

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1378 of 2012

Manirul Maulavi Mustafa & Ors .. Appellants
Versus
The State of Maharashtra .. Respondent

Mr. D.G. Khamkar, Advocate for the applicant.

Mr. Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 19th MARCH, 2015

JUDGMENT :-

1 The appellants were prosecuted on the allegation that they had committed offences punishable under section 489B and 489C of the Indian Penal Code (IPC). There was one more accused i.e. the Accused no.4, who was also prosecuted along with the appellants. After holding a trial, the learned Addl. Sessions Judge, Pune found the appellants guilty of an offence punishable under section 489C of the IPC read with section 34 of the IPC, and sentenced each of them to suffer Rigorous Imprisonment for 6(six) years, and to pay a fine of Rs.1,000/- each in default to suffer RI for one month each. The learned Addl. Sessions Judge found the appellants not guilty of an offence punishable under section 489B of the

IPC, and as such acquitted them of the said offence. The learned Addl. Sessions Judge found the Accused no.4 not guilty of any offence, and as such, passed an order acquitting him. The appellants are aggrieved by the judgment and order, convicting and sentencing them, and have therefore, by the present Appeal, challenged the same.

2 I have heard Mr. Khamkar, learned counsel for the appellants and Mr. Deepak Thakre, the learned APP for the State. I have been taken through the entire evidence adduced during the trial. I have carefully gone through the impugned judgment with particular reference to the parts highlighted by the learned counsel for the appellants.

3 The prosecution case was to the effect that while Sunil Gaikwad – a Police Officer – who was, at the material time, attached to Samarth Nagar Police Station, along with his staff, patrolling in the night of 31st July 2011, came across three persons at about 9.00 p.m, at Shirsalseth Chowk of Rasta Peth. These three persons are said to be the appellants. The appellants, after noticing the police party, tried to abruptly depart from the place where they were, and this aroused suspicion about them. The members of the police party then accosted them, made certain inquiries with them, and then, after calling two panchas, took their personal search. 10(ten) counterfeit currency notes of Rs.1,000 denomination each were recovered from the appellant no.1

Manirul Mustafa. 10(ten) counterfeit currency notes of Rs.1,000 denomination were recovered from the appellant no.2 - Ansar Bashir Husein also. 5(five) counterfeit currency notes of Rs.1,000 denomination were found with the appellant no.3 – Kamaluddin Arsad Ali.

4 I have carefully gone through the evidence of API Sunil Gaikwad (PW 1) and the evidence of Dilip Jadhav, a Head Constable of Police who was with him at the time when the appellants were spotted. I find their evidence consistent with no infirmities.

5 The evidence of these two witnesses is supported by the evidence of Madhavan Nambiar (PW 2) - a panch. I do not find any discrepancies in the evidence of these three witnesses.

6 The third witness for the prosecution Sunil Welhal is an Officer serving in HDFC Bank Ltd, and his evidence indicates the notes in question to be counterfeit. This evidence is further supported by the report from the India Security Press, Nasik, opining the notes allegedly seized from the appellants to be counterfeit. There does not appear to be any serious challenge to this aspect of the matter, either during the trial, or during the hearing of the present Appeal.

7 Through one Chhaganlal Patel PW No.6, an attempt was made to show that the appellant no.3 had previously also circulated some counterfeit currency notes, but no such notes could be recovered by the police from this witness. As such, no reliance on his evidence to show any circulation, in the past, by the appellant no.3 of counterfeit currency notes can be placed.

8 The seventh witness Bhagwant Ingale, Inspector of Police is the Investigating Officer, and he had filed the charge-sheet. Nothing which would discredit the prosecution version has been elicited in the cross-examination of this witness.

9 In my opinion, the fact that the appellants were, at the material time, found in possession of counterfeit currency notes, was satisfactorily established before the trial court, and the finding arrived at by the trial court in that regard, appears to be proper and legal.

10 Mr.Khamkar contended that in order to hold a person guilty of an offence punishable under section 489C of the IPC, the fact of mere possession of counterfeit currency by such person, is not sufficient, and that there should be evidence to show that the possessor had the knowledge that the notes in question were counterfeit. The legal proposition, as put forth by the learned counsel for the appellants, cannot

be disputed. However, whether or not in a given case, the possessor of a counterfeit currency can be attributed with such knowledge would depend on the evidence in that particular case. An inference about the guilty knowledge can be drawn from the circumstances as would be appearing in the evidence.

11 In the instant case, all the appellants were together. Counterfeit currency notes were recovered from each of them. They had been residing in a hotel room together. They are from West Bengal, and there was no satisfactory explanation of their presence in Pune, and more particularly about the place of their residence i.e. a reasonably good hotel. The number of counterfeit currency notes found with the appellants, is not insignificant. Moreover, the evidence indicates that on noticing the police (atleast one of the members of the party was in uniform) the appellants tried to run away. This *prima facie* indicates that they wanted to avoid the police. Since the appellants were not in possession of any other objectionable articles, an inference can be drawn that they wanted to avoid the police because of the knowledge that the notes that were with them, were counterfeit. I am alive to the possibility of the story of appellants attempting to run away or escape being falsely and shrewdly introduced just to attribute the requisite guilty knowledge to the appellants, but there is nothing in the cross-examination of the relevant witnesses to suggest so.

12 In my opinion, the charge of an offence punishable under section 489C was satisfactorily proved against all the appellants, and the conviction of the appellants on that count, as recorded by the learned Addl. Sessions Judge, suffers from no infirmities.

13 Mr.Khamkar urged that the sentence of RI for six years, as imposed by the learned Addl. Sessions Judge is rather harsh, and that keeping in mind that none of the appellants had any past criminal record, the sentence imposed upon the appellants, be reduced to the period already undergone. He placed reliance on some of the decided cases where comparatively lesser sentences were imposed by the Courts in similar cases. However, it cannot be said that these cases lay down any principles in the matter of awarding of sentence. I am therefore, not inclined to reduce the sentence imposed upon the appellants to the period already undergone, as urged, which period appears to be of less than four years.

14 However, after hearing Mr.Khamkar and Mr.Thakare, the learned APP, I am inclined to reduce the substantive sentences imposed upon the appellants to Rigorous Imprisonment for a period of five years.

15 Accordingly, it is directed that the substantive sentences imposed upon the appellants, shall stand reduced to RI for a period of 5(five) years.

16 Save and except the above modification and reduction in the sentence, no other order in this appeal, which stands dismissed.

17 Appeal is disposed of in the aforesaid terms.

(ABHAY M.THIPSAY, J)