

(2018) 10 CHH CK 0072

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 397 of 2011

Babulal Verma @APPELLANT@Hash State of Chhattisgarh

Date of Decision : 29-10-2018

Acts Referred:

Narcotic Drugs and Psychotropic Substance Act, 1985 — Section 20(b)(ii)(c)
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 10 CHH CK 0072

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Rakesh Kumar Thakur, Suryakant Mishra

Final Decision : Dismissed

Judgement

1. This appeal is preferred against the judgment of conviction and order of sentence dated 19-4-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, 'the Act, 1985') Jagdalpur in Special Case No. 12 of 2009, wherein the said Court has

convicted the appellant for commission of offence under Section 20 (b)(ii) (c) of the Act, 1985 and sentenced him to undergo rigorous imprisonment

for ten years and to pay fine of Rs.1,00,000/- with default stipulations.

2. As per prosecution case, on mid-night of 1-6-2009 one Marshal Jeep bearing registration No. CG 07/5999 was found in forest area of Kamanar and

upon searching of the vehicle, three bags of Ganja containing 15 packets were found and it was measured to 188 kgs. Upon investigation, the appellant

was charge- sheeted. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under:

i) Present appellant could not be convicted only on the ground that he is a registered owner of the vehicle. The vehicle was in possession of the driver

of the present appellant and therefore, criminal liability cannot be fastened on the appellant.

ii The trial Court has not evaluated the evidence in its true perspective and came to wrong conclusion which is liable to be reversed.

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. To substantiate the charge, prosecution examined as many as ten witnesses. As per version of PW/8 S.P. Bhagat, Sub Inspector of Police Station

Darbha, he received information that one Marshal Jeep bearing registration No. CG 07 -5999 was stopped at Kamanar forest barrier and returned

towards Darbha. He further deposed that it is informed by some one that contraband article ganja was kept in the said vehicle. He recorded said

information in Rojnamcha Sanha (Ex.P/17). Information was sent to City Superintendent of Police Jagdalpur. Again two independent witnesses were

called through Constable Umesh Kunjum and one panchnama was prepared for not getting search warrant. As per version of this witness, all the

information was sent to City Superintendent of Police Jagdalpur and thereafter he rushed to the spot with police personnel and independent witnesses.

When they reached near Kamanar canal valley, person sitting in the said Marshal vehicle fled away. Vehicle was searched and substance like Ganja

was found in jute bag and plastic bag kept in the said vehicle. Total number of packets were 15 which were weighed and then quantity of said article

was found 188 kgs and 600 grams. All the seized articles were mixed properly and thereafter 13 samples were prepared and each sample packet

contained 25 grams of the said article which was marked as A1 and A2 to O1 and O2. Sample of seal kept by this officer was affixed in the sample

of contraband article and after seizure of articles and the vehicle, the same were handed to Incharge of Malkhana who is Head Constable.

As per version of his witness, all the proceedings were recorded and the same was sent to City Superintendent of Police, Jagdalpur. Version of this

witness is supported by version of Head Constable Kamlesh Kumar Nirmalkar to whom article was entrusted by Police Inspector S.P. Bhagat which

was recorded in the register of Malkhana as per Ex.P/16. Constable Ramdas Sethiya (PW/3) and Head Constable Sukhal Singh Gowde (PW/6) have

supported version of these witnesses. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of

defence. From the evidence of PW/1 Dheeraj Gupta, it is established that the vehicle from which contraband article Ganja was seized, was sold to

appellant for cash consideration of Rs.1,50,000/-. As per version of this witness vehicle was in possession of the appellant. Version of this witness is

unrebutted during cross examination and therefore, it is established that the vehicle was in possession of the appellant at the time of incident. Though

PW/2 Ramnath has not supported the version of Police Officer, but as per version of this witness, he did not accompany the Police Officer during

search. If this witness was not present during search, he is not the real witness of the incident and if he was suppressing the fact of search even after

participating in the same, his version is not reliable. Constable Tarjan Korram PW/9 is a person who received sample packet and submitted the same

in FSL and deposited the acknowledgment receipt at Police Station. From the evidence of Malkhana Incharge, Head Constable Kamlesh Kumar

Nirmalkar (PW/7), it is established that he had given the sample packet to Constable Tarjan Korram who deposited the same in FSL. From the

evidence of both these witnesses, it is established that the contraband article which was seized in the present case was kept in the safe custody of

Malkhana after seizure and same was sent for chemical examination and as per report of FSL (Ex.P/29), test of Ganja was found positive.

7. Learned counsel for the appellant would submit that the case of the persecution is based on registration certificate of the vehicle which is not

sufficient to bring home the guilt. In view of this Court, argument advanced on behalf of the appellant is not sustainable. As per version of PW/1

Dheeraj Gupta, vehicle was transferred to the present appellant in which contraband article Ganja was found and as per the statement of the appellant

recorded under Section 313 of the Cr.P.C., he had given the said vehicle to one driver namely Ajay Kumar Verma, but said Ajay Kumar Verma has

not been examined as defence witness. Therefore, it is not established that the vehicle was in possession of some other person namely Ajay Kumar

Verma. Possession of the appellant of the said vehicle is proved by the evidence and the appellant has also admitted that he was in possession of the

said vehicle, but he failed to discharge his burden that the vehicle was handed over to some other person. Therefore, the trial Court opined that

possession of contraband article is proved against the present appellant and this court has no reason to record contrary finding. Argument advanced

on behalf of the appellant is not sustainable. Commercial quantity of Ganja is 20 kgs. In the present case, the appellant was in possession of 188 kgs

and 600 grams of Ganja, therefore, the case of the appellant falls within offence of Section 20(b)(ii)(c) of the Act, 1985 for which the trial Court has

convicted the appellant and this court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed.

8. Heard on the point of sentence. The trial Court awarded minimum sentence to the appellant for the said offence and less than minimum sentence

cannot be awarded. Sentence part including fine amount is also not liable to be interfered with by this court.

10. Accordingly, the appeal is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest

etc., is required.