Supreme Court of India
State Of Maharashtra vs P.K. Pathak on 5 February, 1980
Equivalent citations: AIR 1980 SC 1224, (1980) 82 BOMLR 418, 1980 CriLJ 923, 1983 (13) ELT 1628 SC, (1980) 2 SCC 259, 1980 (12) UJ 320 SC
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Bench: A Koshal, S M Ali
JUDGMENT S. Murtaza Fazal Ali, J

1. These two appeals by special leave are directed against the judgment dated February 16, 1973 of the Bombay High Court by which the two respondents, who were Accused No. 1 and Accused No. 5 before the Trial Court, were acquitted of the charges framed against them As both the appeals arise out of the sama case, we propose to dispose them of by one common judgment.

2. The two respondents and others were tried by the Chief Presidency Magistrate under various sections of the Customs Act as also Section 5 of Imports and Exports (Control Act), 1947 read with Section 120B of the Indian, Penal Code. The learned Magistrate convicted the respondents under Section 135(a) and (b) of the Customs Act read with Section 120B, I.P C. and also under Section 5 of the Imports (Control) Act, 1947 and sentenced respondent No. 1 (A-1), PK. Pathak to rigorous imprisonment for three years under Section 135(a) and (b) of the Customs Act and for one year under Section 120B, I.P C. and Section 3 of the Imports and Exports (Control) Act. He further directed that the sentences would run concurrently. Respondent No. 2 (P-5), Sari Madhukar Keshav Wity, was also convicted of the aforesaid offences but contended only to rigorous imprisonment for one year.

3. We have heard the learned Counsel for the state but unfortunately no one appeared on behalf of the respondents, despite repeated calls, although they were represented by a Counsel in this Court.

4. The material facts constituting the prosecution case have been detailed in the judgment of the learned Magistrate and also of the High Court. After conviction, the respondents filed an appeal before the High Court which came to the conclusion that the prosecution case was not proved and accordingly acquitted both the respondents. Hence this appeal.

5. Put briefly, the case arose out of an incident which led to the recovery from both the accused of a huge quantity of smuggled goods worth Rs. 15 lakhs which consisted partly of imported watches valued at Rs. 12,50 lakhs and partly of diacen antwerpon packed in 40 small cartons (each containing 20 sticks) worth about Rs. 2.50 lakhs.

6. The central evidence in the case consisted of the confessions made by the respondents before the Customs authorities, particularly PW 4, corro-borated as it was by the recovery of the smuggled articles at the instance of the respondents witnessed by PWs 1, 2, 4 and 9 PW. 9 was an independent witness whereas PW 1 was a police officer and PWs 2 and 4 were Customs officials. As the confessions were retracted, the learned Trial Court, as a rule of prudence, decided to act on them only if they were corroborated in material particulars by some other evidence. The learned Magistrate found that the search witnesses, PWs 1, 2, 4 and 9, fully corroborated the statements

made by the respondents in their confessions. Apart from the recovery of the smuggled articles at the instance of the respondents, the circumstances under which respondent No. 1 (A-1) was arrested, at the instance of A-5,from a bus stand which were proved by PW 9, was also relied upon by the learned Magistrate in holding that the case against the respondents stood proved.

7. The High Court disagreed with the view of the learned Magistrate and found that as no independent witness or witnesses from the locality were taken by the Customs authorities to witness the search, no reliance could be placed on the searches or recovery of the smuggled articles and that thus since the confessions were not corroborated, the conviction of the respondents was bad. The High Court also rejected the evidence of PW 9, an independent search witness, on the ground (1) that he was not a witness of the locality, and (2) that he gave his assent to accompany the police and Customs officers to witness the various recoveries whether he was taken by the police.

8. We have gone through the evidence of PWs 1, 2, 4 and 9 who are the witnesses to the search and we find ourselves unable to agree with the High Court that there were any good reasons to disbelieve their evidence. Infact, the fact that PWs 2 and 4 were Customs officials would be ground to distrust their evidence unless there was any serious in firmity in the intrinsic merits of their testimony, The High Court made no attempt at all to consider the intrinsic merit of any of their exposition, an exercise which was called for particularly when the learned Magistrate had relied on the same and a number of ether circumstances to hold that the recoveries had been proved. We have done throug the evidence of PW 9 and we are unable to find any serious infirmity therein. It appears to be consistent and straight forward. The High Court laid stress on the fact that witness from the locality was taken to witness the search It is common knowledge that when dealing with the recovery of smuggled goods, the Customs authorities have to maintain top secrecy lest the recovery should prove abortive by reason of any leakage. Furthermore, smuggled goods are often kept in lonely places which may or may not have habitation. In the instant case, we find that while respondent No. 2 (A-5) got the articles recovered from a toney at the sea-shore, respondent No. 1 (A-1) got the articles recovered from an island which had to be reached through a mechanised vessel, the journey taking an hour and a half. The articles were found concealed in the bushes growing on the island. In these circumstances, it would neither be practical nor reasonable to expect any person of the locality to witness the search. The fact that PW 9 was approached by the police and the Customs-authorities and accompanied them to witness the search, made at the instance of the respondents, by itself would not show that he was in any way interested or unreliable. Furthermore, the evidence of PW 9 is corroborated as regards the search list, Ext, A, by Kulkarni who was a police officer of the rank of sub-Inspector. The search list, Ext, A, shown that respondent No. 2 (A-5) took the witnesses to the sea-shore near the edge of sea-water and recovered a yellow coloured suitcase from a toney and that from inside the suitcase a number of wrist watches of foreign make valued at Rs. 1.50 lakhs and diacem valued at Rs. 50,000/- were recovered. Thus the total value of the goods recovered at the instance of respondent No. 2 was Rs. 2 lakhs. The goods recovered were handed over by PW 1, Kulkarni, to the Customs Officers (PW 2 and others) under panchnama Ext. B. Similarly, Ext. C which is the recovery made at the instance of respondent No. 1 (A 1) from a rocky island called Vasi Uttan is witnessed by PW 9 and PWs 2 and 4, the Customs Officers. The articles recovered under Ext. C were also wrist watches and diacem which were taken out from 22 plastic bags at the instance of tbe first respondent. The total value of these articles was Rs. 13 lakhs, comprised of wrist watches

worth Rs. 10,50 lakhs and diacem worth Rs. 2.50 lakhs. These articles were handed over to the Customs officers under Ext. C-1. Thus it would appear that the total value of She smuggled goods recovered was in the range of Rs. 15 lakhs.

9. Merely because PWs 2 and 4 were Customs Officers their evidence could not be rejected outright because they were doubtless competent officers to prove the search and the recoveries. Thus, we are unable to agree with the view of the High Court that in the instant case the confessions of the respondents were not corroborated by the recoveries as proved by the search lists and witnesses to the same.

10. Having considered the evidence of PWs 1, 2, 4 and 9, we are satisfied that the confessional statements made by the respondents before the Customs Officers (which are undoubtedly admissible in evidence) were fully corroborated by the witnesses mentioned above.

11. On an overall consideration of the evidence, therefore, we are Satisfied that the judgment of the High Court acquitting the respondents is vitiated by a clear error of law The appeal are accordingly a lowed and the judgment of the High Court is set aside and that of the Chief Presidency Magistrate convicting and sentencing the respondents, as indicated above, is restored.