

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 50 of 2017**

- Toran Lal Diwan S/o Dwarika Diwan, Aged About 27 Years, R/o Akaltara, Police Station Chhura, District Gariyaband, Chhattisgarh., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Tendukona, District Mahasamund, Chhattisgarh., Chhattisgarh

--- Respondent

For Appellant : Shri Sunil Sahu, Advocate.

For Respondent/State: Shri Samdarsh Nirankari, Panel Lawyer.

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

11/04/2019

1. This appeal has been preferred against judgment dated 22-09-2016 passed in Special Criminal Case No. H -07/2015 by the Special Judge (Narcotic Drugs and Psychotropic Substances Act) Mahasamund, District Mahasamund, C.G. convicting the appellant under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act') and sentencing him with R.I. for 10 years along with fine Rs.1,00,000/- with default stipulation.
2. The case of the prosecution, in brief, is this, that on 13-02-2014 Sub-Inspector Rajendra Gendle (PW-10) received a confidential information, that one person is transporting contraband on a motorcycle. He summoned the witnesses and then after sending intimation to the superior authority he proceeded to the spot of incident along with team of police officials and witnesses. Near the village Mudagaon one motorcycle bearing registration No.CG

04 CP 7476 was intercepted, the rider introduced himself as Toran Lal Diwan, i.e., the appellant. On notice under Section 50 of the N.D.P.S. Act (Ex.-P/8) the appellant gave consent for being searched by S.I. Rajendra Gendale (PW-10) vide Ex.-P/9. After initial search of the police officials and the witnesses which was found without any result, the search of the appellant was made vide Ex.P/12 in which the gunny bag in possession of the appellant was searched which contained the contraband Ganja. Recovery memo Ex.-P/13 was separately recorded. On the spot of incident the material recovered was tested vide Ex.-P/14 and it found to be Ganja, a narcotic substance. Weightment procedure was carried out. The balance was firstly verified vide Ex.-P/16 and thereafter the contraband was also weighed which was found to be of weight 15 kg. and Panchnama Ex.-P/17 was recorded in this respect. Two samples of 100 grams each were prepared from the material seized, which were packed and sealed separately. Vide Ex.-P/19 the contraband, samples and the motorcycle were seized from the possession of the appellant.

3. After completion of these procedures, S.I. Rajendra Gendale (PW-10) proceeded to the police station along with the staff and the appellant, where the offence was registered by lodging of the FIR Ex.-P/36. Seized articles were handed over for keeping in safe custody in Malkhana. Statement of the witnesses were recorded in the investigation. The sample packets of the material seized were sent for FSL examination and a report Ex.-P/40 was

obtained from the FSL Raipur in which it was confirmed that the material present in the sample was Ganja, a narcotic substance. On completion of the investigation charge sheet was filed against the appellant.

4. The appellant was charged under Sections 20(b)(ii)(B) of the IPC, to which he denied and prayed for trial.
5. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence.
6. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned.
7. It is submitted by learned counsel for the appellant that the prosecution has failed to prove its case beyond reasonable doubt, therefore, conviction of the appellant is bad in law. Independent witnesses of search and seizure Koduram (PW-5) and Narayan Lal Sahu (PW-3) have turned hostile and not supported the prosecution case, therefore, conviction is based only on the evidence of police witnesses, which was not worthy of reliance. Therefore, the appellant was entitled for acquittal in this case. In the alternative, it is prayed that if this Court is not convinced to acquit the appellant from the charge, then his sentence of imprisonment may be reduced to the period already undergone by him in jail.

8. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this regard and submits that the prosecution has proved its case beyond reasonable doubt. Therefore, the appeal may be dismissed.
9. Heard learned counsel for the parties and perused the record of the trial Court.
10. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable doubt?
11. S.I. Rajendra Gendale (PW-10) has stated that on 13-02-2015 he received a confidential information from one informer that one person was transporting contraband on a motorcycle. One entry was made on the Station House diary vide Ex.-P/28C. Information Panchnama was separately prepared and the independent witnesses were summoned for the purpose of witnessing the raid. The intimation was sent to the office of S.D.O.P. Bagbahra regarding the information given by informer and about proceeding to the spot without obtaining search warrant, giving reasons for the same vide Ex.-P/7. The witnesses then proceeded to the spot along with the staff and the witnesses.

A barricade was raised on the spot when the motorcycle bearing registration No. CG 04 CP 7476 driven by this appellant arrived on the spot. The appellant introduced himself as Toran Lal

Diwan. The appellant was served with a notice Ex.-P/8 under Section 50 of the N.D.P.S. Act. The appellant then gave consent to be searched by this witness by Ex.-P/9. He has stated that firstly the witnesses and the members of the raiding team were searched and no objectionable substance were found in their possession, regarding which Panchnama Ex.-P/10 and Ex.-P/11 were recorded on the spot. Thereafter, this witness searched the white plastic bag in possession of the appellant and found containing 15 plastic packets each of the packets contained narcotic substance Ganja, the Panchnama Ex.-P/12 was prepared for the same and recovery panchnama Ex.-P/13 was also recorded to this effect.

The material in all the 15 packets were taken out and homogeneous mixture test was conducted by smelling, testing and burning it and it was confirmed that the substance was Ganja, regarding which panchnama Ex.-P/14 was recorded in the spot. In the weightment procedure the balance was firstly weighed electronically vide Ex.-P/16 and then the recovered article was weighed which was found to be in total 15 kg. and panchnama Ex.-P/17 was recorded in this respect. Two sample packets of 100 grams each were prepared separately and sealed which were marked as A1 and A2 and the remaining contraband was also packed and sealed, Panchnama Ex.-P/18 was recorded in this respect. Seizure of contraband, samples and the motorcycle in possession of the appellant was made vide Ex.-

P/19.

This witness then proceeded back to the police station along with the appellant and the members of the team where the FIR (Ex.-P/36) was lodged by him registering the offence against the appellant. The articles of seizure were handed over to Malkhana Incharge Siraj Ahmed (PW-8) and acknowledgment Ex.-P/26 was received from him. This witness then proceeded to investigate the case and recorded the statement of witnesses. The samples of the contraband were sent for laboratory examination to FSL. The FSL report (Ex.-P/40) confirmed that the contents of the samples were Ganja. Report of the complete procedure was sent to the superior authority vide Ex.-P/25 on the same day. Thereafter, this witness has further made request to the Executive Magistrate for the weightment of the seized Ganja which was weighed again and after preparing the sample packet of 100 grams the remaining Ganja 14.700 Kg. was again packed and sealed, Panchnama E.-P/43 was recorded in this respect.

In cross-examination S.I. Rajendra Gendale (PW-10) has remained firm on his statement given in his examination-in-chief and stated that the witnesses Koduram (PW-5) and Narayan Lal Sahu (PW-3) were present during the procedure of raid. He has denied all the adverse suggestion given in defence and also denied that he did not give proper opportunity to the appellant for his search according to the law. He has further reiterated that before preparing samples the contents of 15 packets were taken

out and homogeneous mixture was prepared. There is no other admission or other statement made by him in cross-examination so as to hold that he has made any false statement in his examination-in-chief. No specific question has been put to him in cross-examination to show that he had any enmity with the appellant or any personal reason to falsely implicate him.

12. Narayan Lal Sahu (PW-3) and Koduram (PW-5) both are the witnesses of procedure of search and seizure who have not supported the prosecution case, therefore, declared hostile and discredited by the prosecutor. However, they have admitted their signatures on all the memos of search and seizure. Because of this admission made it can be made out that these witnesses were present at the time when the proceeding of raid was taken up by S.I. Rajendra Gendale (PW-10).
13. Constable Jalesh Shrivastava (PW-1) is the person who was assigned to deposit the sample packets in FSL Raipur which he completed and obtained acknowledgment Ex.-P/2. Constable Manish Yadav (PW-2) was the messenger of the intimation given to the SDOP office.
14. Dilip Kumar Bandhe (PW-4) is the Patwari who has prepared the spot map Ex.-/21.
15. Anubhav Sharma (PW-6) is Executive Magistrate who has conducted the repeat weightment of the contraband vide Ex.-P/43.
16. ASI Motiram Dhruw (P-7) was posted in SDOP office Bagbahra

who received intimation Ex.-P/7 and the Panchnama of information Ex.-P/6 in the office of SDOP.

17. Siraj Ahmad (PW-8) was the In-charge of Malkhana who has stated that he received the articles Ganja including two sample packets which were kept in safe custody by him and the motorcycle was also handed over to him which was also kept in safe custody by him, regarding which he had given acknowledgment Ex.-P/26.
18. Dinesh Kumar Agrawal (PW-9) has partly supported the statement given by S.I. Rajendra Gendale (PW-10) by stating that he had weighed the Ganja and at that time the appellant was present. He was informed that the Ganja was seized from the appellant. This weightment was done in the police station by him. He was declared hostile and suggested by the prosecution that weightment was done on the spot to which he denied, however, he does not deny the weightment of Ganja that was seized.
19. After closely scrutinizing of the evidence of witnesses of prosecution, I am of this opinion that the prosecution rests only on the statement of S.I. Rajendra Gendale (PW-10) who happens to be a police witness. There is no such rule that police witness shall always be disbelieved, on the contrary, in such cases only rule of caution applies. The Court below and this Court has taken care to minutely scrutinize the evidence of S.I. Rajendra Gendale (PW-10) and it has been found that there is no reason or there is no previous enmity established by the defence so that it may be

considered that the witness, S.I. Rajendra Gendale (PW-10) had any interest in falsely implicating the appellant. Therefore, I find the evidence of S.I. Rajendra Gendale (PW-10) reliable and trustworthy. Therefore, after due consideration, I am of this opinion that conviction recorded by the Court below does not suffer from any infirmity. Hence, there is no room for interference in the finding of conviction in the impugned judgment.

20. Considered on the prayer for reduction in sentence of the appellant. For the reason that this appellant does not have any criminal history and that the appellant is in jail since 13-02-2015 and thus completed about more than 4 years in jail and he has also been unable to pay the fine amount imposed upon him, therefore, after considering on all the facts and circumstances of this case and economic status of the appellant, I feel inclined to allow this prayer.
21. Consequently, the appeal filed by the appellant is allowed in part. Conviction of the appellant recorded by the trial Court is upheld. The sentence imposed upon the appellant in the impugned judgment is modified and the appellant is now sentenced with R.I. for five years and the fine imposed upon him by the trial Court of Rs.1,00,000/- is reduced to Rs.25,000/-. In case of non-payment of fine amount the appellant shall have to undergo additional R.I. for 6 months.

Sd/-
(Rajendra Chandra Singh Samant)
 Judge