

(2011) 08 GUJ CK 0051
In the Gujarat High Court
Case No : Criminal Appeal No. 801 of 2002

Ramjibhai Ganeshbhai Tadvi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(A), 8(C)

Citation : (2011) 08 GUJ CK 0051

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Chintan P. Champaneri and Harin P. Raval, for the Appellant; H.L. Jani, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The present Appellant has preferred this Appeal u/s 374 of the Code of Criminal Procedure against the judgment and order of conviction and sentence dated 29.8.2002 passed by the learned Additional Sessions Judge, Bharuch, in Special NDPS Case No. 8 of 1998, whereby the learned Sessions Judge has convicted the Appellant u/s 8(C) and 20(A) of the Narcotic Drugs and Psychotropic Substance Act, 1985 and sentenced the Appellant to undergo R.I. of five months and to pay a fine of Rs. 1000/-, in default, to undergo further S.I. for 15 days and the Appellant was further ordered to undergo R.I. for five months and to pay a fine Rs. 1000/-, in default, to undergo S.I. for 15 days for the offence punishable u/s 22 Narcotic Drugs and Psychotropic Substance Act.

The brief facts of the prosecution case are as under:

2. The allegations levelled against the accused are that the complainant received information that the accused Ramjibhai, resident of village Vanji, was coming on his cycle with one bag containing 100 grams of opium (Ganja). The complainant after investigation, the said opium was recovered from the possession of the Appellant and, therefore, the accused was arrested for the offences aforesaid

under the Narcotic Drugs and Psychotropic Substance Act.

3. Thereafter, statements of the witnesses were recorded, panchnama was drawn. Thereafter, the case was registered as Special NDPS Case No. 8 of 1998.

4. Thereafter, the charge was framed against the Appellant. The Appellant pleaded not guilty and claimed to be tried.

5. To prove the case against the Appellant, the prosecution has produced documentary evidence and also examined 12 witnesses before the trial Court.

6. Thereafter, after examining the witnesses, further statement of the Appellant - accused u/s 313 of the Code of Criminal Procedure was recorded in which the Appellant - accused has denied the case of the prosecution.

7. After considering the oral as well as documentary evidence and after hearing the parties, learned Additional Sessions Judge, Bharuch vide judgment and order dated 29.8.2002 held the Appellant - accused guilty to the charge levelled against him as stated above.

8. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, the present Appellant has preferred this appeal.

9. Learned advocate Mr. Chintan P. Champaneri for Mr. Harin Raval appearing on behalf of the Appellant submitted that there were several contradictions between the documentary evidence and oral evidence led by the witnesses and they were never proved. Even though the learned Sessions Judge held guilty the Appellant for the offence alleged and convicted the Appellant. Therefore, the order impugned is required to be quashed and set aside by allowing the appeal. He has read the charge at Exhibit 5 and submitted that from the present Appellant, original accused has recovered 100 Gram opium and as per the provisions of Narcotic Drugs and Psychotropic Substances Act, Section 20 (A) is concerned, the maximum punishment is prescribed for 6 months and/or fine of Rs. 10000/- as a fine. Here in the present case, the sentence is awarded R.I. for 5 years. He also submitted that he is not arguing this matter on merits and as per his submission, the Appellant was arrested on 2.4.1998 and he was released on bail on 19.8.1998. Therefore, the accused has already undergone 4 months and 17 days in jail. The Appellant also deposited the fine amount, which was imposed by the learned trial Judge. He also submitted that out of 5 months sentence, the Appellant has undergone 4 months and 17 days and therefore, he prayed that for remaining 15 days about jail period, the Appellant may not be sent to the jail by considering his undergone period.

10. The learned APP Mr. Jani for the State strongly opposed the submissions made by the learned advocate for the Appellant. It was contended by learned APP that the judgment and order of the Sessions Court is just and proper and as per the provisions of law; the Sessions Court has properly considered the evidence led by the prosecution and looking to the provisions of law itself it is

established that the prosecution has proved the whole ingredients of the evidence against the present Appellant. No. doubt, small quantity of opium was recovered from the possession of the Appellant, but the offence under the Narcotic Drugs and Psychotropic Substances Act as alleged against the accused is of very serious in nature. Therefore, No. lenient view may be considered in favour of the present Appellant.

11. I have perused the judgment and order and reasons given by the learned Judge also. I have perused the record of the case and also considered the submissions made by the learned advocates for the parties. After the considering the evidence, the learned Sessions Judge has held the Appellant guilty of the offences and sentenced the Appellant. The Appellant was ordered to undergo R.I. as stated above. Learned advocate for the Appellant argued that he is not arguing this matter on merits, but arguing on the quantum of punishment. Therefore, looking to the undergone period of 4 months and 17 days out of five months, his undergone sentence may be treated as sentence. He also admitted that the present Appellant is involved in the serious offence, but considering the period undergone by him, this appeal is required to be considered on the quantum of punishment. The Appellant is involved in the serious offence as alleged but looking to the Appeal of the year 2002 and the Appellant being a poor person, I am in agreement with the submission of the learned advocate for the Appellant.

12. I have considered his submission about the quantum of punishment and therefore, looking to the quantum of punishment, the sentence undergone by the Appellant is required to be considered as sentence.

13. The Appeal is partly allowed. The judgment and order dated 29.8.2002 passed by the learned Additional Sessions Judge, Bharuch in Special NDPS Case No. 8 of 1998, is hereby modified to the extent that the sentence, which the Appellant has undergone shall be treated as sentence. Rest of the judgment of the learned Sessions Court shall remain unaltered. Bail bonds, if any, shall stands cancelled. R & P to be sent back to the trial Court, forthwith.