

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.351 of 2012

Judgment Reserved on 27/06/2018

Judgment Delivered on 26/07/2018

Criminal Appeal No. 351 of 2012

- Chutaiya @ Shivprasad S/o Buddhe Singh Goand aged about 65 years old
R/o Village-Sonbira Police Station-Janakpur District-Korea, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station-Janakpur District-Korea,
Chhattisgarh

---- Respondent

For the Appellant : Shri Ravi Maheshwari, Advocate.

For the State : Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment

26/07/2018

1. This appeal has been brought against the judgment of conviction and order of sentence passed by the learned Special Sessions Judge Korea, Baikunthpur(C.G.) of NDPS Act, in Special Criminal Case No.12/2010, whereby appellant has been convicted under Section 8/20(A) (1) of Narcotic Drugs Psychotropic Substances (for short 'NDPS') Act and sentenced to undergo R.I. for 10 years along with fine of Rs.1,00,000/- with default stipulation.

2. The prosecution case in brief is this, that Swarn Kumar Lakda, who was posted in PS-Janakpur along with a team of Police Officials made a search of the compound of the appellant and found that the appellant had cultivated the plants of ganja. After following procedure according to the provisions under NDPS Act, the ganja plants were identified and seizure was made. Sample of ganja plant was sealed and sent for FSL examination. The report of FSL was positive showing that the seized plants were that of ganja. After completing the procedure, FIR has been registered and after completion of investigation, charge-sheet was filed.
3. The appellant was charged under Section 8 read with Section 20(A)(1) of NDPS Act to which he denied and sought for trial. After completion of prosecution evidence and on being examined under Section 313 of CrPC, appellant denied all the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence. On completion of trial, the impugned judgment has been passed in which appellant stands convicted and sentenced as aforementioned.
4. It is submitted by the counsel for appellant that the impugned judgment is contrary to law, facts and circumstances of the case and the judgment of conviction is erroneous. There is no evidence on record to show that this applicant had cultivated the said land on which the ganja plants were found & seized and that this appellant was in possession of the said land. The independent witnesses have not supported the prosecution case. The revenue record also does not show the possession of this appellant over the land in question. Hence, the conviction of the appellant is not based on any positive evidence, therefore, it is prayed that the appellant be acquitted.
5. Learned counsel for the State opposes the submissions made in this

respect and grounds raised in the appeal. It is submitted that prosecution has proved its case beyond reasonable doubt, hence, the appeal is liable to be dismissed.

6. I have heard both the parties and perused the documents on record.
7. S.I. C. Lakda PW-7 has stated that on receiving a secret information that appellant is cultivating ganja plants, a narcotic substance, in his field, he left for the spot with the team of other police officials. On searching the compound, he found that in the agricultural field where plants of ladyfinger were cultivated about 74 plants of ganja were also standing. The ganja plants were seized vide Ex.P/7 in presence of witnesses. The plants were identified in the presence of witnesses vide Ex.P/10. Four plants of ganja were separately sealed for sampling vide Panchanama ExP/11. Subsequent to that this applicant registered an unnumbered FIR on the spot Ex.P/28 and on that basis numbered FIR Ex.P/29 was separately recorded in the police station. He has stated about the completion of investigation and sending the sample for FSL examination and vide report of FSL Ex.P/34 it is reported that the seized plants were that of ganja. In cross-examination, his statement remain unrebutted and he had denied all the adverse suggestion put to him in the cross examination.
8. Nageshwar Singh PW-1 is the witness who was present at the time of search and seizure. He has supported the statement given by C. Lakda PW-7, although he was declared hostile by the prosecution for some part of his statement recorded under Section 161 of CrPC as the same were omitted by him before the Court. Even then he is a relevant witness and in the cross-examination his statement has remained unrebutted. His admission that all the papers were signed in the police station does not mean that no

proceeding was taken up at the spot. Further, his admissions that he had not been to the spot but was called later on to the police station would also not negate this fact, that the proceeding of search and seizure were taken up on the spot. Lalu Singh PW-2 has partially supported the statement given by C. Lakda PW-7 that in his presence the ganja plants were seized from the compound of the appellant and from the possession of the appellant which has not been challenged in his cross-examination. Head Constable Kamlesh Pandey PW-3 is the witness of other proceedings which were carried out at the spot and Zerom Minj PW-4 is the constable who had deposited the sample for chemical analysis in FSL, Raipur.

9. On due consideration of the evidence available on record, I am of this view that the trial Court has not committed any illegality or irregularity in convicting the appellant under Section 20(A)(1) of NDPS Act and being so, the same do not call for any interference in exercise of appellate jurisdiction of this Court.
10. It has been submitted by the counsel for appellant that the maximum sentence has been imposed upon the appellant whereas the considering the fact that he is the first offender the punishment should have been lightest, hence, it is prayed that the sentence of imprisonment be reduced to the period already undergone by him.
11. Considered.
12. Maximum period of sentence which can be awarded to an accused under Section 20(A)(1) of NDPS Act is of 10 years. There is nothing on record to show that the appellant is a habitual offender. He also appears to be an old man of more than 60 years. Therefore, keeping in mind the facts and circumstances of the case and further considering the fact that no minimum

sentence is prescribed under Section 20 of the NDPS Act, I am of this view that ends of justice would be met if the sentence imposed upon the appellant by the trial Court is reduced to the period already undergone in detention. The appellant remained in custody for one month & seven days during trial and thereafter he is custody since the date of impugned judgment i.e. 6.7.2010, thereby he has completed about 8 years in custody.

13. Accordingly, this appeal is allowed in part. While maintaining conviction of the appellant under Section 8/20(A)(1) of the NDPS Act, he sentenced to the period already undergone by him in jail. Sentence of fine is, however, maintained along with its default clause.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nisha