

(1990) 12 BOM CK 0034
In the Bombay High Court
Case No : Criminal Appeal No. 152 of 1977

State of Maharashtra

APPELLANT

Vs

Bhailal Rupsi Shah

RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

Customs Act, 1962 — Section 134, 134(1)
Imports and Exports (Control) Act, 1947 — Section 5
Penal Code, 1860 (IPC) — Section 120B

Citation : (1991) 35 ECR 34 : (1991) 56 ELT 20

Hon'ble Judges : S.M. Daud, J;D.J. Moharir, J

Bench : Division Bench

Advocate : Shri C.M. Kothari, P.P, for the Appellant; Shri Shirish Gupte and Mrs. K.K. Pradhan, for the Respondent

Judgement

1. This is an appeal by the State taking exception to the acquittal of the respondent Bhailal Rupsi Shah and Nathalal Rupsi Shah being full brothers and arraigned as accused Nos. 10 and 24 respectively in a prosecution for the alleged commission of offence punishable u/s 120-B Indian Penal Code read with Sections 134(a)(i) and (b)(i) of the Customs Act, 1962 and Section 5 of Imports and Exports (Control) Act, 1947.

2. Shortly stated, the case against respondents is that they were participants in smuggling operations carried on for many years together by done Lootha. In fact accused No. 10 was the landing agent of Lootha at Karwar. After interception of some of the consignments of the smuggled goods, Officers of the Customs Department started questioning various person. In the course of this investigation, they learned of the part played by respondents and other person. After completion of the investigation, a charge-sheet came to be lodged and the learned Additional Chief Metropolitan Magistrate, Bombay, found the respondents not guilty. The resulting acquittal is assailed in this appeal.

3. The defence of the respondents was one of total denial.

4. Witnesses examined to prove the participation of the accused in the smuggling operations were Lightwalla, Ismail Mister, Amin Vote and Others. The learned Magistrate has analysed the evidence of these persons carefully. He has held that their testimony was not reliable for the reason given below :

5. Firstly, Lightwalla and Ismail Mister were clearly accomplices of the accused and therefore unless there was independent corroboration on material particulars - and such corroboration is not forthcoming - the testimony given by them could not be acceptable.

Next, the testimony of the witnesses was based upon conversations over heard by them between the Respondents and other participants in the smuggling operation. Even if there was no difficulty in believing that they had over - heard many things, it was possible that they were mixing up the same with inferences drawn by them thus vitiating the entire testimony. Thirdly, what the witnesses had stated did not square up with the other evidence because of the admitted severance of relations between Respondents on the one hand and Lootha on the other. Having gone through the evidence and the judgment of the Additional Chief Metropolitan Magistrate, we see no error in this reasoning. The evidence containing these and various other infirmities and was therefore rightly rejected. There is the additional reason that the learned Magistrate has taken a possible view of the evidence. While sitting in appeal against an acquittal, it is not open to us to review the evidence and come to a different conclusion, merely because such a conclusion is possible. The State has to establish that the reasoning given by the Magistrate and the conclusion reached by him is either based on no evidence or is the result of a perversity. Neither flaw can be said to disfigure the verdict of the Magistrate vis-a-vis the Respondents. The result is that, the appeal is liable to be dismissed. Hence the order.

6. The appeal is dismissed. The acquittal recorded vis-a-vis the respondent is hereby confirmed. Bail bonds furnished by and on their behalf, stand discharged.