

State of Rajasthan Vs. Budhram

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Court : Rajasthan

Decided On : Mar-28-1968

Reported in : AIR1969Raj48; 1969CriLJ311

Judge : V.P. Tyagi and; C.M. Lodha, JJ.

Acts : Sea Customs Act, 1878 - Sections 167(81), 171A and 178A; [Evidence Act, 1872](#) - Sections 25

Appeal No. : Criminal Appeal No. 760 of 1964

Appellant : State of Rajasthan

Respondent : Budhram

Advocate for Def. : L.R. Mehta, Adv.

Advocate for Pet/Ap. : S.K. Tiwari, Dy. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Lodha, J.

1. The State has filed this appeal from the judgment of the Additional Sessions Judge, Ganganagar dated 5th August, 1964 by which the conviction and sentence passed against the accused-respondent by the Magistrate First Class,

Ganganagar under Section 167(81) of the Sea Customs Act (No. 8 of 1878) were set aside.

2. The prosecution case briefly was that Shri J. P. Tandon, Deputy Superintendent, Customs, Sri Ganganagar received information on 14-9-1958 that the accused Budhram was in possession of some dutiable and prohibited goods. He, therefore, obtained a search warrant from the First Class Magistrate, Ganganagar authorising Shri Heerasingh, Inspector, Land Customs, to search the premises of the accused. In execution of the warrant, Shri Heerasingh searched the house of the accused situated in Sri Ganganagar the same night and recovered 11 bars of gold which contained foreign markings. Further investigation was made in the matter and eventually the Collector of Central Excise and Land Customs, New Delhi confiscated the gold bars under Section 167 (8) of the Act read with Section 23 of the Foreign Exchange Regulation Act, 1947. Thereafter a complaint was filed by the Assistant Collector of Customs under Section 167 (81) of the Sea Customs Act No. 8 of 1878 (hereinafter to be referred as 'the Act') before the Sub-divisional Magistrate, Ganganagar on 11-8-1961.

3. The case of the accused Budhram was that his brother Ramjas lived with him in the same house and the gold in question was recovered from the room occupied by Ramjas. It may be added that the accused is alleged to have made statements before Shri Heerasingh, Inspector, Customs, Ganganagar and Shri J. P. Tandon, Deputy Superintendent, Customs, Sri Ganganagar on 15-9-1958, and those statements were also put in evidence in support of the prosecution case and they have been marked Ex. P. 1 and Ex. P. 2. In those statements the accused practically admitted the prosecution case that the gold was smuggled one and he had purchased the same from one Chirag Ali, a national of Pakistan. The learned Magistrate convicted the accused under Section 167 (81) of the Act and sentenced him to one year's rigorous imprisonment and a fine of Rs. 1000/-; in default of payment of fine six months' further rigorous imprisonment. The learned Magistrate relied on the evidence produced before him which was mainly about the recovery of gold and did not attach any importance to the statements Ex. P. 1 and Ex. P. 2 alleged to have been made by the accused before the Customs Authorities.

4. The accused filed an appeal to the Sessions Judge, Ganganagar but it was heard by the Additional Sessions Judge, Ganganagar, who acquitted the accused.

5. The learned Deputy Government Advocate has urged that it is amply proved that the gold was recovered from the exclusive possession of the accused Budhram. He has also argued that the learned Additional Sessions Judge, Ganganagar erred in holding that the gold was not smuggled one. In support of his contentions he has placed strong reliance on the statements Ex. P. 1 and Ex. P. 2 made by the accused before the Customs Authorities. It is urged that there is a clear admission of the accused in these statements that the gold was recovered from the exclusive possession of the accused and further that this was smuggled gold which the accused had purchased from Chirag Ali knowingly with intent to evade the restrictions for the time being in force with respect thereto. These statements, according to the learned Deputy Government Advocate, are relevant and the learned Additional Sessions Judge committed an error of law in placing no reliance on them. In support of his contention the learned Deputy Government Advocate has relied upon *Vallabhadas Liladhar v. Asst. Collector of Customs*, AIR 1965 SC 481. In that case the contention raised by the counsel for the accused that the statements made before the Collector of Customs were inadmissible in evidence under Sections 24 and 25 of the Indian Evidence Act, was undoubtedly repelled and it was held that Section 25 of the Indian Evidence Act has no application to such a case. It was observed that the Customs Officers are not Police Officers and statements made to them were not inadmissible under Section 25 of the Evidence Act. Their Lordships were pleased to observe that,

'Section 24 would however apply, for Customs Authorities must be taken to be persons in authority and the statements would be inadmissible in a criminal trial if it is proved that they were caused by inducement, threat or promise.'

In face of this authority there is no room for argument that a statement made by an accused before the Customs Authorities is hit by Section 25 of the Indian Evidence Act and we must therefore hold that the statements Ex. P. 1 and Ex. P. 2 made by the accused before the Customs Authorities are relevant unless it appears that they have been caused by any inducement, threat or promise. P.W. 4 Heerasingh

states that he had taken down the statement of Budhram Ex. P. 1 and it was signed by Budhram. As regards Ex. P. 2 P. W. 1 Shri J. P Tandon has stated that he interrogated the accused and all the questions and answers contained in Ex P. 2 were written by him and also that the accused had signed the statement Ex. D. 2 after the same had been read out to him. In his statement under Section 342, Criminal Procedure Code, when the accused was asked to explain as to what he had to say with respect to his alleged statements Ex. P. 1 and Ex. P. 2 before the Customs Authorities, he replied that the Deputy Superintendent, Customs, and the Inspector, Customs had both beaten him and obtained his signatures the next day. However, he did not produce any evidence in support of his allegation. The learned counsel for the accused has contended that before the statements Ex. P. 1 and Ex. P. 2 which are in the nature of a confession can be received in evidence, they must be shown to have been voluntarily made. The material question therefore is whether they have been obtained by the influence of hope or fear or under the influence of an improper inducement?

We may in this connection draw attention to the provisions of Section 80 of the Evidence Act which inter alia provides that whenever a statement by an accused person, taken in accordance with law, and purporting to be signed by any Judge or a Magistrate or by any officer authorised by law to take evidence, is produced before any Court, the Court shall presume that the document is genuine and that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it is true and that such statement was duly taken. The presumption under Section 80 can be raised only when the statement has been taken in accordance with law. The Code of Criminal Procedure provides how a confession is to be recorded by a Magistrate (See Sections 164 and 364, Criminal Procedure Code) and the moment it is shown that a confession of the accused has been recorded in accordance with law and all the acts required by law to be done have been done it can then be presumed to be duly taken. The presumption under Section 80 thus arises only when a confession is recorded strictly in accordance with law.

Since no procedure has been prescribed in law for recording of the statement by the Customs Authorities under Section 171A of the Act, no presumption can be

raised under Section 80 of the Evidence Act, and it is to be decided on the facts and circumstances of each case whether the confession was free and voluntary. It is noteworthy in the present case that both the statements Ex. P. 1 and Ex. P. 2 are recorded in English, and the accused does not know English but from the way in which he has put his signature on these statements, it appears that he is almost illiterate. There is no certificate under either of these statements that these statements were interpreted to the accused in Hindi and that he understood the same. On the other hand what has been mentioned below these statements is 'Read over and admitted correct' In his statement before the Court Shri J.P. Tandon (P. W. 2) only states that the statement Ex. P. 2 was read over to the accused and then he signed it. Reading over a statement in English to a person who does not know English is useless. Similarly it is not borne out from the evidence of P. W. 4 Shri Heerasingh that the statement Ex. P. 1 was duly taken with due care and attention. The mode of recording deposition in civil and criminal cases is to be found in Order 18. Rule 5, 6, C. P. C. and Sections 356, 359, 360, 361, Criminal Procedure Code. It is laid down that the depositions shall be read over or interpreted when the witness does not understand the language in which it is so taken down. It is of utmost importance that, if conviction is to be based on the incriminating statement made by the accused before the Customs Authorities the Court must feel convinced that the statement was duly taken by observance of all the care and caution. In the circumstances of the present case we are doubtful whether the accused put his signatures on these statements after fully understanding the contents of the same. This is one aspect of the matter,

6. Another aspect is, that the recovery of the gold was made on the night between 14th and 15th of September, 1958, and both these statements were recorded on 15-9-1958. It is clear from the evidence of P. W. 4 Heerasingh that the accused Budhram was kept in his custody throughout the night after the recovery and also up-till the time the statements Ex. P. 1 and Ex. P. 2 were recorded. Learned counsel for the accused has argued that these circumstances are sufficient to make it appear that these statements were made under the influence of some improper inducement. We have given our careful consideration to this aspect of the matter, The doubt created in the mind of the learned Additional Sessions Judge regarding the voluntary nature of these statements cannot be said to be

unreasonable and in the facts and circumstances of the case, in our opinion, also, it would be unsafe to base conviction of the accused on these statements in view of the doubt subsisting on the question of the free and voluntary nature of these statements.

7. This takes us to the question whether, apart from the statements Ex. P. 1 and Ex. P. 2, there is sufficient evidence on the record to show that the gold was smuggled one, and whether it was recovered from the possession of the accused? As regards the place of recovery Shri Heerasingh, Inspector (P. W. 4) has stated that the gold was recovered from a bag of lime and a tin lying in the room in which Budhram Was sleeping with his family. P. W. 6 Jagdish Chander and P. W. 7 Ajitsingh, who are also Inspectors of Land Customs Department have both stated that on search of the house of Budhram they found the gold lying in one bed room. As against the evidence of these Witnesses P. W. 3 Abhey Singh has deposed that it was Ramjas who had pointed out the gold lying in a bag of lime and a tin and that Ramjas and some children were in that room. This witness was of course declared hostile and permitted to be cross-examined by the prosecution. Another Motbir P. W. 5 Shri Gopal states that he does not remember whether any thing had been recovered in his presence at all. The accused has examined D. W. 1 Bachnaram and D. W. 2 Amichand to show that he was living in that house along with his brother Ramjas and his son Hanuman.

In this state of evidence the learned Additional Sessions Judge came to the conclusion that Ramjas and Budhram used to reside in the house from which the gold was recovered and the exclusive possession of the accused over the house and the room from which the gold was recovered is not established. Both the Motbirs produced by the prosecution viz., P. W. 3 Abhey Singh and P. W. 5 Shri Gopal have not supported the prosecution on this point, and in our opinion, it would not be safe to infer the exclusive possession of the accused merely because according to Heerasingh (P. W. 4) the gold was recovered from the room where Budhram was sleeping with his family.

8. Apart from this there is another hurdle in the way of the prosecution and that is, whether the gold has been proved to be smuggled one? The learned Deputy

Government Advocate has invited our attention to Section 178-A (1) of the Act which runs as follows:

'178-A Burden of proof:-- (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized.'

It has been urged by him that the gold in the present case was seized under the reasonable belief that it was smuggled and the accused had failed to prove that it was not smuggled. We may state at once, that there is no other evidence on the record produced by either side whether the gold was smuggled one or not except the admissions contained in the statements Ex. P. 1 and Ex. P. 2 which as stated above, are not worth reliance, and, therefore, all that we have to determine is, whether a presumption can be raised under Section 178-A of the Act. In order to raise the presumption under Section 178-A of the Act the Court must be satisfied from the evidence that the officer did entertain the belief that the goods seized were smuggled goods and that such belief was a reasonable belief. In order to be satisfied on the first point, there must be direct evidence whether oral or written of the officer seizing the goods that he entertained at the time of seizing them or at time before it, reasonable belief that the goods were smuggled one. Now in the present case in the application (Ex. P. 9) made to the Magistrate for issue of a warrant, there is no mention that smuggled gold was lying in the premises of the accused but all that was stated was that it was reliably learnt 'that dutiable and prohibited goods are secreted in the premises of Budhram.' Even in the search memo Ex. P. 6 there is no mention that the gold was seized as it was believed to be smuggled one. P. W. 4 Shri Heera Singh did not state that he seized the gold as he entertained a reasonable belief at the time of seizure that it was smuggled gold. All that he has stated is that the gold was seized as it was considered to be smuggled.

It is well established that the question whether there was a reasonable belief or not is justiciable and the Court has jurisdiction to consider whether there were grounds which prima facie justified the reasonable belief. In the present case, however, as

already observed above, there is no evidence that the officer seizing the gold entertained, at the time of seizing them or at any time before it, reasonable belief that the gold was smuggled one. In these circumstances we are afraid, no presumption can be raised under Section 178-A of the Act for convicting the accused, and the burden of proof which lay on the prosecution to prove affirmatively that it was smuggled gold has not been discharged.

9. The result is that there is no force in this appeal and it is hereby dismissed. The accused is on bail and need not surrender. The bail bond is discharged.

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