

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1284 OF 2003

STATE OF RAJASTHAN

...APPELLANT

VERSUS

DULICHAND

...RESPONDENT

O R D E R

The respondent-Dulichand, was convicted under Section 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and sentenced to undergo 10 years rigorous imprisonment with a fine of Rs.1,00,000/- (Rupees One lakh only), in default whereof, to undergo further imprisonment for one year, by the Special Judge, Jhalawar in the State of Rajasthan.

This conviction and sentence was challenged by the accused by way of an appeal in the High Court and the High Court has vide its judgment dated 7th January 2002 allowed the appeal, set aside the judgment of the Special Judge and acquitted the accused. The State of Rajasthan is before us by way of special leave.

We have heard the learned counsel for the parties and gone through the record. We find that two primary reasons which weighed with the High Court in acquitting

the accused-respondent were:-

- (i) that there was no evidence to suggest that he was in conscious possession of the narcotic substance; and
- (ii) it appeared that the opium, after recovery, had not been kept in safe custody even as per the prosecution story itself.

We see from the judgment of the High Court that the observations are fully justified in so far as the evidence is concerned. It is the conceded position that the house from where the narcotic substance had been recovered belongs to Bharmal, the father of the respondent, and that the house consisted of four rooms and the narcotic substance had been recovered from the fourth room which was said to be in possession of the respondent. We, however, see from the judgment that the opium had been recovered at point 'K' which was at a distance of 40 feet from Dulichand's room and the finding on this aspect is that the part of the house around point 'K' was being used by all the family members as a way of coming and going and was not accessible only to the respondent. We have also gone through the evidence of P.W.3 - Raghunath Pandey, P.W.7 - Prabhu Dayal, the last named, an official witness from the Department and a member of the checking party, who went so far as to state that he was not aware as to the place from where the narcotic substance had been recovered and did not even know that the room belonged to the respondent, and finally, P.W. 4 - Bhuwana, one

of the recovery witnesses who along with P.W. 6 - Bharmal, the father of the respondent were declared hostile as they did not support the prosecution. We see from a reading of their statements that there is nothing to suggest that the respondent was in exclusive possession of the room at point 'K' where the alleged recovery had taken place.

We have also considered deeply the second reason advanced by the High Court. This is based on the premise that the seal under which the samples had been sealed had been tampered with, which destroyed the sanctity of the recovery. We have gone through the evidence of P.W.9 - Bhikam Chand Gupta to whom the samples had been handed over for safe-keeping and observe that he was not the in charge for the Malkhana as the Malkhana was under the charge of the District Opium Officer, who has not been produced as a witness. We are of the opinion that the evidence of P.W. 2 - Sankta Prasad Choudhary, P.W. 8 - Satyaveer Singh and P.W. 9 - Bhikam Chand Gupta to depose on the sanctity of the sample, therefore, loses all significance.

We are also cognizant of the fact, that we are dealing with an appeal against acquittal, at the instance of the State, and interference in such a matter must be rare and far between.

We, thus, do not find any merit in this appeal

which is, accordingly, dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(J.M. PANCHAL)

NEW DELHI
AUGUST 11, 2009.

