
(2011) 01 SC CK 0074

In the Supreme Court Of India

Case No : Criminal Appeal No's. 1231-1232, 1574 of 2009 and Criminal Appeal No. 129 of 2011 (Arising out of SLP (Criminal) No. 5583 of 2009)

Iqbal Moosa Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 29, 35, 54, 67

Citation : (2011) 2 ACR 1897 : (2011) AIRSCW 884 : (2011) 2 ALD(Cri) 148 : (2011) 3 CGLJ 361 : (2011) CriLJ 1142 : (2011) 1 Crimes 205 : (2011) 2 GLH 905 : (2011) 2 GLR 905 : (2011) 1 JCC 35 : (2011) 1 JCR 241 : (2011) 1 JT 157 : (2011) 2 KCCR 116 SN : (2011) 1 RCR(

Hon'ble Judges : T. S. Thakur, J;Markandey Katju, J

Bench : Division Bench

Advocate : Jayant Bhushan and S.K. Dubey, Sushil Gupta, Kamal Mohan Gupta, Javed Khan, Satyendra Kumar and Sanjeev Kumar, for the Appellant; T.S. Deobia Hemantika Wahi, Enatoli Sema, Rajkumar Tanwar and S.N. Terdal, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—Leave granted.

2. These appeals by special leave are directed against a common judgment and order passed by the High Court of Gujarat whereby Criminal Appeals No. 2327 of 2006, 343 of 2007, 754 of 2007 and 1235 of 2007 have been dismissed and the conviction of the Appellants for offences punishable u/s 8(c), read with Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") upheld. While Appellants in Criminal Appeals No. 2327 of 2006 and 754 of 2007 have been sentenced to undergo twelve years of rigorous imprisonment with a fine of Rs. 2 lakhs, and in default

to further undergo simple imprisonment for two years, Appellants in Criminal Appeals No. 343 of 2007 and 1235 of 2007 have been sentenced to undergo ten years of rigorous imprisonment with a fine of Rs. 1 lakh, and in default to further undergo simple imprisonment for one year. The facts giving rise to the conviction and sentence of the Appellants have been set out in detail by the High Court in the order under appeal hence need not be detailed over again except to the extent it is absolutely necessary to do so. Briefly stated the prosecution case is that a certain secret information was received by Mr. K.C Chudasma, Inspector, Anti-Terrorist Squad which was passed on to Mr. P.S. Tomar, Zonal Director, Narcotics Control Bureau, Ahmedabad. The information suggested that Accused No. 2 Mr. Hemaram Chaudhary was the kingpin of a syndicate involved in smuggling and interstate trafficking of narcotic substances. Accused No. 3-Shri Derajram Jat was the man allegedly carrying out the operations at the instance of the said Mr. Hemaram Chaudhary. The information so received was used to intercept and search a truck bearing registration number RJ-04-G-1305 on 29th June, 2001 at Lal Bahadur Shastri Bridge, Pirana area in the city of Ahmedabad while the same was returning from Bharuch. The truck was driven by accused No. 4-Ashuram Durgaram Choudhary while accused No. 3-Derajram Jat was accompanying him. The search of the truck led to the seizure of psychotropic drugs from the aforesaid two persons who revealed that the consignment in question had been supplied by Mr. Hemaram Choudhary-accused No. 2. On the basis of the information so collected and the disclosure made by the driver of the truck and Derajram Jat-accused No. 3. Appellant-Iqbal Moosa Patel was taken into custody and his statement u/s 67 of the NDPS Act recorded. A raid was then carried out on 7th July, 2001 at village Varadia, Khadaki Street, District Bharuch, which led to the seizure of heroin weighing 3.056 kgs. and cash of Rs. 1,17,500/- from the residence of Appellant No. 1 Iqbal Moosa Patel. In his statement recorded u/s 67 of the N.D.P.S. Act the said accused admitted having purchased four packets of brown sugar from one Master and Bhaikhanbhai both residents of Badmer in Rajasthan in the month of March 2001, out of which one packet had already been sold to one Shakur while the remaining three were seized by the Respondent from his residence as mentioned above. On the basis of the material placed before the Trial Court the accused persons were charged with different offences to which the accused pleaded not guilty and claimed a trial.

3. In support of its case the prosecution examined eight witnesses apart from relying upon several documents. In their statements u/s 313 of the Code of Criminal Procedure, the accused denied their involvement and alleged that their statements u/s 67 of the NDPS Act had been recorded under duress. Accused also examined as many as fourteen witnesses in their defence.

4. The Trial Court eventually held all the accused guilty and convicted and sentenced them to undergo imprisonment for varying terms. Aggrieved by the judgment and order passed by the Sessions Court the Appellants preferred appeals before the High Court which, as noticed earlier, have been dismissed by the High Court, upholding the judgment and order passed by the Trial Court. The

present appeals by special leave assail the said judgment and order of the High Court.

5. We have heard learned Counsel for the parties at some length and perused the record. Apart from the oral submissions made at the bar; written submissions have also been filed on behalf of Appellants in Criminal Appeals No. 1231-1232 of 2009 and No. 1574 of 2009. According to learned Counsel for Ashuram Durgaram Chaudhary Appellant in Criminal Appeal No. 1574 of 2009 and the written submissions filed by him the truck driven by the said Appellant was no doubt intercepted and searched on 29th June, 2001 but nothing incriminating was found even when the truck was unloaded and searched thoroughly and all the relevant papers such as insurance, permit etc. recovered from the driver's cabin. A bag was no doubt recovered from under the seat on which the accused No. 3-Derajram Jat was sitting who admitted before the raiding party that the same belonged to him. Written submissions further state that four packets of heroin were found from the said bag eventually leading to the filing of the charge-sheet against the said accused No. 3-Derajram Jat including Appellant-Ashuram Durgaram Chaudhary-accused No. 4 the driver of the truck. It is contended that Appellant-Ashuram Durgaram Chaudhary has been falsely implicated as he had no knowledge of the fact that accused No. 3-Derajram Jat was carrying any contraband in his bag which the latter had kept under his seat. Para 3 of the written submissions filed on behalf of the Appellant-Ashuram Durgaram Chaudhary reads as under:

3. That the Petitioner herein has been falsely implicated in the matter. The other accused persons are stranger to the Petitioner. He has nothing to do with the other accused person or with the goods seized from them. On the date of incidence the Petitioner herein had no knowledge of the fact that accused No. 3 was carrying any contraband with him in his bag which was kept under the seat on which the accused No. 3 was sitting. The entire story of the prosecution is false and concocted as is clear from the judgment of the Trial Court which eschewed the statement recorded u/s 67 of the NDPS Act and also of Mr. Tomar (PW-5). The Evidence of the Panch witnesses to the recovery shows that there was no ring of truth in the prosecution story.

6. On behalf of the Appellant-Iqbal Moosa Patel it was, inter alia, contended that the prosecution story was totally false and that the Trial Court had rightly rejected as unworthy of any credit the statement allegedly recorded u/s 67 of the NDPS Act. It was further submitted that out of two Panch witnesses PW3-Jignesh Jaswantbhai Modi had not supported the prosecution case including the recovery of the contraband from the residence of the Appellant-Iqbal Moosa Patel. Relying upon the decision of this Court in Jagdish v. State of M.P. 2003 (9) SCC 159 the Appellant claimed benefit of doubt. It was further argued that the deposition of Mr. Bhalla, the Investigating Officer was not reliable and could not be made a basis for finding the Appellant-Iqbal Moosa Patel guilty. The statement of the Appellant-Iqbal Moosa Patel had been according to the learned Counsel recorded

after the search of the residence of the Appellant had been completed. It was contended that the Appellant-Iqbal Moosa Patel is an agriculturist and a law-abiding citizen of India who had already spent 9 years in jail out of a total 12 years to which he has been sentenced.

7. Learned Counsel for the remaining Appellants submitted that the prosecution had failed to prove its case beyond a reasonable doubt and the evidence adduced by it suffered from serious contradictions which made it unsafe to place any reliance upon the same.

8. On behalf of the Respondents it was argued that on the basis of the secret information received by the Anti-Terrorist Squad which was passed on to the Narcotics Control Bureau (NCB) Ahmedabad, a large quantity of heroin weighing 3.056 kgs. was seized from the truck in which accused No. 3-Derajram Jat and accused No. 4-Ashuram Durgaram Chaudhary were traveling. All the accused persons had made statements revealing that the buyer of the consignment was one Shri Iqbal Moosa Patel-accused No. 1 whom they could not contact and, therefore, they were returning back to Rajasthan. It was also stated that a consignment of 4 kgs. was earlier supplied to accused No. 1-Iqbal Moosa Patel sometime around mid March 2001 which led the NCB to raid the house of accused No. 1-Iqbal Moosa Patel. It was further submitted that pursuant to the said information the house of Appellant-accused No. 1-Iqbal Moosa Patel was raided on 7th July, 2001 that led to the seizure of 3 kgs. of heroin and a cash of Rs. 1,17,500/- It was submitted that SLP (Crl.) No. 8029 of 2008 filed against the very same judgment by accused No. 2-Hemaram Chaudhary having been dismissed by this Court, there was no reason for this Court to take a different view, in the present appeals.

9. We have given our careful consideration to the submissions made at the bar including those made in writing. The Trial Court as also the High Court have concurrently come to the conclusion that the statements made by all the accused persons except accused No. 1-Iqbal Moosa Patel were voluntary and reliable. So also the Trial Court and the High Court have held that the recovery of the narcotic substance from the truck driven by Appellant No. 4-Ashuram Durgaram Chaudhary in which the Appellant No. 3 was also traveling had been clearly established. The recovery of the narcotic substance from the house of the Appellant-Iqbal Moosa Patel has also been held by both the Courts below to have been proved beyond a reasonable doubt. The assertion of Appellant-Iqbal Moosa Patel that the said substance was planted to implicate him has been rejected by the Trial Court in the following words:

However, the Court is of the firm belief that considering the evidence of Mr. Bhalla, who was an intelligence officer at the relevant point of time and from other documentary evidence and other proved circumstances, there is no reason as to why visit of officer of NCB at the residence of A-1 at Bharuch should not be believed. Going by the version of DW-13, wife of A-1 also said that these officers had visited on 07.07.2001 her residence alongwith her husband although she

had charged them for ransacking the entire household and other belongings, but this further fortifies factum of visit and the search having been carried out and also the seizure of 3.056 kgs. of heroin. The Court also has to bear in mind that had there been an intention to concoct and plant heroin so as to implicate A-1, the commercial quantity as per the law is only 250 gms. and there would not have been any need for NCB to keep moiri than 250 gms. of heroin and the same could have been also done at Mumbai rather bringing him to his own residence and thereby creating an evidence for the defence with regard to the treatment meted out to the accused and other facts. As this house where the search had been carried out belongs to A-1 and this huge quantity of heroin had been seized from his bed room, vivid description of which has been given in the cross-examination by Mr. Bhalla, there is earthly no reason not to believe him on this vital aspect.

10. The High Court affirmed the above finding and rejected the contention that the Appellants were entitled to the benefit of doubt for in the opinion of the High Court the charge framed against the Appellant had been satisfactorily proved.

11. There is, in our opinion, no error or perversity in the view taken by the Trial Court or the High Court for that matter to warrant our interference under Article 136 of the Constitution of India. The prosecution had on the depositions of the witnesses examined by it and the documents produced at the trial, established that a raid based on the secret information received by the Anti-Terrorist Squad which was passed on to the Narcotic Control Bureau indeed conducted and truck bearing registration number RJ-04-G-1305 intercepted and searched. In the course of the said search 3.056 kgs. of heroin was recovered from the possession of accused No. 4-Ashuram Durgaram Chaudhary who was driving the truck and accused No. 3-Derajram Jat accompanying him. It is noteworthy that the fact that the truck was intercepted and searched by the authorities was not disputed by Appellant-Ashuram Durgaram Chaudhary the driver of the said truck nor is it disputed that 3.056 kgs. of heroin was recovered from the bag that was kept under the seat on which accused No. 3-Derajram Jat traveling with him in the truck was sitting. Para 3 of the written submissions which we have extracted earlier simply suggests that the Appellant-Ashuram Durgaram Chaudhary the driver of the truck was not aware of the contents of the bag. The evidence on record totally belies the version belatedly advanced by both these Appellants, that both or any one of them were/was unaware of the presence of the bag or its contents.

12. So also the seizure of the contraband from the residence of Appellant-Iqbal Moosa Patel in Bharuch in a raid conducted on 7th July, 2001 is established on the basis of the evidence on record. The argument urged on behalf of the Appellant-Iqbal Moosa Patel that the house from where recovery was made was not in his exclusive possession as other members of his family were also living in the same has also been correctly repelled. The Trial Court has in this regard observed:

With the seizure of narcotic substance from the bed room of A-1, which had no access except to the accused and, therefore, it is to be held that A-1 alone was in possession and control as far as seizure on 7.7.2001 is concerned and for the seizure of 29th it was clearly found from the custody of A-3 and within the knowledge of A-4, at the instance of A-2, therefore, invoking these provisions u/s 35 and Section 54 of NDPS Act qua these accused, it becomes their duty to prove beyond reasonable doubt that they were not in possession even by leading the evidence given by defence witnesses and in the opinion of this they have failed to so prove and nullify the case of prosecution as had been proved on record.

13. That brings us to the question whether the Appellants could be given the benefit of doubt having regard to the nature of the evidence adduced by the prosecution against them. We do not think that the Appellants have made out a case for grant of any such benefit. It is true that the prosecution is required to establish its case beyond a reasonable doubt, but that does not mean that the degree of proof must be beyond a shadow of doubt. The principle as to what degree of proof is required is stated by Lord Denning in his inimitable style in *Miller v. Minister of Pensions* (1947) 2 ALL ER 272:

That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with sentence 'of course, it is possible but not in the least probable,' the case is proved beyond reasonable doubt....

It is true that under our existing jurisprudence in a criminal matter, we have to proceed with presumption of innocence, but at the same time, that presumption is to be judged on the basis of conceptions of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is not the law of the land.

14. Reference may also be made to the decision of this Court in *Sucha Singh and Another Vs. State of Punjab*, , where this Court has reiterated the principle in the following words:

...Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See *Gurbachan Singh Vs. Satpal Singh and others*, ,209). Prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity

to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.

15. In the totality of the above circumstances and having regard to the fact that the Trial Court as also the High Court have examined all aspects of the matter and minutely looked into various facets of the case set up by the prosecution and that by the defence including the defence evidence adduced at the trial, we see no reason to interfere. As rightly pointed out by the Respondent an appeal arising out of the same judgment and order filed by accused No. 2-Hemaram Chaudhary has already been dismissed by this Court. That being so we do not see any reason much less a compelling one to strike a discordant note. In the result these appeals also fail and are hereby dismissed.