

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.373 of 2017

Judgment Reserved on : 4.9.2019

Judgment Delivered on : 2.12.2019

Jaiprakash Prajapati, S/o Ram Shabad Prajapati, aged 36 years, Caste Kumhar, R/o Village Kunnupur, P.S. Jalalpur, District Ambedkar Nagar (U.P.)

---- Appellant

versus

State of Chhattisgarh through Police Station Tapkara, District Jashpur, Chhattisgarh

--- Respondent

and

Criminal Appeal No.500 of 2017

Abdul Haq @ Bablu, S/o Abdul Hameed, aged 38 years, R/o Village Jalalpur, P.S. Jalalpur, District Ambedkar Nagar (U.P.)

---- Appellant

versus

State of Chhattisgarh through Police Station Tapkara, District Jashpur, Chhattisgarh

--- Respondent

For Respective Appellants : Shri Sanjay Agrawal and Shri Pawan Kesharwani, Advocates
For Respondent : Shri Shubham Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Both the appeals arise out of a common judgment, therefore, they are decided together.
2. The appeals are directed against the judgment dated 15.2.2017 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act of 1985'), Jashpur in Special Criminal Case No.4 of 2016, whereby the

Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(ii)(C) of the Act of 1985	Rigorous Imprisonment for 10 years and fine of Rs.1,00,000/- each with default stipulation

3. Facts of the case, in brief, are that on 24.11.2015, Sub-Inspector Ajay Sahu (PW11), Assistant Sub-Inspector Karmusai Paikra (PW10) and other Constables of Police Station Tapkara were on night patrolling duty. They were checking vehicles. Sub-Inspector Ajay Sahu (PW11) received a secret information that two persons were coming with contraband article Ganja in a Maruti Swift Car bearing registration No.UP 45 N 3434 from Lavakera to Tapkara. On the basis of the information, he called two witnesses namely, Jagdish Prasad (PW2) and Jermious Lakda (PW3) by giving them notice (Ex.P5). He made them aware of the information and prepared a Mukhbir Suchna Panchnama (Ex.P6). He prepared a Panchnama (Ex.P7) about non-receiving of a search warrant and thereafter in compliance with Section 42 of the Act of 1985 he forwarded the information to the S.D.O. (Police), Kunkuri vide Ex.P41. Thereafter, he reached the spot. After sometime, the said Swift Car reached the spot. He stopped the car. On the driving seat of the car, Appellant Jaiprakash was sitting and adjacent to him Appellant Abdul was sitting. In compliance with Section 50 of the Act of 1985, he gave them notices (Ex.P8 and P9) for their search. He obtained their consent vide Ex.P42 and P43. They consented to be searched by him (Sub-Inspector Ajay Sahu). He also gave his and his staff's search to the Appellants. He made personal search of the Appellants vide Ex.P11 and P12 in which he did not find anything. Thereafter, he searched the car in which he

found total 23 packets of Ganja from the rear seat of the car which he recovered from Appellant Jaiprakash vide Ex.P13. From the dikki of the car he found total 24 packets of Ganja which he recovered from Appellant Abdul vide Ex.P14. He identified the recovered articles and prepared identification panchnama thereof (Ex.P15 and P16). He mixed the recovered Ganja and thereafter prepared a panchnama thereof (Ex.P17 and P18). He called a weighing article and after physical verification thereof he prepared a panchnama thereof (Ex.P19). On weighing the 23 packets which were recovered from the rear seat of the car, they were found to be of total 23.200 Kgs. and on weighing the 24 packets which were recovered from the dikki of the car, they were found to be of total 24.400 Kgs. He prepared weight panchnama (Ex.P20 and P21). 1 sample packet of 500 Gms. was prepared from the 23 packets which were recovered from the rear seat of the car and 1 sample packet of 500 Gms. was also prepared from the 24 packets which were recovered from the dikki of the car and after affixing seal on both the sample packets, he prepared a specimen seal panchnama (Ex.P23). He made seizure of one sample packet of 500 Gms. and of remaining Ganja from Appellant Jaiprakash vide Ex.P24 and also made seizure of the other sample packet of 500 Gms. and of remaining Ganja from Appellant Abdul vide Ex.P25. He recorded Dehati Nalishi (Ex.P46) on the spot. He recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. He arrested the Appellants. After return to the police station, he registered First Information Report (Ex.P48). He deposited the seized sample packets and the remaining Ganja in Malkhana and obtained acknowledgment thereof (Ex.P49). Entries of deposit of the articles were made in the Malkhana Register

(Ex.P64). Information of the complete action taken was sent to the S.D.O. (Police) vide Ex.P33. The sample packets were sent to the Forensic Science Laboratory vide Ex.P52 for chemical examination. Report of the Chemical Examiner is Ex.P53 which is positive. A charge-sheet was filed against the accused persons. Since the car in question was owned by absconded accused Sandeep Kumar Verma, the charge-sheet was filed declaring him as an absconded accused. Charges were framed.

4. To rope in the accused persons, the prosecution examined as many as 12 witnesses. Statements of the accused persons/Appellants were recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded false implication. No witness has been examined in their defence.
5. After completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in the second paragraph of this judgment. Hence, the appeals.
6. Learned Counsel appearing for the respective Appellants argued that the Trial Court has wrongly convicted the Appellants without there being sufficient evidence on record against them. Mandatory provisions of Sections 42, 50, 55 and 57 of the Act of 1985 have not been duly complied with. There are material contradictions in the statements of the prosecution witnesses. Independent witnesses Jagdish (PW2) and Jermious (PW3) have not supported the case of the prosecution. The conviction of the Appellants is based only on presumptions and surmises. There is no conclusive evidence on record to prove the guilt of the Appellants beyond reasonable doubt. It was further argued that during the proceeding

under Section 52A of the Act of 1985, one document marked as Article D was prepared. In Column No.9 of the said document, quantity of the seized Ganja is mentioned as 47.600 Kgs. Therefore, after preparation of the sample packets, weight of the remaining Ganja should have been lesser than 47.600 Kgs. It was further argued that in the entries of Malkhana Register, there is no mention of deposit of the sample packets in the Malkhana. In these circumstances, it is doubtful that the sample packets which were sent to the FSL for chemical examination were the same packets which were prepared on the spot. Thus, the whole prosecution case is doubtful. Mukhbir Suchna Panchnama (Ex.P6) was prepared in the morning at 5:00 a.m. and witnesses were called vide notice (Ex.P5) at 4:45 a.m., i.e., prior to the preparation of the Mukhbir Suchna Panchnama (Ex.P6).

7. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence. It was submitted by Learned State Counsel that from the evidence of the prosecution it is clear that all the mandatory provisions of the Act of 1985 have been duly complied with by the prosecution. With regard to the entries of Malkhana Register, it was submitted that in the acknowledgment (Ex.P49) and in the entries (Ex.P59 and P60) of the Rojnamcha Sanha, there is clear mention of the deposit of the sample packets in the Malkhana. Therefore, if there is no entry of deposit of the sample packets in the Malkhana Register, it does not cause any prejudice to the case of the prosecution.
8. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.

- 9.** Jagdish (PW2) and Jermious (PW3) are independent witnesses before whom seizures were made and other proceedings were done, but both these witnesses have not supported the case of the prosecution and turned hostile. However, they have admitted their signatures on the prosecution documents. Tikam Singh Porte (PW1) is Patwari who prepared the spot-map (Ex.P2).
- 10.** Sub-Inspector Ajay Sahu (PW11) is the Investigating Officer of the case. In his statement, he has deposed before the Court according to the case of the prosecution. With regard to the compliance of the provision of Section 42 of the Act of 1985, this witness has deposed that he had prepared Panchnama (Ex.P7) of non-receiving of a search warrant and he had forwarded the secret information to the S.D.O. (Police) vide Ex.P41. Head Constable Shahbir Bhagat (PW5), Reader of the S.D.O. (Police) has deposed that he had received a dak (post) from Constable Vinod Minz at 7:30 a.m. in which Ex.P6 and P7 were kept and he had given his acknowledgment also. From the above evidence, it is clear that there was compliance of the provision of Section 42 of the Act of 1985.
- 11.** With regard to compliance of the provision of Section 50 of the Act of 1985, Investigating Officer Ajay Sahu (PW11) has deposed that he had given notices (Ex.P8 and P9) to the Appellants for their personal search and for search of the car in question. Vide Ex.P42 and P43, the Appellants had consented to be searched by this witness himself. This witness has further deposed that he had also given his and his staff's search to the Appellants vide Ex.P10. Thereafter, he conducted personal search of the Appellants vide Ex.P11 and P12 in which he did not find anything. Thereafter, he

searched the car in question. In the rear seat of the car, he found 23 packets of Ganja and in the dikki of the car he found 24 packets of Ganja. He prepared recovery panchnama of the recovered Ganja vide Ex.P13 and P14. He made identification of the recovered Ganja vide Ex.P15 and P16. Thereafter, he mixed the recovered Ganja vide Ex.P17 and P18. He got the Ganja weighed and prepared panchnama thereof (Ex.P20 and P21). He prepared 1 sample packet out of the 23 packets of Ganja recovered from Appellant Jaiprakash and he also prepared 1 sample packet out of the 24 packets of Ganja recovered from Appellant Abdul. He prepared seizure memo (Ex.P24 and P25). Assistant Sub-Inspector Karmusai Paikra (PW10) has supported the above statement of Ajay Sahu (PW11). From the statements of these two witnesses, it is established that the provision of Section 50 of the Act of 1985 has been duly complied with.

12. Investigating Officer Ajay Sahu (PW11) has further deposed that after return to the police station from the spot, he deposited the sample packets and the remaining Ganja in the Malkhana and also obtained acknowledgment thereof (Ex.P49). Head Constable Premika Xalxo (PW12) has supported the above statement of Ajay Sahu (PW11) and has deposed that on 24.11.2015 she received two sample packets each of 500 Gms., one sealed packet containing 22.700 Kgs. of Ganja, one more sealed packet of Ganja containing 23.900 Kgs. She gave acknowledgment thereof (Ex.P49) and made entry thereof in the Malkhana Register (Ex.P64). Though in paragraph 7 of her cross-examination she has admitted that there is no entry in the Malkhana Register (Ex.P64) about deposit of the sample packets in the Malkhana, this

witness has deposed that in the acknowledgment (Ex.P49) given by her she had made a mention of deposit of the sample packets in the Malkhana. From a perusal of the entries of Rojnamcha Sanha (Ex.P59 and P60), it is clear that sample packets were given to Premika Xalxo (PW12) and acknowledgment thereof was also obtained from her. Thus, merely on the basis of the entries of the Malkhana Register, it cannot be said that the sample packets were not deposited in the Malkhana. From the above evidence, it is also established that the provision of Section 55 of the Act of 1985 has been duly complied with by the prosecution.

13. With regard to the provision of Section 57 of the Act of 1985, Investigating Officer Ajay Sahu (PW11) has deposed that vide Ex.P33, he had given information of the complete action taken by him to the S.D.O. (Police). Shahbir Bhagat (PW5) has supported the above statement of Ajay Sahu (PW11) and has deposed that he had given his acknowledgment on Ex.P33 itself. Thus, from the above evidence, it is also clear that the provision of Section 57 of the Act of 1985 has been duly complied with by the prosecution.
14. Constable Anand Prakash Lakda (PW7) is the witness who deposited the sample packets in the Forensic Science Laboratory and obtained acknowledgment thereof (Ex.P35). Ex.P35 discloses that the seal of the sample packets was intact. Report of the FSL is Ex.P53, which is positive.
15. The prosecution has also examined Constable Amal Kumar Xess (PW8), who mechanically examined the seized car in question. His report is Ex.P37. He has deposed that the car was mechanically correct, but, from smuggling point of view, middle

seat of the car was modified and a dikki was made there and at the corner of the seat another dikki was made and rear dikki of the car was also modified and one more dikki was made there. Thus, from the above evidence also, it is clear that the car was purposefully modified and designed for smuggling of the contraband article Ganja.

- 16.** On a minute examination of the evidence available on record, it is clear that though independent witnesses have not supported the case of the prosecution, they have admitted their signatures on the prosecution documents. The statement of Investigating Officer Ajay Sahu (PW11) is duly corroborated by Karmusai Paikra (PW10), Amal Kumar Xess (PW8), Anand Prakash Lakda (PW7), Shahbir Bhagat (PW5), Vinod Minz (PW4) and Premika Xalxo (PW12). From the evidence adduced by the prosecution, it is also clear that all the mandatory provisions of the Act of 1985 have been duly complied with by the prosecution. The prosecution has duly proved its case beyond reasonable doubt. I do not find any substance in the arguments advanced on behalf of the Appellants. The Trial Court has rightly convicted the Appellants. The sentence imposed upon them is also just and proper.
- 17.** Consequently, both the appeals are dismissed.
- 18.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE