



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1092 OF 2007

The State of Maharashtra

... Appellant/
Complainant

vs.

1. Sanjay Tukaram Karande
Age 25 yrs., Occ.: Agri.
2. Vijay Baba Thombare
Age 26 yrs. Occ.: Agri.
3. Kumar Pandurang Jadhav
Age – 30 yrs. Occ.: Driver,

All r/o. Mahud, Tal. Sangola,
Dist.: Solapur.

...Respondents
(Orig. Accused Nos.1 to 3)

Mr. H. J. Dedhia	APP for the Appellant-State.
Mr. Samay Pawar i/by Mr. J. D. Mane:	Advocate for the Respondent Nos. 1 and 2.
Mr. P. R. Arjunwadkar i/by Ms. Prabhu Badadare:	Advocate for Respondent No. 3.

CORAM : S. M. MODAK, J.

JUDGMENT RESERVED ON : 04/04/2024

JUDGMENT PRONOUNCED ON : 11/06/2024

JUDGMENT:-

1. The Court of Assistant Sessions Judge, Pandharpur acquitted three Respondents in Sessions Case No.4 of 2004 for the offences punishable under Section 8(c), 29 r/w 20(b)(ii)(c) of Narcotics Drugs & Psychotropic Substances Act, 1985 (for short “NDPS Act”). The correctness of the said judgment is challenged on behalf of the State.
2. On 20th July 2003 at about 12.30 pm in as much as 11 gunny bags of ‘Ganja’ weighing about 169 kg was found in one house situated at Paritvasti village Mahud, Tal Sangola, Dist. Solapur. At that time, Accused No.1 - Sanjay was found at the spot. This raid was conducted as per the information received by local Crime Branch, Solapur. The house is jointly owned by Sanjay and his brother Balu. That is what is informed by Gram Sevak – P.W.5 – Shankar Metkari.
3. After completing the formalities P.W.7 - Head Constable Baburao Mehtre lodged complaint on 20th July 2003 at Solapur Gramin Police Station. It was investigated by P.W.13 P.I. Sharad T. Patil. Charge-sheet was filed against Accused No.1, his colleagues Accused No.2 – Vijay Thombare and Accused No.3 – Kumar Jadhav. All were charged for the offence of conspiracy also. It was disclosed that

Accused Nos.2 and 3 purchased 'Ganja' at Bidar and transported it and handed over to Accused No.1. The jeep used for transporting was also seized. All the three accused have stayed at Kaveri lodge, Bidar. Police have collected the entries from the register.

4. Accused have pleaded not guilty. Prosecution in all examined 13 witnesses. Mainly they are on the point of raid conducted on 20th July 2003, witnesses on the point of ownership of the house, ownership of the land and stay at guest house, about jeep. As it was disclosed that the house is owned by Accused No.1 and Balu, the trial Court concluded that possession of Accused No.1 cannot be said to be exclusive possession. The stay of Accused Nos.2 and 3 at Kaveri Lodge and transport of Ganja in the jeep (owned by Accused No.3) seized was not proved as per the finding by the trial Court. It has resulted into acquittal.

5. The Appeal needs to be decided on the same principles on which any other Appeal is decided. The findings can be interfered with only when they are not supported by reasoning and they are arrived at by process of improper appreciation of evidence. Otherwise, there is limited scope for interference.

Issues

6. The issues involved in this Appeal are “*whether it can be said that Ganja found in the house owned commonly can be said to be in exclusive possession of the Accused*”? Furthermore, whether “*the trial Court has committed wrong in appreciating the evidence on the point of conspiracy*”.

7. On this background, I have heard learned APP Shri Dedhia and learned Advocate Shri Pawar for Respondent Nos.1 and 2 and learned Advocate Shri Arjunwadkar for Respondent No.3. With their assistance, I have gone through the evidence and findings. They have also relied upon few of the judgments. After scrutinizing the evidence, I do not think that there is any scope for interference. I will give reasons for this opinion.

8. On the point of ‘raid’ and ‘possession’ prosecution examined following witnesses:-

- (i) P.W.6 – Nandkumar Ghodake – Police Head Constable.
- (ii) P.W.7 – Baburao Shankar Mhetre – Police Head Constable.
- (iii) P.W.8 – Dyandeo Ganpat Unhale – PSO.
- (v) P.W.13 – Sharad Ramrao Thongepatil – I.O.

They all are police witnesses whereas, the following are the private witnesses :-

- (i) P.W.3 – Umakant Doke - Spot Panch.
- (ii) P.W.4 – Dattatraya Phalke – Weighman.
- (iii) P.W.10 – Kewal Bhagwandas Tiwari - Photographer.

9. On the point of seizure of the jeep, the prosecution examined the following witnesses:-

- (i) P.W. 1 – Ravindra Dadasaheb Patil - Seizure panch,
- (ii) P.W. 2 – Vasant Bhosale - Person from whose campus jeep was seized.
- (iii) P.W.9 – Yashwant Rambhau Salunke - Jeep owner.

10. P.W.12 – Shivaji Baburao Bhosale - Circle Inspector who has supplied the land record whereas P.W.5 - Shankar Metkari is Gram Sevak who has also supplied assessment record in respect of the house wherein raid was conducted. P.W.11 - Ravindra Telagani Chillargi is the Manager of Kaveri lodge.

Possession

11. Respondent No.1 is charged for possessing commercial

quantity of Ganja. Section 8(c) of N.D.P.S. Act, prohibits a person from possessing a Narcotic Drug or a Psychotropic Substance. Whereas, the punishment is prescribed in Section 20(b)(ii)(C) of the N.D.P.S. Act. The focus is on the word 'possession'. It is not defined anywhere in the Act. As per judicial interpretation, the word possession includes physical control and animus i.e. intention to possess the contraband.

12. In this case, the trial Court has given benefit of doubt to the Respondent No.1 for the reason that possession of Respondent No.1 is not exclusive. Learned APP Shri Dedhia emphasized on the aspect that there is voluminous evidence about possession, however the trial Court misdirected itself. According to him, the prosecution has taken utmost care in collecting the evidence and proving it in the Court. According to him, Respondent No.1 took the Ganja to his house and contraband was found. It does not make any difference whether the house stands in the joint name.

13. I have gone through the reasoning given by the trial Court. It is true that there is a presumption under Section 35 about culpable mental state and there is a presumption about possession of illicit

articles as per Section 54 of N.D.P.S. Act. It is true that only when foundational facts are proved, the presumption comes into picture.

14. Admittedly, as per the evidence of P.W.5 Gram Sevak, the house is owned by the Respondent and his brother. So the issue is, the contraband found in the house, whether it can be said in the exclusive possession. Trial Court has discarded the oral testimony of the relevant witnesses and reasoning finds place in para Nos.8 to 11 of the impugned judgment.

15. Trial Court opined there was no opportunity for the panch witnesses to visit the house of Accused No.1 earlier to raid. Both the panch witnesses were residing far away from the place of the raid. This reasoning is illogical. Such raids are conducted on the basis of secret information. Hardly there is a time to visit the place of raid. In such an eventuality, it cannot be expected from the panch witnesses to go and visit the place of raid earlier to raid. It is also true that except police witnesses, panch witnesses, photographer and weighman, persons from the vicinity were not present. It cannot also be expected.

16. It is true that the ownership of the house and its possession may be with different persons. The investigating agency has also

collected 7/12 extract of the land on which the house stands. We are not concerned with the ownership of the land. What is important is possession over the house/hut. It stands in the name of two persons i.e. the Respondent No.1 and his brother. It is true that the recovery is as per raid conducted. Respondent No.1 came to be arrested after the raid. This raid was not in pursuance to the information given by the Respondent No.1 As per Section 27 of the Indian Evidence Act, such information always precedes the raid. It has got some authenticity.

17. It is not prosecution case that hut/house was locked and it was opened by the Respondent No.1. The evidence nowhere discloses as to anyone present in the hut prior to the entry of the raiding party. It is also true that none of the witnesses is examined either from the family of Respondent No.1 or from the vicinity. Merely because the contraband is seized by the police from the house which is jointly owned by Respondent No.1, how it can be said that it was in his exclusive possession.

18. Initially, the raiding party went near the hut, Respondent No.1 was standing outside and he tried to run away. He was caught. In his personal search, nothing incriminating was found. He took the

police to his house. It is true that there is sufficient evidence to show Ganja was found in bags in the house but how we can believe that this was kept by Respondent No.1 only. There is no statement of his brother. It may happen that either Respondent No.1 has kept or any other person has kept. The facts are insufficient to cast the burden of Respondent No.1 to rebut the presumption under Section 35 and 54 of the N.D.P.S. Act. Those presumptions will be applicable only when exclusive possession over the contraband of the Respondent No.1 is proved. What is proved is police went there and seized contraband.

19. When the person is prosecuted for possessing a contraband his possession has to be proved. Unfortunately, it has not happened. On behalf of Respondent No.1 there is reliance on the observations in case of *Antony Sauri Pillay vs. State of Maharashtra*¹. Contraband was seized from a hut. Conviction was set aside by the High Court for the reason that possession cannot be inferred on the basis of mere presence of the accused in the premises. It has to be proved that the Accused alone is in possession of the contraband.

20. As contended by Mr. Dedhia, it is correct that in this case

1 1993 Cr.L.J. 1502

Respondent No.1 is co-owner. This circumstance has put an additional burden on the prosecution to prove that other co-owner has not brought this contraband. I agree with the conclusion drawn by the trial Court on the point of not proving the possession. Acquittal of Respondent No.1 is proper. No interference is warranted.

21. In view of this, I have not discussed in detail the evidence of the eye-witnesses.

Evidence on the point of conspiracy

22. There is an evidence of the Lodge Manager – P.W.11 – Ravindra. All the Respondents have stayed in that lodge on 18th July 2003. All the three Respondents were identified by that witnesses when P.W.7 – Baburao - Police Head Constable took them to Bidar. That hotel register is also seized. That register is shown to me. It is true that there are alterations in that register. It is not free from suspicion. Furthermore, mere stay at the lodge does not prove that visit of these three accused to Bidar is for the purpose of purchase of Ganja only. They might have gone to Bidar for different purpose also.

23. There are three witnesses examined on the point of seizure of

jeep purchased by Accused No.3. They are :-

- (a) P.W.1 - Ravindra Patil - Seizure panch.
- (b) P.W.2 – Vasant Bhosale from whose jeep premises jeep was seized.
- (c) P.W.9 – Yashwant Rambhau Salunke who is jeep owner who has sold it to Accused No.3. But RC book still stands in the name of P.W.9.

24. Mr. Arjunwadkar is right in his submission that mere seizure of a jeep does not lead to any conclusion about use of jeep for transfer of contraband. It is true that no contraband was seized from the jeep. This stand was rightly discarded by the trial Court.

25. So the evidence on the point of conspiracy is insufficient. The connection in between the seizure of Ganja from the house with the Ganja purchased from Bidar is not proved. The conclusion drawn by the trial Court is a possible conclusion. The reasoning given by the trial Court is logical. Learned APP Mr. Dedhia tried his level best to convince me to interfere in those findings. However, unfortunately, I could not accept his submissions. There are other issues raised about

compliance of the provisions of N.D.P.S. Act. Few judgments are also cited. I have not given any observation on that issue in view of the observations in above two points. There is no merit in the Appeal. Hence, dismissed.

[S. M. MODAK, J.]