

Chaganraju

Vs

State of Andhra Pradesh

Criminal Appeal No. 258 of 1973

(Syed M. Fazal Ali, A. D. Koshal JJ)

23.01.1979

JUDGMENT

FAZAL ALI, J. –

This appeal by special leave is directed against the judgment of the High Court of Andhra Pradesh by which the convictions of the appellant under Section 85(ii) of the Gold Control Act and under Section 135(b)(ii) of the Customs Act have been upheld and the sentence imposed by the trial Court has been enhanced on an application made by the State for enhancing the sentence. Mr. Chitale appearing for the appellant has submitted a short point which is that there is no legal evidence against the appellant to show that he was either in possession of the gold articles recovered from the compound of his house or he had any knowledge of the same. It is not disputed that the gold articles were recovered from a pit which was dug somewhere in the compound of the house of the appellant. It appears that the customs authority raided the house of the appellant on February 6, 1969 at about 11 a.m. and after they discovered a site near the Boppas tree they started digging it and after digging the same, the gold articles mentioned above were found. A Majahr prepared at the spot shows that when the appellant was asked about these articles he clearly stated that he did not know about this gold nor did he know who had concealed the gold. Thus at the very first instance, the appellant had denied either the possession or the knowledge that the aforesaid articles had been hidden in the compound. Later at about 3 p.m. Ganeshlal Sopaji who was interrogated at that time, admitted that he had come to the house of the appellant in the afternoon, dug the ground and had put the articles thereunder. This statement was made in the presence of the appellant. After having heard the statement of the appellant, the customs officers questioned the appellant on which he repeated that Ganeshlal Sopaji had hidden the articles in the vacant side of his house. The appellant made it clear that he was not in his house and had spent a few nights in the hospital. He saw Ganeshlal Sopaji at the house only at 3 p.m. He further stated that Ganeshlal Sopaji had not taken his permission for hiding the gold in his house. In our opinion, not much can be made out of this statement which does not at all prove that the appellant had any knowledge that the gold was buried in his house. The knowledge of the gold referred to in the statement of the appellant Ex. P. 25 comes to light only after he had heard Ganeshlal Sopaji stating about concealing the gold in his house. Even so the appellant made it clear in the statement Ex. P. 25 that Ganeshlal Sopaji entered the house and concealed the articles without his permission. In these circumstances, therefore, we are not in a position to agree with Mr. Rao that the conviction of the appellant can be founded on the basis of the Statement Ex. P. 25. Moreover, it appears that Ganeshlal Sopaji who had clearly admitted his guilt was prosecuted on a supplementary trial and convicted. There is no evidence to show any previous collusion or conspiracy between Ganeshlal Sopaji and the appellant. For these reasons, therefore, the prosecution has failed to prove the ingredients either of Section 85(ii) of the Gold Control Act or Section 135(ii)(b) of the Customs Act. In these circumstances, therefore, the High

Court was in error in convicting the appellant without there being any legal evidence to prove the charges framed against the appellant. The appeal is accordingly allowed. The conviction and sentence passed on the appellant are set aside and the appellant is acquitted of the charges framed against him.

</html