

(2010) 11 MP CK 0076

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1092 of 1995

Babboo Lai @ Babu Lal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 8
Penal Code, 1860 (IPC) — Section 307

Citation : (2011) 2 MPHT 184

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Manju Khatri, for the Appellant; R.N. Yadav, Panel Lawyer, for the Respondent

Judgement

N.K. Gupta, J.—The appellant has preferred this appeal against the judgment dated 24-7-1995, passed by Special Judge, Sagar in Special Case No. 4/1995, by which he was convicted for offence punishable u/s 8-C read with Section 20-B (1) of the NDPS Act, 1985 and sentenced to Rigorous Imprisonment for one year with fine of Rs. 1000/-, in default of payment of fine an additional Rigorous Imprisonment for six months. The prosecution story in short is that, on 2-12-1994 the appellant was visiting from Shahpur to Magron by one Moped. He was driving the vehicle whereas two other persons were sitting as pillion riders on the vehicle. At that time ASI Shri Rajouria (P.W. 3) was coming back from Village Rangoli to the Police Station with two other persons. When the appellant crossed the motor cycle of Shri Rajouria, he placed his moped in front of the motor cycle and immediately both the pillion riders jumped down from the moped and out of them one fired from a katta (firearm) upon Shri Rajouria whereas the other assaulted Shri Rajouria by a Khukri. Shri Rajouria captured the appellant and two other persons, thereafter he found that 250 gms of ganja was hanging on the handle of the moped in a bag. Shri Rajouria lodged an FIR for offence punishable u/s 307 of IPC and prepared a separate case for offence punishable u/s 8/20 of NDPS Act. The seized articles were sent for chemical

examination and it was found that the seized article was a contraband substance ganja. A challan was filed before the Committal Court after due investigation.

2. The appellant abjured his guilt. He took a defence that there was enmity of Shri Rajouria with one Balram Yadav and therefore, Rajouria had falsely implicated him in such a case. However, the appellant did not adduce any evidence from his side.

3. Learned Special Judge after due consideration of prosecution's evidence convicted the appellant for offence punishable u/s 8-C read with Section 20-B (1) of NDPS Act and inflicted the aforesaid sentence.

4. I have heard the learned Counsel for the parties.

5. Learned Counsel for the appellant submits that as per charge-sheet the appellant was a 20 year old boy at the time of incident but, he could not get any advantage of Probation of Offenders Act due to a specific prohibition under NDPS Act. However, only 250 gms of ganja was found with the appellant and at present NDPS Act is modified and quantity up to one kilogram of ganja comes in the purview of small quantity and the maximum punishment for such quantity is of six months imprisonment or fine which may extend to Rs. 10,000/-. The appellant remained in custody for 2 months and 14 days and therefore, on considering the very small quantity of ganja he may not be sent to the jail any further. Learned Counsel for the appellant has also submitted that the appellant is ready to deposit some fine amount in addition.

6. It is true that only 250 gms of ganja was seized from the appellant. For violent act of the appellant and co-accused persons a separate case for offence punishable u/s 307 of IPC was registered therefore, that act of the appellant should not be considered in this matter. The appellant was 20 years old at the time of incident but he could not get the advantage of Probation of Offenders Act. At present if any person keeps or transports one kg of ganja then he will be punished for a maximum sentence of six months Rigorous Imprisonment. At the time of incident there was no concept of any small quantity or medium quantity. However, there was no minimum sentence prescribed for transportation of ganja in the provisions of Section 20 of the NDPS Act.

7. Looking to the age of the appellant and quantity of ganja seized from him with the fact that he remained in custody for two months and 14 days, it would be proper that he may not be sent to jail any further and therefore, it would be proper to enhance fine amount against the appellant.

8. On the basis of the aforesaid discussion, the appeal of the appellant can be partly accepted and therefore, the appeal is partly allowed. Conviction directed by the Trial Court for offence punishable u/s 8(C) read with and Section 20-B (1) of NDPS Act is hereby maintained but, his jail sentence is hereby reduced. The appellant is sentenced with the jail sentence for the period which he has already undergone in the custody and with fine of Rs. 6000/-. In default of payment of

fine the appellant has to undergo further for a period of 6 months Rigorous Imprisonment. The fine amount deposited before the Trial Court in complying with the judgment of the Trial Court will be adjusted in the above sum. The appellant is directed to deposit the remaining amount of fine before the Trial Court within two months from today. After completion of that stipulated period, Trial Court may proceed to execute the default sentence. At present the appellant is on bail and therefore, it is directed that his bail bonds shall stand discharged.