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Judgment
27
1965

IN THE PRIVY COUNCIL

No. 52 of 1964

UNIVERSITY OF LONDON
THE INSTITUTE OF ADVANCED
STUDIES
- FEB 1966
21, BEDFORD SQUARE
LONDON, W.C.1.

ON APPEAL
FROM THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

B E T W E E N:

- 80966

JOITABHAI s/o Khodabhai Patel Appellant

- and -

THE COMPTROLLER OF CUSTOMS Respondent

C A S E FOR THE APPELLANT

Record

- 10 1. This is an appeal by Special Leave of the Privy Council granted on the 10th day of August 1964, from a Judgment of the Supreme Court of Fiji, Appellate Jurisdiction, dated the 18th day of March, 1964, whereby the appeal of the Respondent herein from the Judgment of the Magistrate's Court, Suva, dated the 21st day of October, 1963, was allowed, and the Appellant convicted of the offence charged and fined £50 or in default of payment two months imprisonment. p.37
p.27
p.11
- 20 2. The Appellant was charged with making a false declaration in a customs import entry contrary to Section 116 of the Customs Ordinance in that, in respect of five bags of corriander seed imported by the ship "Houtman" which arrived at Suva on the 25th August 1963 he declared on a customs import entry form that the origin of the said seed was India instead of Morocco. pp.1-2
- 3. Sections 116 and 152 of the Customs Ordinance which are material to this appeal read as follows:-
- 30 "116. Should any person make any false entry in

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any form, declaration, entry, bond, return, receipt or in any document whatever required by or produced to any officer of customs under this Ordinance, or should any person counterfeit, falsify or wilfully use when counterfeited or falsified, any document required by or produced to any officer of custom, or should any person falsely produce to any such officer of customs under any of the provisions of this Ordinance in respect of any goods or of any vessel any document of any kind or description whatever that does not truly refer to such goods or to such vessel, or should any person make a false declaration to any officer of customs under any of the provisions of this Ordinance, whether such declaration be an oral one or a declaration subscribed by the person making it or a declaration on oath or otherwise, or should any person not truly answer any reasonable question put to such person by any officer of customs under any of the provisions of this Ordinance, or should any person alter or tamper with any document or instrument after the same has been officially issued or counterfeit the seal, signature or initials of or used by any officer of customs for the identification of any such document or instrument or for the security of any goods or for any other purpose under this Ordinance, such person shall on conviction for every such offence, except where a specific penalty is herein provided, be liable to a fine not exceeding two hundred pounds nor less than fifty pounds and in default of payment to imprisonment not exceeding six nor less than two months."

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"152. If, in any prosecution in respect of any goods seized for non-payment of duties or any other cause of forfeiture or for the recovery of any penalty or penalties under this Ordinance, any dispute arises whether the duties of customs have been paid in respect of such goods or whether the same have been lawfully imported into the Colony or lawfully unshipped or concerning the place whence such goods were brought, then and in every such case the proof thereof shall lie on the defendant in such prosecution, and the defendant shall be competent and compellable to give evidence; and any goods of a description admissible to duty seized under any provision of this Ordinance by any customs officer on any vessel or at any place

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10 whatsoever in the Colony or within the waters of the Colony shall, in any proceeding before a magistrate for the forfeiture of such goods or for the infliction of any penalty incurred in respect thereof or on the hearing on appeal of any such case before the Supreme Court, be deemed and taken to be goods liable to and unshipped without payment of duties unless the contrary be proved, and the evidence that any person acting as an officer of customs in any proceeding relating to customs or undertaken under this Ordinance was duly authorized shall be presumed until the contrary is proved."

4. On the 21st day of October 1963 the charge was tried by the Acting Senior Magistrate, Suva, and the Appellant acquitted; but that at the request of the Respondent a Case was stated by the said Magistrate for the Supreme Court of Fiji, Appellate Jurisdiction.

p.13

20 5. In the said case the Magistrate stated under the heading "Outline of Prosecution's Case" that the "prosecuting officer in outlining the case in prosecuting stated that the prosecution does not intend to prove intention or guilty mind of the accused and that it was sufficient to prove that the entry was erroneous, the offence being one of absolute liability".

p.15

The Magistrate found the following facts:-

pp.15-16

- 30 (a) that the Respondent ordered the corriander seed from Singapore;
- (b) that the bags which contained the corriander seed were shipped from Singapore;
- (c) that the Respondent correctly engrossed the Customs Import Entry Form A (Exhibit B1, in the Court of Trial) in accordance with the particulars contained in the invoice referable to the purchase of the corriander seed (Exhibit B3, in the Court of Trial);
- 40 (d) that the only evidence before the Court that the corriander seed was of Moroccan origin, was the markings on the bags which contained the seed;

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- (e) there was no mens rea or carelessness on the part of the Respondent;
- (f) the stitching on the mouth of the bag Exhibit E was partly in Manila ham;
- (g) that the corriander seeds in both bags i.e. Exhibit E and Exhibit F were round".

6. The evidence for the prosecution showed that the Appellant had completed the said form in which it was stated that the country of origin of the said seeds was India.

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7. On investigation the five bags of seed were each contained in an outer bag marked J.H. Patel and Sons, the name under which the Appellant was trading, but that on inner bags there was written "ALBERDAN/A.D. 4152/Corriander Favourite Singapore", and at the very base of the bag the legend "Produce of Morocco".

p.7
p.8
pp.8-9

8. On behalf of the Appellant a submission was made of no case to answer but was overruled by the Magistrate. The Appellant then gave evidence that on the 1st July 1963 he placed an order with Chandula Jodhu and Company for five bags of round corriander seed from Singapore and that on the 24th June 1963 he placed an order with the Indo-Malaya Produce Company for five bags of round Indian corriander seed; (these two orders were produced in Court); that both consignments were transported to Fiji by the ship "Houtman"; that he prepared the Customs Import Entry Forms from the invoices and other documents received relevant to the orders.

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pp.11-12

9. The Magistrate gave a short judgment in which he held that there was no evidence, save the markings on the inner bag, to show that the seed originated from Morocco, and "a conviction in this case would be most dangerous as the Court is not even remotely certain that the contents of the bag are of Moroccan origin. For all it knows they may be of Indian origin and in this respect the accused is supported by the invoice declared to be genuine. This is a criminal trial and the burden of proof lies on the prosecution.... I am unable to hold that the entry made by the accused is either false or erroneous within the

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- singular included the plural and therefore the word "place" can also mean places and the dispute in this case was whether or not the goods had been brought first of all from Morocco to Singapore and thence from Singapore to Fiji and was therefore covered by the section; that the effect of this section if it covered the instant case was to place the onus of proving his innocence on the accused; 10
- p.32 (iii) that the burden of proof lying on the accused in the circumstances was "on the balance of probabilities";
- p.32 (iv) that the accused had not discharged such burden of proof as laid upon him;
- pp.33-34 (v) that the charge in this case was one of absolute liability and the meaning to be assigned to the word "false" was erroneous"; that the Magistrate had erred in law in acquitting Your Petitioner and that Your Petitioner was convicted of the offence charged and fined £50 or in default of payment two months imprisonment. 20
- pp.35-36 12. On the 13th day of April 1964 the learned judge ruled that he had no jurisdiction to answer question (iv) of the case stated as that was a question of fact and not of law, and therefore in exercise of his proper jurisdiction he declared the purported conviction and sentence a nullity and ordered that the case be removed to the Magistrate's Court, Suva, for the retrial before another Magistrate. 30
- pp.37-38 13. Special leave to appeal to Her Majesty in Council was granted by Order-in-Council, dated the 10th day of August 1964.
14. The Appellant humbly submits that the Judgment of the Supreme Court of Fiji, Appellate Jurisdiction, should be set aside for the following (among other). 40

R E A S O N SRecord

1. BECAUSE the markings on the inner bag were not admissible as evidence of the country of origin of the contents of the bag and the Magistrate erred in failing to rule that there was no case for the Appellant to answer.
- 10 2. BECAUSE the Magistrate was right in holding that, having heard evidence for the prosecution and for the defence, it was "not even remotely certain that the contents of the bag Exhibit E are of Moroccan origin" and that the prosecution had failed to satisfy the burden of proof lying on them.
3. BECAUSE Section 152 of the Customs Ordinance did not govern this case because the dispute was not one concerning "the place whence such goods were brought" but as to the country of origin of the goods.
- 20 4. BECAUSE, which is not admitted, if Section 152 of the Customs Ordinance applies to this case and the onus of proof was on the appellant he satisfied the said onus and the Magistrate so found.
5. BECAUSE the charge under section 116 of the Customs Ordinance is not one of absolute liability but that "mens rea" is an ingredient of the offence.
- 30 6. BECAUSE the Appellant was rightly acquitted of the said charge.
7. BECAUSE the conviction by the Supreme Court of Fiji was a nullity and the said Court had no power to re-open this case when it was "functus officio" and that the order of the 13th May 1964 remitting the case to the Magistrates Court, Suva, is null and void.

E.F.N. GRATIAEN.

THOMAS O. KELLOCK.

EUGENE COTRAN.

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