

Mehtabsingh Gulati

Vs

State of Gujarat and Another

Criminal Appeal No. 341 of 1979

(A. M. Ahmadi, Smt. M. S. Fathima Beevi, V. Ramaswami – II, N. M. Kasliwal JJ)

16.01.1991

ORDER

1. The appellant before us is original accused 14. He was convicted by the learned Additional Chief Judicial Magistrate, Bulsar under Section 135(1) of the Customs Act, 1962 and was sentenced to rigorous imprisonment for five years and to pay a fine of Rs 5000, in default, to suffer rigorous imprisonment for nine months. He appealed against his conviction to the High Court which affirmed the conviction by the impugned judgment dated March 9, 1979. Aggrieved by the said decision of the High Court he has approached this Court under Article 136 of the Constitution.

2. We have heard learned counsel for the appellant/accused at considerable length and we have perused the evidence to which he invited our attention carefully. In particular we have read the evidence of PW 4 Manubhai and PW 5 Abdul Gafur along with their previous statements recorded under Section 108 of the Customs Act, Ex. 56 dated March 6, 1970 and Ex. 39 dated March 5, 1970, respectively. We have also perused the statement of Bashir (since deceased), original accused 13 produced at Ex. 61 dated April 2, 1970. In addition thereto we have taken note of the telephone tickets in respect of the calls made by Bashir from Bulsar from his telephone No. 595 to the telephone bearing No. 538262 installed at the residence of the appellant/accused in Bombay as well as the calls made from the Bombay telephone to Bulsar and Dubai. In addition thereto our attention was invited to the evidence of the two Customs Officers PW 2, Durgeshbhai and PW 3, Chinnubhai. Having taken into consideration all this evidence and the summary of the circumstances set out in the judgment of the High Court and having appreciated the submissions made by Mr Lalit, learned counsel for the appellant, we are inclined to think that there is no such infirmity in the appreciation of the aforesaid prosecution evidence by the two courts below which would demand our interference under Article 136 of the Constitution. Since we are in general agreement with the view taken by the two courts below insofar as the appreciation of evidence is concerned, keeping in mind the caution which the court must administer unto itself while appreciating accomplice evidence and the rule of prudence to look for corroboration in material particulars thereto, we do not think it necessary to traverse the facts and reappraise the evidence. Suffice it to say that having regard to the facts and circumstances of the case and the law applicable thereto we think that the conviction of the appellant is unassailable. We, therefore, do not see any merit in this appeal.

3. Mr Lalit, however, submitted that the incident is of March, 1970, the complaint was lodged on April 28, 1974 and the appellant has been on bail throughout except for a short period of one month or thereabouts. We should not send the appellant to jail after a lapse of about 11 years from the date of the High Court judgment. He also pointed out that by now the appellant should be aged about 65 years and hence it would be too harsh to send him to prison. While we do appreciate that sending the appellant to prison after this passage of time may cause disturbance in his family life, we cannot

overlook the nature of his crime and its impact on society. We are, therefore, not inclined to think that one month's imprisonment would serve the ends of justice even if we are to enhance the fine. We, however, take into consideration his advanced age and the passage of time and reduce his substantive sentence from five years rigorous imprisonment to three years rigorous imprisonment and enhance the fine from Rs 5000 to Rs 20,000 and in default sentence to one year should he fail to pay the fine. In other words we substitute the sentence for the one passed by the trial court and confirmed by the High Court by rigorous imprisonment for three years and a fine of Rs 20,000, in default of payment of fine, rigorous imprisonment for one year. The appeal is allowed to the above limited extent only. The accused will surrender to his bail within one week. His bail bonds are cancelled.

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