2020 INSC 545

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.688 OF 2013

Jeet Ram .....Appellant

Versus

The Narcotics Control Bureau, Chandigarh .....Respondent

J U D G M E N T

R. Subhash Reddy, J.

1. This appeal is filed by the sole accused, in Sessions Trial No.7-5/2002 of 2001 on the file of Sessions Judge, Shimla, aggrieved by the judgment of conviction dated 11.12.2012 and further order of sentencing the appellant, dated 31.12.2012, passed by the High Court of Himachal Pradesh, Shimla in Criminal Appeal No.493 of 2003.

2. The appellant-accused was tried for a charge punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The Sessions Judge, Shimla by judgment dated 30.06.2003 acquitted the accused by recording a finding that the case of prosecution was not free from doubt and there were many infirmities in the case of the prosecution to hold that the accused was found to be in possession of *charas*, as alleged by the prosecution.

3. The case as put forth by the prosecution, briefly stated, is as under:

On 18.06.2001 the Intelligence Officer in the Narcotics Control Bureau (NCB), Chandigarh, by name – R.P. Singh (PW-4) was proceeding to Theog from Shimla. He was travelling along with PW-3 – O.P. Bhatt and other officials. In the transit they stopped at the *dhaba* to have meals which was near the Nangala Devi Temple. When they ordered meals and tea and were waiting for the food to be served, the Intelligence Officer could smell the odour of *charas*. In the meanwhile, the Zonal Director of NCB, Chandigarh, by name – Rakesh Goyal, who was examined as PW-1 also reached the said *dhaba*. Then they have questioned the appellant-accused about the smell of *charas* and on such questioning he became nervous. As such there was increase of suspicion of the NCB officials. On asking the owner of the *dhaba*, he disclosed his name to be Jeet Ram and on further questioning he tried to run away. Then he was apprehended and taken to the counter of the *dhaba*. Just below the counter of the *dhaba* a gunny bag was found. When asked, appellant has replied – there is nothing in it. Then notice under Section 50 of the NDPS Act was given to the accused and appellant has consented to search the same by the NCB officials. Thereafter the bag was searched and the officers have found 13 Kg. of *charas*. The *charas* was divided into two portions of 6½ Kg. each and two packets were made which were marked as ‘X’ and ‘Y’ respectively. From each of these packets, two samples of 25 grams were drawn. The

samples drawn from the packet – Mark 'X' – were marked as 'X1' and 'X2' and the samples drawn from packet – Mark 'Y' – were marked as 'Y1' and 'Y2'. Thereafter all the four samples were sealed in a polythene bag by heat sealing process and were put in paper envelopes and sealed with paper seals, signed by NCB officials as well as the appellant-accused Jeet Ram. On each sample seal no.6 of NCB was affixed on all the four corners and the bulk *charas* in packets 'X' and 'Y' was sealed in paper parcels with six seals each. The seals were handed over to PW-1 and the all the samples and the parcels were signed by NCB officials and accused. Further, in the statement recorded as contemplated under Section 67 of the NDPS Act, the appellant has admitted that for various reasons he was indulged in the trade of *charas* to increase his income. Thereafter a *Panchnama* was drawn which was signed by the appellant and he was arrested on 19.06.2001. The two samples of 'X1' and 'Y1' along with a letter were sent through PW-2 Hayat Singh to Chemical Analyst for analysis, who has vide his report opined that both the samples were of *charas*. On the said basis, the appellant-accused was charged and challaned for the offence under Section 20 of the NDPS Act.

4. When the charge is denied by the appellant-accused, he was tried for the aforesaid offence before the Sessions Judge, Shimla. To prove the guilt of the appellant, the prosecution has examined four witnesses in all, in support of its case. On behalf of the accused oral evidence was let in to show that the *dhaba* in question was not being run by him and

he was employed as a priest in the nearby temple. After considering the oral and documentary evidence on record, the trial court by judgment dated 30.06.2003 acquitted the appellant-accused mainly on the grounds that – the prosecution case was not supported by any independent witness; the prosecution has failed to show that the seized *charas* was recovered from the *dhaba* of the appellant-accused and further there is no evidence to show that the appellant-accused was found in possession of the *charas*, as pleaded by the prosecution; there was non compliance of Section 50 of the NDPS Act; as the samples were handed over to PW-1 Rakesh Goyal who himself gave the sample to PW-2 for carrying the same to the Central Laboratory at Delhi and these seals remained with the Director, as such the chances of tampering could not be ruled out and also on the ground that the case of the prosecution was unnatural and improbable. **5.** Aggrieved by the judgment of the trial court, the NCB, Chandigarh has filed appeal as contemplated under Section 36-B of the NDPS Act read with Section 378 of the Code of Criminal Procedure before the High Court of Himachal Pradesh at Shimla in Criminal Appeal No.493 of 2003. The High Court by reappreciating the evidence on record has come to conclusion that the prosecution has proved its case beyond reasonable doubt and also has proved that 13 Kg. of *charas* was recovered from the possession of the appellant-accused, who was managing the *dhaba* in question, and set aside the judgment of the trial court and ordered conviction of the appellant for offence punishable under Section 20 of

the NDPS Act. By further hearing the appellant, order dated 31.12.2012 was passed sentencing the appellant-accused to undergo rigorous imprisonment for 15 years and to pay fine of Rs.2,00,000/- and in default, to undergo further imprisonment of one year. Aggrieved by the conviction recorded and sentence imposed by the High Court, this appeal is filed by the accused.

6. We have heard Sri Purushottam Sharma Tripathi, learned counsel for the appellant and Sri Aman Lekhi, learned Additional Solicitor General appearing for the respondent-NCB.

7. It is mainly contended by learned counsel for the appellant that the well considered judgment of the trial court acquitting the appellant from the charge, is reversed by the High Court without recording cogent reasons. It is submitted that having regard to evidence on record, the view taken by the trial court was possible view, and even assuming that other view is possible, same is no ground to interfere with the judgment of the trial court. The learned counsel, in support of this argument, has placed reliance on the judgments of this Court in the case of **Union of India v. Bal Mukund & Ors.[1]; Francis Stanly v. Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram[2]; and Rangaiah v. State of Karnataka[3].** Further it was contended that the story of the prosecution is not supported by independent witnesses though it is clear from the evidence on record that the houses in the village were only at a

1 (2009) 12 SCC 161
2 (2006) 13 SCC 210
3 (2008) 16 SCC 737

distance of 500 meters from the place of *dhaba*. He submitted that the High Court has committed error in relying on the testimony of official witnesses to hold the appellant-accused guilty of the charge. While pleading that it is not safe to rely on the testimony of official witnesses, in absence of any independent witness, learned counsel has placed reliance on the judgments of this Court in the case of **Jagdish v. State of M.P.**[4] and **Gyan Singh & Ors. v. State of U.P.**[5]. It is also the submission of the learned counsel that there is no acceptable evidence on record to hold that appellant-accused was in exclusive and conscious possession of the seized material /*charas* as much as same was seized from the gunny bag lying near the counter of the *dhaba*. In support of the said plea, the learned counsel relied upon the judgments of this Court in the case of **Gopal v. State of M.P.**[6] and **State of Punjab v. Balkar Singh & Anr.**[7]. Further it is also stated that search notice issued to the appellant was not in accordance with Section 50 of the NDPS Act and placed reliance on the judgment of this Court in the case of **K. Mohanan v. State of Kerala**[8]**.** Further pleading that the testimony of the defence witness was not considered in proper perspective by the High Court, the learned counsel has submitted that it is a fit case to set aside the judgment of the High Court and acquit the appellant from the charge framed. Lastly it is contended by the learned counsel that in any event the sentence of 15 years' rigorous imprisonment with fine of

4 (2003) 9 SCC 159
5 1995 Supp. (4) 658
6 (2002) 9 SCC 595
7 (2004) 3 SCC 582
8 (2000) 10 SCC 222

Rs.2,00,000/- is excessive and disproportionate to the gravity of the charge having regard to the facts and circumstances of the case and the age of the appellant. Further it is submitted that he is a *pujari* in the temple, situated near the *dhaba.*

8. On the other hand, it is argued by Sri Aman Lekhi, learned Additional Solicitor General appearing for the respondent-NCB, that the findings recorded by the trial court are erroneous and contrary to evidence on record, as such, it is always open to the High Court in appeal to reappreciate the evidence and set aside such erroneous view taken by the trial court. It is submitted that though prosecution has proved its case beyond reasonable doubt, on mere surmises and presumptions the trial court has found that the case of the prosecution is unnatural and same is correctly overturned by the High Court. Further it is submitted that the incident had happened at about 10:30 p.m. at the *dhaba* which is away from the actual village site, as such, merely because independent witnesses were not examined, same by itself is no ground to reject the case of the prosecution. Further it is submitted that it is admitted position that *dhaba* was being run by his wife, which is near to the temple. As the appellant was on the counter during the relevant time, as such, it cannot be said that the seized material of *charas* was not seized from his conscious possession. To support various contentions learned Additional Solicitor General relied on the several judgments of this Court.

- To support his contention that appellate courts have full powers to review the evidence, upon which order of acquittal is founded and come to their own conclusion, he relied on the following judgments :

  1. **Sanwat Singh & Ors. v. State of Rajasthan**[9]
  2. **Damodarprasad Chandrikaprasad v. State of Maharashtra**[10]
  3. **Vinod Kumar v. State of Haryana**[11]

- In support of his contention that merely because independent witnesses are not examined, same is no ground to reject the case of the prosecution, learned Additional Solicitor General has relied on the following judgments of this Court :

  1. **Dharampal Singh v. State of Punjab**[12]
  2. **Baldev Singh v. State of Haryana**[13]

- To support his argument that the *charas* was seized from the conscious possession of the appellant, the learned ASG has placed reliance on the following judgments of this Court :

  1. **Madan Lal & Anr. v. State of H.P.**[14]
  2. **Mohan Lal v. State of Rajasthan**[15]

9 (1961) 3 SCR 120
10 (1972) 1 SCC 107
11 (2015) 3 SCC 138
12 (2010) 9 SCC 608
13 (2015) 17 SCC 554
14 (2003) 7 SCC 465
15 (2015) 6 SCC 222

Further, it is submitted that having regard to the nature of offence which has large repercussions on the society, sentence imposed does not warrant any interference. Hence, prayed for dismissal of the appeal.

9. Having heard the learned counsel on both sides and on perusal of the record, we do not find any substance in any of the contentions advanced by the learned counsel for the appellant, except the submission on the quantum of sentence.

10. It is mainly contended by learned counsel for the appellant that the High Court / appellate Court was not justified in interfering with the judgment of acquittal passed by the trial court merely because another view is possible. As noted earlier, in support of his argument that merely because another view is possible, same is no ground to interfere with the judgment of acquittal by the appellate court, the learned counsel has relied on judgments of this Court in the case of **Bal Mukund[1]; Francis Stanly[2];** and **Rangaiah[3]**. To counter the said submission, the learned Additional Solicitor General Sri Aman Lekhi has submitted that it is always open to the appellate court to review the evidence on record upon which order of acquittal is founded and if it comes to conclusion that the order passed by the trial court is erroneous and unreasonable, it is always open for the appellate court to interfere with the order of acquittal. It is contended that the view taken by the trial court is not a possible view having regard to evidence on record. Such erroneous finding can be corrected by the appellate court. In support of his argument, the learned Additional Solicitor General has placed reliance

on the judgments of this Court in the case of **Sanwat Singh**[9]**; Damodarprasad Chandrikaprasad**[10] and **Vinod Kumar**[11]. Though the ratio laid down in the judgments relied on by the learned counsel for the appellant is that the appellate court would not interfere with the judgment of acquittal only because another view is possible but at the same time whether the findings recorded by the trial court in support of acquittal are valid or not is a matter which is to be considered with reference to facts of each case and evidence on record. On close scrutiny of the depositions of the witnesses examined on behalf of the prosecution as well as on behalf of the accused, we are of the view that the findings recorded by the trial court are contrary to evidence on record and view taken by the trial court was not possible at all, as such the High Court rightly interfered with the same and recorded its own findings to convict the appellant. The trial court acquitted the appellant mainly on the ground that prosecution case was not supported by independent witnesses; conscious possession was not proved; non-compliance of Section 50 of the NDPS Act; proper procedure was not followed in sending the samples for examination and the case of the prosecution was unnatural and improbable. As rightly held by the High Court, this Court in the case of **State of H.P. v. Pawan Kumar**[16] has held that Section 50 of the NDPS Act is applicable only in the case of personal search, as such, there is no basis for the findings recorded by the trial court that there was non-compliance of provision under Section 50 of the

16 (2005) 4 SCC 350

NDPS Act. Even with regard to the finding of the trial court that the case of the prosecution was not supported by independent witnesses, it is clear from the evidence on record that the incident had happened at about 10:30 p.m. in a *dhaba* which is away from the village site and all other persons who are found in the *dhaba* were the servants of the accused. It is also clear from the evidence on record that Suresh Kumar and Attar Singh examined on behalf of the appellant are closely related to the accused, as such, they could not be said to be independent witnesses. Pappu was the only other person who is none other than the servant of the *dhaba* and we cannot expect such a person to be a witness against his own master. Dealing with the issue of conscious possession, it is to be noticed that *dhaba* is constructed on the land which belongs to Kaushalya Devi who is none other than the wife of the accused. Further in deposition PW-4 has stated that when the accused was questioned as to who was the owner of the *dhaba*, he claimed to be the owner. The case of the prosecution was found to be unnatural and improbable by the trial court only on the ground that 13 Kg. of *charas* was lying in open in a gunny bag. The trial court found that it is not believable that any person would keep such a huge quantity of *charas* in open condition. It is clear from the evidence of prosecution witnesses that the officials of NCB got information that trafficking of *charas* was going on in the area in question. Two police parties had left for Theog – one party headed by PW-4 R.P. Singh started earlier and second party headed by PW-1 Rakesh Goyal left a little later from Shimla. Thus the

depositions of PW-4 R.P. Singh; PW-3 O.P. Bhat; PW-1 Rakesh Goyal and PW-2 Hayat Singh are consistent and trustworthy and cannot be said to be unnatural and improbable. Further it is also to be noted that the trial court has held that seal with which samples and remaining bulk of *charas* was sealed was handed over to PW-1 Rakesh Goyal who himself gave the sample to PW-2 for carrying to Central Laboratory at Delhi and since the seals remained with the Director, the chances of tampering could not be ruled out. In this regard, it is to be noticed, as rightly held by the High Court, that the trial court totally lost sight of the fact that on 19.06.2001 JMIC, Theog had also appended his signatures on the samples as well as bulk parcels and, therefore, there was no chance of tampering of the samples. Further, there was no such suggestion of tampering either put to PW-1 Rakesh Goyal or to PW-2 Hayat Singh.

11. For the aforesaid reasons, we are of the clear view that the view taken by the trial court was not at all possible, having regard to the evidence on record and findings which are erroneously recorded contrary to evidence on record were rightly set aside by the High Court. As submitted by the learned Additional Solicitor General appearing for the prosecution, it is always open to the appellate court to reappreciate the evidence, on which the order of acquittal is founded, and appellate courts are vested with the powers to review and come to their own conclusion. The judgments in the case of **Sanwat Singh[9]; Damodarprasad Chandrikaprasad[10] and Vinod Kumar[11]** also support

the case of the respondent. It is relevant to refer to paragraphs 17 and 18 of the judgment in the case of **Vinod Kumar**[11] which read as under :

> **"17.** Before we dwell upon the factual score whether the prosecution has proven the case to warrant a conviction, we think it apt to recapitulate the principles relating to the jurisdiction of the High Court while deciding the appeal against acquittal. In this context, reproducing a passage from *Jadunath Singh* v. *State of U.P.* [(1971) 3 SCC 577 : 1971 SCC (Cri) 726] would be profitable: (SCC p. 582, para 22)
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> > "*22*. This Court has consistently taken the view that in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in *Sheo Swarup* v. *King Emperor* [(1933-34) 61 IA 398 : (1934) 40 LW 436 : AIR 1934 PC 227 (2)] and *Nur Mohammed* v. *King Emperor* [(1945) 58 LW 481 : AIR 1945 PC 151] . These two decisions have been consistently referred to in the judgments of this Court as laying down the true scope of the power of an appellate court in hearing criminal appeals: see *Surajpal Singh* v. *State* [AIR 1952 SC 52 : 1952 Cri LJ 331] and *Sanwat Singh* v. *State of Rajasthan* [AIR 1961 SC 715 : (1961) 1 Cri LJ 766] ."
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> Similar view has been expressed in *Damodarprasad Chandrikaprasad* v. *State of Maharashtra* [(1972) 1 SCC 107 : 1972 SCC (Cri) 110] , *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , *State of Karnataka* v. *K. Gopalakrishna* [(2005) 9 SCC 291 : 2005 SCC (Cri) 1237], *Anil Kumar* v. *State of U.P.* [(2004) 13 SCC 257 : 2005 SCC (Cri) 178] , *Girja Prasad* v. *State of M.P.* [(2007) 7 SCC 625 : (2007) 3 SCC (Cri) 475] and *S. Ganesan* v. *Rama Raghuraman* [(2011) 2 SCC 83 : (2011) 1 SCC (Cri) 607] .
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> **18.** In this regard, we may fruitfully remind ourselves the principles culled out in *Chandrappa* v. *State of*

Karnataka [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] : (SCC p. 432, para 42)

> "*42*. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (*2*) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (*3*) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
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> (*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
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> (*5*) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

For the aforesaid reasons, we reject the submission made by the learned counsel for the appellant. Even with regard to the plea of the appellant that the evidence on record on behalf of the prosecution is not sufficient enough to hold that the appellant-accused was in conscious possession of the seized material, also cannot be accepted. It is clear from the evidence on record that the appellant was on the counter of the *dhaba* which was constructed on the land owned by his wife near the temple and the *charas* was found in the counter of the *dhaba* in a gunny bag. The facts of the case show that accused not only had direct physical control over *charas*, he had the knowledge of its presence and character. As rightly contended by Sri Aman Lekhi, learned Additional Solicitor General in the case of **Mohan Lal**[15] this Court had held that a functional and flexible approach in defining and understanding possession as a concept has to be adopted and the word has to be understood keeping in mind the purpose and object of the enactment. In the statement recorded under Section 313 of Code of Criminal Procedure, though the appellant has referred to Brij Lal and Mantu in support of a version, contrary to that presented by prosecution but he has not chosen to examine either Brij Lal or Mantu. No defence witness has deposed to the chain of events, as has been stated by the appellant in the statement under Section 313, Cr.PC. It is also fairly well settled that where accused offers false answers in examination under Section 313 Cr.PC, same also can be used against him. Further onus was on the appellant to explain the possession and in absence of the same

being discharged, presumption under Section 54 of the NDPS Act also will kick in.

12. For the aforesaid reasons, we are of the view that the judgment of the High Court does not suffer from any infirmity so as to interfere with the judgment of conviction.

13. At the same time we find force in the submission of the learned counsel for the appellant in sentencing the appellant for 15 years' rigorous imprisonment with a fine of Rs.2,00,000/-. Having regard to peculiar facts and circumstances of the case and in view of the fact that the incident occurred in the year 2001 and as the appellant claimed to be a priest in the temple, who is now aged about 65 years, we deem it appropriate that it is a fit case to modify the sentence imposed on the appellant. Accordingly, the sentence awarded on the appellant is reduced to a period of 10 (ten) years, while maintaining the conviction and the penalty as imposed by the High Court. The order of sentence dated 31.12.2012 passed by the High Court stands modified. The appeal is partly allowed to the extent indicated above.

……..J.
[ASHOK BHUSHAN]

…….J.
[R. SUBHASH REDDY]

…….J.
[M.R. SHAH]

New Delhi.
September 15, 2020.