

Kalu Ram Vs. State

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Court : Rajasthan

Decided On : Jan-16-1979

Reported in : 1979(4)ELT644(Raj)

Judge : S.N. Deedwania, J.

Acts : Custom Act, 1962 - Sections 135

Appeal No. : S.B. Criminal Revision No. 238/75

Appellant : Kalu Ram

Respondent : State

Disposition : Revision dismissed

Judgement :

S.N. Deedwania, J.

1. This revision is preferred against the judgment dated June 25, 1975 of the learned Additional Sessions Judge No. 2, Jodhpur convicting the accused-petitioner under Section 135 of the Custom Act, 1962 and sentencing him to rigorous imprisonment for 1 1/2 years and a fine of Rs. 1000/- and in case of default in payment of fine further rigorous imprisonment for six months.

2. Briefly stated the facts are that on 31-8-1968 the accused-petitioner was found in possession of two gold biscuits weighing 20 tolas which had been smuggled in India without payment of duty. The only point urged before me is with regard to the quantum of sentence for an offence which was committed a decade ago. It was argued by the learned counsel for the petitioner that the petitioner has been sufficiently penalised in the form expenses and worries of a trial and further he has already suffered imprisonment

for 10 days and has also to pay a fine of Rs. 1000/- in addition to the loss of Rs. 3600/- which he paid for the aforesaid two gold biscuits.

3. It was therefore submitted that the sentence of imprisonment be reduced to a period already undergone. This submission is hotly opposed by the learned Government Advocate and the learned counsel for the Collector, Customs. It was argued by them that purchase of smuggled gold is an anti-social offence which should be dealt with heavy hand. Such trade in smuggled goods undercuts the economy of the country. Such an offence therefore, does not call for a lenient view. My attention was also drawn to the case of *Soni Vallabhdas Liladhar and Anr. v. Soni Narandas Nagjibhari* (A.I R. 1965 S.C. 481) wherein the sentence was not reduced. I have considered the authority and in my opinion it would not apply to the facts of this case as the facts in that authority were different and the culprits were smugglers. My attention was also drawn to the case of *Balkrishna Chhaganlal Soni v. State of West Bengal* (A.I.R. 1974 S.C. 120) wherein it has been observed that the penal strategy must be informed by social circumstances, individual factors and the character of the crime. India has been facing an economic crisis and gold smuggling has had a disastrous impact on the State's efforts to stabilize the country's economy- I am in complete agreement with the observations made by their Lordships of the Supreme Court but would dare to venture that each case has to be determined on its own facts and circumstances. There may be various types of offences which are anti-social in nature and also the offenders who commit the offence. Therefore, with regard to the offenders it has to be seen whether the offender is a habitual smuggler or a trader in the smuggled goods. If he belongs to this class he ought to be dealt with a heavy hand. However, the offender may be of a class which is tempted to make some

occasional purchase for the household or because of the compulsion of fashion. The lack of proper education and the sense of public duty coupled with examples of even respectable citizens indulging in such occasional purchases entrap an ordinary citizen to commit such a crime which can only be eradicated by proper education and making the people aware of the disastrous effect of their action on the economy of the country. Unless an atmosphere by proper education and touching the sentiments and emotions is created against such crimes, citizens would always be tempted to indulge in them and no amount of deterrent punishment would wipe out this type of crimes. Hence the proper education and not the deterrent punishment is the proper solution of the problem. Even, the impact of a deterrent punishment awarded 10 years after the offence will not be felt by the society and in the absence of adequate public education such a sentence will not serve any useful purpose. I am, therefore, of the view that each case will have to be decided in its own facts and circumstances and where a heavy sentence is sought, adequate circumstances should be brought in support of the demand. It would not suffice to merely urge that the offence is anti-social in character. Some more light has to be thrown as to the occupation and status of the accused with a view to establish that he is smuggler or a dealer in smuggled goods. It is not shown that the accused is a regular dealer in the smuggled gold or is a carrier of smuggled gold. I, therefore, think that the interest of justice would be met if the sentence of imprisonment is reduced to a period already undergone as the accused appeared to be a casual purchaser of the gold.

3. The revision is therefore, dismissed but the sentence of imprisonment is reduced to a period already undergone. The sentence of fine is maintained which the accused will deposit in the court of Judicial Magistrate No. 2, Jodhpur within 15 days in default of which he will serve out the sentence of imprisonment as awarded to him by the learned lower court.