

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 787 of 2014

1. Shiv Prasad Gupta S/o Moti Lal Gupta Aged About 35 Years R/o Tenkar Baniyatola Ps Majholi Distt. Sidhi, Rev. And Civil Distt. Sidhi M.P. , Madhya Pradesh
2. Sudhanshu @ Bablu Dubey S/o Muvneshwar Prasad Dubey Aged About 27 Years R/o Bhaiswahi Ps Majholi, Rev. And Civil Distt. Sidhi M.P., District : Sidhi, Madhya Pradesh

---- Appellants

Versus

- State Of Chhattisgarh Through Ps Farsagaon Distt. Bastar C.G. , Chhattisgarh

---- Respondent

For the Appellants : Mr. P.K. Tulsyan, Advocate.

For the State/Respondent : Mr. Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on board

10/09/2018

1. The appeal has been preferred against the judgment of conviction and order of sentence passed by the Special Judge, NDPC Act, 1985 Kondagaon in Special Case No.04/2013 on 16.7.2014, whereby both the appellants have been convicted under Section 20(b)(ii)(B) of NDPS Act, 1985 (for short 'the Act') and sentenced to undergo RI for 10 years, along with fine of Rs.50,000/- each with default stipulation.
2. The prosecution case in brief is this, that ASI Kishore Chandrakar PW5 received a secret information regarding transport of ganja by two unknown persons. He immediately forwarded information to his superior officer and

summoned the witnesses. As he had no time to obtain search warrant and thereafter he immediately proceeded to the spot with a team of other police personnels and witnesses. The appellants were found on the spot carrying these bags. After introduction, the appellant served notice under Section 50 of NDPS Act and after the consent given by them, their person and belongings were searched and 20 kg. Ganja was found in possession of appellant Shiv Prasad Gupta, whereas 11 kg. Ganja was found in possession of appellant Sudhanshu @ Bablu Dubey. After the procedure of sampling, sealing and writing of panchnamas, the seizure was made accordingly. ASI Kishore Chandrakar lodged FIR Ex.P/30 the same of the seized article was sent for FSL and the report Ex.P/36 & 36A has reported positive findings about presence of ganja in the same. Charge sheet was filed after completion of investigation.

3. The appellants were charged with the offence under Section 20(B)(ii)b of NDPS Act. Both the appellants denied charges and prayed for trial. In their examination under Section 313 of Cr.P.C., they have denied all the incriminating evidence available against him in the prosecution case and pleaded innocence & false implication. No witness was examined in defence. After completion of investigation, the appellants stand convicted and sentenced as aforesaid.
4. It is submitted by counsel for appellants that the appellants had been erroneously convicted for the offence which they have not committed. Statements of prosecution witnesses relied upon by the trial Court for convicting the appellants are unreliable and untrustworthy and therefore they are entitled to be acquitted. He further submits that if this Court is not inclined to acquit the appellant from the charge levelled against him, then atleast the sentence awarded upon him by the trial Court may be reduced to the period of detention already undergone by him.

5. On the other hand, learned State counsel opposes the grounds raised and the submission made in this respect. It is submitted that prosecution has proved its case beyond reasonable doubt. There is no scope for interference with the judgment of the trial Court. Hence, the appeal be dismissed.
6. ASI Kishore Chandrakar PW5 has stated before the Court that he received secret information that two persons engaged in transporting ganja are present on the spot. He summoned the independent witnesses and one information panchnama Ex.P/2 was prepared in their presence. As he had no time to wait for issuance of search warrant, by sending on information to the superior officer, he immediately proceeded to the spot with a team of police officials. Both the appellants were found on the spot. Appellant Shiv was carrying two bags whereas appellant No.2 was carrying one bag. After introduction with the appellants, the intention of search was made clear and notice under Section 50 of NDPS Act was served upon both of them vide Ex.P/4. After the search of the raiding party, the appellants were searched and their belongings were searched. Appellant Shiv was found in possession of 20 kg. Ganja and appellant No.2 was found in possession of 11 kg ganja regarding which recovery Ex.P/18 was recorded on the spot. Seized article were identified as ganja vide Ex.P/9, subsequent to that the weighment procedure was carried out. Samples of the seized ganja were drawn vide Ex.P/11. Ganja was seized vide Ex.P-15 and P-16 from both the appellants. FIR Ex.P/30 was lodged by this witness and he has also conducted investigation in this case. Seized articles were sent for chemical analysis to FSL from where report of Ex.P/36 was received showing presence of ganja in the samples sent for examination, which is another evidence against the appellants.
7. In cross-examination, statement Kishore Chandrakar PW5 remained intact

and there is no such statement or admission in his cross-examination which renders his testimony unreliable or untrustworthy.

8. Banshi PW1 and Goverdhan PW2 are the independent witnesses of search and seizure who have not supported the prosecution case and were declared hostile. Head Constable Sudarshan Majumdar PW3 was the member of raiding team and he has given statement in support of Kishore Chandrakar PW5, which has remained unrebutted in his cross-examination.
9. No specific defence has been taken by the appellants about the integrity of the procedure of collecting and sending the samples to the FSL for examination. Hence, there is scientific evidence in the form of FSL report which supports the prosecution case.
10. After close scrutiny of the evidence available on record, I am of this opinion that the prosecution has been able to prove its case beyond reasonable doubt. Though there was no support of independent witnesses to the search and seizure, but merely on this ground the entire evidence of the Investigating Officer and other supporting witnesses cannot be discarded. It is not a rule that the evidence given by police witnesses has to be discarded. Here applies that the rule of caution. From perusal of the statements of Kishore Chandrakar PW-5 and other police witness it is apparent that there is no suggestion that the investigating officer or police party had anything personal against the accused persons. The search and seizure procedure as adopted by the investigating officer appears to be in accordance with the provisions of the NDPS Act. Hence, for these reasons, the conviction of appellant under Section 20(b)(ii)(B) of NDPS Act deserves to be upheld.

11.As regards the sentence, the appellants are in jail for the last about six years i.e. since 7.9.2012, they have no criminal past and considering the age of the appellants this Court feels that the end of justice would be met if they are sentenced to the period of detention already undergone by them in jail.

12.Resultantly, the appeal is allowed in part. While maintaining the conviction of the appellants under Section 20(b)(ii)(B) of NDPS Act, the sentence imposed upon them by the trial Court is modified and reduced to the detention period already undergone by them in jail and the fine amount is enhanced from Rs.5,000/- to Rs.10,000/-. The appellants are directed to deposit the fine amount within two months from today, failing which they shall undergo for 2 months rigorous imprisonment. Fine amount, if any, already deposited by the appellants shall be adjusted.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha