile, there is altogether no support of prosecution from his deposition.
9. Maneshwar Sahni(PW/5) has supported the statement of Investigating Officer S.I. B.S. Rajput(PW/12), similar statement has been given by soldier Fateshwar (PW/6) supporting the statement of I.O. and Sajeet Kumar Minj (PW/11). Patwari Suresh Kumar Upadhyay (PW/1), has prepared the spot map Ex.P/1. Head constable Swatantra Rai (PW/4)

has stated that on 04.10.2013 B.L. Rajput (PW/12) handed over the seized packets of ganja which weight 10kg. 600g. and two samples packets of 400gm of which he gave acknowledgment Ex.P/24. The entries were made of receiving this article in the register Ex.P/25 certified copy of which is Ex.P/25(C), the statement has remained unrebutted in his cross-examination. There are some discrepancies, regarding the entry of weight in the register on the seizure memo, which cannot be regarded a significant.

10. Head constable Jagannath Rai(PW/7) has stated that he was posted as Reader to S.D.O. Police-Patthalgaon and he received information Ex.P/26 and Ex.P/27 sent by Investigating Officer, which is unrebutted statement. Constable Diwan Sai Paikra(PW/8) was the person, who carried the information Ex.P/26 and Ex.P/27 to the office of S.D.O. Police Station-Patthalgaon. Gajanand Prasad Kurre(PW/10) has stated that he received seized packets from the office of Superintendent of Police-Jashpur, which he carried and deposited in the office of Director F.S.L., Raipur and obtained acknowledgment Ex.P/13, which is an unrebutted statement. The F.S.L. report Ex.P/42 has confirmed that the seized article was ganja, which is a narcotic substance.

11. After scrutinizing the evidence of prosecution on record, it is clear that the statement of S.I. B.S. Rajput (PW/12) has been partially supported by one independent witness Sukhsai (PW/2) and other witnesses of the raiding Party. This witness though a Police Officer, is himself a witness to the search and recovery of articles from the appellants. On appreciation of the evidence of all the witnesses, there is no reason to doubt the veracity of the statement of this witness just because B.L. Rajput(PW/12), is a Police Officer, his evidence cannot be considered as unreliable only for this reason. His evidence has remained unrebutted and supported by the independent witnesses as well, who had been the members of the raid Party. Hence, the finding recorded

by the trial Court does not suffer from any infirmity, due to which there is no reason to interfere with the finding of conviction against the appellants in the impugned judgment.

12. Considering the prayer for modification of sentence of imprisonment, on perusal of records as per the submission made on behalf of the appellants, it is clear that appellants were arrested on 04.10.2013, after which, they have remained continuously in custody during trial and also giving their appearance before this Court till date. Their period of custody comes out to be 3 years, 2 months and 3 days. The provision under Section 20(b)(II)(B) of NDPS Act, 1985 provides that in the matter of narcotic substance, where quantity is lesser than commercial quantity but greater than small quantity, it would be punishable with Imprisonment which may extend to 10 years and with fine which may extend to Rs.1,00,000/-, hence, there is discretion under this provision that the modification of sentence awarded by to the appellants can be given consideration. Looking to the facts and circumstances of this case and that the appellants have suffered imprisonment for more than half of the substantive sentence awarded to them it seems proper and suitable that their sentence of imprisonment can be modified to the period of custody already undergone by them.

13. In view of above discussions, this appeal is partly allowed. The conviction recorded by the trial Court against the appellants is upheld. The sentence part is set aside. The appellants are sentenced with imprisonment of period of custody already undergone by them during trial and appeal along with fine of Rs.15,000/-, in default of payment of fine, they shall be subjected to additional R.I. for 3 months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge