

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.997 OF 2009

THE STATE OF UTTAR PRADESH

...APPELLANT(S)

VERSUS

HANSRAJ @ HANSU

....RESPONDENT(S)

J U D G M E N T

R. BANUMATHI, J.

1. This appeal arises out of the judgment dated 13.12.2005 in Criminal Appeal No. 3651 of 2002 passed by the High Court of Judicature at Allahabad in and by which the High Court has set aside the conviction of the respondent-accused for the offence under Section 20(b)(ii) of N.D.P.S. Act and also the conviction under Section 60 of Excise Act and also sentence of imprisonment imposed upon the respondent-accused.

2. On 17.07.1998 wee hours at about 1.25 a.m. when PW-1 (Ram Chandra Misra) and PW-2 (P.C. Sharma) were on patrolling duty, they had received an information that the respondent-accused along with another person were about to transport country-made liquor for sale. When PW-1 and PW-2 apprehended the respondent-accused and his companion, the respondent-accused was found to be in possession of 2700 pouches of country made

liquor kept in 18 plastic bags and he was also found to be in possession of 300 grams of charas in his pocket. After the formal search and after completion of the investigation, charge-sheet was filed against the respondent-accused under Section 20 of the N.D.P.S. Act and under Section 60 of the Excise Act.

3. Upon consideration of evidence, the Trial Court convicted the respondent-accused for the offence under Section 20(b)(ii) of N.D.P.S Act and sentenced him to undergo R.I. for 10 years along with fine of Rs. 1,00,000/- (Rupees one lakh) for default. The respondent-accused was also convicted for the offence under Section 60 of the Excise Act and was sentenced to undergo R.I. for one year. In appeal, the High Court has set aside the verdict of conviction and also sentence of imprisonment imposed upon the respondent-accused as aforesaid in para 1.

4. We have heard Mr. Garvesh Kabra, learned counsel for the appellant-State as well as Ms. Nidhi, learned counsel appearing for the respondent-accused and perused the impugned judgment and the materials on record.

5. The High Court acquitted the respondent-accused primarily on the ground that there was delay in sending the sample to the laboratory and that there was no evidence to show how and in what condition the recovered contraband and the samples were kept in the meanwhile. The recovery of the charas was on 17.07.1998 and the sample packets were received in the laboratory only on 22.08.1998. Learned counsel appearing for

the State has drawn our attention to the evidence of PW-1, Sub-inspector (Ram Chandra Misra) and PW-2 (P.C. Sharma) who in their evidence stated that the substance which was recovered and sealed were deposited in the Police Station Godown and later produced before the Court. Though the witnesses have stated that the substance was deposited in the Police Station Godown and later produced before the Court as pointed out by the High Court that there is no evidence to show that as to how and at what time and date the samples were taken by the carriers for analysis. It has also come on evidence that constables viz. Asharam and Karam Chand have taken the sample of charas and liquor packets respectively to the laboratory, were also not examined by the prosecution.

6. The High Court has also pointed out that it was incumbent on the part of the prosecution to lead the evidence to show as to how and in what conditions the articles were preserved at the Police Station and how safely they were taken from there to the respective chemical examiners by its carriers. Learned counsel for the State has submitted that the investigating officer in this particular case has passed away and, therefore, the prosecution was handicapped in adducing the necessary evidence. Notwithstanding the death of the Investigating Officer, nothing prevented the prosecution from examining any other witness who was associated with the investigation and adducing necessary evidence to prove as to how and in what conditions the articles were preserved at the Police Station/Police Station Godown.

7. Upon appreciation of evidence, the High Court has taken a view that guilt of the accused has not been established and the same cannot be said to be unreasonable one or suffering from perversity warranting our interference in the order of acquittal.

8. In the result, the appeal is, accordingly, dismissed.

.....J.
[R. BANUMATHI]

.....J.
[INDIRA BANERJEE]

NEW DELHI
12TH SEPTEMBER, 2018