

(2016) 07 GUJ CK 0001
In the Gujarat High Court
Case No : Criminal Appeal No. 1324 of 2005.

State of Gujarat - Appellant @HASH Khokhar Husainkhan @ Bhir Kesharkhan and 1 - Opponents/Respondents

Date of Decision : 01-07-2016

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(2), Section 29

Citation : (2017) 170 AIC 608 : (2017) 1 Crimes 711 : (2016) 4 GLR 2763 : (2017) 1 RCRCriminal 766

Hon'ble Judges : R.P. Dholaria, J.

Bench : Single Bench

Advocate : Mr. LR Pujari, APP, for the Appellants No. 1; HCLS Committee, Advocate, for the Opponents/Respondents No. 1; Mr. PV Patadiya, Advocate, for the Opponents/Respondents No. 1; Mr. Hardik B. Shah, Advocate, for the Opponents/Respondents No. 2

Final Decision : Dismissed

Judgement

Mr. R.P. Dholaria, J. (Oral)—This is an appeal preferred by the State of Gujarat, under Section 378 (3) of the Criminal Procedure Code, 1973, against the judgment and order of acquittal dated 20.11.2004, recorded by the learned Special Judge, Patan, in N.D.P.S. Special Case No. 5 of 2003.

2. It is the case of the prosecution that on 9.4.2003 at about 10 a.m., a secret information was received by Police Inspector (Prohibition) Shri C.P. Chudasama, that one person namely, Khokhar Huseinkha@ Bhir Kesharkha residing at Bhadiwala House has stored ganja in bulk quantity and was selling the same in retail. Accordingly, the Prohibition party raided and seized ganja weighing 9200 gm. from the residence of the respondent No. 2-Pathan Ayyubkhan. Accordingly, a complaint for the offences punishable under Sections 20(2) and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 was filed by the Police Inspector.

3. In pursuance of the aforesaid complaint, the Police recorded the statements of

the witnesses and after completion of investigation, filed charge-sheet which came to be committed to the learned trial Court.

3.1 At the end of the trial, after recording the statement of the accused under section 313 of the CrPC and after hearing the arguments on behalf of the prosecution and the defence, the learned trial Court delivered the judgment and order, as stated above.

4. Being aggrieved by the same, the appellant State has preferred the aforesaid Criminal Appeal before this Court.

5. By way of preferring the present appeal, the appellant has mainly contended that learned trial Court has failed to appreciate the evidence on record and has wrongly recorded the order of acquittal. It is further contended that learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed as such.

6. Mr. Pujari, learned APP appearing for the State has reiterated and urged the grounds mentioned in the memo of appeal. Learned APP has taken this Court through the paper book and evidence on record and argued that the judgment and order of the trial Court is against the provisions of law as the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself, it is established that the prosecution has proved all the ingredients of alleged charges against the present respondents. Learned APP has also taken this court through the oral as well as the entire documentary evidence. It is further submitted by learned APP that the judgment and order of acquittal passed by the learned trial Judge is based on inferences not warranted by facts of the case and also on presumption not permitted by law. It is also submitted by him that the learned trial Judge has not properly appreciated oral as well as documentary evidence and thereby committed error by acquitting the respondents for the alleged offences under Sections 20(2) and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985, which requires to be reversed as such and the accused are required to be convicted. Mr. Pujari, learned APP further argued that ample evidences are available on record wherein the accused were caught red handed with large quantity of ganja weighing 9200 gm. He further submitted that as per the information received, the accused were indulging in selling the same and while carrying out the raid, they were caught red handed with the large quantity of ganja. Mr. Pujari, learned APP has also drawn attention of this Court to the impugned judgment as well as record and proceeding of learned trial Court and stated that the order of acquittal recorded by the learned trial Court is required to be converted into conviction as such.

7. On the other hand, Mr. Hardik Shah, learned advocate appearing for the respondent has argued that the learned trial Court has elaborately dealt with the evidence on record and rightly recorded the finding and acquitted the accused from the charges levelled against them. He further argued that except the police

officers, none of the independent witness has supported the case of the prosecution and while carrying out the raid, the raiding party has not involved any independent witness. He has further submitted that it was not proved from the ration card and electricity bill which were seized during the course of raid that the rented premises belongs to the accused. The house in which the raid was carried out and the contraband article was seized belongs to one Kesharkhan Husainkhan and in the ration card which was seized during the course of investigation clearly indicates residence of respondent No. 1 - Khokar Hussainkhan resident of Gusanwadi, Patan and the electricity bill, clearly reveals the name of Harkha Umarcha resident of Bukdi Road. Indisputably, both the places are located at distance places. In that view of the matter, the prosecution miserably failed to prove conscious possession of the contraband article on the part of the respondents. He further argued that the prosecution has not produced any iota of evidence to link the accused with the crime. Consequently therefore, the accused have wrongly implicated and from the place where they were found nothing is recovered.

8. This Court has heard Mr. L.R. Pujari, learned APP for the appellant-State and Mr. P.V. Patadiya, learned advocate for respondent No. 1 and Hardik Shah, learned advocate for respondent No. 2.

9. Having heard learned counsel for the respective parties and having gone through the impugned judgment as well as record and proceedings of learned trial Court, on going through the entire evidence available on record it appears that on 9.4.2003 at about 10.00 hours, while Police Officer Shri C.P. Chudasma was at the police station, he received secret information that one Khokar Husainkhan is selling contraband article (Ganja) at his residence situated at Bakudi Chowk, Tankwala Road, Patan. Thereafter, the same was informed to the concerned superior officer and the investigating agency arranged to raid the place. Raid was carried out in presence of accompanying panch and during the course of raid at the place which was mentioned in the aforesaid information, the respondent No. 1 was present in the house and he unlocked the house. On being asked, he replied his name as Khokhar Husainkhan. Thereafter, upon searching his house in another room, the respondent No. 2 was found. On being asked his name, he replied his name as Ayyubkhan and in search contraband article (ganja) weighing 9200 gm. was seized. A detailed panchnama was carried out and both the persons were arrested. Accordingly, a complaint for the offences punishable under Sections 20(2) and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 was filed against the respondents.

10. In order to bring home the guilt against the accused persons, the prosecution examined about 9 witnesses and produced several evidences. During the trial, PW-1 and PW-2 turned hostile. PW-3 to PW-9 are Police Officials and Scientist. Almost all the police officials who have been examined by the prosecution were the member of raiding party and out of them, one Shri Chudasama has filed charge-sheet and one became the complainant. During the course of raid, two

documentary evidences at Exh : 18 and 19, i.e. ration card and electricity bill were seized wherein it is clearly revealed the fact that the house in which the raid was carried out was not belonging to present respondents and the present respondents were residing at another place situated and the place where the raid carried out belonged to his father. The same fact was even established during the course of raid itself. On being perusing of electricity bill, it clearly discloses that the place where the raid was carried out belonged to one, Kesharkhan Husainkhan. In view of the aforesaid factual position, the learned trial Court has rightly given the benefit of doubt and rightly recorded the finding that the respondents are not in conscious possession of the aforesaid contraband articles. Though the secret information clearly indicated the name of present respondent No. 1 indulging in selling of the contraband articles (Ganja) but during the raid he was not found to be selling ganja. However, from another room of the aforesaid house, respondent No. 2 was found but from the presence of the respondents it is not established that whatever the contraband article was found from the house belongs to them and also it is not established that they were the occupant of the aforesaid house. The prosecution has failed to link the accused with the crime. Even otherwise on going through the entire case, it is noticed that the complainant is a police official and he himself carried out the investigation and after the conclusion of investigation he himself had filed the charge-sheet.

11. In above view of the matter, this Court is of the considered opinion that learned trial court was completely justified in acquitting the respondent of the charges levelled against them. This Court finds that the findings recorded by learned trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by learned court below and hence finds no reasons to interfere with the same.

12. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.

13. In the result, this appeal fails and accordingly, it is dismissed. Bail bond, if any, stands cancelled. R and P to be sent back to the trial Court, forthwith.