

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 22 of 2012

- Khorwa, S/o Khorbahra Sikari, aged about 40 years, R/o Village Matiyari, P.S. Seepat, District Bilaspur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through – Station House Officer, P.S. Seepat, District Bilaspur (C.G.)

---- Respondent/State

For Appellant	:	Shri Shrawan Kumar Chandel, Advocate
For Respondent/State	:	Shri Rahul Jha, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

25.09.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 15.12.2011 passed by the Special Judge (NDPS Act), Bilaspur (C.G.) in Special Sessions Case No. 17 of 2011, whereby the Appellant stands convicted and sentence as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 20 (B) (2) (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS, Act')	R.I. for two years and pay a fine of Rs.3,000/-, in default of payment to further undergo additional R.I. for three months

3. The allegation against appellant Khorwa is that on 29.03.2011, 5 Kg of *ganja* was found in possession of the appellant in his red coloured air-bag.
4. Facts of the case in brief are that on 29.03.2011, PW-8 Rajendra Singh Parihar, Inspector (Station House Officer) in Police Station Seepat, was

engaged in the proceeding against one Jugendri Bai under the NDPS, Act and he alongwith his staff had gone for patrolling to Village Matyari. During investigation against Jugendri Bai under the NDPS, Act, when PW-8 stopped the bus for sending Jugendri Bai and her associate to Police Station, at that time one man got down nervously having a red coloured bag in his hand from the bus. On being suspected, PW-8 inquired from the said man, he told his name as Khorwa son of Khorbahra and he also told that he was having *ganja* in his air-bag, on which, he (PW-8) issued notice to the witnesses namely Mohit Ram (PW-4) and Anil Kumar (PW-3) vide Ex.-P/4. On being produced red coloured bag in which the contraband was kept in polythene by accused was recovered in presence of above witnesses and recovery-*pachnama* of the contraband was prepared vide Ex.-P/6. PW-8 also prepared identification-*panchnama* of the contraband which was seized from accused Khorwa in presence of the said witnesses by smelling, testing and burning vide Ex.-P/7. PW-8 gave notice to Laxman (PW-5) to be present alongwith weighing machine vide Ex.-P/9 and on being weighed, it was found to be 5 Kg. Thereafter, out of 5 Kg *ganja*, PW-8 prepared two samples of 50-50 grams each for FSL examination vide Ex.-P/13 and particular of specimen seal was prepared vide Ex.- P/12. PW-8 prepared spot map (Ex.- P/5) and arrest memo Ex.-P/14. After returning to the Police Station, *Roznamchasahna* (Ex.-P/18) was recorded by PW-8 and F.I.R. (Ex.-P/19) was registered against accused/appellant Khorwa under Section 20 (B) of the NDPS, Act. The seized *ganja* and the samples were given to PW-2 Kiritram Joshi, Head Constable (PW-2), on supurdnama vide Ex.-P/3 which was recorded in *Roznamchasahna* No. 1214 vide Ex.-P/20C and the statements of Mohit Ram (PW-4) and Anil Kumar (PW-3) were recorded. Information regarding investigation in the case and arrest was also given to the concerned Superintendent of Police and Additional Superintendent of Police (Rural) through Radio-Message vide Ex.-P/21 and thereafter, PW-8

made an information regarding investigation under NDPS Act and the same was sent to Superintendent of Police vide Ex.-P/22. The above information as per Ex.-P/21 & Ex/-P/22 were recorded in *Roznamchasahna* No. 1215 vide Ex.-P/23C. Samples of 50-50 grams of *ganja* marked as Articles 'A' & 'B' were sent to FSL, Raipur for examination from where a report was received vide Ex.-P/24. As report Ex.-P/24 the *ganja* was found in Article 'A'.

5. After completion of the investigation, the charge-sheet was filed against the accused/appellant under Section 20 (B) of NDPS, Act and while framing the charge, the Special Judge framed the charge against the accused/appellant under Section 20 (B) (2) (b) of the NDPS, Act which was denied by him and he prayed for trial.
6. So as to hold the accused/appellant guilty, the prosecution examined 08 witnesses namely PW-1 Vasudeo Patel, PW-2 Kiritram Joshi, PW-3 Anil Kumar, PW-4 Mohit Ram, PW-5 Laxman, PW-6 Ramkrishna Mishra, PW-7 Rajkishore Paikra and PW-8 Rajendra Singh Parihar in support of its case. Statement of the appellant was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. Accused/appellant examined one Satish Agrawal as DW-1 in his defence.
7. After appreciation of the evidence available on record, the learned Special Judge (NDPS), Bilaspur (C.G.) by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para- 2 of this judgment, hence this appeal.
8. Learned counsel for the appellant submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all these grounds and is assailing the jail sentence on the ground that the appellant has remained in jail for about nine months and eight days and presently he is on bail. He further submits that the offence occurred in the year 2011 and

at that time the appellant was aged about 40 years and now he would be aged above 50 years, therefore, it would be appropriate to reduced the sentence imposed upon him to the period already undergone by him.

9. On the other hand, learned counsel for the State supporting the impugned judgment submits that the Special Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
10. Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.
11. PW-3 Anil Kumar and PW-4 Mohit Ram who are independent witnesses of recovery-*panchnama* Ex.-P/6, spot map Ex.-P/5, identification of contraband Ex.-P/7, arrest memo Ex.-P/14 etc, have admitted that they have signed on the documents Ex.-P/6, Ex.-P/5, Ex.-P/7, Ex.-P/14 etc, Both these witnesses have proved this fact also that on the date of incident Police Officers prepared documents Ex.-P/6, Ex.-P/5, Ex.-P/7, Ex.-P/14 etc. But they have been declared hostile by prosecution as they have not supported the prosecution case.
12. PW-1 Vasudeo Patel, Constable in Police Station Seepat, has stated that goods-register in which entry was made regarding 5 Kg *ganja* and 50-50 grams of *ganja* packets for FSL examination, was seized vide Ex.-P/1 in his presence and he has duly proved the same.
13. PW-2 Kritram Joshi, Head Constable, has proved this fact that 5 Kg *ganja* and 50-50 grams of *ganja* packets for examination seized from the appellant were received by him for keeping in safe custody in *Malkhana* and the entry of the same was made in goods-register at serial No. 21 vide Ex.-P/2C and he has duly proved the same
14. PW-5 Laxman has stated that the police had demanded weighing machine

from him and he took electronic weighing machine to Police Station Seepat where after giving weighing machine, he returned back. He admits his signature on the document of weighing-*panchnama* vide Ex.-P/11.

15. PW-6 Ramkrishna Mishra, Constable, has stated that he submitted sealed packet of *ganja* for examination to FSL, Raipur and receipt of which is Ex.-P/16. PW-7 Rajkishore Paikra, Constable, has proved the document of Ex.-P/1 whereby the *Malkhana* register was seized and handed over to Head Constable *Moharrir*.

16. PW-8 Rajendra Singh Parihar, who is the Investigating Officer in this case, has stated that when he was patrolling alongwith constable of Police Station for investigating in village Matiyari against Jugendri Bai under the NDPS, Act, he stopped the bus for sending Jugendri Bai and her associate to Police Station, at that time one man got down nervously having a red coloured bag in his hand from the bus. When PW-8 asked the name of the said person/appellant, he told his name as Khorwa and the appellant himself surrendered red coloured bag to PW-8 saying that *ganja* was kept in the said bag.

17. As per evidence of PW-8 Rajendra Singh Parihar, he complied with the procedure as per the Act and after giving notice to the witnesses namely Mohit Ram (PW-4) and Anil Kumar (PW-3) recovered contraband as per Ex.-P/6 and also prepared identification-*panchnama* of the contraband seized from the appellant vide Ex.-P/7. PW-8 gave notice to Laxman (PW-5) to be present alongwith weighing machine vide Ex.-P/9 and on weighing, it was found to be 5 Kg and out of 5 Kg *ganja*, he prepared two samples of 50-50 grams of *ganja* and the same were sealed and seized separately for FSL examination as per Ex.-P/13. He prepared spot map vide Ex.-P/5 and arrest memo Ex.-P/14. PW-8 recorded the proceedings in *Roznamchasahna* (Ex.-P/18) and registered F.I.R. (Ex.-P/19) against appellant Khorwa under

Section 20 (B) of the NDPS, Act. Information regarding arrest of the appellant was sent to the family members i.e. Shyama Bai and Ganga Prasad as per Ex.-P/15. The seized *ganja* and their samples were given to PW-2 Kritram Joshi, Head Constable, on *supurdnama* for keeping the same in *Malkhana* as per Ex.-P/3 which was recorded in *Roznamchasahna* No. 1214 (Ex.-P/20C). After registration of FIR and other procedure under the law, PW-8 immediately informed about the incident to Superintendent of Police and Additional Superintendent of Police (Rural) via Radio-Message as per Ex.-P/21. As per FSL report (Ex.-P/24), *ganja* was found in Article 'A'. Entire evidence of PW-8 Rajendra Singh Parihar is not challenged in cross-examination and only formal questions were put in cross-examination. There is no reason to disbelieve the evidence of police personnels i.e. PW-8 Rajendra Singh Parihar, PW-1 Vasudeo Patel, PW-2 Kritram Joshi, PW-6 Ramkrishna Mishra and PW-7 Rajkishore Paikra.

18. In the present case, the appellant examined one defence witness Satish Agrawal as DW-1. DW-1 has stated that on 29.03.2011 the appellant was taking tea in his shop (hotel) and at that time the police came and took the appellant from his (DW-1) hotel. Accused/appellant has taken the defence in his examination under 313 Cr.P.C. that he was falsely implicated. However, in the given facts and circumstances, the oral and documentary evidence available on record as discussed above, the evidence of defence witness (DW-1) does not inspire confidence of the Court and as such it is of no help to the appellant.

19. It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer

and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the Court finds the evidence of the police officer as unreliable and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This also based on the principle that quality of the evidence weighs over the quantity of evidence. [***Pramod Kumar Vs. State (GNCT) of Delhi*** reported in ***AIR 2013 SC 3344***]. The same principle of law has been reiterated by the Supreme Court Judgment in the matter of ***Baldev Singh Vs. State of Haryana*** reported in ***(2015) 17 SCC 554*** and in paragraph-10, it has been observed as under:

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness. ”

20. In the present case, though independent witnesses i.e. Anil Kumar (PW-3) and Mohit Ram (PW-4) have not supported the prosecution case, but they

have admitted their signatures on all relevant documents. However, the other witnesses i.e. police personnel namely PW-8 Rajendra Singh Parihar, PW-1 Vasudeo Patel, PW-2 Kritram Joshi, PW-6 Ramkrishna Mishra and PW-7 Rajkishore Paikra have unequivocally stated about search and seizure of the contraband. As per available evidence on record of prosecution, defence has utterly failed to elicit anything from them which could suggest that they were in any manner inimical to the accused or were interested in false implication of the accused in the said crime; their evidence appear to be trustworthy and supported by the documentary evidence on record as also from the evidence of independent witnesses. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the police personnel.

21. Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, the findings recorded by the Special Court holding the appellant guilty under Section 20 (B) (2) (b) of the NDPS, Act cannot be found faulted with and the same are hereby affirmed.

22. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellant was first offender of 40 years on the date of incident and now he must be aged above 50 years, he has no criminal antecedent, he remained in jail for about nine months & eight days and is on bail since 06.01.2012 granted by this Court, the incident took place around 09 years back, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that in the present case also no useful purpose would be served in

again sending the appellant back to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him while keeping the fine sentence with default stipulation intact.

23. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant awarded by the Special Court under Section 20 (B) (2) (b) of the NDPS, Act, he is sentenced to the period already undergone by him, however, the fine amount imposed on him with default sentence by the Special Court shall remain intact. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge