**Decision Number:** 8243

**Decision Date:** 2066-05-14 (2009-08-29)

**Final Decision:** Supreme Court, Joint Bench

**Pre-Decisions:** Kapilvastu District Court, Butwal Appellate Court

**Petitioner:** Nepal Government (Plaintiff)

**Respondent:** Magare Khan (Defendants)

**Key Words:** Narcotics (Brown Sugar), Control Act, Evidence, Confessional Statement, Criminalization, Mens Rea, Corpus Delicti, Prosecution

## Key Points:

1. Legislative power to control narcotics is within the broader interest of society.

2. In criminal cases, the prosecution must first prove the crime occurred (Corpus Delicti) before proving the accused committed it.

3. Association with drug dealers alone does not prove guilt; solid evidence is required.

4. Suspicion, however strong, cannot replace evidence.

5. The state must have concrete evidence before prosecuting; otherwise, the Attorney General should not appeal acquittals.

6. Intention (Mens Rea) is important

## Facts of the Case

\* A police search of Santosh Kumar Kashaudhan found 15 packets of brown sugar hidden in a tobacco container.  
\* Kashaudhan stated he had been using brown sugar for 10-12 years.  
\* He claimed to have purchased 20 packets for Eight Hundred Rupees from Sullu Kahar.  
\* Mangare Khan was found with one packet of brown sugar.  
\* Rajesh Sharma was arrested with one packet of brown sugar.  
\* Multiple individuals provided statements about purchasing and consuming narcotics from various dealers.  
\* Laboratory tests confirmed the presence of heroin in some of the seized substances but not in the substance recovered from Mangare Khan.

## Petitioner's Contention

The lower court’s decision to acquit some defendants was flawed. Magare Khan confessed to drug use and dealing, which should have been grounds for conviction. Other defendants were implicated in drug-related activities based on their statements and witness testimonies.

## Respondent's Contention

Defendants denied the charges in court, claiming their confessions were not voluntary. Witnesses testified that some of the accused were not involved in drug use or dealing. The substance recovered from Magare Khan was not heroin.

## Legal Issues

1. Whether the defendants were involved in the purchase, sale, or consumption of narcotics.

2. Whether confessional statements made to police are sufficient evidence for conviction in the absence of other corroborating evidence.

3. Whether dealing in fake narcotics is criminalized.

4. What constitutes sufficient evidence for prosecuting individuals in narcotics cases.

## Judgment

The Supreme Court upheld the appellate court’s decision to acquit Om Prakash Kahar and Kaushal Kandu Gupta, finding that their confessions to the police were not supported by any independent evidence. The court reversed the appellate court’s decision regarding Magare Khan, sentencing him to two years and six months imprisonment and a fine of Two Thousand Five Hundred Rupees, because he confessed to the crime and there was other evidence against him.

## Significance

The decision emphasizes the importance of independent evidence in narcotics cases and criticizes the prosecution's reliance on police confessions alone. It highlights the need for thorough investigations and the protection of individual liberties. The court also clarified that dealing in fake narcotics is a criminal offense under the Narcotics Control Act 2033. Relevant legal provisions cited include:  
\* Interim Constitution of Nepal, 2063, Articles 12(2), 135(2)  
\* Narcotics Control Act, 2033, Sections 4, 14, 17(a)  
\* Evidence Act, 2031, Sections 3, 4, 9, 24  
\* Government Cases Act, 2049, Sections 4, 7, 12  
\* Muluki Ain, Sections 184(a), 185(a)  
\* ICCPR, Article 14

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