

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 681 of 2014

Sonadhar baghel, S/o Late mangtu Baghel, Aged about 62 years,
R/o Village Panara Para, Thana Kotwali, Jagdalpur, Civil &
Revenue District Bastar (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Bodhghat, Distt.
Bastar (C.G.)

---- Respondent

For Appellants :	Shri Anurag Verma, Advocate
For Respondent/State :	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

24/01/2017

1. This appeal has been preferred against the judgment dated 21/04/2014, passed in Special Case No. 2/2012 by Special Judge (N.D.P.S. Act) Jagdalpur (C.G.), by which appellant has been convicted under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and sentenced with RI of five years along with fine of Rs. 10,000/- with default stipulation.

2. The case of the prosecution in brief is this, that Sub Inspector Uttam Sahu (PW-9) was posted in Police Station Bodhghat on the date of incident on 15/02/2012 at 20.10 p.m. he received one telephonic information that narcotics substance ganja was being transported in a bus bearing number C.G. 17 GA/0190 of Gupta Travels arriving at

Jagdalpur. Recording this information in station house diary, he immediately summoned witnesses and in their presence recorded the information Panchnama Ex.P/2. One information vide Ex.P/3 was sent to the office of City Superintendent of Police, as he had no time to obtain search warrant. He recorded memo Ex.P/4 in this respect. He proceeded on the spot along with witnesses and members of raiding party. A bus of Gupta Travels bearing number C.G. 17 GA 0190 was stopped. On enquiry he came to know that appellant was traveling from Malkangiri carrying the contraband ganja in his possession.

3. Appellant was served a notice under Section 50 of the NDPS Act informing him about his right to be searched in presence of Magistrate or a gazetted officer. Appellant gave consent to be searched by the officer present vide Ex.P/10. Uttam Sahu (PW-9) and others afforded an opportunity to appellant to search them vide Ex.P/11,12 and 13 to search the members of raiding party in which no objectionable substance was found in possession of any of the members of this party. Thereafter appellant was searched and narcotics substance ganja was found in his possession vide search memo Ex.P/14 contained in three bags. The contents of the bags were identified vide memo Ex.P/16 as narcotics substance ganja. The ganja contained in all bags was taken out and mixed to make a Homogeneous Mixture, out of which 300 grams were taken out as sample vide memorandum Ex.P/17.

4. Weight and balance were procured for weighing procedure which were verified vide Ex.P/18. The article ganja recovered from the appellant was weighed, which found to be 15 Kg. 300 grams. This

procedure was recorded in Ex.P/19. The bags containing ganja and the packets of ganja for sample were seized vide Ex.P/20. One un-numbered FIR was registered against appellant and two others vide Ex.P/32. Spot map Ex.P/8 was prepared. Statement of witnesses were recorded. Formal arrest of appellant and others was made, later on, on arriving in Police Station, Bodhghat, the seized articles three bags of ganja and samples were deposited in Malkhana. A numbered FIR Ex.P/26 was separately recorded. A memo of complete proceeding was sent to City Superintendent of Police, Jagdalpur vide Ex.P/5. The sample marked as A1, B1 and C1 was sent for FLS examination vide report Ex.P/41. The contents of sample packets were confirmed as ganja in FSL report. After completion of investigation, appellant and two others were charge-sheeted.

5. Appellant and two others were charged under Section 20(b)(ii)(B) of NDPS Act. In pleading appellant denied the charges against him and demanded for trial. Prosecution has examined 10 witnesses. No witness was examined in defence on examination under Section 313 of Cr.P.C. By the impugned judgment the appellant was convicted and sentenced as mentioned above, whereas the remaining accused persons were acquitted.

6. The grounds in this appeal are these, that the judgment of conviction against the appellant is against the facts, law and circumstances of the case. Sections 42, 52, 55 and 57 of the Act have not been complied with. Independent witnesses have not supported the case of prosecution. It is clear from the evidence of prosecution that

when the contraband was seized it was not in possession of the appellant. The trial Court failed to appreciate that the bags containing ganja were recovered from under the seats of the bus. Hence prosecution has failed to prove conscious possession of these articles at the time of search and seizure. Prayer to set-aside the conviction has been made.

7. It is submitted by counsel for the appellant that it was the duty of prosecution to prove its case beyond reasonable doubt, that the bags containing ganja were in exclusive possession of the appellant. There is also evidence that bus was stopped and appellant was called out, later on the conductor of the bus brought the bags from the bus, which shows that the bags were planted in possession of appellant. The witnesses of prosecution have themselves not supported each and every proceeding, hence for these reasons the appellant had been entitled for benefit of doubt.

8. Counsel for the State has opposed the grounds in appeal and the argument submitted by counsel for appellant. It is submitted, that prosecution has proved its case beyond reasonable doubt, hence there is no scope of interference with the impugned judgment.

9. Considering the material on record and the arguments submitted from both the sides the question in this appeal is, whether the conviction against the appellant is supported by evidence of prosecution beyond all reasonable doubt?

10. Sub Inspector Uttam Sahu (PW-9) stated that after receiving the

information he along with witnesses and members of raiding party proceeded to the spot. He stopped the bus of Gupta Travels bearing number C.G. 17 GA 0190. After finding the appellant-accused and others, a notice under Ex.P/9 was served on them under Section 50 of the Act. After which appellant gave consent vide Ex.P/10 for being searched by the officers present. A members of the raiding party and witnesses were searched vide Ex.P/11, 12 and 13 by the appellant which was without result. The appellant was searched and from his possession narcotics substance ganja was recovered vide Ex.P/14 and recovery panchnama Ex.P/15 was separately recorded, according to which ganja was recovered in one bag of black colour, one ragzin bag and one plastic bag, the contents of bags were taken out and identified as ganja by burning and smelling and other procedure vide Ex.P/16. The ganja contained in all the bags were taken out and mixed to make a Homogeneous Mixture out of which 300 grams were taken out as sample vide memorandum Ex.P/17. Weight and balance were procured for weighing procedure which was verified vide Ex.P/18. The article ganja recovered from the appellant was weighed, which were found to be 15 Kg. 300 grams. This procedure was recorded in Ex.P/19. The bags containing ganja and the packets of ganja for sample were seized vide Ex.P/20. One un-numbered FIR was registered against appellant and two others vide Ex.P/32. Spot map Ex.P/8 was prepared. Statement of witnesses were recorded. Formal arrest of appellant and others was made, later on, on arriving in Police Station, Bodhghat, the seized articles three bags of ganja and samples were deposited in Malkhana. A numbered FIR Ex.P/26 was separately recorded. A memo

of complete proceeding was sent to City Superintendent of Police, Jagdalpur vide Ex.P/5. The sample marked as A1, B1 and C1 was sent for FLS examination vide report Ex.P/41.

11. In cross-examination, Sub-Inspector, Uttam Sahu (PW-9) admitted, that he did not enquire about all the passengers traveling in bus and also does not know that on which seat appellant was sitting. He also admitted that he himself did not go inside the bus to do the search and he does not know on which seat appellant was travelling, but he has stated that conductor took out the bag and told that it belongs to appellant. Other suggestion given were denied.

12. Manish Tiwari (PW-4) who has supported the case of prosecution by stating, that it was appellant who was apprehended and searched and 15 kg 300 gr. ganja was recovered. He did not fully support the prosecution because of which permission of Court was sought to refresh the memory of witness by showing him the documents. Later on he has stated in support of prosecution. In cross-examination he has stated that appellant tried to flee from the spot but he was apprehended by the Constables. He also admitted that appellant was not carrying anything when he was running. He does not know that on which seat the appellant was sitting. In cross-examination itself he has stated that one bag was kept below the front seat which was taken out by the policeman and the proceeding was done. Other statement in examination in chief is un-rebutted.

13. Another independent witness Raghubir Dongre (PW-7) has not supported the case of prosecution and was declared hostile. Constable Heeralal Mandavi (PW-3) has stated about the weighing procedure. Kishore Chandra Joshi (PW-1) was a member of raiding party who has stated about the recovery of ganja from appellant, the weighing and sampling procedure.

14. As per the submissions made by the learned counsel for the appellant the main contention in appeal is only this, that the ganja found in three bags was not in conscious possession of the appellant. Prosecution witnesses have failed to establish that the contraband recovered was exclusively in possession of the appellant. Reliance has been placed on judgment of High Court of Jammu & Kashmir in Criminal Appeal No. 39/2013 (**Bhat and Ors. Vs. State of J&K**) decided on 10/07/2014 in which after analyzing and scrutinizing the evidence of witnesses the High Court gave finding that inconsistency and contradictions as noticed could not establish that the appellant-accused was in possession of the contraband recovered. In this case here the question of conscious possession of the appellant relating to the article recovered has to be considered on the evidence on record.

15. Section 35 of the NDPS Act provides for presumption of culpable mental state according to which in any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

In this case, culpable mental state relates to the possession of the articles, the contraband. It is the case of the prosecution that the bags that were searched on the spot belonged to and possessed by the appellant. Uttam Sahu (PW-9) who conducted the search, has stated in this manner in his examination-in-chief and has also stated in paragraph 28 of his cross-examination that when appellant was to be searched the conductor of bus took out the bags and told this witness that those bags belonged to the appellant and he also informed the same to appellant himself. No question has been put to this witness for the sake of denial with regard to possession. Statement of circumstances in deposition of this witness that bags were kept inside the bus and it is argued for the appellant that it may have been possessed by any of the travelers in the same bus, but here the conduct of the appellant is relevant who never objected during the search procedure that the bags taken out from the bus did not belong to him.

16. As per evidence on record in this case, it has been proved by the prosecution that the bags containing contraband were in conscious possession of the appellant. This point was also raised before the trial court which was decided in favour of the prosecution and against the appellant. Under these circumstances, the said ground in appeal fails. Other grounds in the appeal regarding the inconsistency, contradictions and omissions in the statements of the witnesses have been considered in detail and it is found that the evidence brought by the prosecution against the appellant has remained unrebutted throughout and the prosecution has successfully established that the appellant was

the person who was in possession of the contraband ganja in three bags. On the basis of these findings, this appeal has no merit, which is hereby dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE