
(2019) 09 UK CK 0205

In the Uttarakhand High Court

Case No : Criminal Revision No. 263, 268 Of 2011

Pooran Singh & Others

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Uttaranchal (The Uttar Pradesh Excise Act, 1910 — Section 60(2))

Citation : (2019) 09 UK CK 0205

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : P.S. Bohra

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. This criminal revision, which has been preferred by the revisionist is as against the appellate court's judgment rendered in Criminal Appeal No. 54 of 2011 'State vs. Pooran Singh', whereby, the State has challenged the judgment of the Trial Court dated 07.03.2011 as rendered in Criminal Case No. 71 of 2011 'State vs. Pooran Singh & Another', which has resulted into an acquittal of the revisionist. The said judgment of acquittal on a challenge being given in the Appeal, the Appellate Court has set aside the judgment, and as a consequence thereto, it had convicted the revisionist for commission of the offence under sub-section (2) of Section 60 of the Excise Act, and as a consequence thereto, the revisionist has been convicted to undergo a sentence of two years simple imprisonment and a penalty of Rs. 10,000/- has been imposed on the revisionist. It is this order of conviction, which has been as rendered by the Appellate Court of Additional Sessions/II FTC, which is under challenge in the present revision.

2. When the revision was preferred before this Court on 9.10.2011, it was taken up for hearing at admission stage and on 19.10.2011, while admitting the revision the revisionist was granted bail by this Court's order dated 19.10.2011.

The matter is taken up in the revised call and none appears for the revisionist to assist the court as against the challenge given by the revisionist, against an order of conviction rendered by the Appellate Court. Hence, in such an eventuality, this court has got no other option while exercising its revisional power except to decide the revision itself on its merit because there cannot be a dismissal of revision in default under the law. In such an eventuality, the revision is being adjudicated on its own merits on perusal of records and after hearing the counsel for the State.

3. The proceedings by way of Criminal Case No. 751 of 2007 'State vs. Pooran Singh' was initiated before the Court of 1st Additional Chief Judicial Magistrate for the purposes of trying the present revisionist for commission of an offence under Section 60(2) of the Excise Act. On initiation of the proceedings by way of registration of the FIR No. 40/2007 on 15.04.2007 the police team conducted the investigation and ultimately it was found that the revisionist was engaged in illegal manufacturing of the country made liquor in an illicit manner without having due sanction and permission under law.

4. Consequently, on conclusion of the investigation by the Investigating Officer and on submission of the chargesheet a trial commenced and ultimately the Trial Court vide its order dated 27.01.2011 had framed a charge to the effect that when the police team has raided the spot situated at Village Aethal at about 23:40 PM the Sub-Inspector Mohd. Yunus and other accompanying police officials of the police team had found that the revisionist-accused person was engaged in manufacturing the illicit country made liquor and on the raid being conducted by the police party about 10 litres of country made liquor was recovered from his possession and consequently, the revisionist was charged with for commission of the offence under sub-section (2) of Section 60 of the Excise Act.

5. The Trial proceeded and the learned Trial Court vide its judgment as rendered by it on 07.03.2011 in Criminal Case No. 71 of 2011 'State vs. Pooran Singh', has acquitted the revisionist for commission of the offence and as a consequence thereto, the State has preferred the Criminal Appeal, in which the impugned judgment of acquittal has been reversed. The Appellate Court while considering the rival contentions including the evidence, which was brought on record, ultimately after considering the veracity of the evidence and the propriety of the raid conducted by the police party on 15.04.2007 where the accused person Pooran Singh as well as Heera Singh, who is the revisionist in the connected revision, were arrested on the spot along with the articles, which were utilized by them for the purposes of manufacturing the illicit country made liquor and all the devices, which was being utilized by them to undertake the process of manufacturing the illegal liquor including the Bhatti, the utensils, as well as the pipes, which were used in manufacturing the liquor was confiscated from the spot, as was made as a case property, to be used as exhibit during the trial of the case.

6. Consequently, the revisionists were charged and on the charge being imposed

upon them the trial proceeded though the learned Trial Court has acquitted the revisionist, but the Appellate Court which exercises its inherent jurisdiction being first court of appeal, to deal with the set of allegations, which has been determined by the Trial Court, on its own merit by its exclusive appreciation of evidence or reappreciation of the evidence, the Appellate Court has considered the various aspects, which was projected by the State in the appeal preferred before the Appellate Court and the Appellate Court has recorded a statement that on the scrutiny of the statement of PW1 Constable Suersh Kumar, it rather shows that in his statement that when he raided the spot where liquor was being manufactured he has recovered a sealed container (Jaricane) in which he found that the country made liquor was stored, which was manufactured by the revisionist was stored in the said container to be used for its illegal sale.

7. He further recorded a finding that the recovery of the articles used and which also found place in the Fard Baramdagi, which was made on the spot in the presence of the revisionist and which was duly endorsed by him, and, who were arrested on spot and consequently the recovered articles were exhibit- 1 to exhibit- 11, which was placed before the learned Trial Court in order to sustain the commission of the offence under sub-section (2) of Section 60 of the Excise Act. The Appellate Court while scrutinizing the cross-examination of PW1 Constable Suresh Kumar and also comparing his statement with the list of articles collected and as shown in the Fard Baramdagi, the Appellate Court has on a comparative analysis of the statements with its cross check and examination with the articles recovered from the spot has come to the conclusion that the statement of PW1 goes to prove beyond doubt that atleast at the time when the raid was being conducted the offence was being commissioned and was being carried by the revisionist, who was found indulged in the commission of the offence, and further more, their presence on the spot, from where and from whom the articles were recovered, was also affirmed in the statement of PW1 and which stands fortified by the Fard Baramdagi, which was placed before the court below as an exhibit.

8. The learned Appellate Court has held that after the commission of the offence on 05.04.2007 when the proceedings reached upto the stage of leading respective evidence there was a contradictory evidence, which was wrongly dealt with by the learned Trial Court for the purposes of exonerating the revisionist from commission of the offence and the finding, which has been recorded by the learned Trial Court with regards to the contradictory evidence being adduced in order to substantiate the commission of the offence under sub-section (2) of Section 60 of the Excise Act as it has chanced on 5.04.2007 was not rightly interpreted by the learned Trial Court because looking to the date of commission of the offence and the date when the evidence, was being placed before the Court below for its consideration, i.e. before the Trial Court, i.e. after three years of commission of offence, a minor discrepancy or contradiction in leading of the evidence is bound to follow, but those minor discrepancies in itself will not result into an exoneration of the accused from the commission of the offence, as it has

been laid down by the Hon'ble Apex Court in the judgment of 'Ramesh and Another vs. State of Uttar Pradesh' as reported in 2009 (15) SCC 513. Relevant paragraphs of the judgment are quoted hereunder:

"24. Some minor contradictions were pointed out by Shri Jaspal Singh, the Learned Senior Counsel, which in our opinion, have been rightly disbelieved by the Trial Court and the High Court. After all, the contradictions were bound to be there and in fact, those contradictions have gone to support the truthfulness of the witness.

25. Lastly, Shri Jaspal Singh, the Learned Senior Counsel for the appellants pointed out that there were about 12 witnesses. It was admitted by both the eye-witnesses that there were about 10-12 persons, who were watching the incident. Learned Senior Counsel severely criticized the prosecution on not collecting any evidence. Now, it can be understood as to why the other witnesses were not examined. The enmity between the two parties was known, there was also murders and counter murders. Under such circumstances, if the witnesses do not become available, it is not the fault of the investigating agency. This is apart from the fact that the Investigating Officer was not asked about the aspect of witnesses being available. We do not, therefore, find fault with the judgment of conviction recorded by the Sessions Judge and the High Court."

9. The Court is of the view that the Appellate Court's finding is not only based on an isolated interpretation of the statement of PW1 for the purposes of reversing the finding as recorded by the Trial Court while acquitting the revisionist of the commission of the offence, the Appellate Court has also scrutinized effect of the statements of PW3, i.e. Sub-Inspector Mohd. Yunus, who was the head of the team, which has conducted the raid and who has, in fact, apprehended the revisionist, wherein, he has recorded a statement to the effect that when the team of police officials raided the spot and arrested the revisionist on the spot shown to be engaged in the said process, the Sub-Inspector PW3 has made the accused person aware about the magnitude of the offence and its social gravity in which they were involved, they were also made aware about the articles, which were recovered from their custody of which the Fard Baramdagi was made and was also made as exhibits. Rather in the cross-examination too of PW2, which has been scrutinized by me, which was recorded before the learned Trial Court, the statement of PW2, in fact, inevitably shows that the place where the offence was being committed is a place which is situated at a tiraha, and it was a space, which was existing in between two houses and the police team could get an opportunity to raid the place when an information was parted over to the police authority by the mukhbirkhas that the revisionists are indulged in manufacturing the illicit country made liquor.

10. Consequently, the Appellate Court on the appreciation of evidences, which already stood recorded above and on considering the propriety and the ratio laid down by the Hon'ble Apex Court in 2003(5) SCC 291 'Karamjeet Singh vs. State (Delhi Administration)' has held that in view of the aforesaid ratio of the Hon'ble

Apex Court, it has held that even if despite of the best efforts made by the police team, who has raided the place of occurrence of the incident even if an independent public witness has not been made available, that in itself will not result into vitiating the proceedings of the prosecution because the other corresponding evidences available on record, which also corroborates the commission of an offence has had to be considered even in the absence of there being any independent witness produced by the police party, who has apprehended the revisionist from the spot while being indulged in the process of committing the offence. Relevant paragraph of the said judgment is quoted hereunder:

"8. Shri Sinha, learned senior counsel for the appellant, has vehemently urged that all the witnesses of recovery examined by the prosecution are police personnel and in absence of any public witness, their testimony alone should not be held sufficient for sustaining the conviction of the appellant. In our opinion the contention raised is too broadly stated and cannot be accepted. The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down. PW11 Pratap Singh has clearly stated in the opening part of his examination-in-chief that ACP Shakti Singh asked some public witnesses to accompany them but they showed their unwillingness. PW10 Rajinder Prasad, SI has given similar statement and has deposed that despite their best efforts no one from public was willing to join the raiding party due to the fear of the terrorists. Exactly similar statement has been given by PW9 R.D. Pandey. We should not forget that the incident took place in November 1990, when terrorism was at its peak in Punjab and neighbouring areas. The ground realities cannot be lost sight of that even in normal circumstances members of public are very reluctant to accompany a police party which is going to arrest a criminal or is embarking upon search of some premises. At the time when the terrorism was at its peak, it is quite natural for members of public to have avoided getting involved in a police operation for search or arrest of a person having links with terrorists. It is noteworthy that during the course of the cross-examination of the witness the defence did not even give any suggestion as to why they were falsely deposing against the appellant. There is absolutely no material or evidence on record to show that the prosecution witnesses had any reason to falsely implicate the appellant who was none else but a colleague of theirs being a member of the same police force. Therefore, the contention raised by Shri Sinha that on account of non-examination of a public witness, the testimony of the prosecution witnesses who are police personnel, should not be relied upon has hardly any substance and cannot be accepted."

11. After having gone through the lower court record, which was placed before this Court, after the same being summoned from the court below, the Trial Court's judgment, which was resulted into an acquittal, was based upon a hearsay and on a wrongly appreciation of evidence and the finding, which has been recorded therein can also be said that it was not in its true letter and spirit in exact appreciation of the circumstances under which the offence was being committed by reading it along with the report of the Investigating Officer No. 48/07 dated 07.5.2007 as submitted before the court below. Thus, the Appellate Court while setting aside the order of acquittal dated 29.01.2011 and while exercising its power as an appellate authority as against the judgment of acquittal, which is permissible under the Code of Criminal Procedure, the Appellate Court has reversed the judgment and has convicted the revisionist for undergoing a sentence of two years of simple imprisonment and a fine of Rs. 10,000/- has been imposed upon the revisionist for the aforesaid offence, which stood proved.

12. Consequently, this Court after hearing the learned Government Advocate, who has supported the finding recorded by the Appellate Court and this Court itself while going through the records of the proceedings as held before both the courts below is of the view that the circumstances and the manner in which the evidence was adduced by the parties before the court below it goes beyond doubt to prove that as far as the commission of the offence on 15.04.2007 is concerned that stands established beyond doubt and consequently, this Court holds that the finding of the Appellate Court in its judgment dated 17.08.2011, cannot be said to be perverse or based upon misreading of any evidence because a direct indulgence of the revisionist in commission of the offence has been made out by the Appellate Court on appreciation of evidence both documentary and oral evidences, which was led before it, which proved their involvement because they were arrested from spot, while being engaged in the process of commission of offence.

13. In that view of the matter, this Court also is in agreement with the finding recorded by the Appellate Court. Consequently, the revision fails and is, accordingly, dismissed.

14. The revisionists, who are on bail in pursuance to this Court's order dated 09.10.2011 and order dated 02.11.2011 respectively, as rendered by this Court in the connected revision granting bail to the revisionists of the said revision is recalled. Revisionists are directed to surrender forthwith before the Magistrate concerned and the Magistrate concerned would ensure that the revisionists are taken in custody and they are send to jail for serving the remaining sentence as affirmed by this Court's judgment and consequently, the sureties, which have been extended for the purposes of availing the bail, that stands discharged. Revisions are dismissed.