

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.838 of 2012

Judgment Reserved on : 30.1.2020

Judgment Delivered on : 2.6.2020

Mukesh Dubey, son of S.K. Dubey, aged 31 years, business – travels,
resident of Anand Nagar, Raipur, District Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Kondagaon, District Bastar,
Chhattisgarh

--- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate
For Respondent	:	Shri Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 14.9.2012 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act'), Jagdalpur in Special Case No.53 of 2010, whereby the 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. Prosecution case, in brief, is that Manoj Prajapati (PW6), Sub-Inspector of Police Station Kondagaon received a secret information on 19.8.2010 at 9 a.m. that illegal Ganja was being transported from Jagdalpur to Raipur in a white Qualis vehicle

bearing registration No.CG 05 A 5110. He recorded the information in Rojnamcha Sanha (Ex.P21), called witnesses Kamod Kumar Chandrakar (PW2) and Mohd. Khurshid (PW3). He intimated them about the secret information and prepared a Mukhbir Suchna Panchnama (Ex.P3). In compliance of the provision contained in Section 42(2) of the Act, the said information was forwarded to S.D.O. (P), Kondagaon through Constable Afzal Khan (PW4). Acknowledgment of the receipt was obtained on Ex.P2. Sub-Inspector Manoj Prajapati (PW6) along with the witnesses and staff went to the spot at 10:30 a.m. At 11:50 a.m., the said Qualis vehicle reached near the forest barrier where stopper was put. Having seen the police, the Qualis vehicle dashed the stopper and fled away. The vehicle was chased for about 12-13 Kms. and was stopped near Jaitpuri. The vehicle was found being driven by the present Appellant. A notice under Section 50 of the Act was given to the Appellant for his personal search and search of the vehicle. His consent was obtained. The vehicle was searched. Illegal Ganja was found kept in total 4 bori (bags). A search panchnama (Ex.P9) of the vehicle was prepared. A panchnama (Ex.P10) of recovery of Ganja was prepared. Identification of the Ganja was done and a panchnama thereof (Ex.P11) was prepared. Constable Salim Javed (PW5) weighed the recovered Ganja and total weight of the Ganja was found to be 119.900 Kgs. Weight panchnama (Ex.P14) was prepared. Ganja was mixed and a panchnama thereof (Ex.P12) was prepared. 2-2 sample packets containing 50-50 Gms. each were taken out from all the 4 bags and those sample packets were marked as from A1, A2 to D1, D2. Sample packets were sealed and a panchnama thereof (Ex.P15) was prepared. The samples and remaining Ganja were seized from the Appellant

vide Ex.P17. The Appellant was arrested vide Ex.P18. After return to the police station, the seized articles were deposited in Malkhana and an acknowledgment thereof was obtained. Relevant entries were made in this regard in Rojnamcha Sanha (Ex.P32). Thereafter, First Information Report (Ex.P33) was recorded. In compliance of the provision contained in Section 57 of the Act, information of the complete action taken was sent to the S.D.O.(P), Kondagaon vide Ex.P5. 1-1 sample packets prepared from each bags were sent to the Forensic Science Laboratory vide Ex.P29. Acknowledgment of the FSL is Ex.P30 and report of the FSL is Ex.P31. The report (Ex.P31) is positive. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. Charge was framed against him.

3. In support of its case, the prosecution examined as many as 6 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. It was the defence of the Appellant that he was engaged in travel business. One Washid Khan had obtained his vehicle on rent and given an advance of Rs.3,000/- towards the rent. His vehicle was obtained for taking a dead body from Jagdalpur and for support of the dead body few bori (bags) containing grass like material were kept in the vehicle. He was not aware that the said grass like material was Ganja. Whatever material was kept in those bori (bags) were of Washid Khan. About this, he had disclosed in the police station, but no investigation was done in this regard. He had also made complaints to higher police

officers in this regard, but no inquiry was conducted on his complaints. It was also the defence of the Appellant that according to the press release of Police Station, Kondagaon, they had received information of transportation of illegal Ganja on 19.8.2010 at 4 a.m. and they had seized the illegal Ganja at 5 a.m. from two vehicles, i.e., one Indica Car and one Qualis vehicle. 2 cases were prepared. One case was against the Appellant and the other case was against Washid Khan and Javed and the entire proceedings were concluded in the morning hours itself. Later on, to implicate the Appellant, false and fabricated documents were prepared. In his defence, the Appellant examined as many as 4 witnesses.

4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the entire prosecution story seems to be doubtful. Without there being any clinching evidence on record against the Appellant, the Trial Court has wrongly convicted him. It was further submitted that though according to the entries of Rojnamcha Sanha (Ex.P32), the seized articles were deposited in the Malkhana and acknowledgment thereof was also obtained, the prosecution did not examine the Malkhana Moharrir nor did submit the Malkhana register or the acknowledgment issued against the deposit of the seized articles. Thus, mandatory provision of Section 55 of the Act has not been duly complied with by the prosecution. It was further submitted that the prosecution has also not examined Constable Vrittnarayan, who, according to the prosecution, had taken the sample packets to the FSL. This is fatal to the case of the

prosecution because according to the prosecution the sample packets were deposited in the Malkhana on 19.8.2010 and Constable Vrittnarayan was given those sample packets on 21.8.2010 to take them to the FSL, but the same were received in the FSL on 27.8.2010. Between 21.8.2010 and 27.8.2010, where were those sample packets kept, with whom were they kept and in what condition were they kept, statement of Constable Vrittnarayan was essential in this regard, but the prosecution has not examined him. It was further submitted that Head Constable Samaylal Pandey (PW1), Reader of the office of the S.D.O. (P), Kondagaon has admitted the fact that in the Receipt and Despatch Register (Ex.P1), in which he had made entry of receipt of the secret information which was forwarded to the S.D.O. (P), Kondagaon in compliance of the provision contained in Section 42(2) of the Act, in the last column where name of the accused is mentioned whitener was applied and some content was deleted. He has further admitted that in that column, earlier names of Javed Khan and Washid Ahmed were mentioned. He has further admitted that he had received the information at 10:30 a.m. and till that time crime was not registered, but despite that, there is an entry of Crime No.173 of 2010. Referring to the statement of Kamod Kumar Chandrakar (PW2), it was further submitted that this witness is a doctor. Though the doctor has not supported the case of the prosecution, Investigating Officer Sub-Inspector Manoj Prajapati (PW6) has admitted the fact that in the statement recorded under Section 161 of the Code of Criminal Procedure, the doctor has stated himself to be a kuli-majdoor, which is not possible. It was submitted that a false and fabricated case has been made against the Appellant by the prosecution. It was further

submitted that one of the independent witnesses namely, Mohd. Khurshid (PW3), who has supported the case of the prosecution, has categorically admitted the fact that on 19.8.2010, including him the entire raid/police party had returned to the police station and by that time the entire proceedings were completed and the documents were prepared in the police station later on and he had put his signatures on those documents in the police station. Referring to the documents Ex.P6, P7, P8, P10, P11, P12, P13, P14, P15 and P16, it was further submitted that from perusal of these documents, it reveals that preparation time of these documents was earlier left blank in these documents which was filled in later on by different pen, which shows that all the documents were prepared after completion of the entire proceedings collectively at a time. Therefore, the entire case of the prosecution becomes doubtful.

6. Learned Counsel appearing for the State opposed the above submission and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. With regard to the argument advanced by Learned Counsel appearing for the Appellant regarding non-compliance of the provision of Section 55 of the Act, I have examined the entire record of the Court below. According to the entries of Rojnamcha Sanha (Ex.P32), after return to the police station, all the seized articles as well as the sample packets were handed over to Malkhana Moharrir Naresh and an acknowledgment thereof was

also obtained from him, but the prosecution has neither produced the Malkhana register nor has produced the acknowledgment issued by Malkhana Moharrir Naresh. The prosecution has also not examined Naresh in this regard. In his Court statement, Sub-Inspector Manoj Prajapati (PW6) has even not stated a single word in this regard. At the relevant time, Manoj Prajapati (PW6) was posted as a Sub-Inspector in Police Station Kondagaon. He was not the Station House Officer of Police Station Kondagaon. Station House Officer of Police Station Kondagaon was Mohsin Khan. Before depositing the seized articles in Malkhana, Station House Officer Mohsin Khan had affixed his seal on the seized articles, no statement of Mohsin Khan in this regard has been recorded by the prosecution nor has the prosecution submitted any such document in this regard. Thus, in my considered view, the prosecution has totally failed to comply with the provision contained in Section 55 of the Act. Thus, the finding of the Trial Court in this regard is not in accordance with the evidence available on record.

9. As regards other argument raised by Learned Counsel appearing for the Appellant, I have gone through the entire statements of the witnesses and other evidence adduced by the prosecution. According to the entries of the FIR (Ex.P33), the FIR was registered on 19.8.2010 at 18:40 hours. As admitted by Head Constable Samaylal Pandey (PW1), entries were made by him in Receipt Despatch Register (Ex.P1) at 10:30 a.m., but in that entry Crime No.173 of 2010 is mentioned. Samaylal Pandey (PW1) has tried to justify in this regard, but his explanation is not satisfactory. From perusal of the documents Ex.P6, P7, P8, P10, P11, P12, P13, P14, P15 and P16, it also reveals that earlier preparation time

was left blank in these documents and were filled in later on by different pen at a time, which finds support from the admissions made by Mohd. Khurshid (PW3), one of the independent witnesses, because in his cross-examination, Mohd. Khurshid has categorically admitted that till 11 a.m., the whole proceedings were completed and they had returned to the police station by that time and thereafter the documents were prepared in the police station and he had put his signatures on these documents in the police station itself. Furthermore, Constable Afzal Khan (PW4) has also admitted the fact that on 19.8.2010, a photograph (Ex.D2) was taken out in the police station at about 12-1 p.m. in which presence of the Appellant and other two persons appear along with few bori (bags). From this also, it is clear that the raid party had returned to the police station till 12-1 p.m. and thereafter itself all the documents were prepared in the police station collectively at a time and time was mentioned in these documents at a time. Furthermore, according to the case of the prosecution and statement of Constable Afzal Khan (PW4), on the direction of Investigating Officer Manoj Prajapati (PW6), he had gone to a poultry farm situated in Bazarpara and had brought an electronic weighing machine made of Onyx company. The capacity of that weighing machine was of 50 Gms. to 50 Kgs. But, Constable Salim Javed (PW5), who had weighed the recovered Ganja, has deposed that the capacity of the weighing machine by which he had weighed the recovered Ganja was of 30 Gms. to 50 Kgs. He has further admitted in paragraph 6 that in the morning when he had gone to the police station he had seen that weighing machine kept in the police station. Therefore, the statement of Constable Afzal Khan (PW4) that he had gone to Bazarpara and brought a

electronic weighing machine from there is suspicious. Moreover, the prosecution has not examined Malkhana Moharrir Naresh as also Constable Vrittnarayan, who had taken the sample packets to the FSL nor any entry of Malkhana register was produced. Therefore, from 19.8.2010 to 27.8.2010, the seized Ganja and the sample packets were kept at which place, in what condition and in whose possession, the prosecution has failed to give any explanation in this regard. Therefore, the statements of Naresh and Vrittnarayan were essential in this regard. From 19.8.2010 to 27.8.2010, the sample packets and the seized Ganja were kept at which place, in what condition and in whose possession, since the prosecution has failed to give any explanation in this regard, possibility of tampering of the sample packets cannot be ruled out.

10. For the foregoing reasons, in my considered view, the Trial Court has wrongly convicted the Appellant. The Appellant is entitled to get benefit of doubt.
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. He is reported to be in jail. If he is not required in any other case, he be set at liberty forthwith.
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