

HON'BLE DR JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.171 of 2017

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of Cr.P.C., is filed by the appellant/Accused No.2, aggrieved by the conviction and sentence passed in N.D.P.S. Sessions Case No.02 of 2009, vide judgment, dated 20.04.2014, passed by the learned Special Judge under N.D.P.S. Act-cum-I Additional District Judge, West Godavari, Eluru, wherein, the appellant/Accused No.2 was convicted and sentenced to suffer Rigorous Imprisonment for a period of 10 (Ten) years and to pay fine of Rs.1,00,000/- (Rupees one lakh only) for the offence punishable under Section 20 (b) (ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

2. The learned counsel for the appellant/Accused No.2 would submit that the contraband, which was seized from possession of the appellant/Accused No.2, was not produced before the Court below. He was not consciously possessing and transporting the Ganja. There is no compliance of Section 50 of the Act. The entire case of the prosecution is false. The trial Court did not appreciate the facts and circumstances of the case in proper perspective. The findings of the trial Court are contrary to the facts and law. The case of the prosecution is highly doubtful and ultimately, prayed to allow the appeal.

3. On the other hand, leaned Additional Public Prosecutor would submit that the trial Court had narrated all the facts and circumstances of the case and rightly convicted the appellant for the offence punishable under Section 20 (b)(ii)(c) of the Act. The trial Court was pleased to award minimum sentence prescribed for the offence.

4. The case of the prosecution is that on 19.02.2009, at about 2:00 P.M., Sri G.R.R.Mohan (L.W.6) along with P.W.2-Prohibition and Excise Sub-Inspector, Kovvuru, and other staff, while conducting vehicular check opposite to B.S.N.L., Office on Eluru-Rajahmundry road in Devarapalli Village limits, they intercepted one vehicle bearing No.MH-12-W-1262 and found Accused No.1 and Accused No.2 transporting Ganja in 22 polythene bags in the said vehicle. The accused were arrested and Ganja was seized under the cover of panchanama in the presence of mediators. The Ganja was weighed as 320.8 kgs, thereafter took 22 samples of Ganja of 100 gms., each from 22 polythene covers for the purpose of analysis. After receipt of analyst report and after completion of investigation, the police filed charge sheet against the accused. Since Accused No.1 did not attend the Court for a long time, his case was split up and numbered as N.D.P.S. Sessions Case No.01 of 2015.

5. In the course of trial, P.Ws.1 to 4 were examined and Exs.P.1 to P.6 and M.Os. 1 and 2 were marked.

6. The trial Court, after analyzing the entire evidence on record, found that the appellant/Accused No.2 was in conscious possession of 320.8 kilograms of Ganja, which was being transported in Car bearing No.MH-12-W-1262, and accordingly, convicted and sentenced him for the aforesaid offence.

7. In view of contentions put forth by both the learned counsel, the point for determination is whether the conviction and sentence recorded by the trial Court against the appellant/Accused No.2 for the offence punishable under Section 20 (b)(ii)(c) of the Act is sustainable?

8. P.W.1 is the Village Revenue Officer of Bandapuram of Devarapalli Manal, who acted as panch witness along with other witnesses in this case. He deposed that on 19.02.2009, he along with Tahsildar- Vijay Kumar and Revenue Inspector –Rama Chandra Rao, went to the place opposite to B.S.N.L., Office on Rajahmundry High Way in Devarapalli, and noticed one white colour Tata Estate Car bearing No.MH-12-W-1262 was proceeding from Rajahmundry to Eluru, wherein they found two persons. In the course of trial, he identified the appellant/Accused No.2 as one of the persons. On search of the said car, they found 22 blue coloured polythene bags. On opening them, they noticed Ganja. The appellant/Accused No.2 was speaking in Hindi language. The accused confessed that they were bringing ganja from Odisha State and selling the same in Maharastra State on retail. The ganja was weighed and it was found 320.8 kgs. Samples were collected and an amount of Rs.5,040/- was also seized from the possession of the accused. The 'C' book of the car was also seized. M.O.1 is 22 bags of sample packets collected during course of panchanama and M.O.2 is cash of Rs.5,040/- seized under the cover of panchanama. Thereafter, Accused No.1 and Accused No.2 were arrested by the police.

9. P.W.2 is R.Vara Prasad, Inspector of Police. His evidence also corroborated with the evidence of P.W.1 in all material particulars. He also deposed about intercepting of car, seizure of ganja and taking samples under the cover of panchanama. There are no material discrepancies in the evidence of P.Ws.1 and 2.

10. Learned counsel for the appellant/Accused No.2 would submit that Section 50 of the Act has not been followed. It is evident from the record that there was no personal search of the appellant/Accused

No.2. The ganja was seized when the same was being transported by the accused in Car bearing No.MH-12-W-1262. The trial Court, while dealing with these issues, cited number of judgments and held that Section 50 of the Act has no application to the case on hand. However, learned counsel for the appellant/Accused No.2 would submit that the seized ganja i.e., 320.8 kgs was not produced before the trial Court at any point of time. This contention was also raised before the trial Court and the trial Court has narrated number of reasons and held that the ganja was destroyed, as per the procedure established by law, in the presence of Tahsildar and mediators on 22.05.2015 at 10:30 AM. There is no obligation under the Act to produce ganja before the Court. Therefore, there is no infirmity in destruction of ganja by the Excise Officials.

11. The evidence of P.Ws.3 and 4 also supported the case of the prosecution. The evidence of all witnesses corroborates with the evidence of P.Ws.1 and 2. P.Ws.1 to 4 are the Public Servants and they have no any enmity to speak false against the appellant/Accused No.2, who is a stranger. There is no reason for the Excise Officials to get huge quantity of ganja and foist a false case against the appellant/Accused No.2. Ex.P.1-mediator's report also corroborated with the evidence of witnesses. Ex.P.2 is the First Information Report. Ex.P.3 is the confessional statement of Accused No.1. As per analyst report, the material is of dry green leafy substance with stalks, flowering tops and seeds possessing a characteristic odor of "Cannabis Sativa Linn". Therefore, it can be safely concluded that 320.8 kgs., ganja was seized from the conscious possession of appellant/Accused No.2. The trial Court has assigned number of reasons and relied on number of citations discussing the entire evidence on record

elaborately and ultimately held that the accused is guilty of committing the offence punishable under Section 20 (b)(ii)(c) of the Act; and, has imposed minimum sentence of imprisonment and fine against the appellant/accused No.2. Therefore, there is nothing to interfere with the impugned judgment. The Criminal Appeal is devoid of merits and the same is liable to be dismissed.

12. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 20.04.2014, passed in N.D.P.S. Sessions Case No.02 of 2009, by the learned Special Judge under N.D.P.S. Act-cum-I Additional Sessions Judge, West Godavari, Eluru.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

NOVEMBER 21, 2017
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Date: 21.11.2017

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