

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.788 OF 2006

MUNISH KUMAR . . . APPELLANT (S)

VERSUS

STATE OF HIMACHAL PRADESH . . . RESPONDENT (S)

WITH

CRIMINAL APPEAL NO.789 OF 2006

RAVI KUMAR . . . APPELLANT (S)

VERSUS

STATE OF HIMACHAL PRADESH . . . RESPONDENT (S)

WITH

CRIMINAL APPEAL NO.790 OF 2006

JIVAN DASS . . . APPELLANT (S)

VERSUS

STATE OF HIMACHAL PRADESH . . . RESPONDENT (S)

O R D E R

1. These appeals are directed against the judgment and order passed by the High Court of

Himachal Pradesh at Shimla in Criminal Appeal No.466 of 1999, dated 27.03.2006. By impugned judgment and order, the High Court has reversed the judgment of acquittal passed by the Trial Court and convicted and sentenced the appellants under Section 61(1)(a) of the Punjab Excise Act, 1914 (for short, "the Act").

2. The brief facts of the prosecution case are that on 15.04.1994 around 12:30 p.m., the appellants were found to be in possession of and transporting 13 cartons containing liquor bottles without permit in Dharamshala, Himachal Pradesh. The cartons containing liquor bottles were seized by the investigating officer in the presence of accompanying police officials and an independent witness. One bottle from each carton was set apart as sample and sealed. After lodging of the First Information Report, the samples in a sealed condition were sent for chemical analysis. On

receipt of the Chemical Examiner's Report affirming the contents of the sample bottles as alcohol, and completion of investigation, a chargesheet was filed against the appellants under Section 61(1)(a) of the Act. Thereafter, the case was committed to Trial.

3. In order to substantiate the charges framed against the accused persons, the prosecution examined 5 witnesses and produced 9 documents and one material object. While no evidence was led by the defense, the statements of the appellants were recorded under Section 313(1)(b) of the Code of Criminal Procedure, 1973 (for short, "the Code") wherein they stated that they had been falsely implicated.

4. The Trial Court considered the evidence on record as also the arguments of the parties and noticed that the case of the prosecution suffered from several material infirmities, in particular the

lack of credible independent witnesses. Accordingly, the Trial Court concluded that the guilt of the appellants had not been established beyond reasonable doubt, and by judgment and order dated 20.04.1999 the Trial Court acquitted the appellants.

5. Aggrieved by the order of acquittal passed by the Trial Court, the respondent-State carried the matter in appeal before the High Court on the grounds, *inter alia*, that the lack of independent witnesses did not itself vitiate the entire prosecution case and that conviction can be based solely on the evidence of the police. The High Court has re-appreciated the entire evidence on record and observed that the appellants had failed to support their defense of false implication with sufficient evidence. The High Court has observed that there was no reason to doubt the testimonies of the prosecution witnesses. Accordingly, the High Court allowed the appeal, set aside the order of acquittal

of the Trial Court and convicted the appellants for the offence under Section 61(1)(a) of the Act.

6. Being aggrieved by the said judgment and order passed by the High Court, the appellants are before us in these appeals.

7. We have heard the learned counsel for the parties to the *lis*.

8. The incident is of the year 1994 and more than 21 years have elapsed from the date of the incident. Further, Section 61(1) of the Act does not provide for a minimum punishment. After going through the judgment and order passed by the High Court as well as the Courts below and in the peculiar facts and circumstances of the case, we are of the considered view that the ends of justice would be met if we modify the sentence imposed on the appellants by reducing it to the period already undergone by them. Accordingly, we modify the

sentence imposed on the appellants by reducing it to the period already undergone by them.

9. The Criminal Appeals are disposed of accordingly.

Ordered Accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

NEW DELHI
SEPTEMBER 01, 2015.

ITEM NO.11

COURT NO.1

SECTION IIB

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). 788/2006

MUNISH KUMAR

Appellant(s)

VERSUS

STATE OF HIMACHAL PRADESH

Respondent(s)

WITH

Crl.A. No. 789/2006Crl.A. No. 790/2006

Date : 01/09/2015 These appeals were called
on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Iftexhar Ahmad, Adv.
 Mr. Anil Nag, Adv.

For Respondent(s) Mr. Suryanarayana Singh, Sr. Addl.A.G.
 Ms. Pragati Neekhara, Adv.

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

The appeals are disposed of in terms of
the signed order.

As a sequel to the above, pending
interlocutory application(s), if any, are
disposed of.

(Neetu Khajuria)

Sr.P.A.

(Signed order is placed on the file.)

(Vinod Kulvi)

Assistant Registrar