

HIGH COURT OF CHHATTISGARH, BILASPUR

S.B. : Hon'ble Shri Justice Chandra Bhushan Bajpai

Criminal Appeal No. 531 of 2013

Appellant

Prabhudayal S/o Tunde Yadav Aged
About 40 Years R/o Basakala, P.S.
Pathariya , Distt. Damoh (M.P) Civil &
Rev. Distt. Damoh (M.P)

Versus

Respondent

State of Chhattisgarh (wrongly
mentioned as Union of India in the
impugned judgment) through police
Station GRP Bilaspur, District Bilaspur
(CG)

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973

Appearance:

Shri Vimlesh Bajpai, Advocate for the appellant.
Shri O.P. Sahu, Government Advocate for the State.

JUDGMENT

(16/3/2017)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22.4.2013 passed by Special Judge, Bilaspur (CG) competent to try the case under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act) in Special Criminal Case No.20/2012 whereby and whereunder the Special Judge after holding the appellant guilty for illicit possession of 6 kg Ganja, convicted the appellant under Section 20 (b)(ii)(B) of the NDPS Act and sentenced him to undergo rigorous imprisonment for 5 years and to pay fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for 3 months.
2. Conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 22.9.2012, S.H.O. G.R.P. Shri S.L. Navratan, PW8 received information from the informant that a person keeping an Airbag is in illicit possession of Ganja and sitting near RM office at platform No. 7 & 8. The said Investigating Officer, PW8 recorded the information as Ex. P5 and thereafter reached to the spot along with witnesses and police party. He met the accused/appellant and also prepared notice to the witness as required, Ex.P1 and P11 and informant Panchanama Ex.P2, sent the information to the superior officials immediately and make aware of the identity of the appellant, gave him notice under Section 50 of the NDPS Act that he may be searched before the Gazetted Officer or the Executive Magistrate or if he agrees he may be searched by the Investigating Officer himself. The accused/appellant consented to be searched by PW8, Investigating Officer as per Ex. P20. Thereafter, the accused made search of the Investigating Officer and the staff, noticed no objectionable substance with 10 and other staff. Thereafter, Panchanama Ex. P15 was prepared and then the bag in conscious possession of accused/appellant was opened, in which, 3 packets of objectionable substance were found. On physical examination, the said substance was confirmed as Ganja. The physical verification memorandum Ex.P6 was prepared . The said Ganja was weighed. It was 6 kg. Two samples of 50-50 gm were prepared and thereafter they were sealed in accordance with law. The remaining Ganja and a sample were kept in the safe custody of Malkhana. First Information Report Ex.P23 was recorded. The accused was arrested as per Ex.P9. The sample packet was sent for chemical analysis to Forensic Science Laboratory, Raipur. The FSL, Raipur vide its report Ex.P25 confirmed the presence of Ganja. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

4. After completion of the investigation charge sheet was filed before the Special Judge under the NDPS Act. The trial Judge framed charges against the accused/appellant under Section 20 (b)(ii)(B) of the NDPS Act.

5. In order to prove the guilt of the appellant, the prosecution examined as many as 8 witnesses. The accused/appellant was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.

6. The trial Court after providing opportunity of hearing to the parties, convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial court.

8. Learned counsel for the appellant submits that he is not challenging and assailing the order of conviction on merits whereby the appellant has been held guilty under Section 20(b)(ii)B of the NDPS Act, but he is confining the arguments on the quantum of sentence only. The accused/appellant was arrested on 22.9.2012 and till date he is in custody, thus, he has served the sentence for 4 years, 5 months and 23 days. With this, he has served almost the complete sentence awarded to him. He is the first offender and aged about 40 years. Earlier to his involvement in the present matter, he was earning his bread working as a labourer. During investigation, Police had not collected any material regarding his earlier antecedents. He will not commit any offence in future and as no minimum sentence is prescribed for the act, he may be given an opportunity by sentencing him for the period already undergone by him.

9. Per contra, learned counsel for the State opposed the arguments advanced by the learned counsel for the appellant and supported the quantum

of sentence awarded and submitted that looking to the quantity of Ganja so seized and also as the appellant is the resident of District Damoh (Madhya Pradesh) and he was caught at Bilaspur Railway Station goes to show that he was carrying the said NDPS substance for illegal sale or consumption. With this, the sentence awarded by the trial Court is appropriate and the appeal may be dismissed on all the counts.

10. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence adduced on behalf of the prosecution.

11. The appellant is not contesting his appeal on the point of conviction. Even after perusal of the entire evidence adduced, I do not see any reason to take a different view regarding the conviction of the appellant for the act. Consequently, the conviction awarded by the Court below is hereby affirmed.

12. So far as the substantive jail sentence is concerned, he was sentenced for R.I. for 5 years and he already remained in jail for 4 years, 5 months and 23 days till date. The accused/appellant is the first offender. He was earning his bread by a job of labourer. There is no minimum sentence prescribed for the offence and after consideration of the entire facts, it appears that the period already undergone may serve the ends of justice.

13. Consequently, the appeal filed by the appellant is hereby allowed in part. Conviction of the appellant under Section 20(b)(ii)B of the NDPS Act is hereby affirmed. The fine sentence awarded to the appellant is also affirmed. Instead, R.I. for 5 years, the appellant is sentenced for the period already undergone by him. The accused/appellant is in jail. He shall be set free immediately if not required in any other case after deposition of the fine sentence of Rs.5,000/-. If the appellant fails to deposit the fine sentence then the authorities are directed

to run the sentence in default of payment of fine as per para 26 of the impugned judgment.

14. Copy of this judgment be sent to the Court below for compliance.

15. The appeal is allowed in part.

Sd/

(Chandra Bhushan Bajpai)

JUDGE

