

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL APPEAL No.750 OF 2009

Between:

K. Chinna Rami Reddy

... Appellant/Accused No.3.

Versus

The State, rep. by the Station House Officer,
Prohibition & Excise Police Station, Rayadurg,
Rep. by its Public Prosecutor, High Court of
Andhra Pradesh.

... Respondent/complainant.

DATE OF JUDGMENT PRONOUNCED: 14.12.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
Fair copy of the Judgment? Yes/No

A.V.RAVINDRA BABU, J

*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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! Counsel for the Appellant : Sri Shaik Mohammed Ismail,,
learned counsel, representing Sri
C. Sharan Reddy.

^ Counsel for the Respondent : Public Prosecutor.

< Gist:

> Head Note:

? Cases referred:

This Court made the following:

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU
CRIMINAL APPEAL NO.750 OF 2009

JUDGMENT:-

The unsuccessful Accused No.3 in Sessions Case No.73 of 2005, on the file of I Additional Sessions Judge, Anantapur ("Additional Sessions Judge" for short), filed the present Criminal Appeal impugning the judgment, dated 03.07.2009 whereunder the learned Additional Sessions Judge found A.3 guilty of the offence under Section 20(a)(i) of the Narcotic Drugs and Psychotropic Substance Act, 1985 ("NDPS Act" for short), convicted under Section 235(2) of the Code of Criminal Procedure ("Cr.P.C." for short) and after questioning him about the quantum of sentence, sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for three months. By virtue of the said judgment, the learned Additional Sessions Judge found A.1 and A.2 not guilty of the charge and acquitted them under Section 235(1) of Cr.P.C.

2) The parties to this Criminal Appeal will hereinafter be referred to as described before the learned Additional Sessions Judge for the sake of convenience.

3) The case of the prosecution, in brief, as set out in the charge sheet filed by the Station House Officer, Prohibition

and Excise, Rayadurg in Crime No.79/04-05, is that the accused are residents of D. Hirehal Mandal. A.1 is the father of A.2. A.3 is the owner of land bearing S.No.274/B. On 28.08.2004 Prohibition & Excise party along with the mediators made a visit to the land in the aforesaid survey number. They found A.1 and A.2 attending the agricultural work at 9-30 a.m. Excise party entered into the land and found Ganja plants raised as mixed crop in the cotton crop. A.1 and A.2 disclosed that A.3 is the owner of the land. Then A.3 was also brought to the land by the police. All the Ganja plants were up rooted and two of them were separately taken for sample. All the Ganja plants and the sample plants were sealed and labeled. Prohibition and Excise party arrested A.1 to A.3 under the cover of mediatorsnama. The property and accused were brought to Prohibition & Excise P.S., Rayadurg. They registered a case in Cr.No.79/04-05 and investigated into. Sample Ganja plants were sent to the chemical examiner, Chittoor, who opined that, they are of Ganja.

4) The learned Additional Sessions Judge took cognizance of the case under the above provisions of law. After appearance of the accused, copies of case documents were furnished to them as required under Section 207 of the Cr.P.C., and on hearing both sides, a charge under Section 20(a)(i) of

N.D.P.S Act was framed and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

5) During the course of trial, the prosecution examined P.W.1 to P.W.6 and got marked Ex.P.1 to Ex.P.8 and M.O.1 and M.O.2. After closure of the evidence of prosecution, the accused were examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances appearing in the evidence let in by the prosecution, for which they denied the same and stated that they have no defence witnesses.

6) The learned Additional Sessions on hearing both sides and on considering the oral as well as the documentary evidence, found A.1 and A.2 not guilty of the charge, but found A.3 guilty of the charge and accordingly convicted and sentenced him as above. Felt aggrieved of the said judgment, the unsuccessful A.3 filed the present appeal.

7) Now, in deciding this Criminal Appeal, the points for determination are as follows:

(1) Whether A.3 on 28.08.2004 at 9-30 a.m. was found in cultivating the Ganja in the land situated in Sy.No.274-B and that he was in exclusive possession of the aforesaid land in the manner as alleged?

(2) Whether the judgment of the learned Additional Sessions Judge, dated 03.07.2009 in S.C.No.73 of 2005, is

sustainable under law and facts and whether there are any grounds to interfere with the same?

Point NoS.1 and 2:-

8) Sri Shaik Mohammed Ismail, learned counsel, representing Sri C. Sharan Reddy, learned counsel appearing for the appellant, would vehemently contend that the present appellant had nothing to do with the land in question where the Ganja was alleged to be cultivated. A.1 and A.2 were alleged to be found when the raid party visited the land. Basing on the so-called confession of A.1 and A.2, A.3 was brought to the land by the Excise police party. They obtained the signature of A.3 on the mahazarnama. Police party did not examine any neighbouring land owners to speak that A.3 was possessor or owner of the said land. They did not examine any revenue officials and they did not get any document of possession in the form of Adangal copies. The learned Additional Sessions Judge on assumptions and presumptions and basing on the version of A.1 and A.2 and taking into consideration of the fact that A.3 signed the mahazarnama and by putting negative burden on A.3 that he has to file documents to show that he was not the possessor of the land erroneously made a conviction which is wholly unsustainable under law and facts. He would submit that there is no iota of evidence as against the present appellant and the

judgment of the learned Additional Sessions Judge is nothing but erroneous basing on the assumptions and presumptions, as such, the appeal is liable to be allowed.

9) Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, would contend that basing on the version of A.1 and A.2, the name of A.3 was brought into picture. A.3 was brought to the land where Ganja was alleged to be found under cultivation and before Excise police A.3 stated that he is the owner of the said land and it was the basis for the police to file the charge sheet and that the learned Additional Sessions Judge made an appropriate finding so as to convict the present appellant, as such, the appeal is liable to be dismissed.

10) The sum and substance of the case of the prosecution is that A.1 to A.3 were found cultivating Ganja on 28.08.2004 at about 9-30 a.m. The case of the prosecution is that A.1 and A.2 were present in the land physically and basing on their version, the presence of A.3 was secured, who admitted that he was the owner of the land. The basis for the prosecution to prove the case against A.3 is the so-called version of A.1 and A.2 in the mahazarnama.

11) The prosecution examined P.W.1 to P.W.3, who turned hostile to the case of the prosecution. They are said to be

the mahazar witnesses. According to P.W.1, he signed in the mahazar in the police station and he does not know anything. He does not know the accused. He did not accompany the police to the field of A.3 on 28.08.2004. Similar is the evidence of P.W.2 and P.W.3. The Additional Public Prosecutor cross examined them, who denied the case of the prosecution.

12) The remaining evidence was that of P.W.4 to P.W.6. P.W.4 was the Prohibition & Excise Constable. P.W.5 was the Prohibition & Excise the then ESI, Rayadurg. P.W.6 was the Prohibition & Excise Inspector. Their evidence in substance is that on 28.08.2004 at 9-30 a.m., they visited the field bearing Sy.No.274-B along with mediators and they found the presence of A.1 and A.2 in the land and they verified the field and found 75 Ganja plants which are 5 feet height and Ganja plants were removed and A.1 and A.2 when questioned disclosed that the land belonged to A.3 and then they secured the presence of A.3 also and A.3 stated that the land belonged to him. Accordingly, a mahazar was drafted. During cross examination of P.W.4 to P.W.6, A.3 seriously disputed that the land does not belongs to him and he has nothing to do with the land in question.

13) It is a case where the evidence on record discloses that except the testimony of P.W.4 to P.W.6, who are the Prohibition & Excise officials, whose evidence is based on Ex.P.4-

Mahazarnama, there remained nothing in support of the case of the prosecution. It is not a case where they physically found the presence of A.3 in the land in Sy.No.274-B cultivating Ganja along with A.1 and A.2. It is not a case where A.3 was physically present giving instructions to A.1 and A.2 for carrying out the agricultural operations. None of the surrounding ryths were examined by the prosecution to prove that the land in question belonged to the present A.3/appellant. The Prohibition & Excise party did not examine any revenue officials to ascertain as to who are in possession of the land in question. These contentions were raised by the learned counsel for A.3 before the learned Additional Sessions Judge.

14) The findings made by the learned Additional Sessions Judge were such that A.1 and A.2 disclosed that the land belonged to A.3 and that presence of A.3 was secured to the place which was not in dispute and the signature of A.3 on the mahazarnama was not in dispute and his contention that he signed in the mahazarnama in the police station is not a tenable and that A.3 admitted before Excise police in mahazar that he is the owner of the land and it is sufficient to prove the case.

15) Those findings are totally disturbing. The judgment of the learned Additional Sessions Judge reveals that he put negative burden on A.3 stating that if really A.3 was not the

owner or possessor of the land, he has to file documentary proof to prove the said aspect. Further findings of the learned Additional Sessions Judge is that there are specific recitals in the mahazarnama that the land belongs to A.3 and that it was disclosed by A.1 and A.2 and that A.3 signed the mahazar, as such, contents of mediators report can be used against A.3. Those findings of the learned Additional Sessions Judge are not at all sustainable under law.

16) It is to be noted that to prove that A.3 was the owner or possessor of the land, proper evidence was to examine the neighbouring land owners or to examine the revenue officials or to produce the relevant revenue records. These things were not complied by the investigating officer. It is rather surprising that just by securing the presence of A.3 to the fields basing on the so-called version of A.1 and A.2, the prosecution wanted to fasten criminal liability against the present appellant.

17) It is no doubt true that according to Section 8 of the NDPS Act, no person shall (a) cultivate any cocoa plant or gather any portion of cocoa plant or (b) cultivate the opium poppy or any cannabis plant. The penal provision in this regard is Section 20 of the Act. It provides that whoever, in contravention of any provision of this Act or any rule or order made or condition of licence 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 punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees.

18) So, the gist of the offence under Section 20(a) coupled with the prohibition contained in Section 8 is the cultivation of Ganja by any offender. Cultivation of Ganja by any offender can be direct or indirect. In other words, the offender may cultivate the land personally and may cultivate through somebody by employing some coolies or labourers. Here is a case that A.1 and A.2 were physically present by attending agricultural operations. Having put negative burden on A.3 that he has to file proof that he was not the owner or possessor of land, the learned Additional Sessions Judge extended benefit of doubt against A.1 and A.2 on the ground that the prosecution did not file any Adangal to show that A.1 and A.2 raised crop in the land. The findings of the learned Additional Sessions Judge were such that A.1 and A.2 might be in the field in some other capacity attending agricultural work and they need not be persons in possession of the land. When that being so i.e., when the learned Additional Sessions Judge exonerated A.1 and A.2 on the ground that the prosecution did

not file any Adangal to show that they cultivated the land, but the same logic was not applied to A.3 who was not physically present in the land in question. The criminal liability against A.3 was fastened basing on the so-called version of A.1 and A.2 which is nothing but confession by exonerating A.1 and A.2. The whole approach of the learned Additional Sessions Judge in appreciating the evidence on record is not in accordance with law.

19) Viewing from any angle, absolutely, there was no legally admissible evidence against the present appellant so as to convict him under Section 20(a)(i) of N.D.P.S. Act, as such, I am of the considered view, there was totally an erroneous approach by the learned Additional Sessions Judge in appreciation of the evidence against the appellant is concerned. Therefore, this Court is of the considered view that the prosecution miserably failed to prove the charge against A.3, as such, he is liable to be acquitted of the charge.

20) In the result, the Criminal Appeal is allowed, setting aside the judgment, dated 03.07.2009 in Sessions Case No.73 of 2005, on the file of I Additional Sessions Judge, Anantapur against A.3, thereby A.3 shall stand acquitted of the charge leveled against him. The fine amount, if paid by A.3, shall be refunded to the accused after appeal time is over.

21) The Registry is directed to forward copy of the judgment along with record to the trial Court on or before 21.12.2023.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 14.12.2023.

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THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRL. APPEAL NO.750 OF 2009

Note:-

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