
(2015) 10 SHI CK 0038
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 454 of 2009

State of Himachal Pradesh

APPELLANT

Vs

Budhi Singh and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 417, 418, 423
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 29

Citation : (2015) 3 ShimLC 1721

Hon'ble Judges : Sanjay Karol, J; Piar Singh Rana, J

Bench : Division Bench

Advocate : Kush Sharma, Deputy Advocate General and J.S. Guleria, Assistant Advocate General, for the Appellant; Ajay Mohan Goel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J—State has appealed against the judgment dated 21.3.2009 of the learned Special Judge, Fast Track, Kullu, Himachal Pradesh, passed in Sessions Trial No. 52/2007, titled as State v. Bhdhi Singh and another, challenging the acquittal of respondents Budhi Singh and Jai Chand (hereinafter referred to as the accused), of the offence, punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act).

2. It is the case of prosecution that on 22.5.2007, police party comprising of ASI Khem Chand (PW-3), HC Purshotam (not examined), HHC Dina Nath (PW-2) was on patrol duty at a place known as Dhunkra. At about 3 p.m., accused, who were coming from the opposite side, seeing the police party got perplexed and tried to flee away. On suspicion, they were apprehended. After associating independent witnesses Shri Anil Jolly (PW-1) and Shri Raj Kumar (not examined), accused, who were informed of their statutory rights and consented to be searched by the police party present on the spot, vide Memo (Ex. PA), were searched. One packet

containing Charas was recovered from the pants worn by accused Budhi Singh, which on weighment was found to be 500 grams. Two samples, each weighing 25 grams, were drawn. Bulk parcel as also the samples were sealed with seal of impression "K"; NCB form (Ex. PX) was filled up in triplicate. Ruka (Ex. PK) was carried by HHC Dina Nath (PW-2), on the basis of which FIR No. 280 dated 22.5.2007 (Ex. PA/A), for commission of offence, under the provisions of Sections 20 & 29 of the Act, was registered at Police Station, Kullu, Himachal Pradesh. With the file being taken back on the spot, proceedings were concluded. Case property was entrusted to ASI Shiv Singh (PW-5), who after resealing the same with his own seal of impression "T", handed it over to MHC Manoj Kumari (PW-6). The sealed sample was taken by Constable Pardeep Kumar (PW-7) to the Forensic Science Laboratory, Junga for chemical analysis and report (Ex. PO) was obtained by the police. Special Report (Ex. PN) was received by Shri Kashmi Ram (PW-8) in the office of the Deputy Superintendent of Police, Kullu. With the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

3. Accused Budhi Singh and Jai Chand were charged for having committed an offence punishable under the provisions of Sections 20, and 20 read with Section 29 of the Act, respectively, to which they did not plead guilty and claimed trial.

4. In order to establish its case, prosecution examined as many as nine witnesses and statements of the accused, under the provisions of Section 313 of the Code of Criminal Procedure, were also recorded, in which they took defence of innocence and false implication. No evidence in defence was led.

5. Based on the testimonies of witnesses and the material on record, trial Court acquitted both the accused of the charged offence. Hence, the present appeal by the State.

6. Having heard learned counsel for the parties as also perused the record, we are of the considered view that no case for interference is made out in the present case.

7. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential ingredients so required to constitute the charged offence.

8. In *Prandas Vs. The State*, AIR 1954 SC 36 , Constitution Bench of the apex Court, has held as under:

"(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.c., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the

true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.c. in an appeal from an order of acquittal has been stated in - "Sheo Swarup and Others vs. The King-Emperor AIR 1934 227 (Privy Council) , in these words:

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice." "

9. Independent witness Shri Anil Kumar (PW-1) has not supported the prosecution. He was declared hostile and despite extensive cross-examination, nothing fruitful could be elicited from his testimony. He is categorical that no search and seizure operations took place in his presence and was called to the Police Station where he was made to sign certain papers, which he did, as two/three criminal cases already stood registered against him. In his unrebutted testimony, he categorically states that police obtained his signatures on some papers. Thus, a version other than the one, which the prosecution wants the Court to believe, has emerged on record.

10. It is a settled proposition of law that sole testimony of police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. It cannot be stated as a rule that a police officer can or cannot be a sole eye-witness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and if required duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness.

11. It is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by

other independent evidence. The presumption applies as much in favour of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. Rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of police administration.

12. Wherever, evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction.

[See: Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, AIR 2012 SC 1292 : (2012) CriLJ 1991 : (2012) 3 JCC 1714 : (2012) 3 SCALE 414 : (2012) 4 SCC 722 : (2012) AIRSCW 1994 ; Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, AIR 2012 SC 1292 : (2012) CriLJ 1991 : (2012) 3 JCC 1714 : (2012) 3 SCALE 414 : (2012) 4 SCC 722 : (2012) AIRSCW 1994 ; Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 ; and Aher Raja Khima v. State of Saurashtra, AIR 1956].

13. Apex Court in Tahir Vs. State (Delhi), (1996) 3 AD 206 : AIR 1996 SC 3079 : (1996) 1 Crimes 222 : (1996) 3 SCALE 41 : (1996) 7 SCC 498 : (1996) 3 SCC 338 : (1996) 3 SCR 757 , dealing with a similar question, held as under:--

"6.....In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

14. This leads us to the testimonies of police officials Shri Dina Nath and ASI Khem Chand and having perused the same, we are of the considered view that

the witnesses cannot be said to be reliable and their testimonies inspiring in confidence. There are contradictions, which are absolutely material.

15. According to ASI Khem Chand, NCB form was filled up on the spot and no addition was made thereafter, which version stands materially contradicted by Shri Dina Nath, according to whom certain entries were made subsequently. Further, the place where the Naka was set up itself is in doubt. According to HHC Dina Nath, no Naka was laid near the gate of Malana Project, as the police party was on patrol duty, whereas according to ASI Khem Chand, Naka had been set up in the middle of Malana bifurcation road. HHC Dina Nath states that the accused were spotted from a distance of 20-25 paces, whereas according to ASI Khem Chand, it was 50-100 metres. According to HHC Dina Nath, proceedings were conducted inside the security room of the Malana Project, whereas on the other hand ASI Khem Chand admits not to have shown any such security room in the site plan and also having conducted proceedings not inside but outside. According to this witness, Memos were prepared sitting on wooden plank/logs in the open, which version stands materially contradicted and belied by Shri Dina Nath. Thus, the place and the manner in which the proceedings were conducted itself renders the prosecution case to be doubtful and the testimonies of the witnesses to be shaky.

16. There is yet another factor, which remains unexplained by the prosecution. Alleged recovery was made at about 3 p.m. on 22.5.2007, but the case property was deposited in the Police Station only the following day, i.e. 23.5.2007 at 11 a.m., which fact is evident from the testimony of ASI Shiv Singh and MHC Manoj Kumari. Where did the police remain all this while, remains unexplained on record.

17. It appears that the documents have been prepared not on the spot but at the Police Station. In the documents (Ex. PG and PH), it is shown that the accused were arrested at Jari and Dhunkra, which are two different and distant places (distance of 2 kms.). Thus, there is material contradiction in the version of ASI Hem Chand, according to whom the accused were arrested on the spot. It is nobody's case that the accused either tried or fled away from the spot.

18. From the material placed on record, prosecution has failed to establish that the accused are guilty of having committed the offence, they have been charged with. The circumstances cannot be said to have been proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused does not stand proved beyond reasonable doubt to the hilt. The chain of events does not stand conclusively established, leading only to one conclusion, i.e. guilt of the accused. Circumstances when cumulatively considered do not fully establish completion of chain of events, indicating to the guilt of the accused and no other hypothesis other than the same.

19. Hence, it cannot be said that prosecution has been able to prove its case, by leading clear, cogent, convincing and reliable piece of evidence so as to prove

that the accused were found in conscious and exclusive possession of Charas.

20. For all the aforesaid reasons, we find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence so placed on record by the parties.

21. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P.*, AIR 2010 SC 566 : (2010) CLT 222 : (2010) CriLJ 861 : (2009) 14 JT 6 : (2009) 13 SCALE 584 : (2010) 1 SCC 94 : (2009) 15 SCR 616 : (2009) 10 UJ 4781 , it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.

Appeal stands disposed of, so also pending application(s), if any.