
(2008) 05 GUJ CK 0018
In the Gujarat High Court
Case No : Criminal Appeal No. 507 of 2005

Gulam Rasul Piru Malek

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 20B

Citation : (2008) 05 GUJ CK 0018

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : Roopal R. Patel, for the Appellant; P.D. Bhatte, APP for Opponent 1, for the Respondent

Judgement

Akil Kureshi, J.—The appellant is the original accused. By impugned judgement and order dated 9.12.2004 passed by learned Sessions Judge and Special Judge, Bharuch in Special N.D.P.S. Case No. 5/2003, he was convicted for offence punishable u/s 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985(here-in-after referred to as "the NDPS Act") and sentenced to rigorous imprisonment of seven years and fine of Rs. 50,000/- was also imposed. In default of payment of fine, he had to undergo simple imprisonment of six months.

2. Learned advocate Ms. Roopal Patel appearing for the appellant submitted that conviction and sentence are illegal and unlawful and that there are number of procedural and substantial defects in the investigation. She submitted in the alternative that sentence is also harsh and excessive. She submitted that if the Court is inclined to consider the question of adequacy of sentence, it would not be necessary for the appellant to press appeal on merits.

2.1 With respect to sentence, she submitted that even as per the prosecution case, the accused was found with ganja weighing 1250 grams. She pointed out that small quantity of ganja is prescribed under the NDPS Act as 1000 grams and commercial quantity is prescribed as 20 kgs. She also drew my attention to the provisions contained in Section 20 of the NDPS Act to point out that for carrying

small quantity, maximum sentence permissible under the law is six months. For carrying ganja higher than the small quantity and lesser than the commercial quantity, law prescribed maximum punishment of 10 years. She therefore, submitted that sentence of seven years of rigorous imprisonment was highly excessive.

3. On the other hand, learned APP Shri Bhatte produced the jail record of the accused from which it can be seen that he had already undergone sentence of more than five years and one month. He submitted that the conviction and sentence called for no interference.

4. Thus having heard learned advocates appearing for the parties mainly on the question of sentence imposed on the appellant, I find that even as per the prosecution case, the appellant was carrying ganja of 1250 grams. Against the small quantity of 1000 grams and commercial quantity of 20kgs of ganja, thus the accused was carrying ganja which was marginally higher than the small quantity but substantially lesser than the commercial quantity. From the record, it appears that this is the first involvement of the appellant in a criminal case. Averments of the Counsel for the appellant that he is the main breadwinner of the family is not disputed by the respondent.

5. In an order dated 4.4.2008 passed in Criminal Appeal No. 1229 of 2004, following observations were made-

5. Mr Agrawal has drawn my attention to the decision of the Apex Court in the case of Balwinder Singh v. Asstt. Commissioner, Customs and Central Excise reported in 2005(2) EFR 420 : AIR 2005 SC 2917 wherein the accused was found in possession of 175 kgs of Heroin and 39 kgs of Opium. However, considering that the accused was a first time offender, sentence of 14 years of imprisonment imposed by the Courts below was reduced to minimum prescribed under the Act that of 10 years.

5.1 My attention is also drawn to the decision of the Division Bench of this Court dated 09.01.2008 in the case of rendered in Criminal Appeal No. 904 of 2000 wherein the accused were found in possession of Charas weighing nearly 9.5 Kgs. The Division Bench reduced the punishment from that of rigorous imprisonment of 15 years to the minimum of 10 years as prescribed under the Act.

5.2 Similarly in a judgement dated 05.02.2008 rendered by the Division Bench of this Court in Criminal Appeal No. 954 of 2003 with Criminal Appeal No. 2277 of 2004, the accused were found to be in possession of Charas of nearly 6 Kgs. The Division Bench reduced the sentence from rigorous imprisonment of 12 years to the minimum of 10 years prescribed.

5.3 In the case of Ghasita Sahu v. State of Madhya Pradesh reported in AIR 2008 (Cri) 277, the Apex Court considering the poor background of the accused reduced the punishment from 5 years to one already undergone (about 4 years

as noticed by the Apex Court) and also reduced the fine from Rs. 20,000/- to Rs. 10,000/- and imposed the default sentence of six months. It was a case wherein the accused was found carrying 17 Kgs of Ganja. It may be noted that commercial quantity for Ganja is prescribed as 20 Kgs.

5.4 In the case of Shanti Lal v. State of M.P. reported in 2007(2) EFR 702, the Apex Court in para 36 observed that the accused appellant is a very poor person and it was his first offence. It is further observed that because of poverty he could not pay the heavy amount of fine of Rs. 1 lakh and that if he is ordered to remain in jail even after the period of substantive sentence is over only because of his inability to pay fine, serious prejudice will be caused not only to him but also to his family members who are innocent. With these observations the Apex Court though found itself unable to reduce the fine below the minimum of Rs. 1 lakh prescribed by the legislature directed that in default of payment of the said fine, the accused appellant shall serve sentence of six months.

7. Having thus heard learned advocates appearing for the respective parties and having taken into account relevant aspects of the matter, I find that imposition of the sentence of 7 years and fine of Rs. 75,000/- in the facts of this case are harsh.

8. As already stated the appellant was found in possession of 462.916 gms of charas. Small quantity of charas is defined as 100 gms and commercial quantity is 1 Kg. The appellant was thus carrying charas more than small quantity but substantially lesser than commercial quantity. In that view of the matter, and also considering the fact that the appellant is a first time offender and has no other criminal antecedents, the sentence of 7 years of rigorous imprisonment needs to be reduced. So also imposition of fine of Rs. 75,000/- against the maximum permissible fine of Rs. 1 lakh in facts of the case is high.

Taking into account the various decisions noted hereinabove and also taking into account special facts of the case including the facts that the appellant is stated to be a very poor person, this is his first involvement in a criminal case and the quantity of the drug found in his possession I find that the ends of justice will be met if the sentence is reduced to rigorous imprisonment for 4 years and imposition of fine of Rs. 15,000/-. In default of payment of fine he shall serve sentence of six months of simple imprisonment.

6. It can thus be seen that sentence of seven years in the present case is certainly on the higher side. Same is required to be suitably reduced.

7. Considering the facts and circumstances of the case, sentence is reduced to four years of rigorous imprisonment. The appellant shall also pay fine of Rs. 10,000/-. In case of default of payment of fine, he shall undergo simple imprisonment for six months.

8. With these modifications, appeal is disposed of.