

**(2019) 09 CHH CK 0048**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal No. 1635 Of 2017

Raju @ Pintu Yadav And Ors

APPELLANT

Vs

State Of Chhattisgarh Through  
Police Station Saraipali

RESPONDENT

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**Date of Decision:** Sept. 4, 2019

**Acts Referred:**

- Narcotic Drugs And Psychotropic Substances Act, 1985 - Section 20(b)(ii)(C), 42, 50, 52A, 55, 57
- Code Of Criminal Procedure, 1973 - Section 161, 313

**Hon'ble Judges:** Arvind Singh Chandel, J

**Bench:** Single Bench

**Advocate:** Vikash Pradhan, Amit Singh

**Final Decision:** Allowed

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**Judgement**

Conviction,Sentence

Under Section 20(b)(ii)(C) of the Act of 1985,"Rigorous Imprisonment for 10 years and fine of

Rs.1,00,000/- with default stipulation

Kanwar (PW2) vide Ex.P1 in compliance with Section 52A of the Act of 1985.,

10. Head Constable Shaukilal Thakur (PW3) has supported the statement of Investigating Officer Pramesh Dhruw (PW12) and has stated that on,

13.2.2016 information of complete action (Ex.P4) was received by him in the office of Sub-Divisional Officer (Police) and he had given an,

acknowledgment thereof on Ex.P4 itself.,

11. Naib-Tahsildar/Executive Magistrate Sitaram Kanwar (PW2) has deposed about preparation of an inventory vide Ex.P1 in compliance with the, provision contained in Section 52A of the Act of 1985. Patwari Rajesh Kumar Dewangan (PW4) has deposed that he prepared spot-map (Ex.P5)., Sunil Agrawal (PW5) is the witness who weighed the recovered Ganja, but he has not supported the case of the prosecution and has been declared", hostile. Raju Nirmalkar (PW6) and Sanjay Kumar Agrawal (PW8) are the witnesses of seizure and other proceedings done by Investigating Officer, Pramesh Dhruw (PW12), but both have also not supported the case of the prosecution and have been declared hostile.",

12. Head Constable Balram Sahu (PW7) has stated that on 12.7.2016 he received 3 bags marked with A, B and C each containing 20 packets of", Ganja seized in Crime No.58 of 2016 and gave an acknowledgment thereof (Ex.P27).,

13. Constable Saudagar Bagarti (PW10) is the witness who had deposited the sample packets (A1 and A2) in the FSL and obtained acknowledgment, thereof (Ex.P30). This witness has deposed that he had received the sample packets on 17.2.2016 and deposited the same in the FSL on 18.2.2016.,

14. From the statements of Investigating Officer Pramesh Dhruw (PW12) and Reader of the Sub-Divisional Officer (Police) Shaukilal Thakur (PW3)," , it is clear that the intimation of Ex.P2 and P3 was received by Shaukilal Thakur (PW3) in the office of the Sub- Divisional Officer (Police) and, thereafter information of complete action (Ex.P4) was also received by him on 13.2.2016. Thus, the provisions contained in Sections 42 and 57 of the", Act of 1985 have been duly complied with.,

15. From the evidence available on record, it is clear that weighing witness Sunil Agrawal (PW5) and seizure witnesses Raju Nirmalkar (PW6) and", Sanjay Kumar Agrawal (PW8) have not supported the case of the prosecution. Thus, the case of the prosecution is mainly dependent on the", statements of Pramesh Dhruw (PW12), Balram Sahu (PW7), Saudagar Bagarti (PW10).",

16. Investigating Officer Pramesh Dhruw (PW12), in his cross-examination, in paragraphs 37 and 38 has admitted the fact that there is no mention of", sealing of the seized articles in the acknowledgment (Ex.P27). He has also admitted that there is also no mention in Ex.P27 regarding deposit of the,

sample packets. He has also admitted that copy of the Malkhana Register in which entries of deposit of the seized articles were made was also not,

submitted before the Trial Court. He has also admitted that in the FSL report (Ex.P35), there is mention of receiving of samples of Ganja kept in 2",

separate packets (emphasis supplied) marked as A1 and A2. Contrary to this, from perusal of the mixing panchanama (Ex.P21) and the sample",

panchanama (Ex.P23), it reveals that 2 samples of Ganja prepared at the spot were kept in 2 separate plastic boxes (emphasis supplied) marked as",

A1 and A2. From perusal of Ex.P23, it also reveals that there is no mention in it about impression of any seal from which the boxes were sealed.",

17. Malkhana Incharge Head Constable Balram Sahu (PW7) has also admitted the fact that when the seized articles were deposited before him in the,

Malkhana, at that time, no seal or specimen seal was given to him along with the seized articles to deposit in the Malkhana. He has also admitted that",

in the acknowledgment (Ex.P27), there is no mention that the sample packets were sealed and there is also no mention that at what time the seized",

property were deposited in the Malkhana. On a bare perusal of the acknowledgment (Ex.P27), it reveals that acknowledgment of receipt of only 3",

bags marked as A, B and C each containing 20 packets, total weighing 59 Kgs. and 800 Grams, was given. Balram Sahu (PW7) has categorically",

stated that other than this nothing was given to him to deposit in the Malkhana. Neither Malkhana Register nor a copy thereof has been submitted,

before the Trial Court to prove its entries. Thus, from the evidence adduced by the prosecution itself, it is established that in the Malkhana, only 3 bags",

containing Ganja of total 59 Kgs. and 800 Grams were deposited and no sample packets were deposited.,

18. Though Saudagar Bagarti (PW10) has stated that on 18.2.2016 he had deposited 2 sample packets marked as A1 and A2 in the FSL and obtained,

acknowledgment thereof (Ex.P30), sample packets A1 and A2 were received by him from whom and where has not been stated by him and no",

documentary evidence has also been led in this regard. As stated by Balram Sahu (PW7), the sample packets were not deposited in the Malkhana.",

Therefore, it was essential for the prosecution to establish that from whom, where and how Constable Saudagar Bagarti (PW10) received those",

sample packets. Apart from this, as per the entries made in the mixing panchanama (Ex.P21) and in the sample panchanama (P23), the 2 sample",

packets each containing 100 Grams of Ganja were kept in 2 plastic boxes marked as A1 and A2, but as per the FSL report (Ex.P35) the FSL",

examined the samples of Ganja kept in 2 sealed packets not kept in plastic boxes. Therefore, it is suspicious that examination of the seized Ganja itself",

was done in the FSL. It is suspicious that the samples which were prepared at the spot were only sent for chemical examination.,

19. From a minute examination of the above evidence on record, it is clear that compliance of Section 55 of the Act of 1985 has not been done. It is",

also clear that the sample packets prepared at the spot were not deposited in the Malkhana. Record of the prosecution does not show that where, in",

whose possession and in what condition the sample packets were kept. Apart from this, it is also not established that the samples which were sent for",

chemical examination were the same which were prepared at the spot. Thus, in my considered view, ignoring these facts, the Trial Court has wrongly",

convicted the Appellants. The Appellants are entitled to get benefit of doubt.,

20. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge",

framed against them. If any amount has been deposited by any of the Appellants towards the fine imposed by the Trial Court upon them, the same",

shall be refunded and the seized property shall be disposed of in accordance with law.,

21. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.,