

State Vs. Iqbal

State Vs. Iqbal

SooperKanoon Citation : sooperkanoon.com/850912

Court : Uttaranchal

Decided On : Dec-02-2009

Judge : Dharam Veer, J.

Appellant : State

Respondent : iqbal

Disposition : Appeal dismissed

Judgement :

Dharam Veer, J.

1. This appeal, preferred by the State/appellant under Section 378(3) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C.'), is directed against the judgment and order dated 12.7.2000 passed by the Additional Sessions Judge, Dehradun in Special Sessions Trial No. 31 of 1996 State v. Iqbal whereby the accused respondent has been acquitted of the charges punishable under Section 8/20 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

2. Briefly stated facts of the case are that on 29.8.1996 at 11.15 am, S.I. Harpal Singh Rawat (PW1) and S.I. Anil Kumar Joshi (PW2) along with other police personnel were on patrolling duty. When they reached in village Chiranjipur, they were informed by the mukhbir that a person having charas (sulfa) was coming

towards Shakti Canal. On this they tried to search the public witnesses but nobody agreed. Thereafter the police personnel and the mukhbir searched each other and fard Ex. Ka-4 was prepared. Thereafter they proceeded towards Shakti Canal and waited for that person after hiding in the nearby bushes. After sometime a person was seen coming and the mukhbir pointed towards that person that he was the man who was carrying the charas. That person tried to escape from the spot after seeing the police party. He was chased by the police party and was arrested at 12.45 pm at a distance of nearly 200 metres. When he was asked for the search, then he himself conceded that he was having charas. There was no public witness as the place of occurrence was the forest area. When he was asked as to whether he wanted to be searched before a Magistrate or Gazetted Officer, then he replied that since he was having charas, therefore, there was no need to call any such officer and asked the police party to take his search, fard Ex. Ka-5 thereof was also prepared. He disclosed his name as Iqbal i.e. the accused respondent. When the pink coloured polythene which he was holding in his right hand was opened, two more polythenes containing charas were found inside. The contraband was weighted and it was found that 30 gm charas was kept inside the yellow polythene and 420 gm charas was kept inside the pink polythene. He was asked to produce the license but he failed to do so. Sample of 50 gm out of 420 gm charas and sample of 10 gm out of 30 gm charas were taken at the spot. Recovered contraband and samples were sealed on the spot. Fard of recovery Ex. Ka-1 was prepared at the spot.

3. On the basis of the Fard Ex. Ka-1, a case under Section 8/20 of the Act was registered against the accused respondent and chick FIR was prepared by the Head Constable Satya Prakash. Investigation of this case was entrusted to S.I. B.D. Patia (PW3), who during the course of investigation inspected the place of occurrence and prepared the site plan Ex. Ka-6. The recovered contraband was sent to Forensic Laboratory, Agra for the chemical examination. The I.O. during the course of investigation recorded the statements of the witnesses and after completing the investigation filed the chargesheet against the accused respondent.

4. On 19.12.1996, learned Additional Sessions Judge, Dehradun framed the charge against the accused respondent for the offence punishable under Section 8/20 of the Act. The charge was read over and explained to the accused respondent, who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined PW1 S.I. Harpal Singh Rawat; PW2 S.I. Anil Kumar Joshi and PW3 S.I. B.D. Patia, the I.O. of the case.

6. Thereafter statement of the accused respondent was recorded Under Section 313 Cr.P.C. The oral and documentary evidence were put to him in question form, who denied the allegations made against him and stated that he was falsely implicated in this case. However, in defence, the he did not produce any oral or documentary evidence.

7. After appreciating the evidence and after hearing learned Counsel for the parties, learned Additional Sessions Judge, Dehradun vide his judgment and order dated 12.7.2000 acquitted the accused respondent of the charges levelled against him as discussed above. Against the aforesaid judgment and order dated 12.7.2000, the State has preferred the present appeal.

8. To prove its case, the prosecution has examined PW1 S.I. Harpal Singh Rawat, who in his examination-in-chief has reiterated the version made in the fard Ex. Ka-1 and proved the fard of recovery Ex. Ka-1, fard of requirement of weight machine Ex. Ka-2, fard of search of accused Ex. Ka-3, fard of mutual search Ex. Ka-4, fard of summon for Magistrate/Gazetted Officer Ex. Ka-5. In his cross-examination, he has admitted that the case property present in the court was in many pieces. He pleaded ignorance about the number of the pieces. He further admitted that number of pieces was not mentioned in the Fard Ex. Ka-1. He has also admitted in his cross-examination that fard Ex. Ka-3 was prepared at the place where the mukhbir had given the information about the charas. He also admitted that mukhbir had not told the name of the accused respondent. This witness has also admitted in his cross-examination that information given by the mukhbir was not conveyed to the higher authorities. He has further admitted that he did not tell the I.O. as to with which seal, the recovered contraband was sealed and the same was also not written in the fard Ex. Ka-1. Thus, in his cross-examination, this

witness has not corroborated his statement and his version is not a reliable piece of evidence.

9. PW2 S.I. Anil Kumar Joshi is also an eyewitness of recovery and he was also in the police party on the date of said incident. In his examination-in-chief, he has also reiterated the version of fard Ex. Ka-1. In his cross-examination, he has admitted that fard of requirement of weight machine Ex. Ka-2, fard of search of accused Ex. Ka-3, fard of mutual search Ex. Ka-4, fard of summon for Magistrate/Gazetted Officer Ex. Ka-5 do not bear his signature nor do they bear the signature of the accused respondent. In his cross-examination, this witness also failed to corroborate his statement.

10. PW3 S.I. B.D. Patia is the I.O. of the case. His statement was recorded 25.5.2000, which was deferred for 9.6.2000 for recording the remaining examination-in chief and for the cross-examination at the request of defence counsel. Thereafter he was summoned many times by the trial court, but he did not appear for the remaining examination-in-chief and for the cross-examination. Hence, his statement cannot be read in the evidence.

11. Thereafter statement of the accused respondent was recorded Under Section 313 Cr.P.C. The oral and documentary evidence were put to him in question form, who denied the allegations made against him and stated that he has been falsely implicated in this case. However, in defence, the he did not produce any oral or documentary evidence.

12. I have heard learned Counsel for the parties and have carefully perused the materials available on record.

13. Learned Additional G.A. for the State argued that the case against the accused respondent is proved on the basis of the evidence adduced by the prosecution, but the trial court has not appreciated the evidence correctly and acquitted the accused respondent. Learned Counsel for the accused respondent submitted that on the basis of the evidence discussed above, no case against the accused respondent is made out and prosecution has not produced any link evidence to prove its case against the accused respondent and learned trial court has rightly

acquitted the accused respondent of the charges levelled against him under Section 8/20 of the Act. The submission of learned Addl. G.A. for the State/appellant lacks substance, whereas I find force in the arguments raised by learned Counsel for the accused respondent due to the following reasons:

(i) That the prosecution has not produced any evidence to show that as to who had deposited the recovered contraband in the malkhana and who had taken the samples from the malkhana to the laboratory, which creates reasonable doubt on the prosecution witness.

(ii) That the aforesaid contraband was said to be recovered from the possession of the accused respondent on 29.8.1996 and the same was said to be sent to the laboratory for its chemical examination on 9.9.1996, but the prosecution has not produced any link evidence on the record to prove that the recovered contraband was kept intact in the malkhana from the alleged date of its recovery till the date of its sending to the laboratory for chemical analysis and nobody was allowed to tamper with it during the said period.

(iii) That the quantity of sample taken out of 30 gm charas has been shown to be as 10 gm in the fard Ex. Ka-1, but the report of the Forensic Laboratory, Agra dated 14.10.1996 reveals that it was 15 gm and not 10 gm. It also creates reasonable doubt on the prosecution story.

(iv) That the police party failed to procure any independent public witness at the time of search and alleged recovery.

(v) That PW2 S.I. Anil Kumar Joshi who was an eyewitness of recovery has admitted in his cross-examination that fard Ex. Ka-2, fard Ex. Ka-3, fard Ex. Ka-4 and fard Ex. Ka-5 do not bear his signature, which creates reasonable doubt on the prosecution story.

(vi) That PW3 S.I. B.D. Paitia, the I.O. of the case did not appear for recording his remaining examination-in-chief and for his cross-examination. Hence, his statement cannot be read in the evidence. Even many other prosecution witnesses did not appear before the trial court in spite of the fact that they were summoned

many times by the trial court and even non-bailable warrants were issued against them. It creates doubt on the whole prosecution story.

14. In support of her arguments, learned Counsel for the accused respondent cited a judgment reported in 1999 (38) ACC 181 Shiv Charan v. State and relied heavily on para 6 of this judgment, which is reproduced hereunder:

6. A perusal of the record of the case shows that the prosecution had not given link evidence. It is not known where the seized Charas was kept after it was recovered from the possession of the appellant. It is also not known that who had carried it from the place of recovery to the place of storage. No evidence was also adduced as to who had carried the Charas in question to the Chemical Examiner. The said Charas is said to have been recovered on 11.10.1990 and the report of chemical examiner is dated 26.08.1991 from which it appears that it was received in the office of chemical examiner by means of letter dated 5.11.1991. No evidence is given to show that the Charas in question remained intact in the sealed bag for a period of more than one year i.e. from 11.10.1990 to 5.11.1991. In view of this, it cannot be said that the same Charas was sent to the chemical examiner for his report which was recovered from the possession of the appellant. Hon'ble the Supreme Court in the case of Valsala v. state of Kerala has held that in the absence of link evidence, the conviction under the N.D.P.S. cannot be sustained.

15. Learned Counsel for the accused respondent further placed her reliance on the judgment delivered by Hon'ble Apex Court in the case of State of Rajasthan v. Gurmail Singh reported in 2005 SCC (Cri) 641. Para 3, 4 and 5 of this judgment are relevant and the same are reproduced hereunder:

3. ...we find that the link evidence adduced by the prosecution was not at all satisfactory. In the first instance, though the seized articles are said to have been kept in the malkhana on 20.5.1995, the malkhana register was not produced to prove that it was so kept in the malkhana till it was taken over by PW 6 on 5.6.1995. We further find that no sample of the seal was sent alongwith the sample to the Excise Laboratory, Jodhpur for the purpose of comparing with the seal appearing on the sample bottles. Therefore, there is no evidence to prove

satisfactorily that the seals found were in fact the same seals as were put on the sample bottles immediately after seizure of the contraband. These loopholes in the prosecution case have led the High Court to acquit the respondent.

4. We find no error in the judgment of the High Court.

5. This appeal is, therefore, dismissed.

16. In support of her arguments, learned Counsel for the appellant has further placed his reliance on the judgment of Hon'ble Division Bench of this High Court in Mr. Harman Chrust v. State reported in 2005 (1) U.D.727 wherein at para 25 it has been observed as under:

25. Another point, which creates suspicion about the authenticity of the prosecution story, is that the recovery and seizure has not been made in accordance with the standing instruction No. 1/88 dated 15.03.1988 issued by the Narcotics Control Bureau, New Delhi. Clause 1.9 of the Instructions reads as under: 1.9 It needs no emphasis that all samples must be drawn and sealed in the presence of the accused, Panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose custody the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and the; duplicate of each of the samples. The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in paper envelop may be sealed properly. Such sealed envelop may be marked as original and duplicate. Both the envelops should also bear the S. No. of the package(s) container(s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seal should be legible. This envelope alongwith test memos should be kept in another envelope which should also be sealed and marked 'Secret-Drug sample/Test Memo' to be sent to the concerned chemical laboratory.

17. Learned Counsel for the accused respondent has also invited my attention towards Clause 2.9 Standing Order No. 1/89, which is reproduced as under:

2.9. The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in paper envelop which may be sealed properly. Such sealed envelop may be marked as original and duplicate. Both the envelops should also bear the No. of the package(s) container(s) from which the sample will also have a reference of the test memo. The seal should be legible. This envelope alongwith test memos should be kept in another envelope which should also be sealed and marked 'Secret-Drug sample/Test Memo' to be sent to the chemical laboratory.

18. Learned Counsel for the accused respondent has further argued that though the recovery was made in broad daylight and PW1 S.I. Harpal Singh Rawat has also admitted in his cross-examination that the residential houses were situated at the place where he got the said information from the mukhbir, but no independent public witness could be procured. Although it is not necessary that in each and every case public witnesses are required to prove the alleged recovery and it depends on the facts and circumstances of each and every case. But in the present case, as the recovery has been shown to be made at 12.45 pm on 29.8.1996 and admittedly there were residential houses where the information was received by the police, but even then no public witness could be procured by the police party at the time of recovery, which creates doubt in the prosecution story.

19. Learned Counsel for the accused respondent lastly argued that where two views are possible and one of the possible views has been taken by the trial court, then the appellate court shall not ordinarily interfere with the judgment of acquittal. Reliance has been placed on paras 7 and 8 of the judgment rendered by the Hon'ble Apex Court in the case of Kalyan Singh v. State of M.P. reported in (2007) 3 SCC (Cri.) 173 which are reproduced as under:

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.

8. We, therefore, having regard to the fact situation of the instance case, are of the opinion that as two views are possible, the High Court should not have interfered with the judgment of acquittal passed by learned Sessions Judge. We, therefore, set aside the impugned judgment and allow this appeal. The appellant is in jail, he is directed to be released forthwith if not required in connection with any other case.

20. On the basis of the evidence and legal proposition discussed above, I am of the considered view that when one view is also possible which was taken by the trial court, then as per the aforesaid judgment of Kalyan Singh (Supra), the interference with the judgment of the trial court at this stage is not warranted. Therefore, there is no reason to disagree with the view taken by the trial court on the basis of the evidence discussed above and, as such, the prosecution has not able to prove its case against the accused respondent beyond reasonable doubt.

21. In view of my above discussion and conclusion, it is held that the prosecution has failed to prove its case against the accused respondent for the offence punishable Under Section 8/20 of the Act beyond reasonable doubt. I am in total agreement with the views and findings recorded by the trial court and the impugned judgment and order dated 12.7.2000 passed by the trail court is correct and justified.

22. In the result, the appeal being devoid of merit is hereby dismissed. The judgment and order dated 12.7.2000 passed by the Additional Sessions Judge, Dehradun in Special Sessions Trial No. 31 of 1996 State v. Iqbal whereby the accused respondent Iqbal has been acquitted of the charges levelled against him under Section 8/20 of the Act is hereby upheld. Let the lower court record be sent back.

