



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

CRA NO. 30 OF 2010

MARRISON WAFUBWA SYANDETE.....APPELLANT

VRS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was convicted by Webuye Senior Resident Magistrate of the offence of being in possession of Narcotic Drugs c/s 3 (1) as read with section 4 (2) (a) of the Narcotic Drugs and Psychotropic Substances Control Act No.4 of 1994 and fined Ksh.20,000/= in default 4 months imprisonment. The Appellant paid the fine and was released. Being dissatisfied with the judgment the Appellant lodged this appeal. In his petition of appeal, the Appellant relies on the following grounds:

- 1. That the offence was not proved beyond any reasonable doubt.**
- 2. That the [prosecution's evidence was contradictory.**
- 3. The charge was defective.**
- 4. That Government Chemist report was produced by the investigating officer.**

The appeal was opposed by the state on grounds that Appellant was found in possession of the stuff which was later confirmed on analysis to be *canabis sativa* which was not medically prepared in contravention to the Act. The two witnesses who were police officers testified that they recovered the *canabis sativa* and smoking equipment from the house of the Appellant. In mitigation the Appellant admitted that he smokes bhang. The State submitted that the sentence was reasonable.

The facts of the case are that, two police officers PW1 & PW2 were on patrol duties at Matisi area within Webuye when they received information that there was an old man in the village who was a bhang peddler. They were led by the informer to the house of the Appellant. In his presence, police conducted a search and recovered 500 gms of bhang and some smoking equipment. The Appellant was arrested and taken to police station where he was charged. The investigating officer PW3 sent the exhibit to Government Chemist who confirmed that the stuff was *canabis sativa* not under medical preparation. He was then charged with the offence.

PW1 testified that acting on information, he visited the house of the Appellant accompanied by PW2 and the area chief. He conducted a search and in the bedroom recovered a tin containing dry stuff and smoking equipment which also had bhang in it. His evidence was corroborated by that of PW2 on the seizure of the exhibit. The Government Chemist report was positive that the exhibit recovered was *canabis sativa*. In his defence the appellant admitted that he was in possession of the bhang. He said ***“bhang is my food, I started smoking bhang in 1934. I have never been arrested or differed with a neighbour. How is the law interfering with my food.? If it is an offence I want to go to parliament to ask them why this is so.”***

The Appellant went on say that he buys bhang for smoking. He added that he used to grow bhang but people were stealing from him thus forcing him to stop the cultivation.

The evidence of PW1 & PW2 was found credible by the trial court and formed the basis of convicting the Appellant. PW3 confirmed through Government Chemist report that the stuff found in possession of the appellant was *canabis sativa*. This was crowned by the admission of the accused in his defence that he was in possession of the bhang which he had used for many years and that he did not believe that it was a criminal offence to use or be in possession of the stuff. The investigating officer is authorized by the law to produce documents in court. The Government Chemist report was duly signed by the expert concerned and there was no reason to suspect that it was not a genuine document. The Appellant did not object to the production of the document by PW3 although he had a right to do so. I therefore find that the Government Chemist report was properly tendered in evidence under section 77 of the Evidence Act. The evidence of the three prosecution witnesses was consistent and not contradictory as contended by the Appellant. The conviction was based on the overwhelming evidence of the prosecution which was not challenged in defence.

The magistrate in passing sentence noted that the bhang that the Appellant had was meant for his personal consumption. For this reason, the Appellant was fined 20,000/= in default 4 months imprisonment which sentence was within the law. The sentence was therefore not harsh nor excessive.

I have looked at the charge and I find that it includes all the ingredients of the offence and it was

not defective as alleged. The Appellant did not point out to the court which part of the charge was defective.

I find that the appeal has no merit and it is dismissed accordingly. The conviction is upheld and the sentence confirmed.

F. N. MUCHEMI

JUDGE

Judgment delivered in open court this 18th day of May 2011 in the presence of the Appellant and the State counsel Mr. Ogoti.

F. N. MUCHEMI

JUDGE