

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1661 OF 2010

Sk. Sakkar @ Mannan

.....APPELLANT

VERSUS

State of West Bengal

.....RESPONDENT

JUDGEMENT

Surya Kant, J:

The appellant Sk. Sakkar @ Mannan assails the judgement dated 09.12.2009 passed by the High Court at Calcutta whereby his appeal against the judgement and order dated 26.05.2004 and 27.05.2004 passed by Special Judge, Birbhum convicting him for offences under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act") and imposing a sentence of five years rigorous imprisonment (RI) and a fine of Rs. 20,000/- (in default, whereof to further undergo RI for one additional year), has been dismissed.

2. The prosecution case in brief is that upon receiving secret information, D.S.P. Headquarter, Birbhum conducted a raid on 16.11.1997 and intercepted an Ambassador car bearing no. BRW 312.

Since the car was detained inside a forest area, 3/4 occupants of the car managed to flee, while only 2 of the occupants, including the appellant, were caught and arrested. 11kgs of ganja was seized following the statutory procedure. The suspects were thereafter interrogated, and a formal FIR was registered at Police Station Sadaipur. Charge sheet was submitted against five persons including the appellant.

3. The appellant and his co-accused, except one Kalachand Saha, were charged under Section 20 of the NDPS Act. Since they pleaded not guilty, trial was conducted, and the charges against them were proved. The Special Judge, Birbhum convicted and sentenced the appellant as noted in paragraph 1 of this order.

4. The appellant assailed his conviction before the High Court, contending, inter alia, that the prosecution case was suffering from inherent weakness, and that the testimonies of the witnesses were not credible. The plea of absence of independent witnesses, more so when PW-2, PW-3 and PW-8 were declared hostile, was also pressed into service. It was also highlighted that although Kalachand Saha was claimed to have been arrested along with the appellant, he was not even charge-sheeted.

5. The High Court minutely scrutinized the entire evidence and has extensively discussed the depositions made by PW-1, PW-6, PW-7 and PW-9. It then firmly held that about 11 kgs of ganja was recovered from

the appellant and Kalachand Saha. As regard to other three co-accused, the High Court opined that since they were not arrested at the spot and were roped in only with the aid of confessional statement of the arrested person(s), the case against them was not proved beyond reasonable doubt. The High Court thus acquitted the appellant's co-accused, but dismissed his appeal upholding the conviction and sentence awarded by the Special Judge.

6. The still aggrieved appellant approached this Court through Special Leave to Appeal, in which leave was granted on 27.08.2010. Thereafter, having regards to the fact that the appellant had already undergone actual sentence for a period of 2 years 4 months and 16 days, out of the total sentence of RI for five years, this Court vide order dated 02.11.2012 suspended the sentence and released the appellant on bail.

7. We have heard learned counsel for the parties at considerable length and perused the record. In sum and substance, it is urged on behalf of the appellant that the courts below have not correctly appreciated the statements of the witnesses or the evidence comprising seizure memo etc. It is also argued that PW-2, PW-3 and PW-8 having been declared hostile, the remaining ocular evidence falls short of proving the appellant's guilt beyond reasonable doubt.

8. We are, however, not impressed by these contentions. What has been sought to be argued is essentially either a question of fact or an

abortive attempt for re-appreciation of evidence on record. Such discourse ordinarily does not fall within the scope and ambit of powers vested in this Court under Article 136 of the Constitution¹. The appellant's claim for parity with his acquitted co-accused is also misconceived, for unlike the appellant, none of them were apprehended at the spot; and as found by the High Court, no evidence was produced to connect them with the alleged offence. Contrarily, not only was the appellant apprehended at the spot of the incident but also was found in conscious possession of the ganja. As regard to his co-accused Kalachand Saha, there is unfortunately no material on record to shed light on the circumstances in which charge sheet was not filed against him. The appellant, however, did not rely upon this fact either in his defense statement under Section 313, CrPC or otherwise. The aforementioned supplication therefore cannot be entertained at this belated stage. There is no other substantial question of law raised on behalf of the appellant. We are, thus, not inclined to interfere with the concurrent finding of fact returned by the courts below.

9. Faced with this, learned Senior Counsel for the appellant relies upon several mitigating circumstances to persuade us to reduce the sentence period. He passionately urges that: (i) the appellant has

¹ (i) Surendra Puri v. State of Uttarakhand, (2016) 13 SCC 274; (ii) Mangu Khan and Others v. State of Rajasthan (2005) 10 SCC 374; (iii) Pritam Singh v. State, AIR 1950 SC 169.

suffered protracted trial for more than 23 years; (ii) he alone has been convicted while his co-accused are acquitted; (iii) the appellant was not involved in any other case under the NDPS Act or other Penal Laws; (iv) the appellant has already undergone actual sentence of 2 years 4 months and 16 days out of the total sentence of five years; (v) and that the appellant has not misused the concession of bail granted by this Court on 02.11.2012.

10. We find some merit in the submission noticed above. It may be noted that the appellant committed the crime in the year 1997, i.e., much before the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 came into force. The punishment for contravention in relation to cannabis plant or any other provision of the NDPS Act, in his case, would thus be regulated by the unamended Section 20 of the NDPS Act, as it stood before the amendment of 2001 and which reads as follows:

“20. Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted thereunder-

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,-

(i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;

(ii) where such contravention relates to cannabis other than ganja, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

(emphasis supplied)

11. It is manifest from Section 20(i) of NDPS Act (as it stood in 1997), that even though a maximum sentence of five years RI and a fine of upto Rs. 50,000/- was prescribed but there was no minimum mandatory sentence. The Legislature had in its wisdom left it to the judicious discretion of a court to award the minimum sentence albeit guided by the well known principles on the proportionality of sentence. Taking into consideration the peculiar facts and circumstances of this case, it appears to us that the ends of justice would be adequately met if the appellant's sentence is reduced to the extent of the period he has already undergone. We order accordingly.

12. For the reasons(s) stated above, the appeal is allowed in part; the impugned judgments of the Special Judge and the High Court are modified and the sentence of five years RI awarded to the appellant is reduced to the period of sentence already undergone. The bail bond of the appellant is discharged. However, the appellant shall be liable to pay fine of Rs. 20,000/- within two months, if already not deposited and in default thereof he will be liable to undergo RI for six months.

..... J.
(N.V. RAMANA)

..... J.
(SURYA KANT)

..... J.
(ANIRUDDHA BOSE)

NEW DELHI
DATED : 03.02.2021