

(1970) 01 SC CK 0019

In the Supreme Court Of India

Case No : Criminal Appeal No. 34 (N) Of 1967

Ambalal Chimmanlal Chokshi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-01-1970

Acts Referred:

Customs Act, 1962 — Section 135(b), 135(ii)

Citation : (1970) 3 SCC 1 : (1970) 1 SCC(Cri) 135

Hon'ble Judges : K. S. Hegde, J;J. C. Shah, J;I. D. Dua, J;A. N. Ray, J;A. N. Grover, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

M. HIDAYAIULLAH, C.J-In this appeal by special leave against the judgment of the High court of Bombay, December 22/23, 1966, the appellant Ambalal Chimanlal Chokshi stands convicted under Rule 126-P(2)(11) of the Defence of India Rules and Section 135(ii), read with Section 135(b) of the Customs Act by the Additional Chief Presidency Magistrate, 8th court, Bombay and sentenced to nine months rigorous imprisonment and Rs. 2,000.00 fine for each offence. The sentences of imprisonment are to run concurrently. His convictions and sentences were confirmed by the High court) on appeal.

2. Chokshi was residing in Neeta Building opposite Marine Lines Railway Station, Bombay in a flat on the second floor. On 5/04/1963, Rane(P.W. 1.) Deputy Superintendent of the Excise Department with other officers went to make a search of his flat. He was authorised by Wagh (P. W. 2) officer Incharge of the Excise Department, to make this search under the provisions of the Gold Control Order. When Rane reached the door of the flat he found that the Panchas, who were to have met him there at the appointed time (12-30 p. m.), had not arrived. The door of the flat opened and two persons by name Chandchankar and Ashok (son of the accused) came out. Rane asked them to go back and stay inside within his sight in the drawing room. Rane stood at the door and did not

enter the flat. Chokshi then came to the door. Rane told him that a search of the flat was to be taken. Rane was invited to go in but he declined as the Panchas had not arrived. At 12-45 p. m. the Panchas arrived. Rane showed his authority to search the flat and then they entered. The raiding party was conducting the search of the flat and of the persons inside the flat, which, as already shown, were Chokshi, Chanchankar and Ashok (son of the accused). There were two other ladies in the flat at that time because the wife of Chokshi arrived while Rane was at the door. and was allowed to enter the flat. The other lady was a girl aged 16 years and was the daughter of the accused. It is not clear whether there was a boy also, but in any case his age was 4 to 5 years and he does not count in this case.

3. When Rane and the raiding party entered the flat they had left two persons on the road to keep a watch, on the house. ; They were Patel (P. W. 5) and one Chuggani, both officers of the Department. Meanwhile something was happening to which a separate reference is necessary. One Rotak (P. W. 3), who was living in a flat on the 1st floor below Chokshi's flat, switched on his radio at 2 minutes to 12-30 p. m. for the news. He heard a big thud and opened the window and looked out. This was at the back of the building where there was a pit. He saw in the pit two bags with some yellow blocks lying near about the two bags. He also saw a pigeon lying near the two bags. He attempted to contact one Mody (P. W. 3) Chairman of the Co-operative Society of the owners of the flats, but could not get his atones. He again tried and Mody came down to the flat of Kotak and saw two persons who were keeping watch on the building from the road end he called out to them. Patel thereupon shouted from the road telling them to go to the second floor and call Rane to the first floor from the second. In the meantime, Wagh, Superintendent of the Excise also arrived. They went and saw the two bags and the pigeon lying in the pit. Photographs of bags were found to contain gold slabs, some of which had fallen out. Meanwhile Mody came and informed Wagh that in the balcony of his flat which adjoins the balcony of Chokshi's flat a cloth bag was lying which did not belong to him. This cloth bag was opened by Wagh and was found to contain a plastic bag inside. In the plastic bag bundles of currency notes wrapped in the newspaper of the value of Rs. 1,04,000.00 were found. The bag also contained an exercise book some pages of which were found to be torn and a diary in which something was written in code language. The bag was also attached and brought to the flat. When the bags in which the gold pieces were found at the bottom of the pit, was opened, the gold piece were found wrapped in newspapers and. between two slabs of gold in each bag were found two slips of paper on which the weight of gold and its price were noted. It appeared that some one had calculated the value of the gold. A piece of a newspaper was also found in one of the bags. Wagh thereupon ordered the search of the flat for newspapers and he found a newspaper which had a piece torn out and this newspaper and the piece found in the bag fitted exactly. Chokshi was thereupon prosecuted for offences under the Gold Control Order and the Customs Act.

4. The short question in this case was whether the two bags had been thrown from the flat of Chokshi or from the flat of any of the other tenants of the building and who could have thrown them. It was obvious that whoever threw the bags had reasons to hide the gold at least temporarily while the search was going on. Chokshi naturally denied that he had thrown these bags, but he admitted that the other bag which was found in the balcony of Mody's flat was his. His explanation was that Chandchankar had probably thrown the gold since he was making enquiries about the price of gold from him. He admitted that the slips of papers on which the account of gold was written were in his handwriting but he said that he had written them to find out the price of gold which presumably Chandchankar had for sale.

5. The High court and the Presidency Magistrate have believed the prosecution case and have deduced on circumstantial evidence that it must have been Chokshi who threw the bags from the window of his lavatory at the back of the flat since it was directly above the place where the bags had fallen and in the course of falling has killed a pigeon nesting there. They disbelieved the version of Chokshi that it was Chandchankar who could have thrown the gold. The reasons given by the High court in support of accepting the prosecution version are very convincing and, in fact, they leave no room for doubt whatever.

6. To begin with Chandchankar, if he had thrown the bags, could not have got the newspapers from the flat to wrap the gold pieces including a piece of newspaper torn out of a newspaper that was later found in the flat. This piece of newspaper, remnant of which was found in the flat clearly shows that it could not have been Chandchankar, did not have sufficient time between the arrival of Rane and the hearing of the thud by Kotak to have completed all this operation. Again, Chandchankar, according to the evidence of Rane, was in the drawing room all the time within his sight and had not moved from the place. The High court ruled out the possibility of the young boy or the young girl of having done this. They also ruled out the possibility of the wife having thrown the bags. The bags contained papers torn from the exercise book on which the account of gold was written, by Chokshi himself. Each bag had one statement of account and it is curious that when the gold in the bags was weighed, weight of each bag tallied with the weight written on the slips. Chandchankar could not possibly have pushed in pieces of papers in such a way that the weight of the gold pieces and the written account would tally. Further the finding of the third bag in the balcony of Mody's flat quite clearly demonstrated that the bag had come from someone in the house or belonging to the house because Chandchankar had no access to that bag containing over a lakh of rupees in currency notes.

7. Ordinarily this court does not enter into questions of fact and we were most reluctant to do so but for a statement of Kotak that he had heard a movement in the flat above his own flat and had seen someone in the flat above his who was not the accused or any member of his family. Because of this Statement it was argued that it might have been Chandchankar who had thrown the bags.

However, the entire circumstantial evidence is against Chandchankar having done so : the writing on the slips of papers) which the accused admits was his own : the fact that Rane kept Chandchankar within his sight till the Panchas arrived and further that Chandchankar would not know that throwing anything out of the back lavatory window would drop it in the pit at the back of the flat. All this clearly demonstrates that it must have been accused Chokshi who was responsible for throwing the bags. By throwing the bags he cannot get rid of the possession of gold which under the law makes him responsible under the Gold Control Act and the Customs Act. This was undeclared gold of foreign origin and he could not escape the consequences of possessing such gold.

8. It was faintly argued that after the Gold Control Order came the Gold Bond Scheme and he was discriminated against his possession was treated as an offence. His contention is that there is discrimination between him and others who had committed similar offences and had evaded prosecution by getting gold bonds. We do not think that the argument merits any consideration. There is no discrimination if one person is prosecuted and the other is not. There are so many criminals who are going a bout unprosecuted but it cannot be said that those who are prosecuted are discriminated against because some are not prosecuted. The appeal fails and is dismissed.