

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.813 of 2001

1. Ramlal Katanga, son of Ghasiyaram, aged 32 years, resident of Aamgaon,
2. Baliram, son of Chaituram, aged 28 years, resident of Kapsi, P.S. Narayanpur, District Bastar, Chhattisgarh
3. Prafulla Rangati, son of Ajayprasad, aged 27 years, resident of Banglapara, Narayanpur, District Bastar, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through P.S. Antagarh, District Kanker, Chhattisgarh

--- Respondent

For Appellants	:	Shri Suryakant Mishra, Advocate
For State/Respondent	:	Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

4.12.2017

1. This appeal has been preferred against the judgment dated 3.8.2001 passed in Special Case No.58 of 2000 by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act of 1985'), Bastar at Jagdalpur convicting and sentencing each of the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(i) of the Act of 1985	Rigorous Imprisonment for 3 years and fine of Rs.6,000/- with default stipulation

2. Case of the prosecution, in brief, is that on 2.11.2000, Assistant Sub-Inspector Shyamlal Thakur (PW1) stopped and checked Taxi No.MP 23 G 2211 in Bus Stand Antagarh. He found that all the present three Appellants were sitting in the taxi. 4 bags were also kept in the taxi. He called panch witnesses Sunil (PW2) and Laxman (PW3). He gave a notice (Ex.P1) to the Appellants under Section 50 of the Act of 1985 for their search. Vide Ex.P1 itself, the

Appellants consented to be searched by the Assistant Sub-Inspector himself. On making search of the bags kept in the taxi, total 30 Kgs. Ganja was found therein. Search panchnama (Ex.P2) was prepared. Two sample packets each of 50 Grams were prepared from the recovered Ganja and sealed. Identification of the recovered article was done vide Ex.P3. The recovered Ganja was weighed and its panchnama was prepared vide Ex.P6. Assistant Sub-Inspector Shyamlal Thakur forwarded the intimation of seizure of Ganja to the superior officer vide Ex.P14. On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Section 20(b) of the Act of 1985. Charge was framed against them under Section 20(b) of the Act of 1985.

3. In support of its case, the prosecution examined as many as 5 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication.
4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Vide order of this Court dated 4.12.2009, the appeal, so far as it relates to Appellants No.1 and 2, has been disposed of as not pressed. Now, the instant appeal relates to Appellant No.3 only.
6. Learned Counsel appearing for Appellant No.3 argued that the Investigating Officer was not examined by the prosecution. There is no proof that sample packets were deposited in Malkhana in

sealed condition. There is no proof that the sample packets sent to the FSL for chemical examination were the same packets which were prepared at the time of recovery and seizure. Mandatory provisions of the Act of 1985 have not been complied with in this case.

7. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the record minutely.
9. Assistant Sub-Inspector Shyamlal Thakur (PW1) has stated that on 2.11.2000, under suspicion, he stopped Taxi No.MP 23 G 2211. He found that 3 persons were sitting in the taxi. He also found that 4 bags were kept in the taxi. On being asked about the bags, they told that the same was cement. On being opened the bags, the material kept therein badly smelled like grass. On again being asked, they told him that the material kept in the bags was Ganja. Panch witnesses Sunil (PW2) and Laxman (PW3) were called. The Appellants were given notice (Ex.P1) under Section 50 of the Act of 1985 for their search. Vide Ex.P1 itself, they consented to be searched by him. Search panchnama (Ex.P2) was prepared. On being weighed, total 30 Kgs. Ganja was found in the bags kept in the taxi. Two sample packets each of 50 Grams were prepared and sealed. Rest of the Ganja was seized separately. Seizures of the articles were made vide Ex.P8 and P10. He returned to the police station and handed over the Appellants along with the seized property to the Station House Officer S.K. Tiwari. Further investigation was done by Station House Officer S.K. Tiwari.

- 10.** Panch witnesses Sunil (PW2) and Laxman (PW3) have not supported the case of the prosecution and declared hostile. Gangadhar (PW4), who weighed the recovered Ganja, has not supported the case of the prosecution and declared hostile. Constable Harishankar (PW5) has stated that on 4.11.2000 he deposited the sample packets in the FSL. In his cross-examination, he has admitted that the sample packets were sealed, but the same were not sealed before him. He has not deposed about the kind of seal affixed on the sample packets.
- 11.** As per the statement of Shyamlal Thakur (PW1), he handed over the Appellants and the seized articles to Station House Officer S.K. Tiwari, but S.K. Tiwari has not been examined by the prosecution. There is no evidence on record to show that the seized articles were deposited in the Malkhana. Even if it is accepted for the sake of argument that the said articles were deposited in the Malkhana, there is no evidence on record to state the condition of those articles at the time of their deposit in the Malkhana. FIR has not been proved. Mandatory provisions of the Act of 1985 appear to have not been complied with in this case. FSL Report is not proved by the prosecution.
- 12.** In the premises of aforesaid, I find that the offence alleged against present Appellant No.3 is not proved beyond doubt.
- 13.** Consequently, the appeal, which relates to Appellant No.3 only, is allowed. Appellant No.3 is acquitted of the charge framed against him.
- 14.** It is reported that Appellant No.3 is on bail. His bail bonds shall continue for a further period of six months from today in terms of

Section 437A of the Code of Criminal Procedure.

- 15.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge