
(2021) 03 CHH CK 0003

Chhattisgarh High Court

Case No: Criminal Appeal No. 1585 Of 2018

Duryodhan Nag

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: March 9, 2021

Acts Referred:

- Narcotic Drugs And Psychotropic Substances Act, 1985 - Section 20, 20(B)(ii)(b), 42, 50
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Gautam Chourdiya, J

Bench: Single Bench

Advocate: Vikash Shrivastava, Sameer Uraon

Final Decision: Dismissed

Judgement

Conviction,Sentence

Under Section 20 (B) (ii) (b) of the Narcotic Drugs

and Psychotropic Substances Act, 1985

(hereinafter referred to as the 'NDPS, Act')", "R.I. for four years and pay a fine of Rs.25,000/-, in

default of payment to further undergo R.I. for six

months

11. Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.,

12. PW-6, Narad Kumar Suryawanshi, in his deposition, has categorically stated that upon receipt of secret information he alongwith the witnesses and the police",

party after recording the same in the Roznamchasahna vide Ex.-P/33 and sending the copy of the same to superior authority, proceeded for indicated place. The",

accused persons were found there, firstly, the police party and the witnesses were got searched by the accused persons on which nothing objectionable was seized",

from their possession. On the consent of appellant Duryodhan Nag being obtained vide Ex.-P/10, in the dark green coloured bag carried by appellant ganja like",

substance was seized. The said substance was examined by smelling, rubbing and burning vide Ex.-P/16 and found to be ganja. After weighment, it was found to be",

07 Kg & 100 grams vide seizure memo Ex.-P/26, out of 07 Kg & 100 grams, two samples of 50-50 grams drawn vide Ex.-P/23 and particular of the specimen seal was",

prepared vide Ex.-P/24. The appellant was taken into custody vide Ex.-P/28. The seized articles and the samples were handed over to Malkhana Moharrir for their safe,

custody vide Ex.-P/30. The F.I.R. was recorded vide Ex.-P/45 on 12.12.2014 and information regarding the entire proceedings was sent to the Office of S.D.O.P.,",

Farasgaon, District Kondagaon vide Ex.-P/54. The seized article from appellant Duryodhan Nag was sent to FSL, Raipur vide Ex.-P/55 and as per FSL report, the",

contraband was confirmed to be ganja. There is no reason to disbelieve the evidence of Investigating Officer Narad Kumar Suryawanshi (PW-6) and no any single,

reason is shown that appellant Duryodhan Nag was falsely implicated in this case. There was substantial compliance of provision of Sections 42 & 50 of the NDPS,",

Act by PW-6.,

13. PW-2 Ganga Prasad Sriwas, Assistant Sub-Inspector, has proved this fact that 07 Kg & 100 grams of ganja was seized from appellant Duryodhan Nag and out of",

the same, 50-50 grams of ganja for examination were received by him for keeping in safe custody in Malkhana and the entry of the same was made in goods-register at",

serial No. 104 vide Ex.-P/30 and he has duly proved the same.,

14. PW-3 Lakhmuram Sori is the Patwari. He prepared spot map (Ex.-P/31), admits his signature and has duly proved the same.",

15. PW-4 Sudarshan Mazumdar, Assistant Sub-Inspector, has proved this fact that the ganja was seized from appellant Duryodhan Nag and has supported the",

version of PW-6 Narad Kumar Suryawanshi. PW-5 Jitendra Veram, Sub-Inspector, is also corroborating the evidence of PW-6. There is no reason to disbelieve the",

evidence of PW-4 & PW-5 and they have remained firm during their cross-examination.,

16. In the instant case, though the independent witnesses namely Sanjiya Kundu (PW-1) and Mahavir Netam (PW-7) have not supported the prosecution case and",

have been declared hostile by the prosecution, but they have duly signed and admitted their signatures on the documents i.e. Ex.-P/1 to Ex.-P/28 and, therefore, there",

is no reason whatsoever to discard/disbelieve the evidence of these police officials witnesses and independent witnesses for the purpose of convicting and,

sentencing the accused/appellant as aforementioned particularly when they have admitted their signatures on the requisite documents i.e. Ex.-P/1 to Ex.-P/28.,

17. Thus, looking to the statements of the prosecution witnesses, in particular, the statement of Investigating Officer " Narad Kumar Suryawanshi (PW-6), it is quite",

apparent that all the relevant procedure prescribed under the NDPS, Act had duly been complied with by the Investigating Officer while making search and seizure of",

the contraband (seeds & leaves of ganja) and there is no reason to disbelieve the statements of the Investigating Officer and other police officials.,

18. It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If,

testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot",

be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by,

overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies",

as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.,

Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and",

trustworthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the Court finds the evidence of the police officer as unreliable",

and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed",

with distrust. This also based on the principle that quality of the evidence weighs over the quantity of evidence.,

[Pramod Kumar Vs. State (GNCT) of Delhi reported in AIR 2013 SC 3344]. The same principle of law has been reiterated by the Supreme Court Judgment in the matter, of Baldev Singh Vs. State of Haryana reported in (2015) 17 SCC 554 and in paragraph-10, it has been observed as under:",

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police, witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the, case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and,

independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness. “,

19. In the recent judgment dated 26.10.2020 delivered by the Hon'ble Supreme Court in the matters of Rajesh Dhiman Vs. State of Himachal Pradesh in CRA No. 1032,

of 2013 and Gulshan Rana Vs. State of Himachal Pradesh in CRA No. 1126 of 2019, where the accused/appellants were acquitted of the charges under Section 20 of",

the NDPS Act by the trial Court and later convicted under the said Section by the High Court, affirming the judgment of conviction of the High Court, the Apex Court", referring to its earlier various judgments holding the field, held that non-examination of the independent witnesses or independent witnesses turning hostile would",

not ipso facto be fatal to the prosecution case if the evidence of the official witnesses/police personnel remain impeccable and free the suspicion of falsity.,

20. In the present case, though independent witnesses i.e. Sanjiya Kundu (PW-1) and Mahavir Netam (PW-6) have not supported the prosecution case and have",

been declared hostile, but they have admitted their signatures on all relevant documents. However, the other witnesses i.e. police personnel namely PW-6 Narad",

Kumar Suryawanshi, PW-2 Ganga Prasad Sriwas, PW-4 Sudarshan Mazumdar and PW-5 Jitendra Verma have unequivocally stated about search and seizure of the",

contraband. As per available evidence on record of prosecution, defence has utterly failed to elicit anything from them which could suggest that they were in any",

manner inimical to the accused or were interested in false implication of the accused in the said crime; their evidence appear to be trustworthy and supported by the,

documentary evidence on record as also from the evidence of independent witnesses. In these circumstances, there is no reason to suspect the credibility of these",

witnesses merely on the ground of they being the police personnel.,

21. Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond",

all reasonable doubt. Being so, the findings recorded by the Special Court holding appellant Duryodhan Nag guilty under Section 20 (B)(2) (b) of the NDPS, Act",

cannot be faulted with and the same are hereby affirmed.,

22. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.",

23. A report has been received from Office of Jail Superintendent, Central Jail, Jagdalpur, District Bastar (C.G.) dated 19.08.2020 about the status of the",

accused/appellant. It is stated in that report that the accused/appellant Duryodhan Nag has been released from jail on 26.09.2019 after completion of his entire,

sentence awarded to him by the Special Court, therefore, no further order regarding his arrest/surrender etc. is required to be passed.",