

Harbansingh Sardar Lenasingh and

Vs

The State of Maharashtra and Others

Criminal Appeal No. 112 of 1969

(J. M. Shelat, P. Jagmohan Reddy, H. R. Khanna JJ)

24.02.1972

JUDGMENT

KHANNA, J. -

1. This is an appeal by Harbansingh Sardar Lenasingh and Wali Mohammad Noor Mohammad Makhnojiia on certificate granted by the Bombay High Court against the judgment of that court affirming on appeal the conviction of the appellants under Section 135 of the Customs Act, 1962, and Section 23 of the Foreign Exchange Regulation Act, 1947, and the sentence of rigorous imprisonment for a period of three years on the former count and one year on the latter count. The sentences on the two counts were ordered to run concurrently for each of the appellants. Wali Mohammad died during the pendency of this appeal, and the appeal insofar as it relates to him has consequently abated. We are not concerned with the appeal of Harbansingh alone, hereinafter referred to as the appellant.

2. The prosecution case was that on March 21, 1965, Anant Sadasiv Wagh (P.W. 1), who was in those days working as Deputy Superintendent, Central Excise and Customs, received telephonic intimation from his superior officer Jokhi that contraband goods were likely to be imported near Bassein and that Wagh should get ready. A car thereafter sent to the house of Wagh. Wagh accompanied by Jokhi, Inspectors Jadhav and Surti and one constable left Vadala at about 10 p.m. and reached Bassein level crossing at about 1.30 a.m. They stopped their car near the wicket gate of the level crossing. The car was facing towards Vajreshwari when it was parked near the wicket gate. Its lights were then put off. At a distance of 4 or 5 furlongs from the wicket gate towards Vajreshwari side, there is a bridge across a creek on that road. About half an hour after their arrival, Wagh P.W. and his companions saw the lights of a car coming from Vajreshwari side. The said car after arrival near the bridge put off its lights and turned towards a kutcha track leading to salt pans. The car after that again turned towards the road and stopped at some distance from the road. Wagh and his companions waited for 10 or 15 minutes. As they did not notice any movement during this interval, they took their car towards the bridge. When they reached near the bridge, they found that the engine of the car on the kutcha track had been kept running. Shortly thereafter, the car in the kutcha track started moving but it was obstructed on the main road because the car in which Customs officials were present was placed across the road. Wagh and other Customs officials then got down from their car went up to the car which had been intercepted. The driver was at the steering wheel, while Harbansingh and Wali Mohammad accused were found sitting on the back seat. Inspector Surti removed the ignition key of the car of the accused. Wagh and Jokhi questioned the two accused as to why they had come there. The two accused kept silent for some time and, thereafter, Wali Mohammad said that there was gold in the dicky of the car. The dicky was not locked, and on opening it, Wagh and other members of the party saw four gunny bundles in the

dicky. The gunny bags were with mud.

3. Jokhi then told Wagh P.W. to procure some panchas. Wagh accordingly went to Bassein town at a distance of four miles from the wicket gate. In Bassein, Wagh contacted Inspector Pandit of Customs Department who resides in Bassein. Pandit then brought two panchas Abhyankar and Kane (P.W. 2). It was past 4 a.m. by the time Wagh returned with the panchas. The dicky was opened and the gunny bags were shown to the panchas. The tyre marks of the car of the accused were also shown to the panchas. It was thereafter decided that the panchanama should be prepared at Bombay and not at that lonely spot at an odd hour. The two accused were then made to sit in their car. Three of the Customs officers went with the accused in that car, while the remaining Customs officials and panchas went in the other car. The two cars reached the Central Excise and Customs Office in Churchgate, Bombay at about 9 a.m. The four gunny bags were then taken to the office along with the two accused and the panchas. On opening the gunny bags, it was found that there were two jackets in each of the three gunny bags and one jacket in the fourth gunny bag. There were gold chips in all the seven jackets. The gold chips had two separate markings. One of the markings was "JOHNSON MATHEY LONDON 99.90 10 TOLAS", while the other marking was "M. ROTHSHILD & SONS 99.90' 10 TOLAS". There were in all 692 chips and they weighed about 6,920 tolas. The value of gold according to the then market-rate was about Rs. 6,75,000. The markings on the chips showed that the gold was of foreign origin. Such chips were also not prepared in India.

4. P.W. 4 James Robb, Senior Superintendent of Customs, who is authorised to record statements under Section 108 of the Customs Act, recorded the statements of the driver of the car of the accused as well as those of Wali Mohammad and Harbansingh accused. Statement Ex. 18 of Wali Mohammad was recorded from 4 to 5 p.m. and it was got written in Gujarati from Sub-Inspector Patel. Statement Ex. 17 of Harbansingh accused was recorded from 5 to 6 p.m. in English and it was got written from Rane, Deputy Superintendent of Central Excise. The statements were read over to the accused and were signed by them. The two accused were thereafter put under arrest. On the following day they were produced before the magistrate.

5. In his statement Ex. 17 Harbansingh accused-appellant, with whom we are concerned, traced his life from 1948 onwards and the different avocations to which he had taken. The appellant also mentioned as to how he had got acquainted with Wali Mohmamad in a cinema house. According further to the appellant, he met a Sindhi gentleman on March 17, 1965, in a cold drink house near Crawford Market, Bombay. The appellant, who was in those days doing some business by purchasing motor car spare parts from Chor Bazar, was then told by the Sindhi gentleman that the appellant would have Rs. 500 if he could arrange to bring some parts from Bassein side. The appellant undertook the task. Referring to the talk with the Sindhi gentleman and the subsequent events, the appellant stated as under :

"He explained to me how and where to go and how the delivery would be made. He said that two fishermen will give the delivery. He asked me to reach there at mid-night of March 21, 1965. Accordingly I met Wali Mohammad at his house yesterday morning and told him to make necessary arrangement for a vehicle and explained the job to be performed. He agreed. He, myself and the driver MRX 7435 - Vaxhall - proceeded from near about Apsara Cinema on Lemington Road at about 10.30 p.m. on March 21, 1965, reaching the appointed place i.e., on bridge near Bessein Railway crossing at about 2 a.m. on March 22, 1965. We asked the driver to dim the light and hoot the horn. We i.e., myself and Wali Mohammad got down from the motor car and told the driver to proceed a bit ahead and turn the car and come

where we had got down. The car accordingly went ahead and turned back where we were waiting. In the meanwhile we went down the road and contacted the fishermen and ascertained that they had brought the gold. I told the driver not to get down from the car and to keep the engine running. The four packets containing gold were placed in the dicky of our vehicle. We got in and started. As soon as we started we were intercepted by the Customs officers. They inquired as to what was there in the car. As our game was up, we thought to give the correct answer and therefore told them that there was gold consignment in our vehicle. The officers took away the keys of our vehicle and called panchas. With the panchas we were brought to Central Excise Office, Churchgate, Bombay, where the gold and vehicle were seized under a Panchanama. I and Wali Mohammad had brought this gold for sale and profit."

6. Jokhi, after obtaining the sanction of the Collector of Central Excise, filed complaint, dated November 3, 1965, against the two accused for their prosecution.

7. At the trial the appellant admitted that the car in which he and Wali Mohammad accused were present was intercepted at about 2 a.m. on March 22, 1965, near the bridge of Bassein creek by the party of Customs officials. The appellant also admitted that when Wagh P.M. questioned them as to why they had come there and what was in the car, the appellant and Wali Mohammad had kept quiet. In answer to the question that Wali Mohammad had after some pause stated that there was gold in the dicky of the car, the appellant stated that he did not know. The appellant admitted that he had been shown the gunny bags in the dicky, but, according to him, he did not know about that. The fact that the two panchas were called and the car was taken to the Central Excise Office, Bombay was also admitted by the appellant. The appellant further admitted that there were some markings in English on the gold chips which were taken out of the jackets. According to the appellant, he did sign statement Ex. 17 but he added that his statement had been recorded twice. The version of the appellant was that he got into the car in question at Bassein railway station as the local train had earlier left. The driver of the car then told the appellant that he would go via Bhiwandi. The car was stopped on the way and was subsequently taken to the Excise and Customs Office in Bombay. According to the appellant, he had no idea about the contents of the dicky. No evidence was produced in defence.

8. Learned Additional Sessions Judge, Thana relied upon the evidence of Wagh and Surti P. Ws., according to whom gold chips had been recovered from the dicky of the car of the accused in the circumstances mentioned above. Reliance was further placed upon the statements made by the two accused to Robb P.W. It was held that the case against the two accused under Section 135 of the Customs Act 23 of the Foreign Exchange Regulation Act had been proved. They were accordingly convicted and sentenced as above.

9. On appeal three contentions were advanced on behalf of the appellant before the High Court. One of the contentions was that there had been violation of the provisions of Section 104 of the Customs Act, according to which the accused should be produced before a magistrate without unnecessary delay. The other two contentions were that the confessional statements of the two accused recorded by Robb P.W., were not true, and that in any case, they could not be acted upon without sufficient corroboration. All the three contentions were repelled by the High Court and in the result, the appeal was dismissed.

10. Mr. Chari in appeal has not questioned the admissibility of the confessional statements of the accused which were recorded by Superintendent Robb. The matter indeed is concluded by the

decision of this Court in the case of Romesh Chandra Mehta v. State of West Bengal, ((1969) 2 SCR 461 : AIR 1970 SC 940 : 1970 Cri LJ 863) wherein it has been held that the statements recorded by an officer of Customs under the Customs Act are admissible in evidence and are not hit by Section 25 of the Indian Evidence Act or Article 20(3) of the Constitution. It is, however, urged by Mr. Chari that there is intrinsic evidence to show that the part of the confessional statement Ex. 17 of the appellant wherein there is reference to the appellant and Wali Mohammad having contacted fishermen and about the bringing of the gold, was not made by the appellant but was introduced by Customs officers. As such, according to the learned counsel, the above statement should be held to be not reliable and the conviction of the appellant should not be based upon it.

11. We find ourselves unable to accede to the above contention. Robb (P.W. 4), who is Senior Superintendent of Customs, has deposed that he recorded statement Ex. 17 of the appellant. According to the witness, the appellant signed every page of the statement. The statement was then attested by the witness. No question was put to Robb P.W. suggesting that any portion of statement Ex. 17 had been inserted by the witness or any other Customs officer. In the circumstances, the contention now advanced on behalf of the appellant that part of statement Ex. 17 was inserted by the Customs officers without the appellant having made that part of the statement would smack of afterthought. It is, no doubt, true that the appellant mentioned gold in statement Ex. 17 only after the alleged contact with fishermen, while in the earlier part of the statement there is reference only to spare parts, but that circumstance would not warrant the inference that the later part of the statement containing reference to gold was introduced by Senior Superintendent Robb. Robb had to record the statement as made by the appellant and if the appellant chose not to refer to gold in the earlier part of the statement, that fact would not discredit the latter part of the statement about the bringing of the gold.

12. Reference has been made by Mr. Chari to the fact that, according to the evidence of Wagh P.W., it was Wali Mohammed who had mentioned that there was gold in the dicky of the car, while, in the course of statement Ex. 17 the appellant is alleged to have stated :

"As our game was up, we thought to give the correct answer and therefore told them that there was gold consignment in our vehicle."

The appellant, according to the learned counsel, could not have used the word "we" when the remark about the gold in the dicky was actually made by Wali Mohammad. In this respect, we are of the view that there was nothing unusual in the use of the word "we" in the above sentence by the appellant even though the actual words about the gold in the dicky had been spoken by Wali Mohammad accused. The circumstances of the case show that the two accused were acting in concert and the fact that the remark about the gold in the dicky had been made by Wali Mohammad and had not been repeated thereafter by the appellant would not make the use of the word "we" in the above context improbable.

13. It has also been pointed out by Mr. Chari that Rane, Deputy Superintendent of Central Excise, from whom the statement of the appellant was got recorded by Robb, has not been examined as a witness. This fact, in our opinion, would not materially affect the case as statement Ex. 17 was written under the supervision of Robb P.W. and was signed by him. Robb's evidence shows that statement Ex. 17 represents what had been stated by the appellant.

14. Apart from statement Ex. 17, we find that the other circumstances of the case clearly point to the guilt of the appellant. Evidence of Wagh P.W. shows that the appellant was found present on the

back seat of the car from the dicky of which gold was recovered. It is also in evidence that the said car before the recovery of gold was brought at an odd hour of 2 a.m. and taken on the kutchra track towards salt pans near Bassein bridge. The car was thereafter parked on the kutchra track near that bridge and its engine was kept running. After the car was intercepted the Customs officials interrogated the appellant and Wali Mohammad accused. No statement was then made by the appellant that he did not know about the presence of gold in the dicky. The fact that the mud on the gunny bags was wet shows that the gunny bags had been placed on the dicky shortly before they were examined by the Customs officials. All these incriminating circumstances, in our opinion, clearly point to the guilt of the appellant.

15. We are satisfied that the conviction of the appellant was fully justified in view of the material on record. We, therefore, uphold his conviction. We see no cogent ground to interfere with the sentence and dismiss the appeal.

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