
(2011) 07 AHC CK 0322
In the Allahabad High Court
Case No : Criminal Appeal No. 5332 of 2002

Salim Khan @ Guddu

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 67, 8

Citation : (2011) 07 AHC CK 0322

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shri Kant Tripathi, J.—The Appellant Salim Khan alias Guddu has preferred this appeal against the judgment and order dated 22.11.2002, rendered by Mr. Ramakant Singh, Special Judge (Narcotics Drug and Psychotropic Substances Act), Varanasi in Criminal Case No. 479 of 2001, Union of India v. Salim Khan alias Guddu, whereby the learned Special Judge convicted and sentenced the Appellant u/s 8/21(c) of the Narcotics Drug and Psychotropic Substances Act (hereinafter referred to as "the Act") to undergo rigorous imprisonment of ten years and also to pay a fine of Rs. One lac and in default of payment of fine to undergo simple imprisonment of two and a half years.

2. The prosecution story in brief is that on 11.6.2001, PW-1 Brijesh Kumar Dubey was posted as Intelligence Officer in the Narcotics Bureau, Varanasi. He got information from an informer that the Appellant was involved in the business of sale and purchase of Heroin, which was being done in the house No. E-29, Konia Colony, Dhobighat. PW-1 Brijesh Kumar Dubey reduced the factum of information in writing and took permission of the Assistant Commissioner, Customs and Excise, Varanasi for making search in the house of the Appellant. After obtaining the permission, PW-1 Brijesh Kumar Dubey proceeded to the house of the Appellant alongwith other officers, namely, Inder Singh, R.A. Dubey,

Y.C. Mishra, Man Singh and R.N. Verma and made a search of the Appellant's house at about 9.45 AM and recovered 276 grams of Heroin from his house. PW-1 Brijesh Kumar Dubey, before carrying out the search, informed the Appellant that he had right to have the search in the presence of a gazetted officer or a Magistrate but the Appellant declined to have the search by a gazetted officer or a Magistrate and permitted the PW-1 Brijesh Kumar Dubey to carry out the search. It is also alleged that the PW-1 Brijesh Kumar Dubey took two samples each of 5 grams from the recovered Heroin and sealed them separately and sent one sample for analysis which was found Heroin on analysis. Remaining Heroin were also sealed in a separate packet. A balance (taraju) and weights were also recovered from the place of seizure and were sealed. PW-1 Brijesh Kumar Dubey after making the recovery, prepared the recovery memo Exhibit Ka-1. He recorded the statement of the Appellant, which is on record as Exhibit Ka-4. He further recorded the statements of public witnesses Raju Prajapati and Nawab Hussain u/s 67 of the Act, who supported the story of recovery. Their statements are Exhibit ka-6 and ka-5, respectively.

3. The Appellant denied the charge levelled against him and pleaded that he has been falsely implicated. The Appellant further stated that he was habitual of consuming Heroin so PW-1 Brijesh Kumar Dubey and his assistants knew him from before the occurrence. It was next stated that the Appellant had been arrested only on account of pressure of the persons involved in the business of sale and purchase of Heroin.

4. In order to prove the charge, the prosecution examined PW1 Brijesh Kumar Dubey, the arresting officer, who has supported the entire prosecution story and proved the recovery of 276 grams of Heroin from the house of the Appellant. PW-2 Man Singh and PW-3 Yogesh Chandra Mishra are also witnesses of the recovery. They have also supported the prosecution story.

5. The learned trial court examined the Appellant u/s 313 of the Code of Criminal Procedure, who denied the prosecution story and set up the case of his false implication. The Appellant appeared himself in the witness box as DW-1 and stated that he had become habitual of consuming Heroin, therefore, PW-1 Brijesh Kumar Dubey knew him from before the occurrence. This witness further stated that PW-1 Brijesh Kumar Dubey came to his house and took him to his office, where he got his signatures on blank papers and concocted the present case.

6. The learned trial court believed the prosecution story and held that the charge u/s 8/21(c) of the Act was proved beyond all reasonable doubts against the Appellant and accordingly convicted and sentenced him.

7. The learned Counsel for the Appellant submitted that the prosecution has not examined any independent witness to prove the recovery. PW-1 Brijesh Kumar Dubey, PW-2 Man Singh and PW-3 Yogesh Chandra Mishra are official witnesses, therefore, their statements cannot be relied upon.

8. In my opinion, the Appellant has no animus with the aforesaid public

witnesses nor there was any reason for them to give false evidence against the Appellant. In this view of the matter, the statements of both the aforesaid witnesses can not be discarded only on the ground that no public witness was examined. The aforesaid prosecution witnesses have supported the prosecution story during the trial and their statements are consistent with each other on all material points and there is no infirmity touching the merit of the case. Learned trial court seems to have evaluated the statements of the aforesaid witnesses correctly and found their statements worthy of reliance on scrutiny. I do not have any reason to take a different view.

9. Mr. P.N. Mishra, the learned senior counsel, at the time of argument, very frankly conceded that the material evidence on record has proved the charge beyond all reasonable doubts and the appeal has no merit so far as the finding of guilty is concerned.

10. Mr. Mishra however, submitted that the Appellant is in jail from 11.6.2001 and has, thus, served out the substantive sentence, therefore, he may be released from the custody. Mr. Mishra further submitted that the Appellant would pay the fine of Rs. One lac after his release from the custody. He placed reliance on *Shantilal v. State of M.P.* (2008) 1 SCC (Cri) 1 and submitted that sentence of simple imprisonment of two and a half year imposed on the Appellant in default of payment of fine may be reduced. In the case of *Shantilal* (supra) the Apex Court had reduced the sentence of imprisonment imposed in default of payment of fine. Keeping in view the facts and circumstances of the case and the submissions of the learned Counsel for the Appellant I am of the view that the appeal has merit to this extent.

11. For the reasons stated above, the appeal is partly allowed. The conviction of the Appellant u/s 8/21(c) of the Act as well as sentence of rigorous imprisonment of ten year and fine of Rs. One Lac imposed on the Appellant is confirmed. It is however, provided that in default of payment of fine the Appellant shall under go simple imprisonment of six months instead of two and a half year, as ordered by the trial court.

12. Let a copy of this order along with lower court record be sent to the lower court for compliance.