

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1190 of 2017

Judgment Reserved on : 7.8.2019

Judgment Delivered on : 24.10.2019

1. Mohd. Guddu, S/o Mohd. Mangu @ Chhaggu, aged about 29 years,
2. Anupam Baranwal, S/o Ganesh Prasad, aged about 24 years,
3. Smt. Pappi Baranwal, W/o Anupam Baranwal, aged about 21 years,
All R/o Lambhuva, Police Station Lambhuva, District Sultanpur (U.P.)

---- Appellants

versus

State of Chhattisgarh through Station In-charge Officer, Police Station Tapkara, District Jashpur, Chhattisgarh

--- Respondent

For Appellants : Shri Sunil Tripathi, Shri Arun Kumar Shukla and
Shri Apoorva Tripathi, Advocates
For Respondent : Shri Anand Verma, Dy. Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 10.7.2017 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act (henceforth 'the Act'), Jashpur in Special Criminal Case No.10 of 2016, whereby the Appellants have been convicted and sentenced as under:

<u>Appellants</u>	<u>Conviction</u>	<u>Sentence</u>
Appellant No.1, Mohd. Guddu	Under Section 20(b)(ii)(C) of the Act	Rigorous Imprisonment for 10 years and fine of Rs.1,00,000/- with default stipulation
	Under Section 417 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation

Appellant No.2, Anupam Baranwal and Appellant No.3, Pappi Baranwal	Under Section 20(b)(ii)(C) of the Act	Rigorous Imprisonment for 10 years and fine of Rs.1,00,000/- with default stipulation
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2. Facts of the case, in brief, are that on 17.6.2016, Sub-Inspector Dipesh Saini (PW11) received information that in a Tata Indigo Car bearing registration No.OD 15A 4847, illegal Ganja was being transported from Orissa. He recorded the information in Mukhbir Suchana Panchnama (Ex.P1) and in compliance with the provision contained in Section 42 of the Act, forwarded the information to the S.D.O. (Police), Kunkuri vide Ex.P2. He called witnesses and thereafter reached the spot along with the witnesses and supporting staff. After sometime, the said Tata Indigo Car reached the spot. The car was stopped. The car was found being driven by Appellant Mohd. Guddu. Appellants Anupam and Pappi were found sitting in the rear seat of the car. He gave the Appellants notice under Section 50 of the Act vide Ex.P6 to P8. He obtained their consent for search vide Ex.P47 to P49. Nothing was found in bodily search of the Appellants. In search of the car, 19 packets of Ganja, total weight 20 Kgs., was found from below the front seat of the car, which was recovered from Appellant Mohd. Guddu vide Ex.P14. During further search of the car, 39 packets of Ganja, total weight 40 Kgs., was found from the dikki of the car, which was recovered from Appellants Anupam and Pappi vide Ex.P15. The Appellants did not have any document regarding legal ownership or possession of the recovered Ganja. Witness Gourishankar Shah (PW4) was called to weigh the recovered Ganja vide Ex.P35. On being weighed, total weight of the Ganja was found to be 60 Kgs. 1 sample packet of 500 Gms. was prepared from the Ganja

recovered from Appellant Mohd. Guddu and 1 sample packet of 500 Gms. was prepared from the Ganja recovered from Appellants Anupam and Pappi. Both the sample packets and the remaining quantity of Ganja were sealed and a Specimen Seal Panchnama (Ex.P26) was prepared. During search of the car, two number plates were found out of which one plate was bearing registration No.UP 44 Z 4847. Papers relating to the car were also found. The number plates, the documents relating to the car, the car and 20 Kgs. of Ganja were seized from Appellant Mohd. Guddu vide Ex.P24. Remaining 40 Kgs. of Ganja was seized from Appellants Anupam and Pappi vide Ex.P25. Statements of witnesses were recorded on the spot and Dehati Nalishi was also recorded. After return to the police station, First Information Report (Ex.P55) was registered. The seized property was deposited in the Malkhana and acknowledgment thereof (Ex.P42) was obtained. Sample packets were sent to the Forensic Science Laboratory for chemical examination. FSL report is Ex.P61 which is positive. Information of the complete action taken was sent to the higher officer. It was also found during investigation that actual registration number of the seized car was UP 44 Z 4847, but a forged number plate bearing registration number OD 15 A 4847 was fixed in the car and the car was being driven by Appellant Mohd. Guddu. It was also found that owner of the car was Harish Chandra (acquitted accused). On completion of the investigation, a charge-sheet was filed. Charges were framed under Section 20(b)(ii)(C) of the Act against all the Appellants and additional charges under Sections 420 and 468 of the Indian Penal Code were framed against Appellant Mohd. Guddu. Against acquitted accused Harish Chandra, charges under Section 20(b)(ii)(C) read with Section 29

of the Act and Sections 420 and 468 of the Indian Penal Code were framed.

3. To rope in the accused persons, the prosecution examined as many as 11 witnesses. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in defence. It was the defence of the Appellants that on 15.6.2016, Appellants Anupam and Pappi were going to Puri for tonsure ceremony of their 7 months' old child. On 16.6.2016, Dipesh Saini (PW11) and other 3-4 persons stopped their car. They deliberately snatched their cash and ornaments and they forcefully obtained their signatures on many papers.
4. After completion of the trial, the Trial Court acquitted accused Harish Chandra of all the charges framed against him, but convicted and sentenced all the present Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submitted that the seizure witnesses and weighing witness have not supported the case of the prosecution. The conviction of the Appellants is based only on the evidence of Dipesh Saini (PW11) and other police witnesses. There are material contradictions in their statements. It was further submitted that contrary to the statement of Dipesh Saini (PW11), Constable Rini Prasad (PW8) himself has stated that weighing of the articles was done at the spot itself, but all the written work was done in the police station. Rini Prasad has further stated that at the time of incident, Appellant Anupam was

sitting adjacent to Appellant Mohd. Guddu in the car and on the rear seat of the car Appellant Pappi alone was sitting. Contrary to this, Dipesh Saini (PW11) has stated that Appellant Mohd. Guddu was sitting in front (driving) seat of the car and Appellants Anupam and Pappi were sitting in rear seat of the car. It was further submitted that from perusal of the entries of the Malkhana register also, it is clear that only 20 Kgs. of Ganja was deposited in the Malkhana and remaining quantity of the seized Ganja was not deposited in the Malkhana. Therefore, the sample packets which were sent to the FSL were related to the seized Ganja is not established. Likewise, according to the Weighing Panchnama (Ex.P22), the Ganja which was seized from Appellants Anupam and Pappi was, on being weighed, found to be of total 20 Kgs., but according to the prosecution, quantity of the said seized Ganja should have been total 40 Kgs. It was further submitted that in place of date 17.6.2016, 16.6.2016 has been mentioned in many documents and some of the documents bear the date 17.5.2016. Thus, it is clear that all the documents were prepared in hurry sitting at one place. Therefore, the conviction of the Appellants cannot be sustained only on the basis of the statements of Dipesh Saini (PW11) and other police witnesses without there being corroboration of the independent witnesses.

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. In the instant case, both the seizure witnesses Kesar Singh (PW2)

and Vinod Kumar Shah (PW3) have not supported the case of the prosecution and turned hostile. Weighing witness Gourishankar Shah (PW4) has also not supported the case of the prosecution and turned hostile.

9. The Trial Court has convicted the Appellants only on the basis of statements of Investigating Officer Dipesh Saini (PW11) and other police witnesses. Since all the independent witnesses have turned hostile and not supported the case of the prosecution, the statements of the Investigating Officer and other police witnesses need a minute scrutiny.

10. Investigating Officer Dipesh Saini (PW11) has stated before the Trial Court that on receipt of the information regarding transportation of illegal Ganja, he recorded the information in Mukhbir Suchana Panchnama (Ex.P1). He forwarded the information to the higher officer vide Ex.P2. He called witnesses and reached the spot along with them and staff. After sometime, one Tata Indigo Car, about whose the information was received, reached the spot. The car was being driven by Appellant Mohd. Guddu and on the rear seat of the car, Appellants Anupam and Pappi were sitting. He gave them notice (Ex.P6 to P8) under Section 50 of the Act. He obtained their consent regarding search vide Ex.P47 to P49. He gave his and his staff's search to the Appellants vide Ex.P9. Thereafter, he searched the bodies of the Appellants vide Ex.P11 to P13 in which he did not find anything illegal. He has further stated that thereafter he searched the car bearing registration number OD 15 A 4847. Below the front seat of the car, 19 packets of Ganja was found which was recovered from

Appellant Mohd. Guddu vide Ex.P14. 39 packets of Ganja was found in the dikki of the car which was recovered from Appellants Anupam and Pappi vide Ex.P15. Identification proceeding of the recovered Ganja was done vide Ex.P16 and P17. Mixing of the Ganja was done vide Ex.P18 and P19. He called weighing witness Gourishankar Shah (PW4) and thereafter did physical verification of the weighing article vide Ex.P20. After weighing the recovered Ganja, panchnamas thereof (Ex.P21 and P22) were prepared. 1 sample packet from the Ganja recovered from Appellant Mohd. Guddu and 1 sample packet from the Ganja recovered from Appellants Anupam and Pappi were prepared and sealed. Specimen Seal Panchnama (Ex.P26) was prepared. Thereafter, from Appellant Mohd. Guddu, he seized 1 sample packet containing 500 Gms. of Ganja, remaining quantity of Ganja recovered from Appellant Mohd. Guddu and the Tata Indigo Car behind which number plate bearing registration number OD 15 A 4847 was fixed vide Ex.P24. One more number plate bearing registration number UP 44 Z 4847 kept inside the car and the papers relating to the car were also recovered and seized from Appellant Mohd. Guddu. 1 sample packet containing 500 Gms. of Ganja and remaining quantity of Ganja which was recovered from Appellants Anupam and Pappi were seized from Appellants Anupam and Pappi vide Ex.P25. This witness has further stated that he recorded Dehati Nalishi (Ex.P53) on the spot. Thereafter, he returned to the police station and on the basis of the Dehati Nalishi (Ex.P53), he recorded First Information Report (Ex.P55). The seized articles were deposited by him in the Malkhana and acknowledgment (Ex.P38) was obtained by him. He has further stated that the seized sample packets were sent to the FSL vide

Ex.P60. FSL report is Ex.P61 which is positive. Information of the complete action taken was sent to the higher officer vide Ex.P3. In his Court statement, in paragraph 27, this witness has admitted the fact that Sanha (Ex.P48, P46) bear the date 16.6.2016 in place of the date 17.6.2016. He has also admitted in paragraph 31 that in the Weighing Panchnama (Ex.P21), weight of the Ganja seized from Appellant Mohd. Guddu is mentioned as 40 Kgs. and in the Weighing Panchnama (Ex.P20), weight of the Ganja seized from Appellants Anupam and Pappi is mentioned as 20 Kgs. In paragraph 32 of his cross-examination, he has further admitted that Specimen Seal Panchnama was prepared on 17.6.2016, but the said panchnama bears the date 17.5.2016 and below his signatures in the said panchnama he has also mentioned the date 17.5.2016.

- 11.** Head Constable Sahbeer Bhagat (PW1), who was posted as Reader in the office of the S.D.O. (Police), Kunkuri, has stated that on 17.6.2016, he had received the information which was given in compliance with the provision contained in Section 42 of the Act. On 18.6.2016, he received the information regarding the complete action taken. This witness has also stated that in place of 18.6.2016, inadvertently he has also mentioned the date 17.6.2016 in the acknowledgment (Ex.P3) issued against the receipt of the complete action.
- 12.** Patwari Pitar Sidar (PW5) prepared spot-map (Ex.P25). Malkhana Moharrir Premika Xalxo (PW6) has deposed that she had received the seized sample packets and Ganja in the Malkhana and she had given acknowledgment (Ex.P38). This witness has also stated

that she had made relevant entry at Sl. No.33 of the Malkhana register (Ex.P39). Relevant Column No.5 of the said register (Ex.P39) bears the details of the deposited articles. According to the entry, 19 packets of Ganja and out of which a sample packet containing 500 Gms. of Ganja was prepared, total quantity of the Ganja being 20 Kgs. were kept in a sealed packet. There is no entry in the said register (Ex.P39) about deposit of Ganja or sample packet seized from Appellants Anupam and Pappi.

13. Constable Jitendra Kumar Gupta (PW9) prepared Mukhbir Suchana Panchnama (Ex.P1). Constable Rajesh Kumar Minz (PW10) deposited the sample packets in the FSL. Constable Rini Prasad (PW8) is the witness who was present at the spot with Investigating Officer Dipesh Saini (PW11) and the entire proceeding was done in his presence at the spot. He has deposed that when the car in question was stopped, Appellant Mohd. Guddu was found sitting in the driver seat and Appellant Anupam was found sitting in the other front seat of the car. Appellant Pappi was found sitting alone in the rear seat of the car. This witness has further deposed that after recovery of the Ganja, the recovered Ganja was weighed at the spot and thereafter all of them returned to the police station and all the written work was done at the police station.

14. On a minute examination of the above evidence, it is clear that the case is based only on the evidence of Investigating Officer Dipesh Saini (PW11) and other police witnesses. From the admission made by Dipesh Saini (PW11), it is clear that in some of the documents he has mentioned the date 16.6.2016 in place of the

date 17.6.2016 and in the Specimen Seal Panchnama he has mentioned the date 17.5.2016 in place of the date 17.6.2016 and also mentioned the date 17.5.2016 below his signatures. From perusal of the record, it is also established that according to the Weighing Panchnama, the Ganja seized from Appellant Mohd. Guddu was found to be 40 Kgs. and the Ganja seized from Appellants Anupam and Pappi was found to be 20 Kgs. But, case of the prosecution is that 20 Kgs. of Ganja was recovered and seized from Appellant Mohd. Guddu and 40 Kgs. of Ganja was recovered and seized from Appellants Anupam and Pappi. From the entries made in the Malkhana register (Ex.P39), it is also clear that the said register bears the entry of deposit of only the Ganja which was seized from Appellant Mohd. Guddu, but the acknowledgment issued by the Malkhana Moharrir shows that it was also issued for deposit of the Ganja which was seized from Appellants Anupam and Pappi. According to the statement of Investigating Officer Dipesh Saini (PW11), when the car in question was stopped, Appellant Mohd. Guddu was found sitting in the driver seat of the car and remaining Appellants Anupam and Pappi were found sitting in the rear seat of the car. But, Constable Rini Prasad (PW8), who was present at the spot along with Investigating Officer Dipesh Saini (PW11), has deposed that in the front seats of the car Appellants Mohd. Guddu and Anupam were found sitting and Appellant Pappi was found sitting in the rear seat of the car. From the statement of Rini Prasad (PW8), it is also established that all the written work was done at the police station after return thereto from the spot. Considering the entire evidence available on record, the whole prosecution story seems to be suspicious because there are material contradictions between the

statement of Constable Rini Prasad (PW8) and Investigating Officer Dipesh Saini (PW11). Dates are also wrongly mentioned in some of the relevant documents. In the Malkhana register also, there is no entry regarding deposit of 40 Kgs. of Ganja. But, in the acknowledgment issued by the Malkhana Moharrir, deposit of 40 Kgs. of Ganja which was seized from Appellants Anupam and Pappi is also mentioned. In these circumstances, without there being any corroboration by the Independent Witnesses, relying only on the evidence of Investigating Officer Dipesh Saini (PW11) and Constable Rini Prasad (PW8) for convicting the Appellants is not proper.

15. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them. If any amount has been deposited by any of the Appellants towards the fine imposed upon them by the Trial Court, the same shall be refunded and the seized property shall be disposed of in accordance with law.
16. 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