

Bhana Khalpa Bhai Patel

Vs

Assistant Collector of Customs Bulsar, Gujarat

(M. M. Punchhi, M. Srinivasan JJ)

18.11.1997

JUDGMENT

SRINIVASAN, J.

1. The appellant is the 8th accused in Criminal Case 240 of 1974 on the file of Judicial Magistrate, 1st Class, Umbergaon. He was held guilty of the offence punishable under Section 135(1-A) and 135 (1-B) of the Customs Act 1962 and also under Section 25 of the Gold Control Act 1968. He was sentenced to undergo rigorous imprisonment for a period of six years and pay a fine of Rs.5,000/- for each of the offences under the Customs Act and rigorous imprisonment for a period of 2 years and pay a fine of Rs.2,000/- for the offence under the Gold Control Act. The sentences of imprisonment were directed to run concurrently. Along with the appellants some other accused were also convicted. There were appeals by the State Government as well as the Assistant Collector of Customs and an appeal by the appellant before the High Court while confirming the conviction, partly allowed his appeal and reduced the sentence of imprisonment under Section 135 (1-A) and 135(1-B) of the Customs Act to five years rigorous +imprisonment. Aggrieved by the said judgment, the appellant preferred these appeals on Special Leave. 2. The main contention of the learned counsel for the appellant is that the entire case of the prosecution as against him is wholly unbelievable as there is nothing on record to connect him with the alleged occurrence. It is submitted that the Courts below have acted on the sole uncorroborated testimony of PW 7 who was originally accused No.9 and convicted on his pleading guilty and had undergone imprisonment for a short period. It is argued that if the evidence of PW 27 who claimed to have worked as a driver under the appellant is eschewed there is no material on record to prove the guilty of the appellant. It is further argued that even if the evidence of PW 27 is considered, it will be seen that no credence can be given to the same as his version is inherently improbable.

3. In the first blush the arguments of the appellant's counsel appear to be attractive but on a perusal of the entire record it is that there is no merit. Briefly, the relevant facts are as follows:-

On receipt of information that contraband was being brought the officers of the Customs Department kept vigil at Village Jampore in Moti-Daman. It was found that two persons (Accused 10 and 11) were coming to the coast from the sea and after interrogation it was learnt that they were to give signals after coming to the coast and after such signals were given, the boat in the midst of the sea would come to the coast on the instructions of the officers. Such signals were given by the said persons but the boat did not come to the coast. The officers saw red signals being flashed from the house of the appellant situated nearby and they went to that house. There were three persons who had flashed red signals. On the next day the officers went to the

boat which was at the mid sea and made a search. Accused Nos. 1 to 7 were on that vessel. It was learnt from the three accused that 16 packets of gold were dumped in the sea at a short distance.

They were taken out and it was found that they contained 3200 tolas of gold. The officers recorded statements under Section 108 of the Customs Act. Ultimately a complaint was filed by the Assistant Collection of Customs, Valsad on 29.3.74 against 11 accused. Accused No. 10 was absconding, Accused No. 3 expired, Accused No. 9 pleaded guilty. He was convicted and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs. 2,000/-. He was in jail from 15.2.76 but there was a remission of sentence and after release he gave evidence as PW 27.

4. According to PW 27 he was working as Driver of the appellant from the year 1966-67. He knew the first accused for more than 15 years. On 31.1.1970 he met the first accused in his house and told him that from a Vessel at 'Kalai' gold was to be transferred to his boat and brought to Jampore School. The Work was to be done for or on behalf of the appellant. According to the witness one person sent by the appellant accompanied him whose name was not known to him. That person was to go to the Vessel so that the gold could be transferred from that Vessel to the boat by the first accused. The said unknown person and Accused No. 1 with his labourers went to the coast and left them there. After the boat left, he went to the Vadi of the appellant in Jampore and stayed till the boat returned. He learnt on the next morning that the boat was caught and the gold was also seized by the customs officers. He was being paid by the appellant whenever he wanted money. When he learnt that the officers had seized the gold he went to Badalivadi and from the place went to Bombay to inform the appellant. He did not know how much gold was seized. We have already referred to the contentions urged by the learned counsel for the appellant. We are unable to accept the arguments that the entire case rests on the sole uncorroborated testimony of PW 27 who was a co-accused. If it had been factually correct the contention would have been well founded. Our attention has been drawn to the in Haricharan Kurmi Versus State of Bihar, AIR 1964 S.C. 1134 in which it is held that though the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity for an assurance in support of its conclusion deducible from the said evidence. The Court observed that the stage to consider such confessional statements arrived only after the other evidence is considered and found to be satisfactory.

6. In the present case several statements have been recorded under the Customs Act and marked as Ex. 23 to Ex. 31. They were all recorded on 2.2.1970. In the statement of Accused No. 1 he stated that PW 27 was driving the car of the appellant and he met him on the relevant date and requested him to bring gold from the vessel which was in the sea. He was also assured that he would be paid for the work by the appellant. He was instructed to bring gold near Jampore School. His statement implicate the appellant amply. His second statement was recorded on 3.2.1970 and the third on 11.7.70. In the third statement he had stated that the machine for his boat was fitted with the help of the appellant and it was agreed between him and the appellant that the amounts payable for the work which he would do for the appellant could be adjusted towards the cost of a machine. According to him the appellant told him that if he had any work he would send a message through PW 27. The fourth statement of Accused No. 1 was recorded on 25.2.1972. The statements of Accused Nos. 2 to 7, 10 and 11 were also recorded on 2.2.1970. Accused No. 3 made a specific reference to the appellant. The statements recorded under the Customs Act have been duly proved by the concerned officials. The courts below were satisfied that there was no threat or inducement and that the relevant provisions of law were explained to the persons who gave the statements. The statements were found

to be voluntary and not vitiated in any manner. Hence, all those statements are admissible in evidence and it is clear therefrom that the appellant was guilty of the offences for which he was prosecuted.

7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra Versus State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny Versus Assistant Collector (H.Q). Central Excise Collectorate, Chochin (1997) 3 S.C.C.721.

8. The Courts below were therefore justified in accepting the contents of those statements and considering the evidence of PW 27 in addition thereto. Moreover reference has been made to the evidence of PW 15 who was of a Customs Officer. According to his evidence he knew PW 27 personally and had knowledge that he was a driver of the appellant.

9. Both the Trial Court and the High Court have discussed the evidence on record in detail. We do not find it necessary to repeat the exercise in this judgment. We are convinced that the discussion and appreciation of evidence by the courts below do not suffer from any infirmity whatever. We do not find any reason to differ from the conclusion arrived at by them. In the circumstances, the appeals fail and are dismissed.