

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.734 of 2011

Judgment Reserved on : 11.9.2019

Judgment Delivered on : 10.12.2019

1. Jaspal Singh, S/o Rajinder Singh Arora, aged 35 years, R/o Housing Board Sector-6, P.S. Balco, District Korba, Chhattisgarh
2. Tribhuvan Sharma, S/o Ramakant Sharma, aged 32 years, R/o Village Jhiriya, Post Bamni, P.S. Budhar, District Shahdol, M.P.

---- Appellants

versus

State of Chhattisgarh through Police Station Kondagaon, District Bastar, Chhattisgarh

--- Respondent

and

Criminal Appeal No.791 of 2011

Tribhuvan Sharma, S/o Shri Ramakant Sharma, aged about 32 years, R/o Village Jhiriya, Post Bamni, Thana Budhar, District Shahdol, M.P.

---- Appellant

versus

State of Chhattisgarh through Police Station Kondagaon, District Bastar, Chhattisgarh

--- Respondent

For Appellants	:	Shri Bhaskar Payashi, Advocate
For Respondent	:	Shri Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Appellants Jaspal Singh and Tribhuvan Sharma first jointly preferred Criminal Appeal No.734 of 2011 against the judgment dated 30.8.2011 and thereafter Appellant Tribhuvan Sharma filed Criminal Appeal No.791 of 2011 against the same judgment. Since both the appeals have been moved against a common judgment, they are decided together.

2. The appeals are directed against the judgment dated 30.8.2011 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act'), Bastar at Jagdalpur in Special N.D.P.S. Case No.23 of 2009, whereby both the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(ii)(C) of the Act	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 Assistant Sub-Inspector Vikas Chandra Rai (PW8) received a secret information on 1.9.2009 at 7:20 a.m. that in a Bolero vehicle bearing registration number CG 12 D 1184 contraband article Ganja was being carried from Orissa to Raipur. He recorded the information in Rojnamcha Sanha (Ex.P22). He sent Constable No.1201 for bringing independent witnesses and weighing article. Constable No.1201 brought weighing article and witnesses Kamod Kumar Chandrakar (PW2) and Tarak Banerjee (PW3). Vikas Chandra Rai (PW8) made both the independent witnesses aware of the secret information and thereafter he prepared Mukhbir Suchna Panchnama (Ex.P2). Thereafter, he prepared a Panchnama (Ex.P3) against non-receipt of a search warrant. In compliance with the provision contained in Section 42 of the Act, he forwarded the information to the office of S.D.O. (Police). Thereafter, he reached the spot along with police personnel and the independent witnesses. The vehicle bearing registration number CG 12 D 1184 was seen coming from towards Jagdalpur. The vehicle was tried to stop, but the driver did not stop the vehicle and turned back towards Jagdalpur. The vehicle was chased and was stopped near Kothariya Farm House. Both

Appellants Jaspal Singh and Tribhuvan Sharma were caught at the spot. On being asked, they told that their two companions Lal Bengali alias Vimal Kumar Majumdar and Tahir Hussain ran away. A notice (Ex.P5) under Section 50 of the Act was given to both the Appellants for their search. Vide Ex.P5 itself, they consented to be searched by Assistant Sub-Inspector Vikas Chandra Rai (PW8). Personal search of the Appellants and search of the vehicle in question was made vide Ex.P7. In search of the vehicle, total 11 packets containing Ganja like substance were found which were recovered vide Ex.P8. Identification Panchnama (Ex.P9) of the recovered Ganja was prepared. Constable No.690 Salim Javed Khan (PW4) had brought an electronic weighing article whose physical verification was done by the said Constable himself vide Ex.P10. Thereafter, on weighing of the recovered substance, it was found to be of total 126.800 Kgs. Weight Panchnama (Ex.P11) of the weighed article was prepared and seizure of the total 126.800 Kgs. of Ganja was done vide Ex.P12. The Ganja was mixed and a Panchnama thereof (Ex.P13) was prepared. 100 Gms. of Ganja was taken out from each of the 11 recovered packets and from that quantity, 2 sample packets each of 50 Gms. were prepared. All the 11 packets were marked from A to K and accordingly the sample packets were marked from A1 to K1 and A2 to K2 and a Panchnama thereof (Ex.P14) was prepared. The samples were sealed and a Specimen Seal Panchnama (Ex.P15) was prepared. Both the Appellants were arrested. After return to the police station, the seized articles were handed over to Malkhana Moharrir Sukhlal Baghel (PW1). Sukhlal Baghel deposited the articles in Malkhana and made an entry thereof in Malkhana Register (Ex.P1). Vikas Chandra Rai (PW8) registered

a crime vide First Information Report (Ex.P31). Information of the complete action taken was sent to the S.D.O. (Police) vide Ex.P9 by Station House Officer Mohsin Khan (PW9). 1-1 sample packets were sent to the Forensic Science Laboratory vide Ex.P35 for chemical examination. Report of the FSL is Ex.P37 which is positive. On completion of the investigation, a charge-sheet was filed against 4 accused persons Jaspal Singh, Tribhuvan Sharma, Vimal Kumar Majumdar and Tahir Hussain. Charges were framed against them under Section 20(b)(ii)(C) of the Act.

4. To rope in the accused persons, the prosecution examined as many as 10 witnesses. Statements of the accused persons 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, vide the impugned judgment, the Trial Court acquitted co-accused Vimal Kumar Majumdar and Tahir Hussain of the charge framed against them, but convicted and sentenced the present Appellants as mentioned in the second paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the 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, 52 and 55 of the Act have not been duly complied with. Seizure witnesses have turned hostile. The seized property was a contraband article Ganja has not been established by the prosecution. As per the entry of the Malkhana Register (Ex.P1), deposit of sample packets each containing Ganja of 100

Gms. were made. Likewise, in Ex.P35 also, vide which the sample packets were sent to the FSL, there is a mention of quantity of the sample packets each to be of 100 Gms. Thus, it is not established that sample packets of 50 Gms. each were deposited in the Malkhana and it is also not established that sample packets each of 50 Gms. were sent to the FSL. In the Specimen Seal Panchnama, "PS Kondagaon MP" is mentioned, but in the seal of the sample packets sent to the FSL, only "PS Kondagaon" is mentioned. Thus, it is doubtful that the sample packets which were sent to the FSL were the same sample packets which were prepared at the spot. As per the statement of Assistant Sub-Inspector Vikas Chandra Rai (PW8) and the entries made in Rojnamcha Sanha (Ex.P23 and P24), Constable No.1201 Manoj Kodopi had brought the weighing article at 8:05 a.m., but the prosecution has examined Constable No.690 Salim Javed Khan (PW4) with regard to the bringing of the weighing article and this witness has stated that he had brought the weighing article from a poultry farm after the recovery of 11 packets of contraband article Ganja and thereafter he had done physical verification of the said weighing article vide Ex.P10. Investigating Officer Vikas Chandra Rai (PW8) has also admitted the fact that for bringing the independent witnesses, he had sent Constable No.1201 Manoj Kodopi, but, in the FIR (Ex.P31), there is a mention of sending of Constable Salim Javed Khan instead of Constable Manoj Kodopi for bringing the independent witnesses. Vikas Chandra Rai (PW8) has further admitted that he had not handed over the seized articles to the Station House Officer. Thus, it is also clear that while depositing the articles in the Malkhana, a seal of the Station House Officer was not affixed on the seized articles. Thus, the

provision of Section 55 of the Act has also not been complied with. There are over writings in the documents prepared by Vikas Chandra Rai (PW8) which have not been duly explained by him. Since the independent witnesses have not supported the case of the prosecution, the conviction of the Appellants, which is based only on the statement of Investigating Officer Vikas Chandra Rai (PW8), is not sustainable.

7. On the contrary, Learned Counsel appearing for the State opposed the above submission and supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
9. Sukhlal Baghel (PW1) is the witness who deposited the seized articles in the Malkhana. He has stated that he made entries of deposit in the Malkhana Register (Ex.P1) after depositing the seized articles in the Malkhana. He has also stated that he had received sample packets each of 100 Gms. he has further admitted that he had not received any specimen seal along with the seized articles. He has also admitted that he had received 11 sample packets each of 100 Gms., but, he did not make entry of deposit of 11 sample packets in the Malkhana Register (Ex.P1). He has also admitted that in the Malkhana Register (Ex.P1), there is a mention of seizure of the articles from Appellant Jaspal Singh only and name of Appellant Tribhuvan Sharma is not mentioned in the said register.
10. Kamod Kumar Chandrakar (PW2) and Tarak Banerjee (PW3) have not supported the case of the prosecution. They have stated that

they had put their signatures only on being asked by the police officials.

- 11.** Constable No.690 Salim Javed Khan (PW4) has stated that he had gone to the spot along with Investigating Officer Vikas Chandra Rai (PW8). At the spot, a vehicle was searched in which 11 bags containing contraband article Ganja were recovered. On being asked by Vikas Chandra Rai (PW8), he had gone to bring weighing article. He had brought the weighing article and had done physical verification thereof vide Ex.P10. He had weighed the recovered contraband article vide Ex.P11.
- 12.** Head Constable Ramesh Nag (PW5) has stated that Constable Salim Javed Khan had brought to him a report of the complete action taken. He had received the same and had given an acknowledgment thereof (Ex.P19).
- 13.** Constable Raghuvir Chandra (PW6) is the witness who had taken the sealed 11 sample packets to the FSL. Santosh Kumar Mishra (PW7) is the owner of the vehicle in question bearing registration number CG 12 D 1184. He has only stated that the said vehicle was taken by his driver/acquitted accused Vimal Kumar Majumdar. Inspector Mohsin Khan (PW9), the then Station House Officer of Police Station Kondagaon has stated that he had sent the report of the complete action taken to the office of the S.D.O. (Police) on 2.9.2009 vide Ex.P9. He has admitted that neither he had gone to the spot nor was any action taken in his presence. Head Constable Samay Lal Pandey (PW10) has stated that on 1.9.2009, Constable Salim Javed Khan had given him a dak (post) and he had received the same and given an acknowledgment thereof

(Ex.P25).

- 14.** Investigating Officer Assistant Sub-Inspector Vikas Chandra Rai (PW8) is the witness who investigated the entire offence in question. Before the Trial Court, he has stated as per the prosecution story. As per the prosecution story, he had taken out 100-100 Gms. of Ganja from each of the recovered packets and prepared 2-2 sample packets each containing 50-50 Gms. He had marked the said sample packets from A1 to K1 and A2 to K2. The sample packets which were marked from A1 to K1 were sent to the FSL. The sample packets marked with A2 to K2 were submitted by him in the Trial Court on 24.2.2011. On the packets marked with A2 to K2, which were submitted before the Trial Court, weight of 100-100 Gms. were mentioned. Though he has explained that he had committed mistake in mentioning weight of the Ganja, he has further admitted that in the memo (Ex.P35) also, vide which the sample packets marked with A1 to K1 were sent to the FSL, there is a mention of weight of the sample packet to be of 100 Gms. each. He has further admitted that in the seizure memo (Ex.P12) also, there is a mention that from 11 recovered packets of Ganja, 2-2 sample packets each of 100-100 Gms. were prepared. In the entries of Malkhana Register (Ex.P1) also, there is a mention of deposit of sample packets containing 100-100 Gms. of Ganja. Thus, a serious doubt arises that what was the actual quantity of Ganja which was taken out for preparation of sample packets whether it was 50-50 Gms. or it was 100-100 Gms. This witness has further admitted in paragraph 22 that specimen seal showing "PS Kondagaon MP" was affixed on the sample packets, but, according to the FSL Report (Ex.P37), on the sample packets

specimen seal showing "PS Kondagaon" only was affixed. Thus, again a serious doubt arises that the sample packets which were sent to the FSL were the same sample packets which were prepared at the spot. During his cross-examination, Vikas Chandra Rai (PW8) has further admitted that in the Mukhbir Suchna Panchnama (Ex.P2) and in the other documents also, over writings were done. He has further admitted that in the FIR (Ex.P31), there is a mention of sending of Constable Salim Javed Khan for bringing weighing article, but, in fact, he had sent Constable Manoj Kodopi for bringing the weighing article. In the diary statement (Ex.D1) of Tarak Banerjee and in the diary statement (Ex.D2) of Kamod Kumar Chandrakar also, there is a mention of sending of Constable Salim Javed Khan for bringing weighing article, but, in fact, there should have been mention of sending of Constable Manoj Kodopi for bringing the weighing article. The statements of Tarak Banerjee and Kamod Kumar Chandrakar were recorded by Inspector Mohsin Khan (PW9). Therefore, merely on the basis of the entries of the FIR, Inspector Mohsin Khan has recorded the statements of independent witnesses Tarak Banerjee and Kamod Kumar Chandrakar mentioning therein sending of Constable Salim Javed Khan instead of Constable Manoj Kodopi for bringing the weighing article. From this, it appears that Inspector Mohsin Khan had prepared the statements of these two independent witnesses according to the prosecution story instead of recording their actual statements.

- 15.** On a minute examination of the evidence available on record, it is clear that the independent witnesses have not supported the case of the prosecution. The case of the prosecution is based only on

the statements of Investigating Officer and other police witnesses. As already discussed above, there are serious doubts regarding quantity of sample packets and regarding sending of the same sample packets to the FSL which were prepared at the spot. Therefore, the statements of the Investigating Officer and other police witnesses are not reliable.

16. Consequently, both the appeals are allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.
17. 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