

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1635 of 2017

Judgment Reserved on : 4.7.2019

Judgment Delivered on : 4.9.2019

- 1. Raju @ Pintu Yadav, S/o Anandiram Yadav, aged about 21 years, R/o Kharmora, Ward No.31, Police Station Balko, District Korba, Chhattisgarh
- 2. Punit Mahant @ Montu, S/o Chhatdas Panka, aged about 32 years, R/o Niharika Aara Machine, Ward No.21, Korba, Police Station Rampur, District Korba, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Police Station Saraipali, District Mahasamund, Chhattisgarh

--- Respondent

For Appellants	:	Shri Vikash Pradhan, Advocate
For Respondent	:	Shri Amit Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 25.9.2017 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act of 1985'), Saraipali, District Mahasamund in Special Criminal Case No.16 of 2016, whereby each of 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/- with default stipulation

- 2. Facts of the case, in brief, are that on 12.2.2016, Inspector

Pramesh Dhruw (PW12) of Police Station Saraipali received a secret information to the effect that Ganja was being transported from Orissa to Saraipali. The information was recorded in Rojnamcha Sanha No.666 (Ex.P38). Witnesses were called and the information was forwarded to the Sub-Divisional Officer (Police), Saraipali. Thereafter, Inspector Pramesh Dhruw (PW12) along with his team proceeded towards National Highway No.53 for barring (*nakabandi*) at Village Khamharpali. At about 6 p.m., a vehicle bearing registration No.CG 12 AH 1727 was stopped for inquiry. On being inquired, driver of the said vehicle told his name to be Raju Yadav (Appellant No.1) and other person told his name to be Punit Mahant (Appellant No.2). Both were given notice under Section 50 of the Act of 1985. On their consent, their search was made by the police team. 3 bags of Ganja were found inside the vehicle. On being weighed, quantity of Ganja was found to be 60 Kgs. Markings were done and thereafter 2 sample packets each containing 100 gms. were prepared. The sample packets were marked as A1 and A2. On return to the police station, a crime, being Crime No.58/16 was registered. Seized property was deposited in Malkhana and an acknowledgment (Ex.P27) thereof was obtained from Malkhana Moharrir Balram Sahu (PW7). Sample packets were sent for chemical examination. FSL report is Ex.P35. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. Information of complete action was sent to the higher officers. On completion of investigation, a charge-sheet was filed against the Appellants for offence punishable under Section 20(b)(ii)(C) of the Act of 1985. Charge was framed against them under Section 20(b)(ii)(C) of the Act of 1985.

3. To rope in the Appellants, the prosecution examined as many as 12 witnesses. Statements of the Appellants were also recorded under Section 313 Cr.P.C. in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
4. After completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that the Trial Court has based its findings on conjectures and surmises and has also relied upon an inadmissible part of the evidence. The sole testimony of Investigating Officer Pramesh Dhruw (PW12) has illegally been accepted by the Trial Court. His statement is not only contradictory on material points but also does not find support from any of the independent witnesses. Even other police officials have not supported his version. Mandatory provision of Section 55 of the Act of 1985 has also not been complied with.
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. Investigating Officer Pramesh Dhruw (PW12) has deposed that on 12.2.2016, he received information to the effect that some persons were coming from Orissa and they were carrying Ganja with them. He recorded the information in Rojnamcha Sanha No.666

(Ex.P38). He also prepared a Mukhbir Suchna Panchnama (Ex.P2) and a Search Panchnama Without Warrant (Ex.P3) and forwarded their copies to the Sub-Divisional Officer (Police), Saraipali. He proceeded to the spot without warrant. Head Constable Shaukilal Thakur (PW3), who was Reader of the office of the SDO (Police), has duly corroborated the above statement of Pramesh Dhruw (PW12) and has deposed that after receipt of the information he gave acknowledgment on Ex.P2 and P3 themselves.

9. Pramesh Dhruw (PW12) has further stated in his Court statement that thereafter he along with the police team reached to the spot at about 6 p.m. A vehicle bearing registration No.CG 12 AH 1727 came from Orissa. The Appellants were sitting in the vehicle. He gave them notices (Ex.P12 and P14) under Section 50 of the Act of 1985 and obtained their consent vide Ex.P15. He also gave search of the police team including him and prepared a panchnama thereof (Ex.P16). Thereafter, he searched the vehicle in which he found 3 bags of Ganja. He recovered the Ganja vide recovery memo (Ex.P19). After identification of the recovered Ganja, he prepared identification panchanama thereof (Ex.P20). Giving notice (Ex.P7), he called Sunil Agrawal (PW5) for weighing of Ganja. After physical verification of the weighing article given by Sunil Agrawal, he prepared a panchanama thereof (Ex.P8). On Ganja being weighed, it was found to be of 60 Kgs. Weight Panchanama (Ex.P9) of the recovered Ganja was prepared. The recovered Ganja was mixed and thereafter 2 sample packets each containing 100 Grams were prepared. Remaining quantity of 59 Kgs. and 800 Grams of Ganja, the vehicle and its documents were

seized vide seizure memo (Ex.P22). The sample packets were marked as A1 and A2 and panchanama thereof (Ex.P23) was prepared. Spot-map (Ex.P33) was prepared. After return to the police station, First Information Report (Ex.P34) was recorded. The seized property and sample packets were deposited in the Malkhana and acknowledgment thereof (Ex.P27) was obtained. Information of complete action (Ex.P4) was forwarded to the Sub-Divisional Officer (Police). The sample packets were sent to the Forensic Science Laboratory for chemical examination. FSL report is Ex.P35. He has further deposed that on 22.3.2016, an inventory was prepared by Executive Magistrate Sitaram Kanwar (PW2) vide Ex.P1 in compliance with Section 52A of the Act of 1985.

- 10.** Head Constable Shaukilal Thakur (PW3) has supported the statement of Investigating Officer Pramesh Dhruw (PW12) and has stated that on 13.2.2016 information of complete action (Ex.P4) was received by him in the office of Sub-Divisional Officer (Police) and he had given an acknowledgment thereof on Ex.P4 itself.
- 11.** Naib-Tahsildar/Executive Magistrate Sitaram Kanwar (PW2) has deposed about preparation of an inventory vide Ex.P1 in compliance with the provision contained in Section 52A of the Act of 1985. Patwari Rajesh Kumar Dewangan (PW4) has deposed that he prepared spot-map (Ex.P5). Sunil Agrawal (PW5) is the witness who weighed the recovered Ganja, but he has not supported the case of the prosecution and has been declared hostile. Raju Nirmalkar (PW6) and Sanjay Kumar Agrawal (PW8) are the witnesses of seizure and other proceedings done by Investigating Officer Pramesh Dhruw (PW12), but both have also

not supported the case of the prosecution and have been declared hostile.

- 12.** Head Constable Balram Sahu (PW7) has stated that on 12.7.2016 he received 3 bags marked with A, B and C each containing 20 packets of Ganja seized in Crime No.58 of 2016 and gave an acknowledgment thereof (Ex.P27).
- 13.** Constable Saudagar Bagarti (PW10) is the witness who had deposited the sample packets (A1 and A2) in the FSL and obtained acknowledgment thereof (Ex.P30). This witness has deposed that he had received the sample packets on 17.2.2016 and deposited the same in the FSL on 18.2.2016.
- 14.** From the statements of Investigating Officer Pramesh Dhruw (PW12) and Reader of the Sub-Divisional Officer (Police) Shaukilal Thakur (PW3), it is clear that the intimation of Ex.P2 and P3 was received by Shaukilal Thakur (PW3) in the office of the Sub-Divisional Officer (Police) and thereafter information of complete action (Ex.P4) was also received by him on 13.2.2016. Thus, the provisions contained in Sections 42 and 57 of the Act of 1985 have been duly complied with.
- 15.** From the evidence available on record, it is clear that weighing witness Sunil Agrawal (PW5) and seizure witnesses Raju Nirmalkar (PW6) and Sanjay Kumar Agrawal (PW8) have not supported the case of the prosecution. Thus, the case of the prosecution is mainly dependent on the statements of Pramesh Dhruw (PW12), Balram Sahu (PW7), Saudagar Bagarti (PW10).

16. Investigating Officer Pramesh Dhruw (PW12), in his cross-examination, in paragraphs 37 and 38 has admitted the fact that there is no mention of sealing of the seized articles in the acknowledgment (Ex.P27). He has also admitted that there is also no mention in Ex.P27 regarding deposit of the sample packets. He has also admitted that copy of the Malkhana Register in which entries of deposit of the seized articles were made was also not submitted before the Trial Court. He has also admitted that in the FSL report (Ex.P35), there is mention of receiving of samples of Ganja kept in 2 separate **packets** (emphasis supplied) marked as A1 and A2. Contrary to this, from perusal of the mixing panchanama (Ex.P21) and the sample panchanama (Ex.P23), it reveals that 2 samples of Ganja prepared at the spot were kept in 2 separate plastic **boxes** (emphasis supplied) marked as A1 and A2. From perusal of Ex.P23, it also reveals that there is no mention in it about impression of any seal from which the boxes were sealed.
17. Malkhana Incharge Head Constable Balram Sahu (PW7) has also admitted the fact that when the seized articles were deposited before him in the Malkhana, at that time, no seal or specimen seal was given to him along with the seized articles to deposit in the Malkhana. He has also admitted that in the acknowledgment (Ex.P27), there is no mention that the sample packets were sealed and there is also no mention that at what time the seized property were deposited in the Malkhana. On a bare perusal of the acknowledgment (Ex.P27), it reveals that acknowledgment of receipt of only 3 bags marked as A, B and C each containing 20 packets, total weighing 59 Kgs. and 800 Grams, was given.

Balram Sahu (PW7) has categorically stated that other than this nothing was given to him to deposit in the Malkhana. Neither Malkhana Register nor a copy thereof has been submitted before the Trial Court to prove its entries. Thus, from the evidence adduced by the prosecution itself, it is established that in the Malkhana, only 3 bags containing Ganja of total 59 Kgs. and 800 Grams were deposited and no sample packets were deposited.

- 18.** Though Saudagar Bagarti (PW10) has stated that on 18.2.2016 he had deposited 2 sample packets marked as A1 and A2 in the FSL and obtained acknowledgment thereof (Ex.P30), sample packets A1 and A2 were received by him from whom and where has not been stated by him and no documentary evidence has also been led in this regard. As stated by Balram Sahu (PW7), the sample packets were not deposited in the Malkhana. Therefore, it was essential for the prosecution to establish that from whom, where and how Constable Saudagar Bagarti (PW10) received those sample packets. Apart from this, as per the entries made in the mixing panchanama (Ex.P21) and in the sample panchanama (P23), the 2 sample packets each containing 100 Grams of Ganja were kept in 2 plastic boxes marked as A1 and A2, but as per the FSL report (Ex.P35) the FSL examined the samples of Ganja kept in 2 sealed packets not kept in plastic boxes. Therefore, it is suspicious that examination of the seized Ganja itself was done in the FSL. It is suspicious that the samples which were prepared at the spot were only sent for chemical examination.

- 19.** From a minute examination of the above evidence on record, it is clear that compliance of Section 55 of the Act of 1985 has not been

done. It is also clear that the sample packets prepared at the spot were not deposited in the Malkhana. Record of the prosecution does not show that where, in whose possession and in what condition the sample packets were kept. Apart from this, it is also not established that the samples which were sent for chemical examination were the same which were prepared at the spot. Thus, in my considered view, ignoring these facts, the Trial Court has wrongly convicted the Appellants. The Appellants are entitled to get benefit of doubt.

- 20.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them. If any amount has been deposited by any of the Appellants towards the fine imposed by the Trial Court upon them, the same shall be refunded and the seized property shall be disposed of in accordance with law.
- 21.** 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