

Samaalana Abdulla

Vs

State of Gujarat

Criminal Appeal No. 648 of 1991

(M. K. Mukherjee, G. T. Nanavati JJ)

16.11.1995

JUDGMENT

NANAVATI, J.

1. This appeal is directed against the judgment and order dated 13-8-1991, passed by the High Court of Gujarat in Criminal Appeal No. 147 of 1990. The High Court allowed the appeal, set aside the acquittal of the appellant (Accused 1) by the learned Sessions Judge, Kuchchh, in Sessions Case No. 62 of 1988 and convicted him for the offences punishable under Sections 3(1)(a) and 3(1)(c) both read with Section 9 and also under Section 10 of the Official Secrets Act, 1923 (hereinafter referred to as the 'Act').

2. Rayna Alimohamad Hothi (Accused 2) was also tried along with the appellant but it is not necessary to mention the facts relating to him as he has not challenged his conviction.

3. On 2-6-1986 Rayna (Accused 2) was arrested while crossing the Indian Border along with two other Pakistani nationals. During interrogation it was revealed that since about 4 years they used to come to India, meet Alana (Accused 1) and two other Indian nationals and obtain information useful to Pakistani intelligence.

4. Therefore, on 4-7-1986, Police Inspector B. B. Dwivedi obtained warrants under Section 11(2) of the Act for searching houses of the said three Indian nationals. Police Inspector B. B. Dwivedi and the raiding party first searched the residence of Rayna Sahab but nothing was found. Then they searched the house of the appellant and found therefrom a map (Ex. 66) prepared by the BSF, showing a section of an underground pipeline constructed for carrying water from Bhuj to Khavda Border for the Army and BSF personnel. As he was found involved in collecting and/or obtaining a map of the type referred to in Section 3(1)(c) and supplying the same to the said Pakistani nationals who were involved in the activity of spying and as he was also found harbouring Accused 2, he was charged and tried for the offences for which he has now been convicted.

5. In order to prove the recovery of map (Ex. 66) from the house of the appellant, the prosecution examined a panch witness in whose presence the said map was recovered and the two Police Officers who were the members of the raiding party, namely, Police Inspector B. B. Dwivedi and PSI Gohil. The panch witness did not support the prosecution. The learned Sessions Judge therefore held that though it was proved that the house in question belongs to the appellant, the evidence of the Police Officers alone was not sufficient to prove that the map (Ex. 66) was found from that house. He also held that as the prosecution has failed to prove that the said map is a secret document, no offence under Section 3 can be said to have been committed by the appellant.

Therefore, the learned Sessions Judge acquitted the appellant and also Accused 2 who was tried along with him. In appeal, the High Court held that for establishing the offence under Section 3 it was not necessary for the prosecution to prove that the map is a secret document. The High Court also held that from the evidence on record it can safely be said that the map was found from the house of the appellant and that he was consciously possessing the same. The High Court believed that the appellant had obtained the map with a view to help Accused 2 who was engaged in spying for Pakistan. The High Court therefore convicted the appellant as stated above.

6. Two questions arise for consideration in this appeal. The first is : whether the map (Ex. 66) was obtained or collected by the appellant? The other question is : whether the High Court was right in holding that it is not necessary for a conviction under Section 3(1)(c) of the Act that the sketch, plan etc. should be a secret document? The contention raised on behalf of the appellant is that out of the prosecution witnesses examined for proving that the map was recovered from the house of the appellant panch witness Praful Kumar (PW 5) did not support the prosecution. P. C. Sajan (PW 1), P. C. Jasuba (PW 2) and H. C. Lachia (PW 3) who have deposed about recovery of the map from the house of the appellant were standing outside the house and therefore they could not have witnessed what happened inside the house. Only PI B. B. Dwivedi and PSI Gohil have stated that the map was found from the house from a tin trunk kept on a cupboard. Therefore, in the absence of any independent evidence the High Court ought not to have held that the appellant was in conscious possession of the said map particularly when at the time of the raid he was not present in the house. In support of the submissions that the evidence of PI Dwivedi and PSI Gohil should not be regarded as sufficient it was also submitted that they had taken two persons of Bhuj as Panchas to witness the raid instead of taking independent witness from the locality i.e., Village Nana Dinara and thus it becomes apparent that they were selected panch witnesses and therefore to that extent the investigation was not fair and impartial. We find from the evidence that the prosecution has explained why the panch witnesses were taken from Bhuj and not from Nana Dinara. The reason given by the prosecution that Village Nana Dinara where the raid was to be carried out being a small village and inhabited mostly by relations of the appellant, it would have been difficult to find an independent witness from that place was considered and found acceptable by the High Court. Even on close scrutiny of the evidence of PI Dwivedi and PSI Gohil, we see no reason to disbelieve this explanation. It cannot, therefore, be said that the investigation was not fair and therefore independent corroboration was necessary. As nothing was found from the house of Rayna Sahab no complaint was lodged against him. PI Dwivedi had no reason to falsely involve the appellant if really no map was found from his house. Again their evidence cannot be rejected only on the ground that they are police witnesses and were members of the raiding party. Their evidence receives corroboration from the panchnama (Ex. 24). It may be stated that the other panch witness could not be examined by the prosecution because he had expired before his evidence could be recorded. In this connection, it may also be said that Abdulla (PW 4) father of the appellant has stated in his evidence that his son was working as a source for Pakistani intelligence and that he had gone to Pakistan once or twice. The evidence discloses that the house from which the map was found belongs to the appellant. The manner in which it was concealed indicates that the appellant was in conscious possession of the same. As no explanation has been offered by the appellant for possession of the map it has to be presumed, as required by Section 3(2) of the Act, that the map was obtained or collected by the appellant for a purpose prejudicial to the safety or interests of the State.

7. It was next contended that the High Court has misinterpreted Section 3(1)(c) and erroneously held that the sketch, plan, model, article or note or other document or information need not be secret for establishing an offence under the section. In order to appreciate this contention, it is necessary to

refer to Section 3 which reads as follows :

"3. Penalties for spying. - (1) If any person for any purpose prejudicial to the safety or interests of the State -

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States."

The High Court held that the word 'secret' in clause (c) qualifies only the words "official code or password" and not "any sketch, plan, model, article or note or other document or information". The reason given by the High Court is that after the phrase "any secret official code or password", there is a comma and what follows is thus not intended to be qualified by the word 'secret'. The Calcutta High Court in *Sunil Ranjan Das v. State* has also taken the same view. It has held that the word 'secret' in the said section qualifies official code or password and not any sketch, plan, model, article or note or other document or information. This is clear from the comma and the word 'or' which comes after the word 'password'.

8. In our opinion, the view taken by the Gujarat High Court in this case and by the Calcutta High Court in the case of *Sunil Ranjan Das* is correct. We find that the said interpretation also receives support from sub-section (2) of Section 3. While providing for a presumption to be raised in prosecution for the offence punishable under that section the phraseology used by the legislature is "if any sketch, plan, model, article, note, document or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or password is made, obtained, collected, recorded, published or communicated". From the way the said sub-section is worded it becomes apparent that the qualifying word 'secret' has been used only with respect to or in relation to official code or password and the legislature did not intend that the sketch, plan, model, article, note, document or information should also be secret. As we do not find any substance in the second contention raised on behalf of the appellant it is also rejected. In the result, the appeal fails and is dismissed.