
(2009) 03 CHH CK 0040
In the Chhattisgarh High Court

Sidhartha Gautam

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 20

Citation : (2009) 2 CGLJ 250 : (2009) CriLJ 3284

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dilip Raosaheb Deshmukh, J.—This judgment shall govern Criminal Appeal No. 1081/2007 preferred by Sidhartha Gautam, Criminal Appeal No. 8/2008 preferred by Vinay Kumar and Criminal Appeal No. 342/2008 preferred by Anil Gupta.

2. Appellants Sidhartha and Vinay were convicted u/s 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth "the Act") by judgment dated 3-11-2007 in Special Case No. 1/2007 by the Special Judge (under the Act), Bastar place Jagdalpur and sentenced to rigorous imprisonment for 10 years each and also to a fine of Rs. 1 Lakh each and in default to undergo rigorous imprisonment for 3 years for transporting 183 kilograms of illicit Ganja in Santro Car No. MP 18C 1226 (henceforth "the Santro Car") on 25-11-2006 near Gadsil Bhata Nala. The appeal preferred by Anil Gupta, i. e., the owner of the Santro Car is directed against the order of confiscation of the Santro Car by the impugned judgment.

3. Briefly stated prosecution's case is as under:

On 25-11-2006, Shri B.S. Nishad P. W. 4 S. H. O. of P.S. Keshkal received secret information at 8.50 a. m. that illicit Ganja was being brought from Jagdalpur in the Santro Car. After recording the said information in Rojnamcha Sanha No. 945 Ex. P-22 and sending information to his immediate superior vide Ex. P-1, he

proceeded with witnesses Sampatram P. W. 1 and Sadan P. W.-2 and staff to intercept the Santro Car. The police party stationed itself on the National Highway and saw the Santro Car coming from Jagdalpur. On being signalled to stop, the Santro Car escaped through the forest road, was chased and finally intercepted at Gadsil Bhata Nala. Appellant Sidhartha was driving the Santro Car while appellant Vinay was seated in it. It was found that the Santro Car was loaded with Gunny Sacks containing Ganja like substance. 11 Gunny Sacks containing Ganja like substance were found inside the Santro Car. Panchnama Ex. P-7 was prepared. 2 samples of 50 grams each were lifted from each Gunny Sack and identification marks A-1 to K-1 were put on 11 sample packets. Weighment was done by Farsuram P. W.-3. Weight of the 20 sample packets of 50 grams each weight of Ganja in the 11 Gunny Sacks was 183 kilograms. The 11 Gunny Sacks and the 22 sample packets were sealed by Shri B.S. Nishad P. W. 4 with the seal of Police Station Keshkal. Specimen impression of the seal was affixed on Panchnama Ex. P. 13 and Ex. P14. A mobile cell phone and Rs. 200/- cash were seized from the appellant Vinay vide Ex. P15 and the Santro Car, Nokia Mobile, 11 sealed Gunny Sacks and 22 sample packets were seized vide Ex. P16 from the appellant Sidhartha. Specimen impression of the seal was also put on Ex. P-16. The appellants Vinay and Sidhartha were arrested at 3 p. m. on 25-11-2006.

4. The 11 Gunny sealed bags of the 22 sample packets were entrusted for safe custody to Malkhana Moharrir of P.S. Keshkal Head Constable Ramesh Sahu P. W. 5 on 25-11-2006 for safe custody and kept in the Malkhana vide Ex. P35.

5. On 27-11-2006, 11 sample packets bearing identification marks A-1 to K-1 were sent for chemical analysis vide Ex. P-31 to the Forensic Science Laboratory through Constable No. 156 Ajay Tekam, who delivered the sample packets A-1 to K-1 on 28-11-2006 at the Forensic Science Laboratory and obtained acknowledgment Ex. P-32. Vide report Ex. P-33 dated 6-1-2007 the Forensic Science Laboratory opined that all the sample packets A-1 to K-1 contained Ganja. After completion of investigation, prosecution u/s 20(b)(ii)(c) of the Act was lodged against the appellants Sidhartha and Vinay on 19-1-2007. Muddemal, i.e., the 11 sealed Gunny Sacks and the remaining 11 sample packets was not produced with the challan before the Special Judge.

6. The appellants Sidhartha and Vinay abjured the guilt, pleaded innocence and led to evidence in defence. The prosecution examined 5 witnesses. Sampatram P. W.1, Sadan P. W.-2 and Farsuram P. W. 3 did not support the prosecution case. Inspector B.S. Nishad P. W.-4 testified in detail regarding the investigation into the offence. Malkhana Moharrir Head Constable Ramesh Sahu P. W.-5 was also examined.

7. The learned Special Judge placing implicit reliance on the testimony of Inspector B.S. Nishad P. W.-4, Head Constable Ramesh Sahu P. W. 5 and the report of the Forensic Science Laboratory Ex. P-33 found the appellants Sidhartha and Vinay guilty and convicted and sentenced them as aforesaid in

paragraph 2 supra while passing the order of confiscation of the Santro Car.

8. Shri Surendra Singh, learned Senior Advocate appearing in Criminal Appeal No. 8/2008 for the appellant Vinay Kumar and Criminal Appeal No. 342/2008 for the Appellant Anil Gupta and Shri Arun Kochar, learned Counsel appearing in Criminal Appeal No. 1081/2007 for appellant Sidhartha and Shri Sushil Dubey, learned Government Advocate with Shri Sameer Behar, learned Panel Lawyer appearing for the State/respondent in all the three criminal appeals were heard at length. Record is perused.

9. Independent witness Sampatram P. W.-1 and Sadan P. W.-2 did not support the prosecution story. They deposed that the police had called them in the police station and obtained their signatures on the documents Exs. P-1 to P-19. Even Farsuram, P. W. -3 denied that he weighed the Ganja. He stated that he is an illiterate person and would not know why his thumb impression was obtained on the Weighment Panchnama. Constable No. 156 Ajay Tekam who was, on 27-11-2006 vide Rojnamcha Sanha No. 1082 entrusted with the duty of delivering 11 sample packets bearing identification marks A-1 to K-1 at the Forensic Science Laboratory was also not examined. The prosecution is thus left with the testimony of B.S. Nishad S. H. O. P. S. Keshkal P. W. 4 and Head Constable Ramesh Sahu P. W. 5 who was the Malkhana Moharir.

10. The law is well settled that heavy burden lies on the prosecution to prove that the sanctity of the samples prepared and sealed after the seizure was preserved from the time of preparation of the samples till they reached the Forensic Science Laboratory. Head Constable Ramesh Sahu P. W. 5 the Malkhana Moharir at P. S. Kehskal did not testify that the Ganja contained in 11 Gunny Sacks and the 22 sample packets each weighing 50 grams was received by him for safe custody in Malkhana on 25-11-2006 in a sealed condition. He also did not depose in para 2 that 11 samples packets were sent through Constable No. 156 Ajay Tekam to the Forensic Science Laboratory duly sealed. In cross examination, he also admitted that the receipt of the above mentioned articles for safe custody in the Malkhana was not entered in the Rojnamcha Sanha. A perusal of the Malkhana Register Ex. P-35 shows that there is absolutely nothing in entry No. 117 made on 25-11-2006 to show that the 11 Gunny Sacks and the 22 sample packets had been kept in the Malkhana in a sealed condition. An endorsement is found on the last page of the Malkhana Register as under:

(Vernacular matter omitted....Ed.)

It thus appears that at some point of time after deposit of the unsealed 11 Gunny Sacks and 22 sample packets in the Malkhana 2 sample were lifted from each Gunny Sack and sealed and thereafter 11 packets were sent to Forensic Science Laboratory.

11. The testimony of B.S. Nishad P. W. 4 that he had put identification marks A-1 to K-1 on the 11 sample packets is rendered untrustworthy because the entry in the Malkhana Register Ex. P-35 does now show that any sample packet bore

such identification mark at the time of depositing in the Malkhana. Even the above mentioned extract from the Malkhana Register does not show that identification marks A-1 to K-1 were put on the sample packets before sending to the Forensic Science Laboratory. According to B.S. Nishad P. W. 4 from 11 Gunny Sacks he had lifted 22 sample packets of 50 grams each. How is the identification marks A-1 to K-1 were put only on 11 sample packets and not on the remaining 11 sample packets. B.S. Nishad P. W.-4 admitted categorically in para 20 that he did not put the same identification marks on the 2 sample packets lifted from each Gunny Sack. It thus becomes highly doubtful that samples were lifted in presence of the appellants Sidhartha and Vinay and were kept in the Malkhana in a sealed condition. The possibility that sanctity of the samples was breached before they reached the Forensic Science Laboratory could also not be ruled out; This renders the testimony of Inspector B.S. Nishad P. W. 4 doubtful that he had sealed the 11 Gunny Sacks and the 22 sample packets in presence of the appellants Sidhartha and Vinay before entrusting those articles to Head Constable Ramesh Sahu P.W. 5 for safe custody at the Malkhana.

12. The order sheet dated 19-1-2007 on the date of filing of challan clearly shows that the 11 sealed Gunny Sacks and the remaining 11 sealed sample packets were not produced before the Special Judge, Jagdalpur under the Act. Thus, the learned Special Judge had no opportunity to examine whether the 11 Gunny Sacks and the 11 sample packets had been sealed and that the seals tallied with the specimen impression of the seals prepared by B.S. Nishad P. W. 4 vide Ex. P13 and P14. Non production of the Muddemal before the trial Court assumes importance in the above mentioned facts and circumstances and creates a serious doubt whether the sanctity of the samples was preserved till they reached the Forensic Science Laboratory.

13. B.S. Nishad P. W. 4 admitted that there is no boot in a Santro Car. Therefore, his testimony in para 6 that the 11 Gunny Sacks were kept in the boot and the rear of the Santro Car is rendered doubtful. It is also pertinent to note that although the seizure memo Ex. P-16 shows that 11 gunny Sacks and 22 sample packets were seized along with the Santro Car yet the Panchnama Ex. P. 10 shows that Ganja contained in 13 Gunny Sacks were found in the Santro Car and seized from the appellants Sidhartha and Vinay. The explanation offered by B.S. Nishad P. W. 4 for this discrepancy is totally unsatisfactory.

14. The following points thus emerge from the above discussion:

(A) Independent witnesses Sampatram P. W. 1, Sadan P. W. 2, and Farsuram P. W. 3 did not support the prosecution.

(B) Constable No. 156 Ajay Tekam to whom the sample packets were entrusted for delivery at the Forensic Science Laboratory was not examined.

(C) Malkhana Register did not mention that contraband Ganja in 11 Gunny Sacks and 22 sample packets were kept in a sealed condition in the Malkhana.

(D) The possibility of tampering with the sample and sealing them in the Malkhana before sending them for chemical analysis to the Forensic Science Laboratory could not be ruled out in view of the endorsement in the Malkhana Register that samples were prepared on 28-11-2006 before entrusting to Constable No. 156 Ajay Tekam.

(E) The 11 Gunny Sacks and the remaining 11 sample packets in a sealed condition were not produced before the Special Judge during trial and, therefore, the learned Special Judge could not examine whether the 11 Gunny Sacks and 11 sample packets had been sealed and the seals tallied with the specimen impression of the seals in Exs. P-13 and P 14.

15. The cumulative effect of the above findings is that, the prosecution has failed to prove that the sanctity of the sealed samples was preserved till they reached the Forensic Science Laboratory. Therefore, the report of the Forensic Science Laboratory Ex. P-33 cannot form the basis for convicting the appellants Sidhartha and Vinay, who are entitled to the benefit of a reasonable doubt. Conviction of the appellants Sidhartha and Vinay u/s 20(b)(ii)(C) of the Act and the sentence awarded thereunder are, therefore, liable to be set aside and in this view of the matter the order of confiscation of the Santro car is also liable to be set aside.

16. In the result, Criminal Appeal No. 1081/2007, Criminal Appeal No. 8/2008 and Criminal Appeal No. 342/2008 are allowed. Conviction of the appellants Sidhartha and Vinay u/s 20(b)(ii)(c) of the Act and the sentence awarded thereunder are set aside. The appellants Sidhartha and Vinay are given the benefit of a reasonable doubt and acquitted of the said charge and be set at liberty forthwith, if not required in any other case. The order of confiscation of the Santro Car passed by the learned Special Judge is also set aside. The Santro Car shall be returned to its registered owner, i.e., the appellant Anil Gupta.