

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.15 OF 2011

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C. '), is filed by the appellants/accused Nos.1 to 3 aggrieved by the judgment, dated 07.01.2011, rendered in S.C.No.2 of 2009 on the file of the I Additional Sessions Judge, Nalgonda, whereby and whereunder the appellants/accused were found guilty for the offence under Section 20 (b) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act') and were accordingly convicted under Section 235 (2) Cr.P.C. and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- each, in default to suffer simple imprisonment for three months.

2. Heard both sides and perused the record.

3. Learned counsel for the appellants/accused would contend that the accused did not transport any dry ganja and they are falsely implicated in this case. Though the prosecution examined PWs 1 to 6 and got marked Exs.P-1 to P-4, there are material contradictions in the evidence of witnesses. There are also omissions and contradictions in Ex.P.2-Panchanama. Though it is alleged that the accused were transporting ganja while traveling in RTC bus bearing No.AP24-Z-3394, no bus tickets were seized. There is so much of variation with regard to number of ganja samples collected from the ganja bags allegedly seized from the possession of the accused. There is also variation with regard to quantity of ganja collected as samples. The prosecution failed to

establish the guilt of the accused beyond all reasonable doubts. However, the trial Court without there being any legally acceptable evidence to hold that the accused were transporting 40 kgs of ganja in 8 bags, convicted the accused, which is erroneous and ultimately prayed to set aside the same.

4. Learned Additional Public Prosecutor would contend that there is specific evidence of PWs 1 to 3 with regard to accused Nos.1 to 3 being caught with eight bags containing ganja. The samples of ganja were collected in the presence of PWs 4 and 5 as mentioned in Ex.P.2-Panchanama. There is evidence of PW.6 Investigating Officer to substantiate the accusation against the accused. FSL Report revealed that the contraband seized from the possession of the accused was ganja. There are no inconsistencies or material contradictions in the evidence of the witnesses. The trial Court rightly found the accused guilty for the offence under Section

20 (b) of NDPS Act and ultimately prayed to dismiss the appeal.

5. In view of the above submissions, the following points fell for determination?

- 1) Whether accused Nos.1 to 3 are found transporting ganja weighing 40 kgs on 13.12.2008 in RTC bus bearing No.AP-24-Z-3394?
- 2) Whether the prosecution proved the guilty of the accused for the offence under Section 20 (b) of NDPS Act beyond all reasonable doubts?
- 3) Whether the conviction and sentence recorded against accused Nos.1 to 3 for the offence under Section 20 (b) of NDPS Act is liable to be set aside?

POINTS 1 TO 3:

6. The specific case of the prosecution is that on 13.12.2008 around 11.45 hours accused 1 to 3 were found transporting 40 kgs of ganja in RTC bus bearing No.AP-24-Z-3394, without there being any valid permit or license and thereby committed an offence punishable under Section 20 (b) of the NDPS Act. To prove the accusation, the prosecution examined PWs 1 to 6 and got marked Exs.P.1 to P.4 and MOs 1 to 32 are also marked. The defence set up by the accused is that they are falsely implicated in this case and the whole case of the prosecution is false.

7. P.W.1 is the Inspector of Police, who is said to have inspected the RTC bus on 13.12.2008. His evidence is that he found accused Nos.1 to 3 in the bus with 8 bags containing ganja and he lodged a report under Ex.P.1 to the Police concerned. P.W.2 is the driver of the bus and he also stated that accused 1 to 3 were traveling in the said bus on 13.12.2008 when he was the driver of the said bus. P.W.3 is a traveler and he also deposed about the presence of accused in the said bus. He also stated that accused were also traveling in the bus on 13.12.2008 when it was inspected by the Police.

8. P.W.4 is a witness to the collection of ganja samples. He stated that Police drawn ganja samples weighing 200 grams each. He identified his signature on Ex.P.2-Panchanama for recovery of bags containing ganja i.e. MOs 1 to 6 and 9 to 16. P.W.5-Tahsildar stated that accused Nos. 1 to 3 confessed commission of offence in his presence. He opened the bags and ganja was found therein. Approximately there was 5 kgs of ganja in each bag. He specially

stated that two samples weighing 2 grams each were collected, sealed and signature chits of witnesses were pasted on the samples. P.W.6, who is the Investigating Officer and in whose presence P.W.5 is said to have drawn samples, deposed that P.W.6 had drawn samples weighing 200 grams each from each bag. He deposed about collection of eight samples. In cross examination, P.W.6 stated that each sample was weighing about 400 grams. This is inconsistent with the evidence of PWs 4 and 5.

9. Further, Ex.P.3 is the FSL report received in this case wherein the Expert has examined 16 samples and details of the weight of the samples were given as follows:

<u>Sl.No.</u>	<u>Sample Number</u>	<u>Weight</u>
1)	26439	238 grams
2)	26440	330 grams
3)	26441	210 grams
4)	26442	198 grams
5)	26443	258 grams
6)	26444	263 grams
7)	26445	235 grams
8)	26446	240 grams
9)	26447	239 grams
10)	26448	226 grams
11)	26449	223 grams
12)	26450	211 grams
13)	26451	280 grams
14)	26452	242 grams
15)	26453	212 grams
16)	26454	246 grams

10. There is no mention anywhere in the evidence of PWs 4 and 5 with regard to drawing of samples weighing differently. Now the question is 'what was the exact number of samples collected and what were their weights?' and 'whether the samples collected in the subject case were sent for FSL for analysis and report?'

11. There is no credible evidence to substantiate the number of samples collected under Ex.P.2. There is also inconsistency with regard to the finding of bags containing ganja from the accused persons in the evidence of PWs 1 to 3. Whether the samples collected in subject crime were analysed or not is doubtful? The case of the Prosecution is a doubtful one. There is no cogent and convincing evidence to establish that accused Nos.1 to 3 were found transporting ganja and the same was seized under cover of a panchanama. In these circumstances, it is not safe to act upon Ex.P.3-FSL Report where the opinion was given that the contraband seized was ganja. Accused 1 to 3 are entitled for benefit of doubt. The Trial Court had not properly analysed the evidence and reached incorrect and unjust conclusion. No offence under Section 20 (b) of NDPS Act is made out against accused 1 to 3 beyond reasonable doubts. Therefore, the conviction and sentence recorded against accused 1 to 3 for the offence under Section 20 (b) of NDPS Act are liable to be set aside.

12. In the result, the appeal is allowed and the conviction and sentence recorded against accused Nos.1 to 3 in S.C.No.2 of 2009 on the file of the I Additional Sessions Judge, Nalgonda, is hereby set aside and they are acquitted of the said offence. Bail bonds of the accused shall stand cancelled.

13. Miscellaneous Petitions pending in this Criminal Appeal, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

24th January, 2019.
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