

Superintendent of Customs

Vs

Bhanabhai Khalpabhai Patel and another

Criminal Appeal No. 846 of 1981

(S. R. Pandian, Kuldip Singh JJ)

06.03.1992

JUDGMENT

1. The Superintendent of Customs, Valsad, Gujarat has directed this Criminal Appeal on being aggrieved by the judgment of the High Court rendered in Criminal Revision Application No. 400/79 allowing the revision and setting aside the judgment. of the first Appellate Court confirming the judgment of the High Court convicting the first respondent (who was arrayed as accused No. 6) before the trial Court.

2. The respondent No. 1 along with seven others. took the trial for the offence under S. 135(i)(b) of the Customs Act, 1962 on the following allegations:

On the intervening night of 24th and 25th August, 1971 the Customs Patrolling Party on a tip off intercepted a jeep bearing Registration No. GDB 267. But the driver of the jeep apprehending some trouble stopped the vehicle at a safe distance from the waiting Customs Patrolling Party and thereafter the driver and inmates of the jeep escaped under the cover of darkness. The Customs Patrolling Party searched the abandoned jeep and found nine packages of wrist watches of foreign marks. The contrabands were taken into custody. After investigation, a complaint was filed before the Judicial Magistrate, First Class in the year 1975 which case was thereafter transferred to the Additional Chief Judicial Magistrate, First Class at Valsad. Though according to the prosecution, there were seventeen persons involved in the occurrence, the complaint was filed only against nine as rest of the eight accused were absconding. Subsequently, the case as against the second accused was withdrawn and he was put up as a witness on the side of the prosecution. Thereafter, as earlier pointed out, the trial proceeded only against eight accused inclusive of the first respondent who was arrayed as accused No. 6.

3. Though the prosecution examined several witnesses., it completely rests its case only upon two pieces of the evidence namely the evidence of PW 7 (who was originally the second accused in the complaint filed before the trial Court) and on the statements recorded from AI and A3 under., S. 108 of the Customs Act.

4. The trial Court convicted accused Nos. 1, 3, 4, 5 and 6 and sentenced them to various terms of imprisonment and acquitted accused Nos. 7 8, and 17 in the complaint. It may be noted that the respondent who was accused No. 6 was sentenced to rigorous imprisonment for 5 years and to pay a

fine of Rs. 500/ -. Challenging the judgment of the trial Court, the first respondent filed Criminal Appeal No. 69 of 1978 before the District Judge, Valsad whilst three other convicted persons filed their appeal in Cr. A. No. 70 of 1978. The appellate Court dismissed the Criminal Appeal No. 69 of 1978 filed by the first respondent and partly allowed and partly dismissed criminal appeal No. 70 of 1978. On being aggrieved by the judgment of the first Appellate Court, the first respondent herein filed his criminal revision application No. 400 of 1979 before the High Court which has allowed the revision. Hence this appeal by Superintendent of Customs.

5. According to the prosecution, the jeep which was used for smuggling the contrabands belonged to the first respondent. But it is brought in evidence that this jeep was purchased by the first respondent sometime before in the name of his wife and thereafter he had sold this jeep to accused No. 17 who has been acquitted. The High Court after going to the question about the ownership of the vehicle has found as follows:

"Admittedly, the vehicle at the relevant time was not standing in the name of accused No. 6 as stated by him. He had much earlier purchased in the name of his wife that is accused No. 17 and a few days before the incident, it was sold to accused No. 7 Klkka Sukkar who is acquitted."

6. We have gone through the records and found that the finding of the High Court is not liable to be interfered with since it is the admitted case of the prosecution itself that the jeep has been sold to the acquitted accused No. 7. Coming to the statements recorded from AI and A3 under S. 108 of the Customs Act, the High Court has correctly pointed out that the first Appellate Court was not at all justified in taking those statements of the accused persons as corroborative pieces of evidence to that of witness No. P.W. 7 (who was arrayed initially as accused No. 2 in the complaint). When these two pieces of evidence, namely, the evidence of P.W. 7 and the statements of AI and A3 given before the Customs Officers are eschewed from consideration as correctly pointed out by the High Court there is absolutely no evidence worth mentioning to sustain the conviction of the first respondent as recorded by the trial Court and subsequently confirmed by the first Appellate Court. In fact, the High Court has analysed the evidence adduced by the prosecution in the proper perspective and arrived at a correct conclusion that the prosecution has miserably failed to establish the charge against the first respondent. The judgment of the High Court, in our considered opinion, does not suffer either from manifest illegality or irregularity or perversity. Hence for all the discussions made above, we confirm the judgment of the High Court and dismiss the appeal as devoid of any merit. Appeal dismissed.

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