

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.863 OF 2012

Manjur Samsuddin Shaikh
Age-45 years Indian Inhabitant
R/o: Ganpat Patil Nagar,
Galli No.7, I.C. Colony, Khadi,
Link Road, Borivali (West),
Mumbai - 400 103.

At present at Nashik Road
Central Prison.

... **Appellant**

V/s.

The State of Maharashtra
At the instance of Shivaji Park
Police Station, Vide C.R.No.
294 of 2009.

... **Respondent**

.....

Mr.Aniket Vagal, Advocate for the Appellant
Ms.S.S.Kaushik, APP for the Respondent/State.

....

CORAM : ABHAY M. THIPSAY J.

DATED : 30TH JANUARY, 2015

ORAL JUDGMENT :

01. This appeal is directed against the Judgment of conviction as delivered by the Ad-hoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No.80 of 2010, in which, the appellant was the accused No.2. There was one more accused

Smt.Ranjana Shaikh (Accused No.1) in the said Sessions Case. The Ad-hoc Additional Sessions Judge found the appellant, as also the said accused No.1, guilty of offences punishable under Section 489B, 489C of the Indian Penal Code read with Section 34 of the IPC and sentenced both of them to suffer Rigorous Imprisonment for five years each and to pay a fine of Rs.5,000/- each, on each count. The Ad-hoc Additional Sessions Judge convicted the accused No.1 Ranjana Shaikh also of an offence punishable under Section 420 of the IPC read with Section 34 of the IPC and sentenced her to suffer Rigorous Imprisonment for five years and to pay a fine of Rs.5,000/- on that count also. The Ad-hoc Additional Sessions Judge directed that all the substantive sentences imposed upon the accused persons shall run concurrently.

02. Being aggrieved by the said judgment of conviction and sentences imposed upon him, the appellant had approached this Court by filing the present appeal.

03. I have heard Mr.Aniket Vagal, the learned counsel for the appellant. I have heard Ms.S.S.Kaushik, the learned Additional Public Prosecutor for the respondent/State. With their assistance, I have gone through the evidence adduced during the trial. I have carefully gone the impugned judgment.

04. The prosecution case as reflected from the 'brief facts of the case', as appearing in Column No.16 of the printed prescribed proforma of the police report/charge sheet, is as under :

That the accused No.1-Smt.Ranjana Babu Shaikh, aged about 19 years, on 23/10/2009 at about 8.20 p.m. at Senapati Bapat Road, Dadar was in possession of and had used as genuine, a forged or counterfeit currency note of Rs.500/- denomination and had purchased a frock from the First Informant-Dinesh Shrivastav - a Hawker by using the same. That, the appellant had kept in his possession four forged or counterfeit currency notes of Rs.500/- denomination knowing them to be forged and with the intention of using the same as genuine.

05. As this does not give sufficient idea as to the nature of the allegation against the said accused No.1 Ranjana and the present appellant, it would be appropriate to state the facts of the prosecution case by giving the relevant details.

06. Prosecution case is that on 23/10/2009 Dinesh Shrivastav, who is a hawker, was carrying on his business at Senapati Bapat Marg as usual. That, at about 8.20 p.m., the accused No.1 Ranjana came to him and purchased a frock for one year old girl child. The price of the said frock was Rs.60/- and in order to pay the same, accused No.1 Ranjana gave a currency note

of Rs.500/- to the said Dinesh. Dinesh took the note and gave an amount of Rs.440/- consisting of four notes of Rs.100/- denomination and four currency notes of Rs.10/- denomination back to her. However, after doing this, Dinesh Shrivastav suspected the genuineness of currency note of Rs.500/-, which had been given to him by the accused No.1. He felt that it was thicker and more rough than a normal note. He then examined the same in the light and was convinced that it was counterfeit. He, therefore, stopped accused No.1 and told her that the note, that had been given by her, was counterfeit. On this, the accused started giving some evasive replies. Some persons assembled there and among them, there was one constable from Shivaji Park Police Station - one Mr.Mhasye, who was taking rounds. Dinesh informed him about the matter. Then he took Dinesh and accused No.1 Ranjana to the Shivaji Park Police Station, where the report lodged by Shrivastav was recorded and treated as the First Information Report; and a case in respect of offences punishable under Section 489B, 489C and 420 of the IPC came to be registered against the accused No.1.

07. The personal search of accused No.1 Ranjana was taken under a panchanama. Thereafter, she gave certain information to the police, from which it was gathered by them that accused No.1-Ranjana had earlier also used counterfeit currency notes of Rs.500/- denomination as genuine and had, by using such

notes, purchased a number of articles from other hawkers on the same day. In the personal search of accused No.1 Ranjana, certain articles purchased by her and some cash were recovered.

08. In the course of further investigation Ranjana Shaikh disclosed some information on 24/10/2009, pursuant to which the police party and panchas were led to the house of the appellant at Borivali. When the search of the house of the appellant was taken currency notes of Rs.27,341/- and four counterfeit currency notes of Rs.500/- denomination were found. The same were taken charge of under a panchanama.

09. The notes suspected to be counterfeit were sent to the Currency Printing Press for examination and opinion. On completion of investigation, a charge sheet came to be filed and the said accused No.1 and the appellant came to be prosecuted.

10. The prosecution examined 14 witnesses during the trial. Dinesh Shrivastav-the First Informant is the first witness for the prosecution. P.W.Nos.2,4,5,6,7,8 and 9 are the hawkers, who had allegedly received counterfeit currency notes from the accused No.1-Ranjana on 23/10/2009 before Ranjana was apprehended at the instance of the First Informant-Dinesh Shrivastav. P.W.No.3 Thakur Chaurasiya is a panch in respect of seizure of the counterfeit currency note supposedly handed over to the police by the P.W.No.1. P.W.No.10 is a panch in respect of the panchanama regarding the personal search of the accused No.1 Ranjana.

11. P.W.No.12-Mohan Dabholkar is the Sub-Inspector of police attached to Shivaji Park Police Station at the material time who has registered a FIR.

12. P.W.No.13-Balu Phule is a panch in respect of the certain information allegedly given by the accused No.1-Ranjana, which led to the recovery of some counterfeit currency notes from some hawkers.

13. The evidence of these witnesses is not material in the context of the allegation against the appellant.

14. The only relevant witnesses in the context of the case against the appellant are P.W.No.11-Mukesh Yadav and P.W.No.14-Sunil Kale - the Investigation Officer.

15. Mukesh Yadav (PW11) is residing by the side of the appellant. In fact, he is said to be the tenant of the appellant. He did speak that the police had come to the house of the appellant and had searched his house, but said that nothing was found in the house of the appellant. His evidence shows that one 'Hayat' had told him that he was doing the work of circulating counterfeit currency notes. He, however, did not support the prosecution with respect to the alleged recovery of counterfeit currency notes from the house of the appellant and was declared hostile.

16. Mr.Sunil Kale (PW14) has stated that pursuant to the information given by the accused No.1-Ranjana earlier on 24/10/2009, she on 25/10/2009 led the police party and the panchas to the house of the appellant. That, this witness took the search of the house i.e. hut of the appellant and found currency notes of Rs.27,341/- and four fake currency notes of Rs.500/- denomination. The suggestion that he had actually not taken the accused No.1-Ranjana to the house of the appellant, as put to him in the cross-examination, was denied by him. Interestingly, no panch witness in support of the alleged seizure of the counterfeit currency notes from the house of the appellant have been examined. No reason for non-examining the same has been given.

17. Thus, there is only the evidence of the Investigation Officer - Sunil Kale (PW14) in support of the allegation against the appellant. There is no explanation even before this Court, as to why the pancha witnesses to the alleged recovery have not been examined.

18. I have carefully considered the matter. There is no rule - certainly not of law - that the sole testimony of the Investigating Officer would never be enough/sufficient to prove the fact of recovery of incriminating articles from the possession of an accused. However, here the prosecution claims that the recovery was effected in the presence of two independent witnesses and

none of these two witnesses has been examined. Non-availability of evidence is one matter, but availability of evidence and holding the same back, is quite another. In the instant case, since no explanation at all has been given for not having examined independent witnesses - in spite of associating them with the search operation - it would be unsafe to place reliance on the evidence of PW.No.14. It would be legitimate to presume, that the pancha witnesses, if had been examined, would not have supported the case of the prosecution and that, that is why they were held back.

19. In these circumstances, the trial Court ought not to have convicted the appellant only on the testimony of the Investigating Officer. This is particularly so, because the prosecution case, when viewed as a whole, suffers from several other infirmities and, therefore, clearly the evidence of the Investigating Officer cannot easily and blindly accepted.

20. The Investigating Officer (PW14) did not produce any entries in the Lock-up Register to show that the accused No.1- Ranjana had indeed been taken up out of the lock-up. He admitted that had she been taken out on 25/10/2009, there ought to have been entry in the Lock-up Register in that regard. Thus, apart not seeking corroboration from independent witnesses, Mr.Kale (PW14) did not seek to support his statement by production of even the police record.

21. As a matter of fact, the learned Additional Public Prosecutor fairly submitted that this has been a case where benefit of doubt should have been given to the appellant and he should have been acquitted.

22. The learned Additional Public Prosecutor further submits that since the entire evidence has been considered and since it shows that there is no satisfactory material to prove the guilt even of the accused No.1, the accused No.1-Ranjana also may be given benefit of doubt and acquitted, although she has not chosen to file any appeal. Since such a suggestion having come from the learned Additional Public Prosecutor herself, I have considered this aspect of the matter.

23. It may be recalled that the case against the accused No. 1-Ranjana is to the effect that she, on 23/10/2009 had been purchasing different articles, from the hawkers, by giving counterfeit currency notes of Rs.500/- to each of them. Thus, the evidence shows that on 23/10/2009, before she came to be apprehended at the instance of Dinesh, she had purchased various articles from Shetty (PW2), Pawar (PW4), Khan (PW5), Shukla (PW6), Das (PW7), Gundal (PW8) and Mohite (PW9). The evidence of these witnesses shows that they all - each of them - had received a counterfeit currency note of Rs.500/- denomination from the accused No.1 Ranjana. They had given articles to her of

different values, and had returned the balance amount. Thus, according to Shrivastav (PW1) he gave a frock worth Rs.60/- and returned an amount of Rs.440/- back to her. Similarly, Shetty (PW2) gave a frock worth Rs.70/- and returned an amount of Rs. 430/- back to her. So also, Pawar (PW4) gave a petticoat worth Rs.50/- and returned an amount of Rs.450/- back to her. Khan (PW5) gave one plastic plate worth Rs.60/- and returned an amount of Rs.440/- back to her. Shukla (PW6) gave a ladies purse worth Rs.50/- and returned an amount of Rs.450/- back to her. Das (PW7) gave one ladies maxi worth Rs.100/- and returned an amount of Rs.400/- back to her. Gundal (PW8) gave a bed-sheet worth Rs.70/- and returned an amount of Rs.430/- back to her, and lastly, Mohite (PW9) gave a *pakkad* worth Rs.50 and returned an amount of Rs.450/- back to her.

24. Thus, as per the prosecution case itself, Ranjana was supposed to be having an amount of Rs.3490/- of genuine currency with her, when she came to be apprehended as aforesaid. However, whether this amount was actually so found on her person, when she apprehended, has not been spoken at all by Meena Jadhav (PW10), who is supposed to have witnessed the personal search of the accused No.1 Ranjana. Meena Jadhav's (PW10) evidence shows that the police had seized some articles and a currency note of Rs.500/- denomination from the accused No.1 Ranjana, but it does not show that any genuine currency was

found with Accused No.1 Ranjana. The evidence of Mohan Dabholkar (PW12), who is supposed to have taken the search of accused No.1-Ranjana in the presence of witnesses, speaks only of recovery of a currency note of Rs.500/- denomination, some articles and four notes of Rs.100/- denomination and four notes of Rs.10/- denomination. The case of the prosecution is that the currency note of Rs.500/- is a counterfeit one and thus the recovery of genuine currency from the person of accused No.1-Ranjana is only of Rs.440/- as per the evidence of Mr.Dabholkar (PW12). As aforesaid, if the evidence of P.W.Nos.1,2,4,5,6,7,8 and 9 is to be accepted, Ranjana ought to be having genuine currency of Rs.3490/- with her. No light has been thrown on as to how this currency has not been found on the person of accused No.1-Ranjana. This, therefore, creates a doubt about the truth of the prosecution case.

25. Even the evidence of P.W.No.3 Thakur Chauriya does not advance the prosecution case against accused No.1 Ranjana in any manner. This witness - a panch - was supposed to depose about the alleged fact that the note allegedly received by Dinesh (PW1) from accused No.1 Ranjana was produced by Dinesh (PW1) before the police and was seized in the presence of this witness. His evidence, however, indicates that the police had already seized the currency note and, that the same was shown to him by the police. His evidence does not show that the production of the note

by Dinesh (PW1) and its taking charge by the police took place in his presence.

26. Moreover, the notes allegedly given by Ranjana to P.W.Nos.1,2 and 4 to 9 have not been recovered at all. It is because these witnesses stated that they had circulated the notes not being aware of the fact that they were counterfeit. In the absence of recovery of notes, it would not be possible to conclude that Ranjana had indeed given counterfeit currency notes to these persons and was circulating the same. This creates a further doubt about the truth of the prosecution version.

27. The evidence of Dinesh Shrivastav (PW1) shows that when his dispute with accused No.1 Ranjana was going on, constable Mhasye of Shivaji Park Police Station was there and that, it was he who took Ranjana and him to the Shivaji Park Police Station. However, this constable Mhasye has not been examined as a witness. The evidence of PSI-Mr.Dabholkar (PW12) shows as if Dinesh Shrivastav came to the police station on his own; and does not even refer to constable Mhasye.

28. In my opinion, even the case against accused No.1 Ranjana was not satisfactorily proved. The trial Judge ought to have given benefit of doubt to her and ought to have acquitted her.

29. It is well settled that the benefit of the conclusion arrived by an appellate Court can be extended even to an accused, who has not appealed. In the instant case, I find that the accused No.1 Ranjana has been rather unfortunate as though she was ordered to be released on bail by the appellate Court, she could not avail of the same, apparently because of poverty, and perhaps, has already undergone the sentence. However, since I have come to a conclusion that she should have been given benefit of doubt and acquitted, it would be proper to interfere with her conviction also.

30. The appeal is allowed.

31. The impugned judgment and order of the conviction of the appellant as recorded by the Ad-hoc Additional Sessions Judge, Sewree, Mumbai is set aside.

32. The appellant stands acquitted.

33. Fine, if paid, be refunded to him.

34. Though the original accused No.1 Smt.Ranjana Babu Shaikh has not preferred any appeal, after having gone through the record and proceedings of the case, I am of the opinion that the conviction of the said accused No.1 is also not proper and

legal. Therefore, for the reasons, which are discussed in this Judgment, the said accused No.1 is also acquitted.

35. If the accused No.1 is in custody, she shall be released forthwith, unless required to be detained in some other case.

36. Fine, if paid, be refunded to her.

37. The appeal is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY J.)