

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.184 of 2016

Judgment Reserved on : 11.11.2019

Judgment Delivered on : 10.2.2020

Hariram Ahirwar, son of Shri Kancheri Ahirwar, aged about 33 years, resident of Village Rasilpur, Police Station Taiuda, District Vidisha, Madhya Pradesh

---- Appellant

versus

State of Chhattisgarh through the Station-in-Charge, Police Station G.R.P. Raipur, District Raipur, Chhattisgarh

--- Respondent

For Appellant : Shri Rishi Rahul Soni, Advocate
For Respondent : Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 20.11.2015 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act (henceforth 'the NDPS Act'), Raipur in Special Criminal Case No.1207 of 2014, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(ii)(C) of the NDPS Act	Rigorous Imprisonment for 10 years and fine of Rs.1,00,000/- with default stipulation

2. Prosecution case, in brief, is that on 11.10.2014, Shankar Lal Chandrakar (PW8), Station-in-Charge of Police Station, G.R.P.,

Raipur received information that one person is sitting with two bags containing contraband article Ganja at platform No.1 near the over bridge which was under construction in Railway Station, Raipur and he was waiting for a train to go to Nagpur. Shankar Lal Chandrakar (PW8) prepared a Mukhbir Suchna Panchnama thereof (Ex.P2) and forwarded the said information to the higher officer in compliance with Section 42 of the NDPS Act. Thereafter, he reached at the spot along with witnesses. In compliance with Section 50 of the NDPS Act, he gave a notice (Ex.P4) to the Appellant and obtained his consent (Ex.P5). Thereafter, he searched the Appellant. He found that the Appellant had kept two airbags. One bag had contained 13 Kgs. of contraband article Ganja and the other bag had contained 12 Kgs. of the contraband article. During the search, it was found that the contraband article kept in the bags was green-brown seeds containing leaves. 50 Gms. quantity of the contraband article was taken out from one bag as a sample and marked as A1. Likewise, 50 Gms. quantity of the contraband article was taken out from the other bag as a sample and marked as A2. Both the sample packets (A1 and A2) and the remaining quantity of the recovered contraband article were seized vide Ex.P8. He arrested the Appellant and thereafter returned to the police station and deposited the seized articles in Malkhana. Entry of deposit of the seized articles was made in Malkhana Register (Ex.P14) and acknowledgment of the said deposit is Ex.P15. He registered First Information Report (Ex.P16). In compliance with Section 57 of the NDPS Act, he sent information (Ex.P18) of the complete action taken to the higher officer. The sample packets (A1 and A2) were sent to the Forensic Science Laboratory vide Ex.P20 for examination. FSL report is

Ex.P21, which is positive. 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 9 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. No witness has been examined in defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being sufficient evidence available against the Appellant, the Trial Court has wrongly convicted him. One of the seizure witnesses has not been examined and another seizure witness Gaukaran Verma (PW2) is a pocket witness of police and, therefore, his statement is not reliable. There are material contradictions and omissions in the statements of other prosecution witnesses. It was further submitted that mandatory provisions of the NDPS Act have also not been duly complied with. Therefore, the conviction of the Appellant is not sustainable.
6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence and submitted that all the mandatory provisions of the NDPS Act have duly been complied with by the prosecution. It was further submitted by him that though one of the seizure witnesses has not been examined,

another seizure witness Gaukaran Verma (PW2) has duly corroborated the case of the prosecution. From the statements of the other prosecution witnesses, the offence is duly proved. Therefore, the Trial Court has rightly convicted the Appellant.

7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. In his Court statement, Shankar Lal Chandrakar (PW8), who, at the relevant time, was an Inspector and was posted as Station-in-Charge in Police Station G.R.P., Raipur, has deposed that on 11.10.2014 at 16:40 hours, he received information from the informant that on platform No.1 one person was present on the bandstand of the under-construction over bridge and he was having contraband article Ganja with him and was waiting for a train to go to Nagpur. He called witnesses and prepared Mukhbir Suchna Panchnama (Ex.P2) in presence of the witnesses. Thereafter, in compliance of Section 42 of the NDPS Act, he gave intimation (Ex.P3) to S.R.P., Raipur about the Mukhbir Suchna and proceeded further without any search warrant. He sent Ex.P3 through Constable Purushottam Latore (PW6). The above statement of this witness is duly corroborated by Purushottam Latore (PW6) and Head Constable Manmohan Singh (PW3), Reader of the office of S.R.P. Manmohan Singh (PW3) has deposed that on 11.10.2014 at 17:55 hours Purushottam Latore (PW6) had brought Mukhbir Suchna Panchnama (Ex.P2) and other Panchnama (Ex.P3). He received both the documents and made entry thereof in a register. The above statement of this witness has not been duly rebutted. Thus, from the statements of Shankar

Lal Chandrakar (PW8), Purushottam Latore (PW6) and Manmohan Singh (PW3), it is clear that compliance of Section 42 of the NDPS Act is duly proved.

9. Shankar Lal Chandrakar (PW8) has further deposed that thereafter he reached at the spot along with witnesses and staff where the Appellant was found. In compliance of Section 50 of the NDPS Act he gave him a notice (Ex.P4). The Appellant gave his consent vide Ex.P5 in which he consented to be searched by this witness himself. Consent of the Appellant has been written by Head Constable Mahendra Pandey (PW4). He has deposed that since the Appellant was an illiterate person and was unable to put his signature, but he could understand Hindi, therefore, the consent letter was read over to him. Thereafter, he gave his consent and put his thumb impression. The statement of this witness has also not been duly rebutted. From the statements of this witness as well of Shankar Lal Chandrakar (PW8), it is clear that compliance of Section 50 of the NDPS Act has duly been proved. Shankar Lal Chandrakar (PW8) has further deposed that he searched the Appellant in which he found one black airbag. In the said black airbag, 13 Kgs. of contraband article Ganja was kept. He also found one more bag of brown colour in which 12 Kgs. of contraband article Ganja was kept. He identified and weighed the contraband article and prepared a panchnama thereof (Ex.P7). He prepared one sample packet from each bag, i.e., total two sample packets each containing 50 Gms. of the contraband article. Thereafter, the sample packets (A1 and A2), remaining Ganja and railway ticket (Article C) issued for journey from Raipur to Ganjbasouda were seized vide Ex.P8. He has further deposed

that thereafter he went to the police station and registered FIR (Ex.P16). Seizure witness Gaukaran Verma (PW2) has only stated that one boy who was having a black bag containing contraband article Ganja was caught from near the over bridge. Other than this, he has not supported the case of the prosecution in any way. Other seizure witness has not been examined by the prosecution. But, in cross-examination of Shankar Lal Chandrakar (PW8), no such fact is mentioned on the basis of which it could be established that the Appellant has been falsely implicated by Shankar Lal Chandrakar (PW8). While his cross-examination, in paragraph 14, Shankar Lal Chandrakar (PW8) was put a suggestion that the bag which was shown to be seized from the Appellant did not belong to the Appellant, but to some other person. From the above suggestion, it is also established that the Appellant had kept two bags. Therefore, the statement of Shankar Lal Chandrakar (PW8) is duly reliable in this regard.

10. Head Constable Dharamraj Dhruw (PW7) was posted as a Malkhana Moharrir at G.R.P., Raipur. He has deposed that he had received two airbags containing 13 Kgs. and 12 Kgs. of contraband article Ganja, respectively and two sample packets each containing 50 Gms. of the contraband article marked as A1 and A2 in sealed condition. He had also received one rail ticket along with the above sealed articles. He made entries of receipt of the above articles in the Malkhana Register (Ex.P14) and gave acknowledgment thereof (Ex.P15). His statement is also not duly rebutted during his cross-examination. From the statement of this witness as well as entries of Malkhana Register, it is also established that the seized articles including the sample packets

were deposited in the Malkhana in sealed condition. According to the statement of Shankar Lal Chandrakar (PW8), he had sent intimation (Ex.P18) of the complete action taken to the S.R.P., Raipur and he also intimated about the same to the Special Court vide Ex.P19. The above statement of this witness is also not duly rebutted during his cross-examination. Thus, it is also established that provisions of Sections 55 and 57 of the NDPS Act have also been duly complied with. Constable Suresh Kumar Mishra (PW5) had deposited the sample packets in the FSL on 13.10.2014 along with a draft (Ex.P10). According to this witness, he had obtained acknowledgment (Ex.P11). FSL report is Ex.P21, which is positive.

- 11.** On a minute examination of the above evidence, it is clear that all the mandatory provisions of the NDPS Act have been duly complied with by the prosecution. Though independent witness of the seizure Gaukaran Verma (PW2) has not duly supported the case of the prosecution and other seizure witness has not been examined, Shankar Lal Chandrakar (PW8) and L.S. Rajput (PW9) have duly corroborated the prosecution story. They have remained firm during their cross-examination and their statements have also not been duly rebutted regarding the search and seizure of the contraband article. After the seizure, two sample packets were deposited in the Malkhana along with other articles in sealed condition. The sealed sample packets were sent to the FSL for examination and the FSL report is positive. There is no issue regarding any tampering of the seized articles. From the entire evidence available on record, I find that the offence is clearly proved. The Trial Court has rightly convicted the Appellant. The

sentence imposed upon the Appellant is also just and proper.

- 12.** Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
- 13.** 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