

(2001) 05 BOM CK 0008
In the Bombay High Court
Case No : Criminal Appeal No. 564 of 1998

A.K. Thaker

APPELLANT

Vs

Miss Marylivina Chinyere Okereke and ors

RESPONDENT

Date of Decision : 04-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Customs Act, 1962 — Section 135A

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 23, 30, 67

Citation : (2001) ALLMR(Cri) 1776

Hon'ble Judges : B.N. Singh, C.J;Ranjana Desai, J

Bench : Division Bench

Advocate : Mr. J.R. Solanki, Mrs. V.R. Bhonsale, app, for the Appellant; Mr. M.P. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, C.J.—This Appeal has been preferred by the Intelligence Officer, Narcotics Control Bureau, Bombay, against the judgment and order of acquittal recorded by the Special Judge for Greater Mumbai at Mumbai in NDPS Special Case No. 278 of 1992. Respondent Nos. 1 and 2 herein were put up for trial before the Special Judge, charged variously on offences punishable under Sections 21, 23, 28, 29 and 30 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) and u/s 135A of the Customs Act, 1962. By his impugned Judgment and order, the Special Judge acquitted both the Respondents of all the charges levelled against them.

2. Mr. Tiwari, Advocate, appeared before us on behalf of Respondent No. 1, Miss Marylivina Chinyere Okereke. Respondent No. 2, Mr. Joseph Ikeh @ Jonathan, however, could not be served with notice of this Appeal as he was traceless. Hence, the Appeal as against him stood dismissed in terms of the order of this Court, dated 9th February, 2000. Counsel for the Appellant informed us that Respondent No. 2 could not be traced out and has apparently absconded.

3. The case of the Appellant is that on the basis of secret information by the Narcotics Control Bureau, Mumbai, it was suspected that large quantity of heroin had been concealed in the unaccompanied baggage booked by Respondent No. 1 herein with M/s Eastern Cargo Carriers, Adarsh Industrial Estate. Andheri (East), Mumbai. Respondent No. 1 is a female and a Nigerian citizen. The unaccompanied baggage was booked for Lagos. On receiving such information (Exhibit 35), Mr. S. M. Sawant (P.W.3), Superintendent in the Narcotics Control Bureau, recorded the information in his own handwriting and signed it. After typing the gist of the said information, he initialled the same and put the original information in an envelope and sealed the same. He handed over the said sealed envelope containing the original information and the typed gist of information to Mr. R. N. Kakkar, Deputy Director, who instructed him to work out the said information, and to find out whether such baggage was in fact booked with the said carriers. The information had revealed that Respondent No. 1 had booked two pieces of baggage with M/s Eastern Cargo Carriers, Andheri for Lagos and the baggage contained about 20kgs. of heroin concealed in them. Mr. Sawant (P.W. 3) made enquiries with M/s Eastern Cargo Carriers and it was confirmed that two pieces of baggage were booked by Respondent No. 1. He also collected information regarding the address of Respondent No. 1 and the carriers also furnished her contact telephone number. The telephone number was of Hotel Oriental Palace and it was revealed on further enquiry that both the Respondents were staying in Room No. 411 of the said Hotel in Khar, Mumbai. He again placed the matter before Mr. Kakkar, who gave written instructions to trace out Respondent Nos. 1 and 2 and examine the baggage booked by Respondent No. 1. Thereafter, Sawant alongwith Mr. Balchandran (P.W.1), Intelligence Officer. Mr. Ghorpade, Mr. S. M. Dange and Mr. Thakkar (P.W. 4), Intelligence Officer, were briefed by Mr. Kakkar and they were instructed to work with Mr. Sawant (P.W. 3). The team then went to Hotel Oriental Palace at about 8.00 p.m. on 16.9.1992. They went to Room No. 411 and the door was opened by one lady who gave her name as Ms. Marylivina, Another person was present in the same room who gave his name as Jonathan. These two persons were Respondent Nos. 1 and 2. After disclosing their identity, enquiries were made with Respondent No. 1 who confirmed that she had booked two pieces of baggage with M/s Eastern Cargo Carriers for being transported to Lagos. Mr. Sawant (P.W.3) requested her to accompany them to the premises of M/s Eastern Cargo Carriers. Alongwith the raiding party, the accused was taken to the office of the carrier, situated on the ground floor of Adarsh Industrial Estate, Chakala, Mumbai. On reaching the office of M/s Eastern Cargo Carriers, they met Mr. Vinodkumar Seth (P.W. 5), who was the Chief Executive of M/s. Eastern Cargo Carriers. Two panchas were called, and in their presence, Mr. Vinodkumar Seth and the accused were told about the information received by the Bureau and their intention to take search. Mr. Vinodkumar Seth confirmed the booking of two pieces of baggage by Respondent No. 1. Respondent No. 1 also confirmed this fact. Thereafter, Mr. Vinodkumar Seth produced the booking documents. He took the raiding party and Respondent No. 1 to the rear side of the office where the baggage was lying.

Respondent No. 1 identified the baggage. The baggage was examined in the presence of the panchas, the accused and Mr. Vinodkumar Seth (P.W. 5). A panchnama (Exhibit 11) was prepared. 15.080 kgs. of heroin was recovered from the baggage. In the presence of the panchas, the same was sealed under panchanama (Exhibit 11). The heroin was found concealed in leather portfolios. From one baggage, 8 such portfolios and from the other, 51 such portfolios were recovered. The other goods in the baggage were also seized under the same panchanama. Samples were drawn from the heroin recovered. Booking documents were also seized. The seizure panchanama was drawn up by Mr. Balchandran (P.W. 1), Intelligence Officer on the spot. Both the Respondents signed the said panchanama which was also signed by Mr. Vinodkumar Seth. Copies of the panchanama were given to the Respondents who acknowledged receipt. The seized goods were taken charge of by Mr. Thakkar.

After the seizure of the contraband, this witness along with the raiding party and the accused returned to Hotel Oriental Palace, and went to Room No. 411. Two panchas were called who were informed about the seizure panchanama (Exhibit 11) and their intention to take search of the said room. The room was opened by one of the accused, who took out the keys in presence of the panchas. The room was searched in the presence of the panchas and the accused but no contraband was found. However, four leather portfolios, Identical with the ones seized under panchanama (Exhibit 11)) were found, and these leather portfolios did not contain heroin. The aforesaid leather portfolios along with some other documents, including passports of the accused, etc., were seized and the panchanama (Exhibit 20) was drawn up in the hotel room itself by Intelligence Officer, Mr. Ghorpade, which was signed by the panchas, Copies of the panchanama were furnished to the accused who acknowledged receipt. This witness then requested accused to accompany the raiding party to N.C.B. office, and along with the members of the raiding party, the accused went to the N.C.B. office with the seized articles. In the morning of 17th September, 1992, he prepared a note of such search and seizure and placed it before Mr. Kakkar along with panchanamas (Exhibit 11 and 20) and the seized articles.

In cross-examination, this witness admitted that he had not asked Mr. Vinodkumar Seth (P.W. 5) about the list of articles contained in the baggage when he had gone to the office of M/s Eastern Cargo Carriers. He had perused the documents produced by Mr. Vinodkumar Seth, and found no necessity of enquiring about the list of articles referred to in the declaration marked "X-1" at Exhibit 12 colly. The baggage was weighed on the weighing scale of M/s Eastern. Cargo Carriers. The samples were weighed on the weighing scale carried by the raiding party. The keys of the baggage were with M/s Eastern Cargo Carriers, and were produced along with the documents by Mr. Vinodkumar Seth. Mr. Vinodkumar Seth had stated that the two pieces of baggage were received by M/s Eastern Cargo Carriers and were kept in the same condition. He denied the suggestion that the accused had not identified the baggage.

4. The prosecution examined Mr. Balchandran (P.W. 1) who was attached with the Narcotics Control Bureau as Intelligence Officer. He was called by Mr. Kakkar at about 18.30 hours on 16.9.1992 and was instructed to accompany the other officers along with Superintendent, Mr. Sawant (P.W. 3) to the office of M/s Eastern Cargo Carriers at Andheri. They were briefed about the information received by Mr. Sawant (P.W. 3). He has thereafter deposed about the manner in which they proceeded to Hotel Oriental Palace, where they reached at about 2000 hours. He has thereafter narrated the facts in the same manner as Mr. Sawant (P.W. 3). He was present when the raiding party along with the accused went to the office of M/s. Eastern Cargo Carriers where the baggage was produced by Mr. Vinodkumar Seth (P.W. 5). Respondent No. 1 opened the bags with the keys produced by Mr. Vinodkumar Seth (P.W. 5). There were two zipper suitcases. In the first zipper suitcase, which was black in colour, the articles found were ladies clothing, 25 ladies purses, 10 pairs of ladies shoes and 8 numbers of leather portfolios black in colour. The portfolios appeared to be heavy and were, therefore, examined. One of the portfolios was ripped open and it was found to contain two poly-bags containing brown powder. The remaining portfolios were also examined similarly, and each one of them was found to contain two polybags containing brown powder. A small quantity of the brown powder was taken out from one of the polybags, and it was tested with field testing kit. It answered positive for heroin. Thereafter, the black coloured zipper cloth bag was opened and the same was examined by this witness. The bag was found to contain 21 numbers of ladies purses and 51 numbers of artificial leather portfolios of similar nature as found in the first bag. The portfolios were examined one after the other and 50 of those portfolios were found to contain two poly-bags each, containing brown powder and kept in concealed manner. In one of the polybags, there was only one poly-bag containing brown powder. A small quantity of brown powder was tested with field testing kit and the test resulted in a positive finding for heroin. The entire quantify of brown powder recovered from the said portfolios was then collected in a big size poly-bag, and it was weighed in the presence of panchas. The total weight was found to be 15.080 kgs. Three samples, each weighing 5 grams were taken out from the composite mixture of brown powder. Samples were collected in small poly-bags which were heat-sealed. The small poly-bags were then kept in three separate paper envelopes with N.C.B. Seal No. 03. The samples were drawn in the presence of the panchas, and their signatures obtained on the envelopes. The balance quantity of brown powder in the big size poly-bag was also heat-sealed and the bag was kept in a card board carton which was also sealed with the N.C.B. seal. This witness collected one ladies skirt and ladles shirt with dhobi marks from out of the clothes found in the black coloured zipper suit case. The witness has then described the procedure followed for seizing and sealing the other articles found in the two zipper suit cases. This witness has been cross-examined at length, but Counsel for Respondent No. 1 was unable to point out anything in his cross-examination which could cast a reflection on the deposition of this witness.

5. Mr. Deepak Bhambri was examined as P.W. 2. At the relevant time, he was attached to N.C.B. as Intelligence Officer. On 17th September 1992, when he came to the office, he learnt about the seizure of 15.080 kgs. of heroin. He was asked by Mr. Sawant (P.W. 3) to record the statement of Respondent No. 1. Accordingly, he recorded her statement. He found that Respondent No. 1 was well conversant with the English language, and, therefore, he Interrogated her in English. She scribed her own statement except that the preamble of the statement was written by this witness. The documents which were taken under the panchanamas (Exhibits 11 and 20) were shown to her. Respondent No. 2 also made an endorsement about his presence. Respondent No. 1 recorded her statement voluntarily. Every page of the statement was signed by her and this witness had countersigned the statement on the last page. This statement of Respondent No. 1 was marked Exhibit 32. The further statement of Respondent No. 1 was recorded on 18.9.1992 in the same manner and marked Exhibit 33. In his cross-examination, this witness denied that the statement (Exhibit 32) was dictated by him and that Respondent No. 1 was compelled to, scribe the same by use of force and by administering threats.

6. The statement of Respondent No. 1 (Exhibit 32) is a detailed statement made u/s 67 of the Act. In the said statement, respondent No. 1 has stated that she had come to India in 1986 for pursuing her studies. She was given her family details. Her father was a businessman dealing in bicycle spares, her brother was a student, studying in Chicago, U.S.A., another brother was studying in Nigeria. Her sisters were married and settled. She joined pre-university course in Board of Education, Mohali, near Chandigarh and completed her pre-university course in 1987. She then Joined the Punjab University for the B.A. course. While studying at Patiala, she stayed with a Nigerian friend in the University Hostel. The friend with whom she was staying, namely, Faka, left for Nigeria in the year 1992. She has then stated about her further studies and the places where she stayed in India at different times, including Chandigarh and New Delhi. Several names have been mentioned by her with whom she came in contact during her stay in India. She left for Bombay on 16th June, 1992 to stay with her fiancée, Respondent No. 2, who was already in Bombay and residing in Hotel Oriental Palace at Khar, Bombay. Jonathan, Respondent No. 2, had earlier informed her about his coming to Bombay to take her back. While staying in Hotel Oriental Palace, she met one Nigerian named Arthur Onorah Uwah in the same hotel. She had come to Bombay on 16th June, 1992 by Punjab Mail and stayed with Respondent No. 2 for a week whereafter she went back to Delhi to collect her belongings. After staying in Delhi for 9 days, she had come back to Bombay, again by Punjab Mall. She again stayed with her fiancée, Respondent No. 2, in Room No. 411. Hotel Oriental Palace. This room was shared by Mr. Arthur, and he was paying the room charges even though the room was booked in her name and in the name of Respondent No. 2. Arthur was bearing her expenses because she did not have money. She, therefore, felt obliged to him. In order to return his favour, she had agreed to cargo a consignment for him to Lagos. She was

told that the consignment consisted of two bags which contained heroin concealed in folders. She was promised a sum of U.S. \$ 500 for taking and booking the two bags to M/s Eastern Cargo Carriers office at Andheri, Bombay, and accordingly, after getting the bags from Arthur on 16th September 1992, in the hotel room, she hired a taxi and went to M/s Eastern Cargo Carriers" office and booked the consignment in her name paying Rs. 16,169/- as cargo charges. She exchanged the dollars given by Mr. Arthur and she received Rs. 13,945/- by way of equivalent Indian currency. Since she was short by Rs. 2,224/-, she came back to the hotel and reported this fact to Mr. Arthur, who gave her more money and thereafter she went and paid to M/s Eastern Cargo Carriers the balance amount and obtained Receipt No. 3556 dated 16.9.1992. All the paper work required for sending the cargo was done in her name. She identified the documents marked X-1 to X-7, being the documents taken under panchanama on 16.9.1992. She had been instructed by Arthur to bring back the receipt relating to the cargo booked by her and give the same to Respondent No. 2 in the hotel. She could not meet Arthur since he was not in the hotel, but the N.C.B. officers came to her hotel room and searched the room. She identified Arthur from his photograph (Exhibit "E"). Arthur was also known as Dnuarh. She did not know who procured the leather portfolios for concealing heroin. The statement also mentioned that on 16.9.1992, in the evening, when she was with her fiancée Joseph, the officers came into her room and to them, she had disclosed that she had booked two bags to Lagos through M/s Eastern Cargo Carriers. The Statement is a long statement, but reading that statement as a whole. It is apparent that the statement is an inculpatory statement, and Respondent No. 1 virtually admitted her guilt. The only excuse given by her was that she was acting at the behest of one Arthur to whom she felt obliged.

7. Mr. Thakkar (P.W. 4), who investigated the case stated that he was not a member of the team which went to Hotel Oriental Palace on the 16th of September 1992. He was asked by Mr. Sawant (P.W. 3) to take over charge of all the seized articles from Balchandran (P.W. 1) at about 11.00 a.m. on 17.9.1992. This witness had interrogated Respondent No. 2 and Respondent No. 2 had scribed his statement in his own hand-writing in the presence of this witness. The Statement of Respondent No. 1 was also handed over to him by Deepak Bhambri (P.W.2) on 17.9.1992. The witness has stated about the steps that he took in connection with the investigation of the case. This witness recorded the statement of the witnesses in the course of investigation. In his cross-examination, this witness admitted that on instructions of Sawant (P.W. 3), he took charge of the accused on 17.9.1992 and the accused continued in custody of the Narcotic Control Bureau. In the night intervening 17th and 18th September, 1992, he handed over the accused to the Azad Maidan Police Station. The arrest memo, Exhibit 41, was typed at about 11.30 p.m. on 17.9.1992. However, the accused were actually arrested at about 0030 hours on 18.9.1992 and were produced before the Additional Chief Metropolitan Magistrate on the same day. The witness was confronted with the statement, of the accused, dated

18.9.1992 (Exhibit 74 colly.) made before the Additional Chief Metropolitan Magistrate, 3rd Court, Bombay. He admitted that such a statement was recorded by the Court but the accused had declined medical examination by the Court. Medical Certificates, dated 28.9.1992 issued by the Medical Officer, Central Prison, Mumbai were shown to the witness and marked Exhibit 75 (colly). This witness, however, asserted that when the accused were produced, they had no Injury and they had refused to be examined by the Medical Officer. He could not account for the injury recorded in Exhibit 75, and he denied the suggestion that the accused were not produced on 17.9.1992 on account of the fact that they had injuries on their person. This witness further stated that he did not remember the exact dimensions of the gala where the office of M/s Eastern Cargo Carrier was located. The godown of M/s Eastern Cargo Carrier was in the nearby structure at a walking distance of 2-3 minutes.

8. The Chief Executive of M/s Eastern Cargo Carriers, Mr. Vinodkumar Seth was examined as P.W. 5. He explained the procedure followed in their office for booking of baggage. He stated that in the month of September 1992, one Ms. Marylivina had booked her baggage. He identified Respondent No. 1 as the said Ms. Marylivina. She had come alone to book the baggage. She had brought two pieces of baggage and had booked them for the destination Lagos. She had filled up a baggage form and had given a photocopy of her passport and a photocopy of air-ticket. This witness has stated in detail how the raiding party came to the office and examined the baggage booked by Respondent No. 1. This witness has substantially corroborated the testimony of P.W. 3 Sawant and P.W. 1 Balchandran. This witness further stated that the office of M/s Eastern Cargo Carriers was located in one of the galas of Adarsh Industrial Estate. The gala was partly an office and partly a warehouse. He admitted that as a carrier, they do not verify the description of the articles. The list of articles referred to in document "X-1" was not given along with the documents submitted by Respondent No. 1. The panchnama was prepared inside his office and the baggage. Articles 2 and 3, was also opened in the office area where the staff generally sits. This witness denied the suggestion that he had wrongly identified Articles 2 and 3 as the baggage booked by Respondent No. 1. He also denied the suggestion that these two items belonged to M/s Eastern Cargo Carriers, and that the same were planted for the purpose of falsely implicating Respondent No. 1.

9. Vijaykumar Khurna was examined as P.W. 6 to prove that the clothes viz., ladies skirt and the top, were washed in his laundry. He stated that he was not in a position to identify the customer who had given those clothes for washing but he remembered that the customer was from Hotel Oriental Palace. He also admitted having earlier made a statement before the N.C.B. Officers.

10. Rajaram Kshirsagar (P.W. 7) was examined to prove that Navrang Leather Goods House, Colaba, used to manufacture goods and obtain bills for such goods from Shramik Leather Equipment Handgloves Industrial Co-op. Society of which

he was the Chairman. He admitted that the Society was issuing bills without actually manufacturing the goods mentioned therein. For this job, the Society was paid a commission.

11. Shantaram Bawdhane (P.W. 8) was examined to prove the seizure of the bags and its contents in the premises of M/s Eastern Car go Carriers on 16th September 1992. He is one of the panch witnesses, and he deposed to the manner in which the two bags were opened up and as to their contents. He has further stated that book-like articles were cut open and they were found to contain poly-bags filled with brown powder. He has also deposed to the weighment of the seized items and its seizure. He has fully supported the case of the prosecution, and admitted that he had signed as a panch witness on seizure memo, Exhibit 11.

12. On the basis of the evidence on record, the prosecution contended that it had proved its case beyond all reasonable doubt, whereas it was contended on behalf of the defence that the Respondents had been falsely implicated. In her statement u/s 313 of the Code of Criminal Procedure, Respondent No. 1 admitted that she had booked two bags for being sent to Lagos, but the bags produced in this case were not the bags which she had booked for being sent to Lagos. She further stated that the officers had forced her to sign on blank papers, and she had signed such blank papers under their pressure. At the trial, it was urged on her behalf that the evidence on record was not sufficient to rule out the possibility of planting of the incriminating articles in the suit cases, allegedly searched by the investigating agency.

The Trial Court considered the material on record and virtually rejected all the contentions urged on behalf of Respondent Nos. 1 and 2. However, it held that a serious doubt was created on account of the fact that all the articles which were got weighed by the Court were found to weigh 77 kgs. only, making a total of 92 kgs., if the weight of the contraband and added. However, the material on record showed that the baggage when booked through the carrier weighed 114 kgs. There was no declaration regarding the contents of the unaccompanied baggage at the time of its booking and, therefore, a reasonable doubt lingered in the mind of the Court, particularly when the keys of the unaccompanied baggage were in the hands of the carriers. Secondly, the Trial Court held that there was considerable doubt about the voluntary nature of the statements made by Respondent No. 1 (exhibits 32 and 33) which, in any event, were retracted by her later. On a mere perusal of the judgment of the Trial Court, it would appear that all findings have been recorded in favour of the prosecution but for the above two findings recorded at the fag end of the judgment.

13. We may observe that Counsel for Respondent No. 1 did not challenge the other findings recorded by the Trial Court in favour of the prosecution and confined his submission to support the two findings recorded in favour of Respondent No. 1. Even though Counsel for the parties did not refer to the deposition of all the witnesses examined at the trial, we have, however, read the

entire evidence. We find that the earlier findings recorded by the Trial Court are fully justified by the evidence on record.

14. In paragraph 52 of its judgment, the Trial Court has noticed the fact that the documents pertaining to the unaccompanied baggage (Exhibit 12 colly), particularly the declaration marked "X-1" did not contain the list of articles referred to therein. We have perused Exhibit 12, and from a perusal of the documents collectively exhibited as Exhibit 12, it appears that the customer who authorises the carrier to airfreight his unaccompanied personal baggage, etc., has to make a declaration giving full particulars. He has to declare that his personal baggage which is required to be air freighted does not contain any contraband, antiques, etc. The application in the printed form contains the following as a part of the declaration:- "The contents are as per the list duly signed and provided by me". Admittedly, Respondent No. 1 while booking the unaccompanied baggage had not submitted a list of the contents of the baggage which she had entrusted to M/s Eastern Cargo Carriers for ah freighting the same to Lagos. This fact is not disputed. The Trial Court, therefore, took the view that if the declaration as to the contents of the baggage was provided by Respondent Nos. 1, that would have certainly provided a valuable guidance about the contents of the unaccompanied baggage.

15. In our view, the fact that Respondent No. I had not made the relevant decoration does not, in any manner, effect the prosecution case. Obviously, any person authorising a carrier to airfreight his unaccompanied baggage will not declare that it contains contraband such as heroin. In our view, therefore, the mere fact that Respondent No. 1 had not made the relevant declaration, and had not given the list of items contained in the baggage is of no consequence. However, the reasoning of the Trial Court is that since the baggage was weighed at the time it was booked, and the total weight of the baggage was 114 kgs., all the seized items taken together should also weigh 1 14 kgs. No doubt, weight of the poly-bags containing heroin weighing 15.080 kgs., had to be added. The Trial Court, therefore, directed that the seized articles should be weighed in Court, and in fact, the Court itself got the articles weighed. It was found that the total weight of such articles was 77kgs. If 15 kgs. of heroin was added to the said weight, the total weight would be 92 kgs, as against 114 kgs. booked by Respondent No. 1. The Trial Court suspected the entire prosecution case as no explanation was forthcoming as to why there was this difference in weight.

16. Counsel for the Appellant rightly submitted that all the items that were seized were in the custody of the Court and they were brought from Court's custody for weighment. It was, therefore, difficult for the prosecution to explain the discrepancy. Moreover, even if it is found that the total weight was less than the weight of all the Items taken together when the cargo was booked, that will not prove that the baggage did not contain 15 kgs. of heroin. At best, it may be said that some of the articles which were seized had not been accounted for or that there may be some discrepancy in weighment. We fail to understand how

this discrepancy in weight leads to the conclusion that the contraband was planted by someone else and Respondent No. 1 was falsely implicated. It also does not stand to reason that 15.080 kgs. of heroin which may be worth lakhs of Rupees outside this country will be kept in the baggage of some other person for no rhyme or reason. If such a huge quantity of heroin was sought to be sent out of this country by an interested person, he would certainly do so with the assistance of a person known to him so that the goods, on arrival at the destination, would be handed over to him. One fails to understand why anyone would have kept 15.080 kgs. of heroin in the baggage of Respondent No. 1 without her knowledge, because that person would not get any benefit by exporting heroin to a foreign country through a person not even known to him. We also do not attach much weight to the fact that the keys of the two zipper suit cases were handed over to the carrier. This is the normal procedure followed in all cases of air freighting of unaccompanied baggage, because the baggage has to be opened, if necessary, for the satisfaction of the Customs Authorities.

Moreover, the recovery of heroin was made on the same day on which the baggage was booked, and there was hardly any time for anyone to plant such a huge quantity of heroin, and that too for no plausible reason. The suggestion made to Mr. Vinodkumar Seth (P.W. 5) that the contraband belonged to the carriers, namely, M/s Eastern Cargo Carriers, appears to be a desperate suggestion made to P.W. 5, since Respondent No. 1 could find no other explanation for the presence of 15.080 kgs. of heroin in her baggage. We are, therefore, of the view that the Trial Court clearly erred in drawing an inference on these facts that the possibility that the heroin may have been planted in the baggage of Respondent No. 1 by someone else, was not ruled out.

17. The next reason given by the Trial Court for acquitting Respondent Nos. 1 and 2 is that the Statements (Exhibits 32 and 33) scribed by Respondent No. 1 were not voluntary statements. The Trial Court observed that Respondent No. 1 was produced before the Additional Chief Metropolitan Magistrate on 18.9.1992 after her arrest, and that she had complained of ill-treatment and expressed a desire that she be medically examined. The medical certificate dated 28.9.1992 (Exhibit 75) recorded the fact that some injuries were sub-stained by Respondent No. 2 (not Respondent No. 1) and such Injuries could be caused by hard and blunt object. Thus, the medical report supported the contention of Respondent Nos. 1 and 2 that the statements said to have been scribed by them were obtained by use of force by the N.C.B. Officers.

18. We have perused Exhibit 74 (colly.). Two statements were recorded by the Court on 18th September 1992. In his statement, Respondent No. 2 had stated that he had been arrested from his hotel room in the evening of 16.9.1992 and was brought to the office. The officers had beaten him with fist blows and sticks. He, however, did not consent to examination of his Injury by the Court and wanted that he may be examined by the doctor and medical certificate may be sent to the Court on the next day. There were 10 to 12 persons who had tied his

hands while beating him, and he would be able to identify some of such officers.

The second statement is the statement of Respondent No. 1 herein in which she had stated that she was arrested by the officers in the evening of 16th September 1992 and the officers beat her by giving fist blows on her body. The Remand Officer who was present in Court was one of the officers who assaulted her. She was not feeling well and she wanted that she may be examined by a doctor and medical certificate be sent to the Court on the next day. She had given her written complaint to the Court. She did not consent to the examination of her injury by the Court. Exhibit 75 consists of two medical certificates. The medical certificates are dated 28.9.1992 and so far as the medical certificate relating to Respondent No. 1 is concerned, it appears that no external injury was detected and Respondent No. 1 had only complained of insomnia and chest pain. So far as the medical report relating to Respondent No. 2 is concerned. It shows that he had some simple injuries caused by hard and blunt object and were in the nature of abrasion and bruise.

19. So far as Exhibit 74 is concerned, though Respondent No. 1 had complained before the Court that she had been beaten with fists, she did not consent to examination of her injuries by the Court, and wanted to be examined by a doctor and the medical report to be sent to the Court. There is nothing in her statement to the effect that under threat of violence, the officers of the N.C.B. had forced her to scribe her statements, Exhibits 32 and 33. In fact, there is no mention about her having scribed the statements. Her medical report also does not disclose any injury on her. We, therefore, fail to understand how merely on the basis of Exhibits 74 and 75 the Trial Court jumped to the conclusion that the statements, Exhibits 32 and 33 obtained from Respondent No. 1 were not voluntary and were extracted by the Officers of the N.C.B. under threat of violence. In our view. Exhibits 74 and 75 do not lead to the conclusion reached by the Trial Court and on the basis of these two exhibits. It cannot possibly be held that Respondent No. 1 was forced to write her statement under threat, and that the statements written by her were not voluntary statements.

20. In view of the above discussion, the findings recorded by the Trial Court must be set aside as being wholly unreasonable. The material on record did not justify such findings. The findings deserve to be set aside, even in an Appeal against acquittal.

21. We, therefore, find that Respondent No. 1, in conspiracy with Respondent No. 2, did illegally possess heroin in breach of law which she attempted to export to Lagos, a foreign country, she had made preparations to export the same in contravention of the provisions of the Customs Act, 1962. In the circumstances, the commission of offences under Sections 21, 23 and 30 of the N.D.P.S. Act has been fully established by the prosecution. The commission of offence u/s 135A of the Customs Act, 1962 is also fully established. Accordingly, Respondent No. 1 is sentenced to rigorous imprisonment for a term of 10 years and a fine of Rs. 1,00,000/-and in default, to undergo six months rigorous imprisonment u/s 21 of

the N.D.P.S Act. She is also sentenced to undergo 10 years rigorous imprisonment u/s 23 of the N.D.P.S. Act. She is also sentenced to undergo rigorous imprisonment for a period of 5 years u/s 30 of the N.D.P.S. Act. She is also sentenced to undergo imprisonment for a term of three years u/s 135A of the Customs Act, 1962. All the sentences are directed to run concurrently.

22. The Appeal is accordingly allowed.