

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 631 of 2003

Judgment reserved on 23.06.2020

Judgment pronounced on 15.09.2020

Vinayak Rao S/o. Maroti Rao, aged 45 years, R/o Village Camp No. 2 Shardapara, Police Station Chhawani, District Durg, CG.

---- Appellant

Versus

State of Chhattisgarh through Police Station Chhawani, District Durg, chhattisgarh.

---- Respondent

For Appellant	:	Shri Vivek Mishra, Advocate
For Respondent	:	Shri Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Challenge in this appeal is to the judgment of conviction and order of sentence dated 09.05.2003 passed by Special Judge, under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Durg, CG. in Special Criminal Case No. 03/2003 whereby the learned Special Judge after holding the accused/appellant guilty for illicit possession of 10 kg 550 grams of Ganja, convicted him under Section 8/C r/w Section 20 (b), 2 (b) of NDPS Act and sentenced him to undergo RI for five years and to pay fine of Rs. 40,000/-, plus default stipulation.

2. Case of the prosecution in brief is that the accused/appellant residing with his second wife in the house of her father, and was involved in selling Ganja with his wife. Thereafter, on 07.01.2003 Police received a secrete information from the informant that the

accused/appellant was in illicit possession of Ganja in the house of his second wife. The said information was recorded in *Rojnamcha* (Ex. P-13A) and the Investigating Officer (PW-4) along with his staff reached his house and informed him regarding the information so received. He also gave him a notice under the relevant provisions of NDPS Act regarding his search before the Gazetted Officer or the Executing Magistrate, and the accused gave his consent by the IO himself. Thereafter, house in question was duly searched and 10 kg 550 grams of Ganja was recovered and was sent for chemical examination under Ex. P-17A. At the same time, two samples of 50-50 grams each were also drawn under Ex.P-10 and the remaining contraband was seized under Ex. P-12. Thereafter the FIR was recorded by the Investigating Officer (PW-4) and a copy of the same was forwarded to the concerned Magistrate. After completion of investigation, charge-sheet was filed before the concerned Magistrate followed by framing of charge accordingly.

3. The Court below vide judgment impugned convicted and sentenced the accused/appellant as mentioned above. Hence this appeal.

4. Counsel for the accused/appellant submits that the prosecution has examined two independent witnesses namely Bishat Ram (PW-1) and Punnu Ram (PW-2) but they have turned hostile. It is submitted that the house from where Ganja was seized was owned by the father-in-law of the accused where apart from the accused/appellant, his wife, father-in-law, brother-in-law and sister-in-law, as is evident from the evidence of PW-1, were also residing and

therefore, it cannot be said that the contraband was seized from the possession of the accused/appellant alone. He further submits that there is no conclusive evidence as to the fact that it is the accused/appellant who was the only inmate of the house and therefore also his conviction is bad in law.

5. State counsel however support the judgment impugned.

6. Having heard the evidence of the two independent witnesses being PW-1 and PW-2 examined by the prosecution, it is apparent that the house in which the contraband is alleged to have been kept and seizure of the same made, number of persons being father-in-law, mother-in-law, brother-in-law and sister-in-law were also residing and therefore, it cannot be said that the contraband was seized from the exclusive possession of the accused/appellant. Their evidence also indicates that brother-in-law of the accused/appellant namely Krishna had also being a convict in a similar case, and so was his wife. PW-1 and PW-2 have further stated in categorical terms that on the fateful day at about 10 PM, the police had forcibly obtained their signature on a blank paper and in fact no seizure of the contraband was made from the accused/appellant in their presence. It is surprising that when the independent witnesses have not supported the case of the prosecution, how the conviction has been imposed on the accused/appellant merely on the basis of statement of the police people. The Court below ought to have taken into consideration the fact that as the house in question was occupied by number of persons, two of them already held guilty in a similar case, and therefore, the involvement of the accused/appellant alone in the

present case cannot be made out. Since the two independent witnesses have already turned hostile, the Court below should not have kept aside their testimony and chosen the police statement for holding the accused/appellant guilty. There is no reason to disbelieve the evidence of PW-1 and PW-2 who happen to be the neighbours of the accused/appellant as there was no occasion for them to tell an untruthful version. True it is that the conviction can be based on the evidence of the police people but when there is a more reliable testimony of the independent witnesses, it should also have been taken into consideration by the Court below, which unfortunately has not been done in this case.

7. In view of the aforesaid analysis, the appeal is allowed and the judgment impugned described above is hereby set aside leading to acquittal of the accused/appellant. Ordered so.

8. Appellant is already reported to be on bail, and therefore, no order for setting him free etc. is necessary.

Sd/-

(Vimla Singh Kapoor)
Judge