
(2019) 08 UK CK 0071

In the Uttarakhand High Court

Case No : Government Appeal No. 221 Of 2004

State Of Uttaranchal (Now Uttarakhand)

APPELLANT

Vs

Harsh Goel @ Munna

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Narcotics Drugs & Psychotropic Substances Act, 1985 — Section 21
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 08 UK CK 0071

Hon'ble Judges : R.C. Khulbe, J

Bench : Single Bench

Advocate : A.K. Sah, Lalit Miglani, D.K. Sharma, Priyanshu Gairola

Final Decision : Dismissed

Judgement

R. C. Khulbe, J

1. The present appeal is preferred by the appellant-State challenging the judgment of acquittal of respondent Harsh Goel @ Munna recorded by learned Special/Sessions Judge, Tehri Garhwal on 4.9.2003 in S.T. No.2 of 2000 u/s 21 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act').

2. The factual matrix of the case is that on 10.1.2000, information was received from informer that two persons staying in a guest house named 'Kuriyal Guest House' and they are having smack with them. On this information, Vinod Chauhan, In-charge of P.S. Muni-ki-Reti telephonically informed C.O. Police, New Tehri who reached at 16:45 hours. On the pointing out of informant, the room was got opened where two persons were found. Both of them were searched before the Circle Officer at 5 PM. On the search of accused Harsh Goel @ Munna, from the bag held by him on his shoulder, 55 grams of smack was recovered apart from some money from his pocket. The recovery memo was accordingly prepared and the FIR was lodged against the accused.

3. The matter was investigated. The I.O. inspected the place of occurrence, prepared the site plan, recorded the statements of witnesses, sent the recovered contraband for chemical examination and after completion of investigation, submitted the charge-sheet against the appellant in the Court.

4. Thereafter, the case was committed to the Court of Sessions. The Charge was framed against the appellant to which he pleaded not guilty and claimed to be tried. Prosecution examined four witnesses in its support namely PW1 Constable Rajpal Singh, PW2 H.C. Jeet Ram Nautiyal, PW3 DSP Kailash Chand Balodi and PW4 Ashok Tyagi (I.O.).

5. Statement of the appellant was also recorded u/s 313 Cr.P.C. After conclusion of trial, the Trial Court acquitted the respondent, as mentioned hereinabove. Hence, the State has preferred the present appeal challenging the judgment of acquittal of accused Harsh Goel @ Munna.

6. I have heard learned Counsel for both the parties and perused the evidence available on record.

7. PW1 Constable Rajpal Singh has reiterated the story as narrated in the FIR. According to him, on 10.1.2000, on being called by the S.O., he reached at the spot. The Circle Officer reached there at 16:45 hours. On the pointing out of informant, they reached at 'Kuriyal Guest House'. The corner room was knocked from which two persons came out. Appellant Harsh Goel was holding a bag on his shoulder. When it was opened, 55 grams of smack was recovered. Accordingly, the recovery memo was prepared.

8. PW2 H.C. Jeet Ram Dhaundiya is a formal witness who prepared the Chick FIR and made entry in the G.D.

9. PW3 Kailash Chandra Balodhi is the Dy. S.P. who has narrated the same prosecution story as also the statement deposed by PW1 Constable Rajpal Singh.

10. PW4 SSI Ashok Kumar Tyagi is the I.O. of the case who conducted the investigation and submitted the charge-sheet.

11. The Court below has recorded the finding of acquittal of accused finding a suspicion on the presence of PW3 C.O. Kailash Chandra Balodhi. Now, I would advert to the relevant evidence of PW3.

12. According to the statement of PW3 C.O. Kailash Chandra Balodhi, he got information at 15:30 hours on the relevant day and he reached the spot at 16:45 hours, which means 1:15 hours later after receiving the information. When PW3 was examined before the Court, he has shown unawareness about the distance from his headquarters New Tehri to the place of occurrence. The Court below has recorded a finding of fact that the distance between these two places is about 72 kilometers. The place of occurrence is a hilly terrain and the Court below has rightly held that it was not possible for PW3 to reach the spot in less than a period of two hours. Thus, the Court below rightly held that it was not feasible

for the PW3 to reach the spot just within 1:15 hours and, therefore, this fact creates a reasonable doubt about the presence of PW3 on the spot.

13. Apart from that, PW3 is the C.O. of that area, who has deposed that he has no knowledge about the distance of place of occurrence from New Tehri. He further stated that he does not know that the distance would be in between 10 kilometers or 100 kilometers. Surprisingly, an officer of C.O. level does not know the distance; while as per the statement of PW1 Rajpal, it is clear that the distance is about 72 kilometers. So, the presence of PW3 C.O. Kailash Chandra Balodhi becomes doubtful.

14. There is a material contradiction in the statements of PW1 Constable Rajpal Singh and PW3 C.O. Kailash Chandra Balodhi. PW1 Constable Rajpal Singh has deposed that before entering the 'Kuriyal Guest House', they tried to search the owner of the guest house but neither the owner nor any employee was found there. On the other hand, PW3 C.O. Kailash Chandra Balodhi has deposed that before entering the guest house, they had a talk with the owner of the same. This contradiction creates a doubt about the presence of PW3 on the spot.

15. That apart, the prosecution story suggests that they had a prior knowledge about the stay of accused in the guest house along with the contraband, and as per the statement of PW3 C.O. Kailash Chandra Balodhi, before entering the room, they had a talk with the owner of guest house that they wanted to search a particular room and person staying in the room which shows that the public witnesses were present there but the prosecution did not produce the owner of guest house. It also causes a dent in the prosecution story.

16. In view of the foregoing facts, since a reasonable doubt is cast about the presence of PW3 C.O. Kailash Chandra Balodhi on the spot at the relevant point of time, the entire prosecution story become doubtful and thus, it is not safe to convict the accused on the basis of such a testimony.

17. Furthermore, it is well settled that in a case where two views are possible and one of the views is possible which was taken by the trial court, then the appellate court shall not ordinarily interfere with the judgment of acquittal. I am fortified in my view by a judgment rendered by the Hon'ble Supreme Court in the case of Kalyan Singh v. State of M.P. reported in (2007) 3 SCC (Cri.) 173. The relevant portion of the said judgment is reproduced hereinbelow: -

7. "The High Court while dealing with the matter, in our considered opinion, failed to apply the proper tests in deciding a case where a judgment of acquittal has been recorded. The views of the learned trial judge cannot be said to be wholly unsustainable. It is now well known that if two views are possible, the appellate court shall not ordinarily interfere with the judgment of acquittal. We do not, however, mean to lay down the law that the High Court, in a case where a judgment of acquittal is in question, would not go into the evidence brought on record by the prosecution or by the State but we would like to point out that even if the High Court reversed the judgment of acquittal recorded by the trial

court, it is incumbent on the High Court to arrive at the conclusion that no two views are possible.

18. On the basis of the evidence discussed hereinabove, I am of the considered view that when one view is also possible which was adopted by the trial court, then as per the aforesaid judgment of Kalyan Singh (Supra), the interference with the judgment of the trial court is not warranted. Thus, I find no reason to disagree with the view adopted by the trial court and, I also reach to the conclusion that the prosecution has failed to prove its case against the respondent/accused beyond reasonable doubt.

19. For the aforesaid reasons, the appeal preferred by the State fails and the same is, hereby, dismissed.

20. Let a copy of this judgment along with LCR be transmitted to the Court concerned for information.