

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.687 of 2013

Judgment Reserved on : 18.9.2019

Judgment Delivered on : 16.12.2019

Abdul Kadir, aged about 43 years, S/o Abdul Karim, R/o In front of Rashtriya Kirana Store Ratanganj, Main Road Thana Nagpuri Gate Amravati, Maharashtra

---- Appellant

versus

State of Chhattisgarh through Police Station Keshkal, Jagdalpur, District Bastar, Chhattisgarh

--- Respondent

For Appellant : Shri Suresh Tandon, Advocate
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 14.6.2013 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act'), Bastar at Jagdalpur in Special Case No.29 of 2010, whereby the present Appellant has 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/- with default stipulation

2. Facts of the case, in brief, are that on 24.8.2009, Suresh Dhruw (PW9), Station House Officer, Police Station Keshkal found a truck bearing registration No.CG 04 G 8385 parked in unclaimed condition in Vyaparipara at Village Bahigaon. He brought the truck

near the premises of the police station and made an entry about the same in Rojnamcha Sanha (Ex.P26). Thereafter, he made a search for the owner of the truck. No owner or driver of the truck was found. Therefore, the truck was parked in the police station. He intimated the senior officer about the same and made an entry thereof in Rojnamcha Sanha (Ex.P27). On the basis of the contact number given in the diary and other papers which were found in the truck, owner of the truck, namely, Abdul Kalim was contacted, but, he did not disclose his name and offered money for leaving the truck and ultimately he did not come. On 29.8.2009, Suresh Dhruw (PW9) obtained a direction from the higher officer for search of the truck and made an entry thereof in Rojnamcha Sanha (Ex.P28). On 29.8.2009 itself, he called Tahsildar, Keshkal and S.D.O., Keshkal on the spot. Tahsildar, Keshkal, namely, Bharosaram Thakur (PW8) conducted a search of the truck in which he found 90 plastic bags containing turmeric like substance and 91 plastic bags containing Ganja like substance. He got all the bags taken out from the truck and Recovery Panchnama thereof (Ex.P7) was prepared. Thereafter, Suresh Dhruw (PW9) conducted an identification proceeding of the recovered Ganja like substance and prepared a panchnama thereof (Ex.P8). He called weighing article through Yasim Memon (PW6) and after making physical verification of the said weighing article, he prepared a panchnama thereof (Ex.P9). Yasim Memon (PW6) weighed the Ganja. It was found to be 3123 Kgs. Weight Panchnama (Ex.P10) was prepared. The Ganja was mixed and a panchnama thereof (Ex.P11) was prepared. 2-2 sample packets each of 25 Gms. were prepared from each of the recovered plastic bags of Ganja. Thus, total 182 sample packets were prepared. A seal of "PS

Keshkal MP” was affixed on each of the sample packets. All the plastic bags of Ganja were marked as A1 to A91. Specimen Seal Panchnama (Ex.P12) was prepared. The truck, the sample packets and the remaining quantity of Ganja were seized vide Ex.P13. After return to the police station, Suresh Dhruw (PW9) deposited all the seized articles in the Malkhana and obtained acknowledgment thereof (Ex.P20). He recorded First Information Report (Ex.P34). For further investigation, the matter was handed over to Inspector N.S. Netam (PW7). During investigation, N.S. Netam (PW7) recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. On 14.9.2009, confessional statement of acquitted accused Alok Gochchhed (accused of Crime No.111 of 2009 registered for offence punishable under Section 20(b) of the Act) was recorded and a panchnama thereof (Ex.P15) was prepared. In his confessional statement, Alok Gochchhed has disclosed that he and P. Nageshwar Rao (another acquitted accused) were present in the truck and due to fear of police they had left the truck and ran away. Thereafter, both these acquitted accused persons were arrested by police. On 7.6.2010, owner of the truck, i.e., the present Appellant was found and he was arrested. The sample packets were sent to the Forensic Science Laboratory vide Ex.P44 for chemical examination. Report of the FSL is Ex.P48, which is positive. On completion of the investigation, a charge-sheet was filed. Charge was framed against the accused persons.

3. In support of its case, 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, pleaded innocence and false implication. In their defence, 1 witness, namely, R.G. Sheikh (DW1), Assistant Sub-Inspector, Police Station Nagpuri Gate, Amravati, Maharashtra was examined.

4. On completion of the trial, vide the impugned judgment dated 14.6.2013, the Trial Court acquitted accused persons Alok Gochchhed and P. Nageshwar Rao of the charge framed against them, but, convicted and sentenced the present Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Trial Court has convicted the Appellant without there being sufficient evidence against him on record. The Appellant has been convicted only on the ground that he was owner of the truck in question in which Ganja was carried. This ground is not sustainable because wife of the Appellant had already reported theft of the truck on 19.8.2009, i.e., before catching of the truck for the alleged offence. No evidence is available on record to establish that the Appellant had any knowledge of the fact that Ganja was being carried in his truck. At the time of recording of his Confessional Statement (Ex.P15), acquitted accused Alok Gochchhed had also not given any statement regarding the Appellant. Therefore, it is not established that the Appellant was in any way conscious possession of the Ganja recovered from the truck. It was further submitted that it is the case of the prosecution that after finding of the truck, Suresh Dhruw (PW9) had tried to contact the Appellant, but, Suresh Dhruw (PW9) has not been able

to state that on which number he tried to contact the Appellant and Suresh Dhruw has also admitted that the number on which he contacted the Appellant and talked with him has not been mentioned by him in any of the prosecution document. R.G. Sheikh (DW1), Assistant Sub-Inspector, Police Station Nagpuri Gate, Amravati, Maharashtra has also deposed that their police station had not received any intimation from the Police Station Keshkal, Chhattisgarh about finding of the truck in question in unclaimed condition and catching thereof. From the above also, it is established that the Appellant was not aware of the fact that the truck was caught by the Police Station Keshkal, Chhattisgarh. Therefore, the finding of the Trial Court that the Appellant was aware of the fact of catching of the truck by the police since beginning and even thereafter he did not appear before the police for claiming his truck is not in accordance with the evidence available on record. Thus, the finding of the Trial Court that the fact of carrying of Ganja in the truck was in conscious possession of the Appellant is not in accordance with the evidence available on record.

6. Learned Counsel appearing for the Respondent/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. It is not in dispute that the truck in question was found in unclaimed condition on 24.8.2009. Thereafter, on 29.8.2009, the truck was searched. In the search, as per the prosecution case, total 91 bags, containing total 3123 Kgs. of Ganja, were recovered and

seized from the truck. It is the further case of the prosecution that later on acquitted accused Alok Gochchhed was arrested by the police and a panchnama (Ex.P15) was prepared regarding recording of his confessional statement. In Ex.P15, it has been disclosed by Alok Gochchhed that he and other acquitted accused P. Nageshwar Rao were transporting the truck in question and having seen the police they left the truck and ran away. In his said confessional statement, Alok Gochchhed has not stated anything regarding involvement of the present Appellant in the offence in question.

9. According to the Court statement of Investigating Officer Suresh Dhruw (PW9), in the truck in question, which was found in unclaimed condition, a diary and some documents relating to the truck were found. In the said diary and documents, some mobile numbers were mentioned on the basis of which he contacted the Appellant. On talking with the Appellant, he asked him to take back his truck, but he avoided to take back the truck and did not appear before him. Thereafter, he obtained necessary instructions from the higher officer and searched the truck. But, in paragraph 20 of his cross-examination, he has admitted the fact that on which mobile number he contacted and talked with the Appellant has not been mentioned by him in any of the prosecution document. This witness has even not been able to state that on which number he talked with the Appellant. Therefore, any number of the Appellant was found by this witness in the truck and he contacted with him is not established. Apart from this, R.G. Sheikh (DW1), Assistant Sub-Inspector, Police Station Nagpuri Gate, Amravati, Maharashtra has deposed that on 19.8.2009, wife of the Appellant

had made a complaint regarding theft of the truck in question. Thereafter, on 29.8.2009, she had submitted a written complaint in which she had mentioned about theft of the truck on 18.8.2009. R.G. Sheikh (DW1) has further deposed that they did not receive any intimation from Police Station Keshkal, Chhattisgarh that the truck in question was found in unclaimed condition. The above statement of R.G. Sheikh has not been rebutted during his cross-examination and the prosecution has also failed to submit any material on the basis of which it could be established that Police Station Keshkal, Chhattisgarh had sent any intimation to Police Station Nagpuri Gate, Amravati, Maharashtra or to any other police station of Maharashtra about finding of the truck in question in unclaimed condition.

- 10.** On a minute examination of the evidence available on record, it is clear that though the Appellant was a registered owner of the truck in question and as per the prosecution case from the truck total 91 bags of Ganja were recovered, the prosecution has not been able to establish that the Appellant was in conscious possession of the said Ganja because there is nothing on record on the basis of which it could be said that after catching of the truck, Investigating Officer Suresh Dhruw (PW9) had found any number of the Appellant from the truck and he had contacted or talked with him and informed him about finding of the truck in unclaimed condition. Suresh Dhruw (PW9) had also not sent any intimation regarding the truck to Police Station Nagpuri Gate, Amravati, Maharashtra or to any other police station of Maharashtra. In the panchnama (Ex.P15) also, which was prepared against recording of the confessional statement of acquitted accused Alok Gochchhed,

nothing is mentioned about involvement of the Appellant in the offence in question. Thus, from the evidence available on record, it is clear that the Trial Court has wrongly arrived at the conclusion that Investigating Officer Suresh Dhruw (PW9) had contacted the Appellant and the Appellant was, therefore, in conscious possession of the contraband article Ganja. Hence, the finding of conviction of the Appellant is not in accordance with the evidence available on record.

- 11.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
- 12.** 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