

State vs.ajay Kumar Sharma

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Court : Delhi

Decided On : Aug-21-2017

Appellant : State

Respondent : Ajay Kumar Sharma

Judgement :

\$~R-4 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + STATE Date of Decision:August 21, 2017 CRL.A. 103/2005 Through: Mr.Kewal Singh Ahuja, APP Appellant for the State. versus AJAY KUMAR SHARMA Respondent Through: Mr.R.M.Tufail, Mr.Farooq Chaudhary, Ms.Astha and Ms.Meenakshi Joshi, Advocates PRATIBHA RANI, J.

(Oral) 1. Feeling aggrieved by the acquittal order dated 5th August, 2000 of the respondent Ajay Kumar Sharma of the offence punishable under Section 284/304(II)/308/120-B IPC by the learned Trial Court, the State preferred Criminal Leave Petition No.113/2002. The leave to appeal was granted by this Court vide its order dated 17th January, 2005 which reads as under:-

"Crl.L.P.No.113/2002 Since the matter has been listed for final disposal vide the order of this Court, it would be appropriate to grant leave in the first instance and thereafter list the matter for disposal. against the respondent Ajay Kumar Sharma. Bailable warrants in the sum of 5000/- be issued CRL.A. No.103/2005 Page 1 of 9
2. List the matter on 19.4.2005. The four convicts namely Rajiv Sapra, Satpal Sethi, Naresh Bhardwaj and Amrish Bhatnagar, who were convicted by the

learned Trial Court vide judgment dated 5th August, 2000 had filed Crl.A.Nos.577/2000, 589/2000 and 601/2000, which were admitted.

3. All the four appeals i.e. the instant appeal preferred by the State and the three appeals preferred by the convicts namely Rajiv Sapra, Satpal Sethi, Naresh Bhardwaj and Amrish Bhatnagar, which are arising out of the same judgment dated 5th August, 2000, are being heard together.

4. The grounds on which the order of acquittal of respondent/accused Ajay Kumar Sharma has been challenged by the State, read as under:-

"(1) Because the impugned judgment is bad in law and facts. (2) Because the Id.Trial Court grossly erred in acquitting the accused/respondent Ajay Kumar Sharma though it convicted the other accused persons, namely, Amrish Bhatnagar, Naresh Bhardwaj, Satpal Sethi and Rajiv Sapra. (3) Because the Id. Trial Court failed to appreciate that the accused Surinder Bedi and Suresh Kumar Kukreja confessed the guilt and were convicted. (4) Because the Id. Trial Court grossly failed to appreciate that it is not necessary to be proved by documentary evidence that the accused/respondent Ajay Kumar Sharma was Manager in the said firm. CRL.A. No.103/2005 Page 2 of 9 5. (5) Because the Id. Trial Court failed to appreciate that there was recovery of Drum of thinner at the instance of the accused/respondent Ajay Kumar Sharma. (6) Because the Id. Trial Court grossly erred in holding that recovery after two days of the arrest of accused/respondent Ajay Kumar Sharma as belated, doubtful and planted. The Id. Court ought to have given due weightage to the fact that in this tragedy a number of people lost their life and the investigation was wide spread and the delay of two days of recovery was nominal in these circumstances. Learned Trial Court has acquitted the respondent of all the charges inter-alia for the following reasons given in paras 668, 669 and 678 of the impugned judgment which are extracted hereunder:-

"668. Consequent upon disclosures by accused persons some incriminating articles were recovered at the pointing out of all accused persons. It has to be seen as to how far such recoveries are relevant under Section 27 of Evidence Act. When the victims of sura consumption were dying in various hospitals, the police commenced investigation in these cases. Accused Amrish Bhatnagar, Nartesh

Bhardwaj and Ajay Sharma were first arrested and made their disclosure statements Ex.CPW36/D, Ex.CPW36/C and Ex.CPW36/A respectively on 9.11.91. Similarly accused Rajiv Sapra made his disclosure statement Ex.CPW35/D on 10.11.91 and Satpal Sethi made his disclosure statement Ex.CPW23/A on 8.12.91. From perusal of their disclosure statements it appears that all of them are more or less same deposition before the police. The disclosure part is divided into two parts - The first part relates to the constitution of the firm M/s Karnal Pharmacy, Ghaziabad and the ways and means of manufacturing of Ayurvedic Medicine. The second part of disclosure relates to the conspiracy for manufacturing Sura for sale. On the first part of their disclosure, the CRL.A. No.103/2005 Page 3 of 9 the help of for one year partnership of all four partners namely; Amrish Bhatnagar, Satpal Sethi, Rajiv Sapra and Naresh Bhardwaj was formed in 1985 and decided to start the firm at Ghaziabad, U.P. and obtained L-2 licence from Drug Controller, Lucknow, U.P. and obtained sanction for manufacture of Ayurvedic medicine particularly Karpoor Ashav because its alcoholic base has got quota of 400 AL alcohol from Excise Commissioner, Lucknow, U.P. The factory premises was taken on rent at Village Manota, Murad Nagar, U.P. Accused Amrish Bhatnagar was assigned the duties of making correspondence on behalf of the firm. The work of sale, purchase and manufacture were taken over by other partners with labourers and Chowkidars. After manufacturing Karpoor Ashav, the supplies were made to suppliers and then to retailers. Purchases were made mostly from Delhi and Ghaziabad markets. The labels of the bottle from M/s. Vinay Printers, Azadpur, CP caps of bottle from Narender Gupta, Shashtri Nagar, Carton boxes from Jaipal Singh of Village Azadpur etc. were managed by the partners.

669. On the second part of disclosure accused Ajay Kumar Sharma was asked to manage rectified spirit from the market but due to scaling prices, he was unable to procure. Then all the partners and Ajay Sharma, Manager, decided why not the sura be produced with thinner by mixing maximum water to give alcoholic base. Karpoor Ashav sura so manufactured were bottled and supplied to the supplier and then to retailers for sale.

678. The prosecution is relying upon the disclosure statement made by accused Ajay Sharma dated 11.11.91 Ex.CPW29/A and dated 14.11.91 Ex.PW29/D. The accused disclosed about some new facts that the thinner which was used for making poisonous sura had been hidden in the cane field behind the factor premises and he could get it recovered. At the instance of the accused, CRL.A. No.103/2005 Page 4 of 9 he was taken to the factor premises and got recovered a black colour cane containing some thinner besides two samples Ex.CPW29/P-1 and P-2 and the sealed cane Ex.CPW20/P-3. The said recovery was witnessed by CPW-20, S.I Ran Singh and CPW36 S.I. Satish Yadav. The learned counsel for accused Ajay Sharma has contended that the said recovery is an after thought and the public witnesses were not taken from the nearby locality, hence the said recovery is planted. The police might or might not have made efforts to include a public person but the public attitude towards police is non- cooperative. They do not want to invite enmity with the accused and harassment from the police. Under such circumstances the police is unable to include public persons. The recovery of thinner is also confirmed from the case memo Ex.CP2 to Ex.CP5 issued by CPW6 Sh. Naresh Goel. As such the recovery of cane containing thinner is relevant u/s 27 Evidence Act. 6. Mr.R.M.Tufail, learned counsel for the respondent has submitted that the respondent had no connection with M/s Karnal Pharmacy. He used to deal in jaggery (gud) and this fact has been proved by DW-1 Sh. Jai Prakash and DW-2 Sh.Gopi Chand whose statements have remained unchallenged. It has also been contended that CPW-6 Sh.Naresh Kumar Goel from whom the thinner was allegedly purchased, has not supported the case of prosecution at all. He was declared hostile and during his cross examination by the learned APP for the State, he did not state that the respondent herein purchased the thinner from him or that the thinner purchased from the said shop was delivered to the respondent at M/s Karnal Pharmacy premises. CRL.A. No.103/2005 Page 5 of 9 7. Mr.Kewal Singh Ahuja, APP for the State has submitted that the respondent herein was working as Manager with M/s.Karnal Pharmacy, Ghaziabad, U.P. It has been contended that it was the respondent who purchased the thinner and mixed the same in alcoholic SURA brand name KARPOOR ASHAV which was consumed by large number of people and many of them expired. Some of them lost their vision. Learned APP for the State has

referred to the disclosure statement made by the respondent/accused and recovery of a container of thinner from the sugarcane field behind the factory premises at his behest to be the evidence against him.

8. During the course of hearing, learned APP for the State has been requested to point out from the record any document on the basis of which it was possible to connect the respondent/accused with his employment and nature of duties with M/s Karnal Pharmacy. It was specifically asked whether there was any attendance register showing him to be an employee or any salary voucher or any other document indicating salary being credited in his account to lead to the inference that at the relevant time, he was the Manager/employee in M/s Karnal Pharmacy.

9. Learned APP for the State fairly conceded that there is no documentary proof to connect the respondent with M/s Karnal Pharmacy as its Manager.

10. The scope of interference by Court of Appeal against an order of acquittal has been examined by the Hon'ble Supreme Court in catena of judgments. In the case Muralidhar @ Gidda and Anr. Vs. State of Karnataka, MANU/SC/0494/2016 the principles governing CRL.A. No.103/2005 Page 6 of 9 the approach of the Court in the appeals against order of acquittal were detailed as under: v. State of Lekha Yadav 12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu v. State [MANU/SC/0076/19

AIR 1954 SC1, Madan Mohan Singh v. State of U.P. [MANU/SC/0162/19

AIR 1954 SC637, Atley v. State of U.P. [MANU/SC/0102/19

AIR 1955 SC807, Aher Raja Khima v. State of Saurashtra [MANU/SC/0040/19

AIR 1956 SC217, Balbir Singh v. State of Punjab [MANU/SC/0101/19

AIR 1957 SC216, M.G. Agarwal v. State of Maharashtra [MANU/SC/0117/19

AIR 1963 SC200, Noor Khan v. State of Rajasthan [MANU/SC/0083/19

AIR 1964 SC286, Khedu Mohton v. State of Bihar [MANU/SC/0139/19

(1970) 2 SCC450, Shivaji Sahabrao Bobade v. State of Maharashtra [MANU/SC/0167/19]

(1973) 2 SCC793, Bihar [MANU/SC/0131/19]

(1973) 2 SCC424, Khem Karan v. State of U.P. [MANU/SC/0158/19]

(1974) 4 SCC603, Bishan Singh v. State of Punjab [MANU/SC/0090/19]

(1974) 3 SCC288, Umedbhai Jadavbhai v. State of Gujarat [MANU/SC/0164/19]

(1978) 1 SCC228, K. Gopal Reddy v. State of A.P. [MANU/SC/0104/19]

(1979) 1 SCC355, Tota Singh v. State of Punjab [MANU/SC/0320/19]

(1987) 2 SCC529, of Haryana [MANU/SC/0058/19]

1995 Supp (1) SCC248, Madan Lal v. State of J and K [MANU/SC/1306/19]

(1997) 7 SCC677, Sambasivan v. State of Kerala [MANU/SC/0356/19]

(1998) 5 SCC412, Bhagwan Singh v. State of M.P. [MANU/SC/0218/20]

(2002) 4 SCC85, Harijana Thirupala v. Public Prosecutor, High Court of A.P. [MANU/SC/0629/20]

(2002) 6 SCC470, C. Raghavan Nair [MANU/SC/0968/20]

(2003) 1 SCC1, State of Karnataka v. K. Gopalakrishna [MANU/SC/0071/20]

Ram Kumar Antony v. K.G. v. State CRL.A. No.103/2005 Page 7 of 9 v. of (2005) 9 SCC291, State of Goa v. Sanjay Thakran [MANU/SC/7187/20]

(2007) 3 SCC755 and Chandrappa Karnataka [MANU/SC/7108/20]

(2007) 4 SCC415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: State (i) There is presumption of innocence in favour of an accused person and such presumption is

strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the CRL.A. No.103/2005 Page 8 of 9 evidence must not result in the interference by the appellate court in the judgment of the trial court. 11. Despite voluminous record containing examination of thousands of witnesses and documents and the various contentions being dealt in the detailed judgment, running into 700 pages, learned APP for the State has not been able to refer to any document on the basis of which even an inference can be drawn that the respondent was working as a Manager with M/s.Karnal Pharmacy or purchased thinner. CPW-6 Sh.Naresh Kumar Goel has not supported the prosecutions case. He has not even identified the respondent to be the person to whom the thinner was sold/delivered which was stated to have been mixed in alcoholic SURA branded as KARPOOR ASHAV in M/s Karnal Pharmacy stated to be run by the convicts.

12. In the above facts, the learned Trial Court had no option but to acquit the respondent of the charges.

13. In view of the above discussion, the order of acquittal does not warrant any interference by this Court in exercise of appellant jurisdiction.

14. The appeal is dismissed. PRATIBHA RANI AUGUST 21 2017 st (JUDGE)
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