

**Uma Vs. State of M.P.**

**Uma Vs. State of M.P.**

**SooperKanoon Citation :** [sooperkanoon.com/509245](http://sooperkanoon.com/509245)

**Court :** Madhya Pradesh

**Decided On :** Sep-14-2004

**Reported in :** 2005(1)MPHT233

**Judge :** A.K. Shrivastava, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20 and 50

**Appeal No. :** Criminal Appeal No. 2190/2003

**Appellant :** Uma

**Respondent :** State of M.P.

**Advocate for Def. :** Aseem Dixit, Govt. Adv.

**Advocate for Pet/Ap. :** Manju Khatri, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**A.K. Shrivastava, J.**

1. Feeling aggrieved by the judgment of conviction and order of sentence dated 5-12-2003 passed by Special Judge, Mandla, in Special Case No. 2/2003 convicting the appellant under Section 20(b)(i) of [Narcotic Drugs and Psychotropic](#)

[Substances Act, 1985](#) (in short 'the Act') and sentencing her to suffer rigorous imprisonment of three years and fine of Rs. 10,000/-, in default, further imprisonment of nine months, the appellant has knocked the door of this Court by preferring the appeal under Section 374(2) of the Code of Criminal Procedure, 1973.

2. Bereft of unnecessary details the facts lie in a narrow compass that in the night of 22-1-2003 Sub Inspector (Excise) Shiv Charan Choudhary received an information through one informant Raju Yadav that one person is carrying liquor in the Balaghat Nainpur G.B.N. Train, as a result of which he alongwith Head Constable Omkar Singh, Sub Inspector Samhar Singh and some other persons alongwith informant Raju Yadav arrived at Platform No. 4. The train came in the late night at 3.00 hours and one lady alighted from one Compartment. These persons made suspicion on that lady and stopped her. Lady Constable Deep Mahis searched her belongings and found that she was carrying some substance weighing 21.500 kgs. in her lap. The Excise party doubted the said substance to be 'Ganja'. The lady was unable to understand Hindi and was speaking Tcigu language, as a result of which Shri Choudhary called a retired Railway Supervisor Kunjanam Pattu Bhaskar Rao who translated the conversation into Telgu language and the words spoken by appellant, in Hindi. During the process of translation, it was found that the appellant is the resident of Warangal District of State of A.P. and she came alongwith three other ladies, namely, Nailamba, Sarupa and Shobha and those ladies handed over the contraband article to her. On seeing the police, those three ladies left her and fled from the spot. The appellant narrated her name and the address of Village Ganpur, Distt. Warangal. After inquiring from her, Shri Choudhary prepared Exs. P-2 to P-4, P-6 and P-7 as well as Ex. P-8 which is spot map. The appellant was arrested and after completing the investigation, a charge-sheet was submitted on 7-3-2003.

3. The appellant was charged under Section 20(b)(i) of the Act which she denied.

4. In order to bring home the charge, prosecution examined as many as four witnesses and placed certain documents on record.

5. Learned Trial Judge, after appreciating and marshalling the evidence, came to hold that the charge framed against the accused/appellant is proved and eventually convicted her and passed the sentence which I have mentioned hereinabove. Hence this appeal.

6. I have heard Ku. Manju Khatri, learned Counsel for the appellant and Shri Asccm Dixit, learned Government Advocate, for the respondent. After having heard learned Counsel for the parties, I am of the view that this appeal deserves to be allowed.

7. The case of prosecution is that the appellant is the resident of a remote village of District Warangal of the State of Andhra Pradesh and she does not understand Hindi. No doubt the prosecution took care and called Kunjanam Pattu Bhaskar Rao (P.W. 1) and his statement is Ex. P-I but if his statement is considered in proper perspective, it is gathered that only initial conversation which took place between the members of Excise party and the appellant was explained to her in her own language. There is nothing on record, in order to show that, how and in what manner the language of Section 50 of the Act was explained to her. On going through the record, it is gathered that notice under Section 50 of the Act was also not given to the appellant.

8. Since the contraband article was recovered from the possession of appellant as it was physically being carried by her in her lap, provisions of Section 50 of the Act was essentially required to be complied with. Since no notice under Section 50 of the Act was given or there is any evidence that the ingredients of Section 50 of the Act was stated to the appellant in her own language, it can not be said that the mandatory requirement of law was complied with. Ku. Deep Mahis (P.W. 2) has said that the members of the raid party who are the employees of the Excise Department including herself stated to the accused that she may allow her search before any Gazetted Officer or Magistrate. But, she did not say anything. The moot question is whether she understood whatever was said to her by these persons. There is nothing on record in order to show that in her own language the ingredients of Section 50 of the Act was explained to her and thereafter she kept herself silent. There is nothing on record to show that the appellant was informed

that it is her right to be searched before any Gazetted Officer or Magistrate. In absence of such type of evidence, it is difficult to affirm the conviction. In this regard, I may profitably rely the decision of the Apex Court in the case of K. Mohanan v. State of Kerala, 2000 SCC (Cri.) 1228. In a later decision, the Apex Court in the case of Beckodan Abdul Rahiman v. State of Kerala, (2002) 4 SCC 229 has also reiterated the same principle. In the case of Beckodan (supra), the search was made while the accused was carelessly walking from the bus shelter towards a particular place and after disclosing the identity the Sub-Inspector searched Beckodan Abdul Rahiman and found the presence of opium in a polythene bag in the fold of dhoti and therefore it was held by the Apex Court that compliance of Section 50 of the Act was mandatory. In the present case also the contraband article, alleged to be ganja, was found in the lap of the appellant as she was carrying the same and, therefore, the view of this Court is that the mandatory requirement of Section 50 of the Act was required to be complied with.

9. Shri Aseem Dixit, learned Government Advocate has submitted that there was no necessity to comply the provisions of Section 50 of the Act for the simple reason that the said provision is applicable only in a case of 'personal search' of a person and it does not extend to a search of a container or a bag. It be seen, indeed it is prosecution's own case that the appellant was physically carrying the alleged contraband article in her lap and, therefore, the view of this Court that any search of appellant would amount to a 'personal search' and thus the decision relied by learned Government Advocate Madan Lal and Anr. v. State of H.P., (2003) 7 SCC 465, is not applicable in the present case. In the said case, the contraband article was found in a car but in the present case, according to prosecution, appellant was physically carrying the contraband article with her. On the similar ground the case of Narayanaswamy Ravishankar v. Asstt Director, Directorate of Revenue Intelligence, (2002) 8 SCC 7, is distinguishable in which the contraband article was found in the bottom of a suitcase alleged to be belonging to the appellant of that case and when he was attempting to transport the same from the International Airport, Chennai to Singapore. The said suitcase was not being physically carried by the accused. In the present case search was conducted on the person of the appellant and therefore the provisions of mandatory Section 50 of the Act was required to be complied with.

10. On bare perusal of Ex. P-6, it is gathered that some dry green substance was seized from the appellant but there is nothing on record in order to show that the substance which was seized, was having flowering or fruiting tops. In this context, it would be apposite to see the definition 'Ganja' under the Act. 'Ganja ' has been defined under Section 2(b) of the Act which reads thus :-

'2. (b) Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated.'

11. There is no evidence on record that whatever was seized at the spot was having flowering or fruiting tops. But, when the seized article was sent to the Chemical Examiner and which was received by him on 3-2-2003, the article was bearing seeds, flowering and fruiting tops. Surprisingly, how the flowering and fruiting tops appeared in that seized substance, when the contraband article was received by the Chemical Examiner. There is no evidence on record that from 23-1-2003 to 3-2-2003 where the contraband article was kept and, therefore, changing of the contraband article can not be ruled out.

12. In the result, the conviction of the appellant can not be sustained and the same is hereby set aside. The appeal is, accordingly, allowed. The appellant is in custody, she be set at liberty forthwith, if she is not required in any other case. The amount of fine, if recovered, may be returned to her.