

The State of Maharashtra Vs. ImmauddIn Abdul Kasim Pathan and Others

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Court : Mumbai

Decided On : Jan-13-2014

Judge : P.V. Hardas & a.S. Gadkari

Appeal No. : Criminal Appeal No. 65 of 1993

Appellant : The State of Maharashtra

Respondent : immauddIn Abdul Kasim Pathan and Others

Judgement :

Oral Judgment: (P.V. Hardas, J.)

1 It appears that that while admitting this appeal, this Court had kept the appeal, as against the original accused no.3, in dormant file as the original accused no.3 could not be served with the notice of admission of the appeal. This appeal insofar as it questions the acquittal of the original accused nos.1 and 2 stood dismissed by the order of this Court.

2 Since this appeal of 1993 has remained pending since 1993 for want of service to respondent no.3, we asked the learned APP to examine the merits of the appeal and accordingly to argue the matter on merits.

3 This appeal has been filed by the appellant-state questioning the correctness of the judgment of 3rd Additional Sessions Judge, Nashik dated 13 November 1992 acquitting the respondents accused nos.1,2 and 3 for an offences punishable

under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

4 It appears that the Trial Court had acquitted accused as the prosecution has failed to prove that on 24.12.1991 at about 1.15 am near fish market, Satpur all the accused were found in possession of charas in contravention of the provisions of the NDPS Act. It appears that the accused were found at fish market and a suitcase was said to have been opened by accused no.1 with the help of a key in his possession. On opening the suitcase, it found to contained 2kgs of charas.

5 The learned Trial Court while acquitting the accused came to the conclusion that the prosecution had miserably failed to establish the conscious possession of the accused in respect of the charas found in the suitcase. The key which was said to be in the possession of the original accuse no.1, with which the accused is said to have opened the suitcase, was not seized by the police. No panchanama has been drawn in respect of the finding of the key in possession of original accused no.1. The panch-witness also did not depose that the suitcase was opened by accused no.1 with a help of a key which was in his possession.

6 In that light of the matter, therefore, the Trial Court came to the conclusion that the prosecution had not proved that the charas was found in the possession of the accused.

7 With the assistance of the learned APP, we have perused the findings recorded by the Trial Court. We have also perused the depositions of the witnesses. On such perusal, according to us the view taken by the Trial Court is a possible view to be taken on the basis of evidence on record. We do not notice any perversity in the reasoning of the Trial Court to warrant any interference in an appeal against acquittal.

8 Consequently, this appeal fails and is dismissed confirming the acquittal of the respondents.