

Court No. - 16

Case :- GOVERNMENT APPEAL No. - 283 of 2001

Appellant :- The State Of U.P.

Respondent :- Amar Singh Bhujwa And Another

Counsel for Appellant :- Govt.Advocate

Counsel for Respondent :- V.Mohan

Hon'ble Shamim Ahmed,J.

The case is taken up in the revised call.

Heard learned counsel for the parties and perused the material available on record.

The **appeal** under Section 378 Cr.P.C. has been filed against the judgment and order dated 29.11.2000 passed by the Court of Additional Session Judge, Barabanki in Session Trial No. 163/97, under Sections 8/10/21/22/25 N.D.P.S. Act, by which the respondent Nos. 1 and 2 were acquitted from the charge levelled against them.

According to the prosecution version, on August 6, 1997, Station House Officer (SHO) Shubhajeet Rai, along with Sub-Inspector S. N. Ram, Constable Sheetala Prasad Saroj, and Constable Brijesh Yadav, were on duty in a government jeep for investigation and in connection with the wanted crime case No. 248/97. Upon reaching the Mohiuddinpur police outpost, they received information from an informant that at the house of Amar Singh Bhujwa in village Mirzapur, morphine was being manufactured, as there was a strong chemical smell coming from the eastern side of the house. Given the urgency and lack of means to summon higher authorities or other resources, and the risk of the evidence being removed, they proceeded directly to village Mirzapur and left the SHO at the outpost.

Upon reaching the village, they attempted to secure witnesses from the locals, but no one was willing to testify. Consequently, with their accompanying force, they proceeded to the house of Amar Singh Bhujwa. The eastern side of the house emitted a strong chemical odor. Two individuals were seen fleeing from the eastern side of the house and were apprehended around 8:00 PM. On inquiry, the two individuals identified themselves as Amar Singh Bhujwa and Unga Lal. They initially hesitated but

eventually admitted to the morphine production.

When asked if they wanted to provide their personal search in the presence of a magistrate or a higher official, both accused consented to the search by the police. Following their consent, their personal searches were conducted, revealing chemicals and the smell of opium on their hands.

At the scene, morphine was found being spread out on a polyethylene sheet. Upon close inspection, the morphine had a distinct odor. Additionally, a polyethylene bag contained a steel bucket with opium solution, which was discarded, and chemicals in two bottles: one contained approximately 60 grams of unlabeled chemicals and the other contained about 80 grams labeled in English. There was also a white cloth with traces of opium and chemicals.

All seized items were taken into police custody. The morphine was weighed, and its quantity was found to be 500 grams. The opium solution was also weighed, and its quantity was 8 grams. The opium solution was destroyed at the scene. Both accused were informed of the grounds for their arrest and were taken into custody.

The court below after taking into consideration the facts and circumstances of the case and evidence available on record, passed the judgment and order of acquittal dated 29.11.2000

Learned A.G.A. submits that the present appeal is of the year, 2001. Moreover, there appears no illegality or infirmity in the judgment and order of acquittal passed by the court below, therefore, leave to appeal may be refused.

I have heard the learned counsel for the parties and considered the ground taken as well as the learned A.G.A. and gone through the judgment passed by the court below.

I have heard the learned counsel for the appellant and considered the ground and gone through the judgment passed by the court below.

In the present case from the statements given by the witnesses produced by the prosecution, I found that prosecution has failed to establish that the crime in question has been committed by the accused and there was no direct evidence produced by the prosecution regarding involvement of the respondent Nos. 1 to 2 in the crime.

Further, learned counsel for the appellant could not point out any illegality or infirmity in the judgment and order of acquittal passed in favour of respondents which is before this Court.

Further, this Court observed that an appeal against acquittal stands on a different footing from the appeal against conviction. Hon'ble the Apex Court in a very recent judgment in the case of **Sadhu Saran Singh Vs. State of Uttar Pradesh and Others reported in (2016) 4 SCC 357** has considered this difference and has observed in paragraph nos.20 and 21 as under:

*"20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can raise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, in **Sambasiva V. State of Kerala 1998 SCC (Cri) 1320** has held:*

"7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

21. The Court, in several cases, has taken the consistent view that the appellate court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate court, on scrutiny, finds that the decision of the court below is based on erroneous views and against settled position of law, then the interference of the appellate court with such an order is imperative."

In the light of the aforesaid guidelines, the impugned judgment has to be considered from the point of view whether the view

taken by the court below was a probable view based on the material on record or it is an absolutely erroneous judgment devoid of merits.

A criminal trial proceeds with the presumption of innocence of the accused persons. With the acquittal of the accused persons this presumption of innocence stands fortified. So very strong and cogent reasons must exist in interfering the judgment of acquittal.

Keeping in view the aforesaid weakness of the prosecution case, as noted by the court below, I am of the view that the view taken by the court below was a probable and logical view, which is based on valid reasons. The judgment of the court below cannot be said to be illegal, illogical and improbable and not based on material on record or is based on erroneous views and is against the settled position of law. So, this Court is satisfied that there is absolutely no hope of success in this appeal and accordingly, no interference is called for.

Accordingly, the appeal does not survive, and in view of above, the appeal is **dismissed**.

No order as to costs.

Copy of this judgment be sent to the court below for its compliance.

Order Date :- 29.7.2024

Arvind