

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1429 OF 2010

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973, is filed by the appellants/accused Nos.1 and 2 aggrieved by the judgment, dated 12.11.2010, rendered in S.C.No.4 of 2010 on the file of I Additional Sessions Judge, Nalgonda, whereby and whereunder, the appellants/accused Nos.1 and 2 were convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- each, in default to suffer simple imprisonment for three months for the offence punishable under Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

2. Heard learned counsel for the appellants/accused Nos.1 and 2 and the learned Additional Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellants/accused Nos.1 and 2 would contend that the provisions of Sections 42 and 57 of the Act were not complied with by the prosecuting agency; that there are no independent witnesses to prove the guilt of the appellants/accused Nos.1 and 2; that the samples collected were not properly analyzed by the Forensic Science Laboratory (F.S.L.); that the F.S.L. report is fabricated and ultimately, prayed to set aside the conviction and sentence recorded against the appellants/accused Nos.1 and 2.

4. The learned Additional Public Prosecutor would contend that altogether four witnesses were examined; that 9 Kgs. of Ganja was seized from the possession of appellants/accused Nos.1 and 2 under a cover of panchanama; that all the prosecution witnesses supported the case of the prosecution; that the provisions under the Act are complied with; that there is F.S.L. report to substantiate that the contraband seized was Ganja; that the trial Court rightly convicted and sentenced the appellants/accused Nos.1 and 2 for the offence punishable under Section 20 (b) of the Act and ultimately, prayed to sustain the conviction and sentence recorded against the appellants/accused Nos.1 and 2 by the trial Court.

5. In view of the submissions made by the learned counsel for both sides, the following points have come up for determination:

- “1. Whether the appellants/accused Nos.1 and 2 were found with 9 Kgs. of Ganja on 13.04.2010?
2. Whether the samples were properly drawn and analyzed?
3. Whether the prosecution proved the guilt of the appellants/accused Nos.1 and 2 for the offence punishable under Section 20 (b) of the Act beyond all reasonable doubt?”

Points 1 to 3:

6. The specific case of the prosecution is that on 13.04.2010, the appellants/accused Nos.1 and 2 were apprehended, while they were carrying 9 Kgs. of Ganja in a gunny bag at S.V. Degree College Main Road, Suryapet. PW.4 is the person, who

apprehended the appellants/accused Nos.1 and 2, along with other police personnel. PW.1 is the Assistant Sub-Inspector of Police, who was also present at the scene of offence when the appellants/accused Nos.1 and 2 were apprehended. He is said to be the witness to the seizure of Ganja from the appellants/accused Nos.1 and 2 and drawing of samples. PW.2 is the Mandal Revenue Inspector. PW.3 is the Tahsildar, who was also present at the time of seizure of Ganja from the possession of appellants/accused Nos.1 and 2.

7. The evidence of PW.1, M.A. Jabbar, reveals that he was the Assistant Sub-Inspector of Police, Suryapet, at the relevant time. On 13.04.2010, while he was present in the police station, on credible information received by the S.I. of Police, the S.I. of Police called him and LW.3 - G. Krishnaiah to S.V. Degree College, Suryapet. By the time they reached the S.V. Degree College, the Mandal Revenue Officer was present there. There, they found two persons moving suspiciously holding a gunny bag. They apprehended them. Thereafter, the Mandal Revenue Officer called two persons. In their presence, he seized 9 Kgs. of Ganja from the possession of the appellants/accused Nos.1 and 2 under a cover of panchanama. He had also drawn two samples, each weighing 50 gms. Later, the Mandal Revenue Officer handed over the appellants/accused Nos.1 and 2 along with the seized Ganja and samples to the S.I. of police. Thereafter, the appellants/accused Nos.1 and 2 were brought to the police station and a *suo motu* case was registered against them. MO.1 is the gunny bag containing 9 Kgs. of Ganja and MOs.2 and 3 are the sample packets.

8. The evidence of PW.2, M. Suresh Kumar, Mandal Revenue Inspector, reveals that on 13.04.2010 at about 12:00 Noon, the Tahsildar (PW.3) called him to S.V. Degree College to act as panch witness. Immediately, he along with LW.5 – Rama Rao went to the S.V. Degree College. By that time, the S.I. of Police, two Constables, Tahsildar and two persons with a gunny bag were present there. On the request of Tahsildar, they enquired the two persons. He identified the two persons in the Court, during the course of recording his evidence, as the same persons i.e., accused Nos.1 and 2. His evidence further reveals that the appellants/accused Nos.1 and 2 confessed the commission of offence stating that they were doing Ganja business. They also stated from where the Ganja was brought. In his presence, Ganja weighing 9 Kgs. was seized and two samples, weighing 50 gms. each, were drawn. Thereafter, the Tahsildar obtained his signatures on the sealed samples. He also deposed that MOs.1 and 2 contain his signature. Through his evidence, Ex.P1 – confession and recovery panchanama of the appellant/accused No.1 and Ex.P2 – confessional statement of appellant/accused No.2 were marked.

9. The evidence of PW.3, P. Anjaneyulu, Tahsildar, reveals that on 13.04.2010, he received a letter from the S.I. of Police to come to S.V.Degree College, stating that two persons were moving suspiciously. As such, he went to the police station and accompanied PW.1 and two other Constables. He found two persons standing west side of S.V. Degree College carrying a gunny

bag. He deposed about the confession of the appellants/accused Nos.1 and 2 that they committed the offence. He further deposed that samples, weighing 50 gms. each, were drawn in the presence of PW.2 and others. The evidence of PW.3 corroborates with the evidence of PW.2.

10. PW.4, K. Dhanunjaya, is the then S.I. of Police, Suryapet. He deposed that on 13.04.2010, he received a phone call stating that two persons were moving at S.V. Degree College under suspicious circumstances and the said two persons were asking the public to purchase Ganja. Immediately, he informed the same to the Tahsildar and has sent a requisition to conduct panchanama. He also deposed about the presence of other police Constables, PW.1 etc., at the scene of offence i.e., S.V. Degree College. He also deposed that PW.3 weighed the Ganja and drawn two samples, weighing 50 gms. each, in the presence of mediators and obtained the signatures of the panchas on the chits and pasted the chits on the samples. Thereafter, PW.3 handed over the seized Ganja and samples to him. Later, he returned to the Police Station along with the appellants/accused Nos.1 and 2 and registered Ex.P3 – F.I.R. against the appellants/accused Nos.1 and 2 for the offence punishable under Section 20 (b) of the Act. Thereafter, he remanded the appellants/accused Nos.1 and 2 to judicial custody. The samples were sent to the Director of R.F.S.L., Warangal, on 14.04.2010 through a letter of advise. Ex.P4 is the Analysis Report. After receiving the Analysis Report and after completion of investigation, he filed the charge sheet. MO.1 is the Ganja seized. MOs.2 and 3 are the samples drawn. He recorded

the statement of PW.1 and other witnesses. There is also evidence of PW.4 that the copy of the F.I.R. was immediately sent to the superior officers.

11. As seen from the entire evidence on record, on receipt of information with regard to the suspicious movements of the appellants/accused Nos.1 and 2 at S.V. Degree College, Suryapet, that they were selling Ganja, PW.4 along with PW.1 and others rushed to the scene of offence, intimating PW.3 to reach there to conduct panchanama. There was no sufficient time for PW.4 to reduce the information into writing and send the same to the superior officers. Had he involved in such a process of preparing the information and sending the same to the superior officers, delay would have caused and the appellants/accused Nos.1 and 2 would have escaped from the scene of offence. However, after the issue of F.I.R., intimation was sent to the superior officers with regard to seizure and registration of crime against the appellants/accused Nos.1 and 2. It is a sufficient compliance. This aspect had been thoroughly discussed by the trial Court and sufficient compliance of Section 42 of the Act was recorded. As seen from the entire evidence on record, there is cogent and convincing evidence of PWs.1 to 4 with regard to the appellants/accused Nos.1 and 2 indulging in selling of Ganja at S.V. Degree College, Suryapet, on 13.04.2010 at around 12:00 Noon. There is also evidence that 9 Kgs. of Ganja was seized from the possession of appellants/accused Nos.1 and 2 and it was subjected to chemical examination and a report, under Ex.P4, is obtained, wherein it is mentioned that the contraband seized was

Ganja. Admittedly, the appellants/accused Nos.1 and 2 have no licence to deal in Ganja business. The appellants/accused Nos.1 and 2, who are relatives, possessing 9 Kgs. of Ganja is proved beyond reasonable doubt. The trial Court had rightly analyzed the entire evidence on record and arrived at a conclusion. There is no infirmity to take a different view. The appeal is devoid of merit and is liable to be dismissed.

12. In the result, the Criminal Appeal is dismissed confirming the judgment, dated 12.11.2010, rendered in S.C.No.4 of 2010 on the file of I Additional Sessions Judge, Nalgonda.

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

February 06, 2019.
MD

Dr. SHAMEEM AKTHER, J