

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1207 of 2003**

1. Khir Sindur, S/o Bishek Uria, Aged About 38 Years,
 2. Putna Bai, W/o Gandharv, Aged About 52 Years, Caste- Uria,
- Both are R/o Uria Mohalla, Kumhari Chowki, Kumhari, District- Durg (C.G.).

---- Appellants**Versus**

- State of Chhattisgarh, Through : P.S. O.P. Kumhari, District- Durg C.G.

---- Respondent

For Appellants	:	Mr. Bharat Sharma on behalf of Mr. Manoj Paranjpe, Advocate
For Respondent/State	:	Mr. Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Rajani DubeyOrder On Board by virtual hearing**13.07.2021**

1. Heard.

2. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment dated 07.11.2003 passed by Special Judge (NDPS Act), Durg (C.G.) in Special Case No. 27/2002, wherein the said court convicted the appellants for commission of offence under Section 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 and sentenced them to undergo RI for 3 years and pay fine of Rs. 5,000/- each with further default stipulations.

3. Learned counsel for the appellants submits that appellant No.2- Putna Bai had died on 10.06.2015 and the death certificate of the appellant No. 2 is annexed therein. Therefore, the appeal is abated with respect to appellant No. 2- Putna Bai.

4. As per case of the prosecution, on 25.12.2002, at about 9.30 PM, information was received by Sub-Inspector- N.K. Patel posted at Police Outpost- Kumhari regarding illegal possession of contraband article ganja by the appellants. On the basis of secret information, police personnel intercepted and found the appellants in possession of contraband ganja which was weighed and it is found to be 10 KG. The matter was invested, charge-sheet was filed and after completion of trial, the trial Court convicted the appellants as mentioned above.

5. Learned counsel for the appellants submits that ganja was not found in physical possession of the appellants. He further submits that the independent witnesses namely Tarabai (PW-3) & Ramadhar Sharma (PW-6) have not supported the prosecution case, but the trial court failed to appreciate this aspect of the matter. The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside. He has also placed reliance in the cases of **Triloki Gupta Vs. State of Chhattisgarh & Gajendra Singh Thakur Vs. State of Chhattisgarh** passed in CRA Nos. 1168/2003 & 287/2009 respectively of this Court.

6. *Per contra*, learned State counsel submits that the finding arrived at by the trial court is based on proper appreciation of evidence and, therefore, is not liable to be interfered with.

7. Heard learned counsel for the parties and perused the material available on record including the impugned judgment.

8. From evidence of Sub-Inspector- N.K. Patel (PW-5), it is established that upon receiving the information and after complying with all the legal formalities, he intercepted and seized polythene packet and weighed, it was found to be 10 KG. The seized article was handed over to Head-Constable- Induram Sahu (PW-2) who was in-charge of Malkhana for safe custody. Thereafter, the seized article was sent for examination and test of ganja was found positive which is supported by report of State Forensic Science Laboratory (Ex. P/32). In view of the above, there is nothing on record to say that any provision of the Act, 1985 was flouted with, therefore, the argument advanced on

behalf of the appellant is not sustainable.

9. The act of the appellant falls within mischief of Section 20(b)(ii) (B) of the Act, 1985 for which the trial court convicted the appellant and his conviction is hereby affirmed.

10. As regards sentence, keeping in view the facts that incident is said to have taken place in the year 2002, and thereby nearly 19 years have rolled by since then. The appellant has already remained in jail for 95 days, therefore, his sentence is liable to be reduced to the period already undergone by him.

11. In view of the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him. Accordingly, his sentence is reduced to the period already undergone by him. However, the fine amount imposed by the trial Court shall remain intact.

12. With these modifications, the appeal is partly allowed.

**Sd/-
(Rajani Dubey)
JUDGE**