IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.260 OF 2001

1] Shaikh Mustafa s/o. Shaikh
Akbar, Age 20 years, Occ. Nil,
r/o. Bhoie Galli, Parali-
Vaijnath, Tq. Parali Vaijnath,
Dist. Beed

2] Shaikh Shafiq s/o. Shaikh Rafiq,
Age 22 years,
Occ. and r/o.as above

3] Shaikh Pasha s/o. Shaikh Hamid,
Age 22 years, Occ. Nil,
r/o. Dhoki, at present Tawarja
Colony, Islampura, Latur

4] Shaikh Farooq s/o. Shaikh
Khudboddin, Age 25 years,
Occ. Nil, r/o. Kakar-Mohalla,
Parali Vaijnath, Dist. Beed

5] Sayyed Mohiyoddin s/o. Sayyed
Tajoddin, Age 23 years,
Occ. Nil, r/o. Gouspura,
Latur, Dist. Latur

6] Allabaksha s/o. Rasulkhan Pathan,
Age 26 years, Occ. Nil,
r/o. Miskinpura, Latur ..Appellants

Versus

The State of Maharashtra ..Respondent

WITH
CRIMINAL APPEAL NO.279 OF 2001

Laxman @ Raju s/o. Bhanudas
Tekale, Age 27 years,
Occ. Rikshaw Driver,
r/o. Sidheshwar Chowk,
Latur ..Appellant

Versus

The State of Maharashtra ..Respondent

WITH
CRIMINAL APPEAL NO.276 OF 2001

1] Dayanand s/o. Gundappa,
Age 26 years, Occ. Nil,
r/o. Lalwadi Bidar
(Karnataka),

2] Sayman s/o. Baburao Kondikar,
Age 23 years, Occ. Nil,
r/o. Lalwadi, Bidar,
(Karnataka)

3] Raju s/o. Hanumant Mhetre,
Age 22 years, Occ. Nil,
r/o. Benkanali, Dist. Bidar,
at present Jangalkoie,
Bidar (Karnataka) ..Appellants

Versus

The State of Maharashtra ..Respondent

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Mr.Rajendra Deshmukh, advocate for appellants in Criminal Appeal No.260 of 2001

Mr.S.R.Choukidar, advocate for appellants in Criminal Appeal Nos.276 of 2001 and 279 of 2001 (appointed)

Mr.A.R.Kale, A.P.P. for respondent – State in all appeals

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CORAM : M.T. JOSHI, J.
RESERVED ON : FEBRUARY 04, 2016
PRONOUNCED ON : FEBRUARY 08, 2016

JUDGMENT :

Heard both sides.

2] All the present ten appellants in three separate appeals, were convicted by the learned IInd Addl. Sessions Judge, Ambajogai in Sessions Case No.85 of 1997 for the separate offences.

. Appellant no.1 – Shaikh Mustafa and appellant no.2 – Shaikh Shafiq in Criminal Appeal No.260 of 2001 were convicted for the offences punishable under Section 489-B read with 34 of Indian Penal Code. They were sentenced to undergo rigorous

imprisonment for five years and to pay a fine of Rs.1,000/- for the said offences. They were also convicted for the offence punishable under Section 420 read with 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- each.

. Appellant nos.3 to 5 in the same Criminal Appeal along with the appellants in Criminal Appeal No.276 of 2001 were convicted for the offences punishable under Section 489-C of Indian Penal Code and were sentenced to suffer rigorous imprisonment for three years each and to pay fine of Rs.500/-.

. Appellant no.5 — Sayyed Mohiyoddin in Criminal Appeal No.260 of 2001 along with the sole appellant — Laxman @ Raju s/o. Bhanudas in Criminal Appeal No.279 of 2001 were convicted for the offence punishable under Section 489-D read

with 34 of Indian Penal Code. They were sentenced to suffer rigorous imprisonment for five years each and to pay fine of Rs.1,000/- each.

. Appellant no.6 — Allabaksha in Criminal Appeal No.260 of 2001 was also convicted for the offences punishable under Section 201 of Indian Penal Code and sentenced to suffer rigorous imprisonment for two years. The sentences of appellant no.1, 2 and 5 in Criminal Appeal No.260 of 2001 were directed to run concurrently. Aggrieved by the said order, present appeals are preferred.

3] For the sake of convenience, the appellants would be termed as accused as per their serial number in the trial, which is as under :-

Accused no.1	:	Shaikh Mustafa
Accused no.2	:	Shaikh Shafiq
Accused no.3	:	Shaikh Pasha
Accused no.4	:	Shaikh Farooq
Accused no.5	:	Shaikh Mohiyoddin
Accused no.6	:	Dayanand s/o. Gundappa
Accused no.7	:	Sayman Kondikar

Accused no.8	:	Raju s/o. Hanumant Mhetre
Accused no.9	:	Allabaksha Pathan
Accused no.10	:	Laxman @ Raju s/o. Bhanudas

4] The prosecution case, in short, would reveal that, while accused nos.1 and 2 had used counterfeit currency notes at the shop the complainant PW 6 – Santosh Tolambe at Ambajogai on 23rd September, 1997, they were seen carrying the same activities in the neighboring shop of PW 12 – Suryakant Nirmale. Therefore, the complainant PW 6 – Santosh Tolambe along with said Suryakant Nirmale and their friend PW 15 – Sajjan Gathal approached Ambajogai Police Station and lodged the complaint. Immediately, PW 20 - Subhash Nikam, PSI, arranged a trap on the bus stand following these accused. At the bus stand, these accused were apprehended and again counterfeit currency notes were seized from them.

5] Upon inquiry with them, certain information was received, which led to other accused, who had disclosed the counterfeit notes. Ultimately, PSI Nikam was led to the PW 10 — Babu Tadlapure, who had prepared the rubber stamp of letters and figure for accused nos.5 and 10. After this investigation, the charge sheet came to be filed.

6] The prosecution case, in detail, is as under :-

. That, on 23rd September, 1997, when PW 6 — Santosh Tolambe was in his shop at Ambajogai, accused no.1 - Shaikh Mustafa and accused no.2 Shaikh Shafiq came to him. They tendered a currency note in the denomination of Rs.50/- and purchased a packet of biscuit for Rs.4=50 ps. The change of Rs.45=50 ps. was returned by the complainant to them. He however suspected the currency note to be counterfeit and he watched movements of the accused.

. He found that accused nos.1 and 2 had thereafter entered another shop in the vicinity i.e. shop of PW 12 — Suryakant Nirmale. When the complainant went to the shop of PW 12 — Suryakant Nirmale, he found that similar trick was played by accused nos.1 and 2 with the said shop keeper and they had left the shop. In the circumstances, the complainant, PW 12 — Suryakant Nirmale along with PW 15 — Sajjan Gathal, a Press Reporter, immediately went to Police Station, Ambajogai. The complainant produced currency note before the police. The complaint was recorded and crime was accordingly registered.

. PW 20 — PSI Nikam immediately took the complainant and other members to the bus stand. At the bus stand, both the accused were apprehended. From their search, two currency notes bearing the same number i.e. 534239 were recovered from the person of accused no.1 — Shaikh Mustafa.

. PW 20 — PSI Nikam interrogated both accused nos.1 and 2. It was found that next of the accused i.e. accused no.3 — Shaikh Pasha, resident of Parali, was supplying the counterfeit currency notes to them. He was apprehended and he also made disclosure leading to recovery of five currency notes. Eventually, accused no.3 — Shaikh Pasha disclosed that accused no.4 — Shaikh Farooq would be arriving with the counterfeit currency notes. He was also apprehended and during his personal search, two currency notes which were of the very same number, were recovered. Accused no.3 — Shaikh Pasha disclosed that the currency notes were supplied to him by accused no.5 — Mohiyoddin of Latur. Therefore, accused no.5 — Mohiyoddin was also apprehended and three currency notes of the same serial number, were recovered from him.

. Parallel investigation was also carried by PW 8 - PSI Kazi in the crime. Upon interrogation of

the apprehended accused, he found that accused no.6 – Dayanand Gundappa, accused no.7 – Sayman Kondikar and accused no.8 – Raju Mhetre were also circulating the counterfeit currency notes. PSI Kazi, therefore, visited Bidar and apprehended these accused. Under three separate panchnamas, currency notes found on the person of accused nos.6, 7 and 8 were also seized.

. Accused no.5 – Shaikh Mohiyoddin also made a disclosure statement that he had kept a bundle of currency notes, instruments and printing material with accused no.9 – Allabaksha Pathan. Accordingly, accused no.9 – Allabaksha was also arrested and brought to Ambajogai. He pointed the spot where, some of the currency notes and printing material were burnt to ashes. Some burnt material was recovered in view of the said disclosure. During interrogation, it was found that PW 14 – Ramakant Mahajan had, on the order of

accused no.10 – Laxman @ Raju and accused no.5 – Shaikh Mohiyoddin, prepared rubber stamps of figures and letters as detailed by him. These accused had took delivery of the said figures and letters, but did not turn up to take the leads. He, therefore, produced the leads before the Investigating Officer.

. From all this investigation, eighteen currency notes having the same number were recovered from these different accused. One currency note was produced by the complainant while, another was produced by PW 12 – Suryakant Nirmale i.e. another shop keeper.

. All the twenty counterfeit currency notes were sent by the Investigating Officer to the Reserve Bank of India. PW 19 – Shrikrishna Gaur, Technical Officer of Ministry of Finance, examined the currency notes and found them to be counterfeit.

In the circumstances, the charge sheet came to be filed.

7] Before the learned Addl. Sessions Judge, in all twenty witnesses were examined. Those included the witnesses as detailed supra, as well as the panch witnesses and peripheral witnesses like PW 9 — Dattatraya Tukde, who was working in the printing press of PW 10 — Babu Tadlapure. Rest of the witnesses were the panch witnesses. Out of them, PW 3 — Amarjeet Lakhera, PW 4 — Prashant Lakhera, PW 7 — Satish Sontakke and PW 16 — Chandrakant Waghmare did not support the prosecution case. PW 1 - Sudhakar has supported the prosecution as regards recovery of currency notes from accused nos.1 and 2. He, however, did not support the prosecution case as regards seizure of currency note from accused no.3 - Shaikh Pasha.

8] The learned Addl. Sessions Judge observed that the prosecution case has been proved beyond the reasonable doubt and therefore, the conviction and sentence, as detailed supra, came to be recorded against the appellants.

9] Mr.R.S.Deshmukh, learned counsel for the appellants supported by Mr.S.R.Choukidar, learned counsel, submitted before me that it would be difficult to appreciate that at the initial stage itself, any panch witness like PW 1, was available. The time gap between recording of the disclosure panchnama and recovery panchnama at Exhibit 78 creates doubt regarding genuineness of the prosecution case. PW 2 – Bhimrao Gandle was, in fact, an interested witness as he was driver of the private jeep of the Police Head Constable. The prosecution has tried to fill up the lacuna by examining the police witnesses where the panch witnesses have turned hostile. Even some of the

witnesses like PW 6 — Santosh Tolambe, complainant, was unable to identify accused nos.1 and 2 in the dock.

. Some of the witnesses have deposed like they are the experts in the currency notes. There is some exaggeration made by the prosecution witnesses. PW 12 — Suryakant Nirmale and panch witness were unable to identify accused nos.1 and 2. It was further submitted that no test identification parade was held. In the the circumstances, it is submitted that the appeals may be allowed and the appellants may be acquitted.

10] On the other hand, learned A.P.P. submitted that the prosecution case is natural one. It would show that the Investigating Officer was led by one accused to another accused from whom, personally either the counterfeit currency notes were recovered or their disclosure statement laid

to the recovery of the currency notes or the stamps and printers. In the circumstances, he submits that the appeal may be dismissed.

11] On the basis of this material, following points arise for my determination :-

I] Whether the prosecution has proved that accused nos.1 and 2 in furtherance of their common intention, had trafficked two counterfeit currency notes in the denomination of Rs.50/- on 23rd September, 1997 at about 6:30 p.m. at Ambajogai, having reason to believe that those were the counterfeit currency notes?

II] Whether the prosecution has further proved that accused nos.3 to 8 in furtherance of their common intention, were possessing counterfeit currency notes in the denomination of Rs.50/-, having reason to believe that the same were counterfeit and they were intended to use the same as genuine ?

III] Whether the prosecution has further proved that accused nos.5 to 10 in furtherance of their common intention, were found in possession of the instruments and material meant for the purpose of printing the counterfeit currency notes in the denomination of Rs.50/- ?

IV] Whether the prosecution has further proved that accused no.10 has caused disappearance of evidence of performing the process in making the counterfeit currency notes of Rs.50/- ?

V] Whether the prosecution has further proved that accused nos.1 and 2, in furtherance of their common intention, have cheated complainant — Santosh Tolambe and PW 12 — Suryakant Nirmale by dishonestly tendering counterfeit currency note in the denomination of Rs.50/- inducing them to deliver the biscuits packet on the above date, time and place ?

. My findings to the above points are in the affirmative. All the appeals are therefore, dismissed, for the reasons to follow.

R E A S O N S

12] Besides the complainant, his neighboring shop owner and his friend, the prosecution has examined PW 1 — Sudhakar Gumte and PW 13 — Arun Somawanshi regarding arrest of accused nos.1 and 2 and recovery of counterfeit currency notes from accused nos.1 to 3.

. PW 1 — Sudhakar Gumte deposed that in his presence, search of accused nos.1 and 2 was taken at the bus stand and the counterfeit currency notes bearing the same number were recovered from them. The panchnama to this effect is proved at Exhibit 78. He was also witness to the seizure of the counterfeit currency notes from accused no.3 —

Shaikh Pasha and panchnama to that effect at Exhibit 79 is proved by him. PW 13 — Arun Somawanshi has also supported the case regarding accused nos.1, 2 and 3.

13] Mr.Deshmukh, learned counsel for the appellants, however, argued that it would be difficult to accept that immediately upon lodging of the FIR, when PSI Nikam rushed at the bus stand, these panch witnesses were readily available.

. It is, however, to be noted that accused nos.1 and 2 were apprehended in the broad day light at the bus stand. Availability of the witnesses, therefore, cannot be doubted.

14] Mr.Deshmukh also raised doubt regarding the time gap in recording of the FIR and recording of the panchnama.

. It should be noted that town Ambajogai in the year 1997, could not be said as a very big town and therefore, unless there is any material on record, no suspicion about these activities can be accepted.

15] PW 2 - Bhimrao Gandle was examined to show that upon pointing out by accused no.3 — Shaikh Pasha, the Investigating Officer apprehended accused no.5 — Shaikh Mohiyoddin from whom, three currency notes in the denomination of Rs.50/- each were recovered. During the cross-examination, this witness deposed that he was carrying a jeep for filling the fuel towards the petrol pump when he was called by the police. He admits that the said jeep belonged to one Constable Dubale and he was working as Cleaner on the said jeep. That itself, however, would not cause us to throw away the prosecution case regarding this accused.

16] PW 13 — Arun Somawanshi has further deposed that as per the disclosure from accused no.3 — Shaikh Pasha, it was gathered that accused no.4 — Shaikh Farooq would be arriving at Ambajogai. He was, therefore, apprehended and two currency notes of Rs.50/- each bearing the same number, were recovered from him under panchnama at Exhibit 102.

17] PW 11 — Shridhar Bade, Constable, had also deposed about the counterfeit currency notes recovered in his presence from the person of accused nos.1, 2, 3 and 5.

. PW 8 — Nagnath Kale has deposed that he was called at the shop of PW 4 — Prashant Lakhera of Latur, who has produced the lead. PW 14 — Ramakant Mahajan has produced in his presence, a bill book seized under the panchnama at Exhibit 95.

. PW 9 – Dattatraya Tukade, a worker working in the printing press of PW 14 – Ramakant Mahajan, had supported this evidence. He deposed that accused no.10 – Laxman @ Raju was working as Printer in the said printing press. He made demand for handing over of the letters and figures and therefore, the same were handed over to him. PW 14 – Ramakant Mahajan has deposed that accused 8 – Raju Mhetre had placed the order for preparation of the rubber stamp and had also taken delivery of the rubber stamp, 18 letters and figures, but the leads remained with this witness.

. The evidence of PW 7 – Satish Sontakke and PW 16 – Chandrakant Waghmare would show that they had accompanied the Investigating Officer to Bidar as panch witnesses. In their presence, accused no.6 – Dayanand Gundappa, accused no.7 – Sayman Kondikar and accused no.8 – Raju Mhetre were arrested. From the mouth of these witnesses,

recovery of certain currency notes from each of the accused of the same denomination and also the same number, was sought to be proved. They, however, turned hostile and did not support the prosecution. The Investigating Officer, however, deposed about these facts.

18] The learned Addl. Sessions Judge has observed that the evidence of PW 20 — PSI Nikam and PW 11 — Shridhar Bade, Police Constable, is trustworthy. It was further observed that due to lapse of time, some of the accused persons were not identified in the witness box by some of the witnesses, yet the Investigating Officer and the accompanying witnesses have identified those accused persons.

19] The learned Addl. Sessions Judge had an occasion to note the demeanor of the witnesses. In the circumstances, in my view, the prosecution has proved its case beyond the reasonable doubt as

regards all the appellants. All the appeals, therefore, deserve to be dismissed.

20] Hence, the following order :-

A] All the Criminal Appeals are hereby dismissed.

B] Bail bonds, if any, of the appellants shall stand cancelled.

C] The learned Addl. Sessions Judge is directed to take steps for securing presence of the appellants for serving the remainder of the sentences by them.

21] Since Mr.Choukidar, learned counsel was appointed through High Court Legal Services Sub-Committee in Criminal Appeal Nos.279 of 2001 and 276 of 2001 to defend the case of the respondents in the said appeal, his fees is quantified at

Rs.10,000/- (Rs.Ten Thousand) in each appeal, to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[M.T. JOSHI, J.]

22] After pronouncement of the judgment, learned counsel for the appellants in all the appeals, pray for grant of some time to surrender by the appellants.

. At the request of learned counsel for the appellants, time to surrender by the appellants in all the appeals, is hereby granted by four weeks from today.

[M.T. JOSHI, J.]

kbp