

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.218 OF 2017

RAMESH

...APPELLANT

VERSUS

THE STATE OF HIMACHAL PRADESH

...RESPONDENT

ORDER

1. Against the judgment of the High Court reversing the order of acquittal passed by the trial court for the offenses punishable under Section 18, 20, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') the present appeal is filed. We have been informed at the bar that the other two co-accused died in incarceration.
2. The case of the prosecution, in a nutshell, is that by chance the prosecution witnesses, being the police officers, found a stationed car, broken down and upon a search unearthed 2.1 kg of '*charas*' and 1.5 kg of '*opium*'. The investigation conducted further led to the appellant who was arrested.
3. Before the trial court nine witnesses have been examined, while the defense put forth six witnesses to establish that the vehicle was stationed at a different place, got repaired and thus, the story of the prosecution deserves to be rejected.
4. The trial court after undertaking a laborious exercise held that the alleged recovery was doubtful as the place in which the vehicle was stationed could not be proved to the satisfaction of the court. It was actually found at the village named *Didi* situated at about 6 kilometres from the place of alleged recovery. The driver of the

taxi in which the prosecution witnesses travelled to arrest and secure the accused has not been examined. The prosecution did not produce any receipt/logbook to prove the usage of the vehicle. There are material contradictions in the evidence adduced by the prosecution witnesses. The seizure memo and the first information report contain unexplained interpolations. The presence of the PW9, another police officer, at the place of occurrence is doubtful. The explanation given for non-examination of any independent witnesses coupled with the reasoning aforesaid created a serious doubt in the mind of the court. Conversely, the court accepted the evidence adduced by the defense.

5. The order of acquittal passed by the trial court was sought to be overturned by the prosecution before the High Court. The High Court found that the discrepancies are natural as they avoid a parroting version through the deposition of the prosecution witnesses. Consequently, the deposition of the witnesses produced by the defense does not inspire confidence. Thus, without assailing the well-merited reasoning of the trial court on several fronts, the High Court placed its faith in the testimony of the police officers to prove the case of the prosecution.
6. Counsel appearing for the appellant submitted that a fundamental error has been committed by the High Court in reviewing a decision which constitutes more than a possible or a plausible view. The conclusions arrived at by the trial court on the basis of legal reasoning cannot be overturned without holding to the contrary. Such an approach by the High court is contrary to law particularly when the trial

court had the advantage of seeing and listening to the statements made by the witnesses. In support of his contention, the learned counsel has drawn the attention of this Court to a decision of this Court in the case of *Basappa v. State of Karnataka*, (2014) 5 SCC 154.

7. Learned counsel appearing for the State submitted that there is nothing wrong in the process adopted by the High Court. Appreciation by the higher court is permissible not only in law but also in fact. There is no need to doubt the testimony of the police officers. The prosecution witnesses have clearly stated the reason for their inability to get independent witnesses.
8. We do not wish to reiterate the settled position of law on the role required to be played by the appellate court. In a recent judgment in *Mohan alias Srinivas alias Seena alias Tailor Seena v. State of Karnataka*, 2021 SCC OnLine 1233, this Court held as under:

“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused

after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.”

9. We have carefully considered the approach of the High Court vis-à-vis the judgment of the trial court. As stated, the trial court has done a meticulous job in considering all the materials including the deposition of the witnesses. The High Court, in our considered view, has wrongly overturned the well-merited judgment of the trial court rendered on cogent and concrete reasoning. The reasons behind the conclusion arrived at by the trial court have not been found to be illegal.

10. This is a case of a police patrol accidentally finding a stationed car without occupants containing narcotic substances. It defies logic as to how the accused person would abandon the car after it is broken down along with the substances inside having commercial value. If the said story is true, the prosecution would not

have gone in search of them in a taxi instead of waiting in the said place to apprehend. Not only driver of the taxi who is also a police officer has not been examined, but also the actual driver and its owner. The fact that the vehicle broke down though at a different place, as projected by the defense is not in dispute. The defense witness has categorically stated that he was inquired by the investigating officer and it is he, who did the repair work.

11. From the aforesaid discussion, we have no hesitation in holding that the prosecution has not established its case beyond reasonable doubt particularly when the infirmities pointed by the trial court are not found to be either incorrect or untrue. The appeal accordingly stands allowed by setting aside the order of conviction rendered by the High Court leading to the confirmation of the order of acquittal by the trial court. The appellant shall be released forthwith if not required in any other case.

.....**J.**
(SANJAY KISHAN KAUL)

.....**J.**
(M.M. SUNDRESH)

New Delhi,
March 08, 2022.

ITEM NO.105

COURT NO.6

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 218/2017

RAMESH

Appellant(s)

VERSUS

THE STATE OF HIMACHAL PRADESH

Respondent(s)

Date : 08-03-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr. Rishi Malhotra, AOR

For Respondent(s) Mr. Vikas Mahajan, Sr. Adv./AAG
Mr. Vinod Sharma, AOR
Mr. Vidit Anand, adv.
Mr. Anil Kumar, Adv.
Mr. Arun Singh, Adv.
Mr. Salik Ram, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal stands allowed by setting aside the order of conviction rendered by the High Court leading to the confirmation of the order of acquittal by the trial court in terms of the signed order.

The appellant shall be released forthwith if not required in any other case.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)

[Signed order is placed on the file]