

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.276-277 OF 2018

(Arising out of S.L.P.(Cr1.) Nos.7105-7106 OF 2015)

THE STATE OF HIMACHAL PRADESH ...APPELLANT(S)

VERSUS

PARDEEP KUMAR ETC. ...RESPONDENT(S)

J U D G M E N T

RANJAN GOGOI, J.

1. Leave granted.

2. These appeals are by the State of Himachal Pradesh challenging the judgment of the High Court acquitting the accused-respondent Nos.1 and 2 of the charge of commission of offences under Section 20 read with Section 29 of the Narcotics Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act"). The Judgment of acquittal by the High Court is in reversal of the conviction recorded by learned

trial court which had imposed a sentence of rigorous imprisonment for 12 years and fine of Rs.1,50,000/- on each of the accused. On default of payment of the fine amount, it was ordered by the learned trial Court that the accused-respondents will suffer imprisonment for a further period of one year.

3. The case of the prosecution in short is that on 27-1-2009 at about 6.30 p.m. while a police party was on patrolling duty on National Highway 21 on the Manali- Kullu road, a white colour Indica car was signaled to stop. According to the prosecution, the vehicle stopped at a distance of about 25 feet away from the police party. One person is alleged to fled away from the car and the accused No.1 was found sitting in the rear seat of the vehicle whereas the accused No.2 was found sitting in driver's seat. The prosecution further alleges that the accused Nos.1 and 2 disclosed their names and had further stated that the person who fled away is one Rajbir Singh. It is the further case of the

prosecution that prior to search of the vehicle, police constables were sent to bring local witnesses but they did not succeed in bringing any witnesses as on account of the severe cold on the date of occurrence, no independent person was available. Thereafter, a search of the car was conducted by the police party and a rucksack was found lying near the legs of accused No.2 which was found to contain cannabis mixture weighing about 18.85 kgs. According to the prosecution two samples of about 25 grams each were taken from the contraband recovered and the samples were separated and sealed. Both the accused Nos.1 and 2 were arrested and on the next day accused No.3 was also arrested. During interrogation, the accused persons had named one Jeewan Lal as the person from whom they had purchased the contraband. The house of Jeewan Lal was searched on 29.11.2009 and an electronic weighing machine, envelopes containing small particles of cannabis and other such materials were recovered. Accordingly, Jeewan Lal (accused No.4) was

arrested. Charges were framed against all the four accused who were sent for trial. At the conclusion of the trial, the learned trial court while convicting and sentencing the accused Nos.1 and 2, as aforesaid, acquitted the other accused Nos.3 and 4.

4. Aggrieved, the accused-respondents had filed appeals before the High Court.

5. The High Court, as it appears from the impugned judgment, took the view that the prosecution had not discharged its burden of examining independent witnesses in support of its case inasmuch as there was a bazaar situated at a distance of about 100 meters and further the place where the contraband was allegedly detected and seized was on the Manali-Kullu Road which is a busy road with many buses and vehicles plying on the same. The High Court also took the view that the contraband article was produced before the learned trial court in a torn condition which raised serious doubts as to its origin and authenticity. On the basis of the aforesaid twin

findings, the appeal was allowed and the order of conviction of the accused-respondents was reversed.

6. We have considered the matter and have heard the learned counsels for the parties. So far as examination of independent witnesses in support of the prosecution case is concerned all that would be necessary to say in this regard is that examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case. In the present case, according to the prosecution, independent witnesses were not available to witness the recovery of the contraband due to extreme cold. The fact that the incident took place at about 6.30 p.m. on 27-01-2009 and that too on the Manali-Kulu road may lend credence to the prosecution version of its inability to produce independent witnesses. In the absence of any animosity between the police party and the accused and having regard to the large quantity of contraband that was

recovered (18.85 kgs.), we are of the view that it is unlikely that the contraband had been planted/foisted in the vehicle of the accused persons. In so far as the condition of the contraband parcel is concerned, the materials on record indicate that the said parcel was brought to the learned trial Court on 15-9-2009 in a torn condition. The prosecution witnesses examined in this regard had testified that the parcel was in a torn condition due to its bulky nature and also due to nails on the stool on which it was kept. In this regard, it may also be noted that the samples from the contraband parcel were sent to the Forensic Laboratory on 23.7.2010. No suggestion was given to the witnesses (PWs 12 and 13) who had taken the samples to the laboratory that the contraband parcel has been tampered with. PW-16, who had chemically examined the contraband samples, was fully cross-examined by the defence. There is nothing in his evidence to suggest that the sample(s) came to him in a torn or otherwise doubtful condition. In view of all

the above, we are of the opinion that the grounds on which the High Court have reversed the findings of conviction of the accused-respondents ought not to be accepted.

7. We, therefore, for the aforementioned reasons, set aside the order of the High Court acquitting the accused-respondents and restore the order of the learned trial court convicting the accused-respondents under Section 20 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The sentence imposed by the learned trial Court is also restored. The accused respondents shall surrender forthwith to serve out the remaining part of the sentence failing which they will be taken into custody.

8. The appeals are allowed as indicated above.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(R. BANUMATHI)

NEW DELHI  
FEBRUARY 16, 2018