
(1983) 09 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 510-DBA of 1983

Assistant Collector of Customs

APPELLANT

Vs

Jamila Begam

RESPONDENT

Date of Decision : 22-09-1983

Acts Referred:

Customs Act, 1962 — Section 132, 135

Citation : (1986) 7 ECC 144 : (1985) 22 ELT 51

Hon'ble Judges : Surinder Singh, J;M.R. Sharma, J

Bench : Division Bench

Advocate : Ashok Agarwal and D.D. Bansal, for the Appellant; Roshan Lal Batta and G.C. Dhangri, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Sharma, J.—It is said that on 28-3-82 Smt. Jamila Begum respondent along with her husband Gulam Mustafa and their son Imdad Hussain were going to Pakistan. At the Attari Road Land Customs Station all three of them gave a joint declaration in which it was not mentioned that the respondent was also carrying 20 gold bangles and 4 gold Karas Exs. P-1 to P-24 to Pakistan. The lady was searched by Mrs. Sethi, a Customs Inspector, when the aforementioned gold ornaments were found to be in her possession. We are told that on the executive side, the Customs authorities had ordered the redemption of the gold ornaments on payment of Rs. 7500/- as penalty. However, the Customs authorities also filed a complaint against the respondent Under Section. 132 and 135(1)(a) of the Customs Act, 1962 (hereinafter called the Act). The learned trial Magistrate after recording the evidence convicted the respondent.

2. She went up in appeal which was allowed by the learned Sessions Judge, Amritsar. The revenue has come up in appeal before us.

3. We have gone through the evidence with the help of the learned counsel.

4. One of the grounds taken by the learned Sessions Judge for disbelieving the

prosecution case is that the recovery Memo. Ex. PC was interpolated in the sense that out of the things recovered Item No. 3 reading as "a piece of cloth" was added later on. The expert evidence does show that this interpolation was made in the recovery Memo. It is also apparent to the naked eye. Normally speaking we would have thought that there was no necessity for the Custom Officers to insert these words afterwards but the case herein is that the ornaments had been concealed by the respondent in a piece of cloth which were detected by Mrs. Sethi. In other words, the presence of a piece of cloth in which the gold ornaments had allegedly been concealed was an important item which was to be mentioned in the recovery Memo. Since on this point it has been held by the learned Sessions Judge that the recovery Memo has been interpolated, we are constrained to take the view that the investigation in this case was not fair. One does not need any authority for the proposition that when a matter of some importance is subsequently added to a document solemnly prepared on an earlier occasion in accordance with the provisions of law, the subsequent addition of the matter or alteration of the document renders the entire document a nullity and it cannot be read to prove the existence of those facts which were genuinely recorded in it.

5. The other point which seems to have weighed with the learned Sessions Judge is that the respondent was an uneducated lady and had merely signed the declaration scribed by her husband. Admittedly, the so-called declaration was a joint declaration which had been signed by her husband and her son. Since the declaration had been prepared by her husband, she because of her implicit faith in him, might have mechanically signed the same without realising the implications of putting her signatures on this document.

6. Under our system of the laws, it is the duty of the prosecution to prove the guilt of the accused beyond a reasonable doubt. Even if a court is morally satisfied about the guilt of an accused person, it cannot convict him unless there is cogent and convincing evidence in support of the prosecution case. Further, even if the accused persons do not set up a specific defence and a defence can be read out or spelt out of the statements made by the prosecution witnesses, the benefit of such a defence has to be given to the accused. The important circumstance in this case is that the respondent has mentioned that she could sign in Urdu language only and was not conversant with English language. This explanation given by her has been accepted by the learned Sessions Judge. An appeal against acquittal does not necessarily mean a re-appraisal of evidence by the High Court. Usually we interfere if the lower court has committed some error of law or has transgressed the limits of its jurisdiction. Herein the learned lower appellate court on an assessment of the evidence led by the prosecution has given the benefit of doubt to the respondent. In this situation, we are not inclined to interfere. This appeal is, therefore, dismissed.