

HIGH COURT OF CHHATTISGARH, BILASPUR

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

Criminal Appeal No.1192 of 2013

Appellant

Nardho Padhi s/o Bramhaved
Padhi, aged about 49 years, R/o
village Sindurpur, PS Manmunda,
Civil & Revenue District Bouddh
(Orrisa)

Versus

Respondent

The State of Chhattisgarh Through
Officer in charge of the GRP
Raigarh, District Raigarh (CG)

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

Appearance:

Shri Abhishek Saraf, Advocate for the appellant.
Smt. Shobha Kashyap, Dy. Government Advocate for the State.

JUDGMENT

(21-2-2017)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 5/8/2013 passed by Special Judge, competent to try the case under Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act)/ First Additional Sessions Judge, Raigarh (CG) in Special Case No.8/2012 whereby and whereunder the trial Judge after holding the appellant guilty for illicit possession of 19 kg Ganja, convicted the appellant under Section 20(b)(ii) (B) of the NDPS Act and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.50,000/-, in default of payment of fine to further undergo rigorous

imprisonment for 5 years with a direction that the period of detention from 18.2.2012 till the pronouncement of judgment be set off with the substantive jail sentence awarded under the relevant provisions of Section 428 Cr.P.C.

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 15/2/2012 at about 3.30 pm, PW8, Inspector A.K. Uike received information from the informant that one suspect is keeping illicit substance and sitting on platform No.2/3 to take train for Bilaspur. The Investigating Officer, PW8 prepared Ex.P/2 the informant Panchanama after due notice to the Panch witnesses, Ex. P/1 and also prepared Panchanama Ex. P/3 to take search without search warrant as required and thereafter along with the Police party and witnesses reached to the spot where he noticed the accused/appellant in a suspicious condition. He gave him notice Ex. P/4 that a search is to be made, he may be searched before any Gazetted Officer/executive magistrate or search may be conducted by the Investigating officer himself. After notice Ex. P/4, the accused/appellant agreed to be searched by the Investigating Officer and thereafter, he made search Panchanama Ex. P/6 in relation to search of Investigating Officer and staff and thereafter, he made a search of 2 airbags carrying by the appellant with him. During search he noticed from the 2 airbags kept in

the possession of the accused/appellant some objectionable substance. On physical verification, the said substance was found as Ganja and thereafter, after taking the sample as required weight of the said substance kept in the bags was taken which was 19 kg. Thereafter, he prepared seizure memo Ex. P/8 and Panchanama for the physical verification and other proceedings. Also recorded the statement of witnesses under Section 161 Cr.P.C. along with Ganja so seized and the sample was sealed. He kept the Ganja in the Malkhana vide receipt No.P/14 and lodged FIR against the accused vide Ex. P/19, arrested the accused vide Ex. P/9 and informed the Special Judge, Raigarh for the seizure and FIR and further proceedings. Also intimated the superior officials for the seizure and other proceedings, thereafter the sample was sent to the FSL, Raipur. The FSL, Raipur after chemical analysis confirmed the presence of Ganja in the said sample.

4. After completion of the investigation charge sheet was filed before the Special Judge under the NDPS Act. The learned trial Judge framed charges against the accused/appellant for the offence 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 Cr.P.C. 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 as directed he is not assailing the conviction part of the judgment, but he is assailing the Cr. Appeal on the quantum of sentence only as the accused/appellant is in custody since 15.2.2012 till date, with this he is in custody for 5 years and 7 days till date. He is the first offender with no criminal antecedents . He will not commit any offence in future. He is a resident of Orrisa aged about 48 years at the time of incident and presently he is aged about 53 years. He may be given an opportunity to remain in society without committing any crime. He is ready to pay the fine amount awarded to him. There is no minimum sentence prescribed for the offence therefore he may be considered sympathetically.

9. On the other hand, learned counsel for the State opposes the appeal and arguments advanced by the learned counsel for the appellant and submits that the appellant who is a resident of many hundred km far from Raigarh noticed along with 19 kg of Ganja goes to show the purpose for carrying such huge quantity of Ganja for sale/illegal consumption. With this, the trial Court had rightly sentenced the accused/appellant for the maximum substantive jail sentence as the quantity was less than the quantity required for commercial quantity i.e.

20 kg. With this, the trial Court has rightly convicted and sentenced the appellant, hence, the appeal may be dismissed on both 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 conviction part. After perusal of the entire evidence adduced by the prosecution it appears that the trial Court had not committed any illegality or impropriety in convicting the accused/appellant for the offence. With this, the conviction part requires no interference. Also from perusal of the fine amount awarded it goes to show that as per provisions, the Court may award fine up to Rs. 1 lac. In the present matter, the trial Court sentenced the fine amount of Rs.50,000/- only. Looking to the quantity of Ganja so seized in the opinion of this Court, the trial Court had not committed any illegality or impropriety in awarding the fine sentence and the fine sentence of Rs.50,000/- is proper and not required any interference.

12. So far as the quantum of jail sentence is concerned, there is no minimum sentence prescribed for the offence though the appellant was mature enough to value the wrongs and rights and he was found in illicit possession of 19 kg Ganja but as the investigating officer was unable to trace any earlier criminal antecedents goes to show that the accused/appellant may be first offender and he is in jail since 5 years

and 7 days till date and ready to deposit the entire fine amount. Upon due consideration, the period already undergone may serve the purpose.

13. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 20(b)(ii) (B) of the NDPS Act is hereby affirmed for the offence committed by the appellant. So far as the substantive jail sentence is concerned, instead R.I. for 10 years, the accused/ appellant is sentenced for the period already undergone by him. The accused/appellant is in jail. He be released forthwith, if not required in any other case after deposition of the fine amount so awarded. If the accused/appellant fails to deposit the fine amount awarded to him then the authorities concerned are directed to serve the default sentence as per para 31 of the judgment and release the accused only after serving the default sentence as required.

14. The appellant may file a copy of this judgment before the concerned authorities for information and compliance.

15. Registrar (Judl) is also directed to send the copy of this judgment to the Court below for compliance.

16. The appeal is allowed in part.

Sd/

(Chandra Bhushan Bajpai)
JUDGE

