

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 08/02/2017****Judgment Delivered on : 14/02/2017****Criminal Appeal No. 386 of 2009**

Sunil Kumar Bhoomihar, S/o Kamlesh Bhoomihar, Aged about 40 years,
R/o Village Rahimpur Sonevarsha, P.S. Khagadia, District Khagadia
(Bihar)

Present resident of Beergaon, Bear Water Tank, Tenant of Chandmohan
Bhoomihar, House Contractor, P.S. Urla, District Raipur, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station, Devbhog, District Raipur
Chhattisgarh.

---- Respondent

For Appellant	:	Shri P.P. Sahu, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**C.A.V. Judgment**

1. This appeal by the accused is directed against the judgment dated 06.02.2009, delivered by the Special Judge, NDPS, Raipur in Special Criminal Case No. 3 of 2008 whereby he convicted the accused of having committed an offence punishable under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- and in default of payment of fine to further undergo rigorous imprisonment for two years.

2. The undisputed facts are that the Officer-In-Charge of Devbhogh Police Station received a secret information on 27.01.2008 at about 9:30 hours that some persons travelling in a bus belonging to New Bus Services who appeared to be outsiders, have kept *Jholas* and bags inside the bus. On this information being received, the same was given to a Police Squad which went on a motor-cycle to stop the bus. The police officials followed the said the bus and near Kadlimuda turn, they checked the bus and one suspected character was found travelling in the bus. The driver of the bus was asked to turn back and the bus was brought to Devbhog police station. At that stage, in the presence of the witnesses, the bus was checked and on asking the suspicious person, he told that his name was Sunil Kumar Bhoomihar, son of Kamlesh Bhoomihar resident of Rahimpur, Police Station Khagadia, District Khagadia Bihar. Near the seat on which he was sitting, two black bags were found and two *Jholas* were also kept. On being asked, this person stated that he was carrying Ganja in all these bags. Thereafter, the bags were seized and on checking some green coloured substance was found inside the bags, which was suspected to be *Ganja*. It was checked and *prima facie* appeared to be *Ganja*. The same was weighed in the shop of Bhimsen Agrawal and the total quantity of Ganja was about 29 Kg 600 grams. From each bag, sample of 25-25 grams was taken. The samples were sealed separately and the bags were sealed separately. Thereafter, information was given to the Sub Divisional Officer (Police) Gariyaband, and then the bags and the accused were taken to Police Station, Devbhog where the sealed items were kept safely. Thereafter, all these samples were sent to Forensic Science Laboratory, which opined that the samples were of *Ganja* and accordingly, the accused was charged with having committed the aforesaid offence.

3. The main ground raised by Shri P.P.Sahu, learned counsel for the Appellant is that the prosecution has miserably failed to prove its case. In this behalf, he has made reference to the statement of Hari Nirmalkar (PW-1). He states that there were 2 *Jholas* and 2 bags. The bus was stopped at Kadlimuda which is about 6 KMs away from Devbhog and then the bus was brought back to the police station. This witness was Conductor of the bus and he is a very important witness. He does not say where the bags were kept. He does not say where the accused was sitting. Except saying that the bags were recovered, he has not said a word more. The statement of this witness does not show that the bags belonged to the accused or that the accused had acknowledged that those bags belonged to him. In cross-examination, this witness admits that there were large number of passengers travelling in the bus and he does not know to whom the bags belonged.
4. Khageshwar Sinha (PW-2) is the booking agent and according to him, the accused booked the ticket from him. He states that *Ganja* was recovered from the accused and the same was weighed in his presence by one Bhimsen Agrawal and the police. The samples were taken out in his presence and sealed. In cross-examination, he admits that as a booking agent, he does not know which luggage belongs to which passenger. He also admits that he could not say to whom the *Ganja* belongs. He also admits that he identified the *Ganja* as belonging to the accused because this was what the police told him. He has no personal knowledge with regard to the ownership or possession of the *Ganja*.
5. Mansingh Sahu (PW-3) is also a witness to the recovery. He states that the police recovered *Ganja* from one *Jhola* near the accused. This witness is the driver of the vehicle and he does not know to whom the bags belong.

6. Purushottam Patr (PW-9) is the star witness of the prosecution. He is a press-reporter. He has identified his signatures on the recovery/seizure memos. According to him, one Sunil Kumar Bhoomihar had been caught with *Ganja* in the bus. The police had information about this and then the police stopped the bus and got it back to the Devbhog Police Station at about 6-6:30 am. He stated that on the same day, the premises of a businessman had caught fire and many persons had gathered there. When he saw the police bringing the bus back, he being a reporter, went to the police station which was at a distance of around 150-200 meters. In the police station, the police informed the Driver and the Conductor of the bus that some passenger in the bus was carrying *Ganja* as per the information received and then the person was asked to give his consent. Thereafter, two policemen entered bus and asked Sunil Kumar Bhoomihar whether the bags belonged to him and he stated that the bags were his. However, this witness did not himself enter the bus. Thereafter, samples were taken. Statement of this witness is not believable because he states that the bus was brought back at about 6-6:30 am, whereas the version of the police is that the bus left Devbhogh at 7:00 am and it had gone 6-7 KMs further and was brought back to the Devbhogh police station. The occurrence could not have been before 7:30 am. This witness in cross-examination stated that the bus leaves at 5:30–6:00 am, which is totally against the record. Furthermore, this witness was not travelling in the bus. Admittedly, there were large number of passengers travelling in the bus. They would have been most independent and normal witnesses. The driver and conductor of the bus have not supported the prosecution case with regard to connection of the accused with the bags in which *Ganja* was kept. It is apparent that this witness, who is a press reporter reached the scene after the bus had come back to the police station. This witness does not even say that he entered the bus. He does not mention

where the *Ganja* was weighed. According to this witness, the substance was burnt and then found to be *Ganja* which is totally contradicted by the statements of the other witnesses.

7. Charan Singh Sori (PW-10) is the Police Constable. According to this witness, the accused was sitting on a two-seater seat with one other person and the bags were kept in the cabin close to them.
8. S.N. Shukla (PW-11) is the Investigating Officer. According to him, after stopping the bus he got on to the bus and the accused was sitting towards the end of the bus. The accused was questioned and he stated that his name is Sunil Kumar Bhoomihar and admitted that the bags belonged to him. He admitted in cross-examination that number of other passengers were sitting in the bus. This witness states that he had straightaway caught hold the accused since he admitted that the bags belonged to him.
9. Parasram Verma (PW-5) is the Moharrir (Head Constable). According to this witness, the incharge of the Police Station, Devbhog deposited four bags containing *Ganja* weighing 29 KG 500 grams and four packets of 25 grams each *i.e.* eight packets in all with him. According to him, on 05.02.2008, he sent the samples with Constable No. 1614 to the Forensic Science Laboratory for verification. Thereafter, he stated that he had given the samples to the Constable a couple of days earlier. He then admitted that in the receipt of the Forensic Science Laboratory, it is mentioned that the packets were received in the Forensic Science Laboratory on 04.02.2008. He states that even on seeing the Maalkhana Register, he could not say when these samples were sent to Forensic Science Laboratory.
10. The whole issue is whether the prosecution has been able to prove that the bags belonged to the accused. The bags were recovered from a bus. There is no identifying mark on the bags. The police had failed to show

that the bags contained any material, such as clothes etc. which could be linked to the accused. There is contradiction as to where the accused was sitting. One witness said that he was sitting on the rear side of the bus whereas other witness states that he was sitting in front near the cabin but the bags were in the cabin and not with the accused. The statement of the accused made to the police that the bags belonged to him would virtually amount to a confessional statement and would not be admissible in evidence. Some other evidence has to be led. The Conductor has not at all supported the prosecution version. The Driver of the bus was driving the bus and states that he knows nothing. None of the other passengers were examined. The statement of the press-reporter cannot be believed because it is apparent that he came to the spot at the time when the articles had already been seized. The statement of the police officials have contradictions with regard to sitting of the accused. Therefore, in my view, the prosecution has miserably failed to prove that the bags in question belonged to the accused.

11. In view of the above discussion, the appeal is allowed. The judgment dated 06.02.2009 delivered by Special Judge (NDPS) Raipur, in Special Criminal Case No. 3 of 2008 is set aside. The accused/Appellant is acquitted of the charge framed against him. He be set at liberty subject to the provisions contained in Section 437-A of the CrPC.
12. The Court records appreciation of Shri P.P.Sahu, Advocate for rendering his valuable assistance.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE