State of Gujarat Vs. Laxman Jivan and ors.

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Court : Gujarat

Decided On : Oct-21-1975

Reported in : (1976)17GLR321

Judge : T.U. Mehta, J.

Appellant : State of Gujarat

Respondent : Laxman Jivan and ors.

Judgement :

T.U. Mehta, J.

1. The state has preferred this appeal for enhancement of sentence imposed by the learned J.M.F.C. At Umbergaon for the offence under Section 135 of the customs Act, 1962, which is hereinafter referred to as the Act, on the respondents, who were accused Nos. 3 to 12 before the learned Magistrate in Criminal Case No. 2005/74. The learned Magistrate has sentenced each of the respondents-accused to suffer R.I. of 6 months, which is the minimum penalty provided for such offences.

2. Short facts of the case are that on some information the Customs Officers, Bhavnagar, were patrolling the sea from 1-5-74 onwards On 4-5-74 they noticed one mechanised vessel suspiciously moving in the sea near Umbergaon coast. The said vessel was given flag signals but it did not stop and, therefore, the customs officers were required to open fire in the air. The vessel was ultimately intercepted on that day that vessel was bearing the name Gita Prasad. On search of the vessel goods worth Rs. 1,10,000/- mainly consisting of foreign fabrics alongwith one T.V. Set were recovered and seized. The case of the prosecution is that the accused persons wanted to smuggle these goods into India further inquiry was made by the customs officers and during the course of this inquiry, the accused persons gave their statements found at, ex. 36 to 48. The respondents, who were accused No. 3 to 12, admitted that they were carrying contraband goods having imported them from dubaiport from persian gulf. It was further found from these statements that they had in fact imported about 40 packages out of which 28 packages of foreign. Goods were unloaded on the sea coast opposite janjira. The rest of the packages were being carried by the accused persons to villagekalai in India on evidence, which was offered by the prosecution the learned magistrate held that the case against all the persons was proved beyond doubt the learned magistrate, however, acquitted accused Nos. 1 and 2 and convicted the present respondents for the offence contemplated by Section 135 of the Act and as stated above, sentenced each of themto suffer R.I. for 6 months.

3. While recording the sentence the learned magistrate has observed as under in para 5 of his judgement:

Accused are charged of having smuggled goods worth more than one lac. The minimum sentence prescribed for offence under Section 135 of the customs Act, is 6 months. Accused Nos. 4 to 12 are mere crew members and they have nothing to do with the ownership of these goods. Accused No. 3 as tindel is also concerned with the transport of those goods. Because of this I do not think it to be a fit case where less than the

minimum sentence should be given and hence the order.

4. The state feels aggrieved by the order of sentence passed by the learned Magistrate and contends that the maximum sentence which is provided by Section 135 in cases where market price of the goods concerned exceeds one lakh of rupees, is for a term which may extend to 7 years and with fine. It is contended on behalf of the state that looking to this maximum term of imprisonment, as well as looking to the fact that the evil of smuggling has assumed much proportion and requires to be curbed with strong hands, the sentence of 6 months imprisonment is quite inadequate.

5. Shri Takwani, was appointed to argue the case on behalf of the respondents accused. He has fairly conceded that it is not possible for him to argue that the accused ought to have been acquitted by the learned magistrate. I find that this concession is quite justified, because, after going through the record of the case, I am convinced that the order of conviction, which is passed by the learned magistrate as regards the respondents-accused, is quite justified.

6. Shri Takwani, however, contended, relying upon certain decisions of the Supreme Court, to which I will presently make a reference, that there is no reason to interfere with the discretion used by the learned magistrate as regards the sentence and, therefore, there is no case for enhancement.

7. Before touching the Supreme Court decisions on which reliance is placed by Shri Takwani, it should be noted that this case is governed by the provisions of the code of criminal procedure, 1973, which specifically provides for preferring of an appeal by the state against the order of sentence. Section 377 of the code says that the state Government may, in any case of conviction on a trial held by any court other than a High Court, direct the public prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy. Such a provision for appeal was not available under the old code with the result that the High Court could interfere on the question of sentence only in revision preferred before it. While disposing of such revision application, the courts have evolved principles under the old code that the discretionary orders as regards sentence passed by the learned magistrate, should be interfered with only in cases where the sentence is found to be grossly in adequate now this position has changed because under the provisions contained in Section 377 of the present code, the High Court can interfere with the order of sentence passed by the lower court on an appeal preferred by the state on the ground of mere in adequacy therefore, ethereal question to be considered is whether the sentence of 6 months imposed by the Learned Magistrate in cases such as this, should be considered inadequate or not.

8. Shri Takwan is contention was that even if it is believed that on the ground of inadequacy, the High Court can interfere in appeal preferred by the state on the question of sentence, the principles on which the High Court should interferer main the same he has principally relied upon three Supreme court decisions, the first of which is the decision given in Kodavandi Moideen v. State of Kerala : 1973CriLJ671 . The Supreme Court has ruled in this case that the question of sentence is a matter of discretion and when that discretion has been properly exercised along with the accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgement, and if a substantial punishment has been given for the offence of which a person is found guilty after taking due regard to all the relevant circumstances, normally there should be no intereference by an appellate court. After observing this, the Supreme Court has also observed that on the other hand, interference will be justified when the sentence is manifestly inadequate or unduly lenient in the particular circumstances of a case and that the interference will also be justified when the failure to impose a proper sentence may result in miscarriage of justice. Another decision, which was relied upon was the one given by the Supreme Court in B.C. Goswami v. Delhi Administration : 1974CriLJ243 . This decision contains some general observations which have to be taken into account while deciding what would be an adequate punishment in a particular case. These general observations provide good guidance even for the purpose of this case and, therefore it would be proper to quote them. They are as under:

The main purpose of the sentence broadly stated is that the accused must realise that he committed an Act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence, it is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however reformatory aspect is being given somewhat greater importances. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal....

The principles stated in the above excerpts of the decision provide good guidance and I propose to be guided by these observations even in this case. The third decision was Modi Ram v. State of M.P. : 1972CriLJ1521 , therein also it is observed that for the broad object of punishment of criminals by courts in all progressive civilised societies true dictates of justice demand that all the attending relevant circumstances should be taken into account for determining the proper and just sentence. The last decision on which reliance was placed was Jagdish Prasad v. State of W.B. : 1972CriLJ1309 . This was a case under the food adulteration Act, 1954. The accused therein was sentenced to one years R.I. The Supreme Court held that interest of justice would be served if the sentence was reduced to two months keeping in view the fact that the main person concerned in the manufacture of the adulterated oil has been acquitted.

7. Relying upon these decisions, Shri Takwani further contended that the question of adequacy or in adeqancy of sentence should also be decided with reference to the minimum sentence provided by law. According to his contention, if the legislature has provided minimum sentence of 6 months in this case and if the magistrate has awarded that minimum sentence, that minimum sentence should be considered as adequate.

8. For the last mentioned contention of Shri Takwani find absolutely no justification because it so obvious that the minimum sentence is provided by the legislature for every type of offences irrespective of the facts of offence which come within the preview of Section 135 of the customs Act. Of course, here also the court is given discretion to impose the sentence which is less than the minimum provided there are special and adequate reasons which should be age order in the judgment but the question of adequacy or in adequacy is not decided by the legislature merely by making the provision for minimum sentence. This discretion is left to the court and if the facts of the case so justify, the courts would be justified in imposing a sentence which is more than the minimum but within the maximum limits prescribed by law. Speaking of this case, the sentence, which is provided by law, is 6 months imprisonment which would go to the extent of 7 years in a fit case. Therefore the court has to choose, after considering the facts and circumstances of each case as to what would be the adequate sentence between six months and seven years which would serve the ends of justice.

9. Keeping the principles stated by the Supreme Court in the above referred cases in mind, I find that the imposition of sentence of 6 months in offences like this would not only be inadequate, but would be grossly inadequate as it would surely not serve the purpose for which the sentence is imposed. The court should take judicial notice of the fact that the offences of smuggling of this type have assumed a proportion which has practically broken the economic backbone of our nation. Therefore, unless the court can bring to the notice, not only of the offenders concerned, but to all potential offenders of this type that the courts would not look at such offences lightly it would be difficult to control the evil of smuggling, which has spread widely in this country. Such offences are always the result of an organised and a pre-conceived method. These are not the offences which are committed by a person under a momentary impulse. If that be so, one cannot look at such offences with leniency. It should be noticed here that for awarding the sentences which are less than minimum, the legislature has specifically provided in Sub-section (3) of Section 135 of the Act that either the fact that the offence was committed for the first time or the fact that the offender is made to pay a penalty such as confiscation under other provisions of the Act or that the offender was Acting merely as acarrier of goods or that he is a person of young age, should not be taken into account as supplying any adequate reasons for awarding the sentence which is less than the minimum. This provision of Sub-section (3) of

Section 135 only emphasises the gravity with which the legislature expects the courts to look at such offences. In my opinion, therefore, the sentence of imprisonment of 6 months, which is imposed by the learned magistrate, is undoubtedly inadequate arid, therefore, the interference of this Court is called for in this appeal.

10. Looking to the facts of the case, it is evident that the accused persons were surreptitiously smuggling the goods in question from a foreign port. Initially they did not pay any heed to the signals given by the customs officers with the result that the custom authorities were required to chase their vessel and to intercept the same. The goods were thereafter seized and recovered. Obviously the accused persons must be dealing in the offence of this type in an organised and systematic manner in my opinion, therefore, they do not deserve any sympathy even if they are found to be mere carriers. It is evident that such systematic and organised activities cannot be carried without the help of carriers. It is, therefore no argument to say that a lenient view in the matter should be taken simply because the offenders of this type happen to be mere carriers. Carrier is an integral part of such systematic machinery of smuggling and, therefore, even the carrier deserves a deterrent punishment in my view, the 3 fore, the sentence imposed by the learned Magistrate should be enhanced. Looking to the facts of the case, I find that of three years would serve the ends of justice and would Act as sufficient deterrence in cases such as this.

This appeal is accordingly allowed and the sentence imposed by the learned magistrate is enhanced from 6 months R.I. To 3 years Rule I.