

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.662 OF 2009

**MOHAMMED SHABBIR S/o.MOHAMMED)
KHURSHID SHAIKH)...APPELLANT**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri M.K.Kocharekar i/b. Rajeev Sawant and Associates, Advocate
for the Appellant.

Smt.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 18th JANUARY 2016.

ORAL JUDGMENT :

1 This appeal is directed against the judgment and order dated 18th May 2009 delivered by the Additional Sessions Judge, Mumbai, convicting the appellant, who was the accused in Sessions case No.720 of 2008 tried by the learned Additional

Sessions Judge, of offences punishable under Sections 489B of the IPC and 489C of the IPC. The learned Additional Sessions Judge sentenced the appellant to suffer Rigorous Imprisonment for 3 years, on each of the said two counts. Additionally, he also imposed a sentence of fine with respect to the offence punishable under Section 498B of the IPC.

2 When the appeal came up for final hearing, it was revealed that the appellant was released from prison after having undergone the sentence. Shri Kocharekar, the learned counsel for the appellant, nevertheless, submitted that the appellant has a good case on merits and he would argue the appeal notwithstanding that the appellant has served the entire sentence awarded to him.

3 I have heard Shri Kocharekar, the learned counsel for the appellant. I have heard Smt.M.R.Tidke, the learned APP for the State. I have gone through the evidence adduced during the trial and the impugned judgment.

4 The prosecution case, as put forth before the trial court, was as follows :

That Rajan Sharma (PW1) owns a bar and restaurant at Bandra. That, on 13th August 2008, the appellant, who had visited the said bar and restaurant, gave a currency note of Rs.500/- to Santosh Poojari (PW2) – a waiter in the said bar and restaurant – for making payment of the bill in respect of the food consumed by him. Santosh Poojari (PW2) handed over the said currency note of Rs.500/- to Rajan Sharma (PW1) who was at the counter. Rajan Sharma, as per his practice, checked the currency note. He noticed certain features thereon which created a suspicion in his mind that the said note was counterfeit. He, therefore, asked Santosh to call that customer i.e. the appellant. The appellant was accordingly called at the counter. Ranjan Sharma (PW1) and Santosh (PW2) then brought the appellant to Bandra Police Station. Ranjan Sharma handed over the counterfeit currency note that had been given to him by the appellant, to the police. P.S.I.Dattaji Sawant (PW6), who was on duty at Bandra Police Station at that time, called two panchas and

took charge of the counterfeit currency note from Ranjan Sharma (PW1) in the presence of panchas, one of whom is Sayyed Ismail Sayyed Jalal (PW3). Sawant (PW6) then took personal search of the appellant in the presence of another set of panchas; and Neel Baro (PW4) is one of the panchas, in whose presence, the personal search of the appellant was taken. In this personal search, seven notes were found with the appellant, which notes were also believed to be counterfeit and taken charge of.

In the course of investigation, the notes in question were sent to Nasik Currency Press. They were taken and delivered there by Maruti Aawhad (PW5). The report received from the Currency note Press, Nasik, showed that the notes were counterfeit. Thereafter, a charge-sheet was filed against the appellant, who came to be prosecuted and convicted as aforesaid.

5 Mr.Kocharekar contended that there were a number of discrepancies in the prosecution evidence and the the learned Additional Sessions Judge was not right in holding that the prosecution case had been proved beyond reasonable doubt.

Indeed, I find that there are a number of discrepancies and infirmities in the prosecution case.

6 In the first place, the prosecution case is that the appellant was brought to Bandra Police Station at about 7.30 p.m. The First Information Report (FIR) shows that the offence took place at about 6.30 p.m. and was reported to the Police station at 7.30 p.m. However, Ranjan Sharma (PW1) categorically states that the incident took place at about 10.30 p.m. to 11.00 p.m. It is, at that time, that Santosh Poojari (PW2) brought the currency note, said to have been given to him by the appellant, to Ranjan Sharma. Ranjan Sharma is not making a mistake in the time, in as much as, inspite of pointing out that the FIR records that the incident had taken place at about 6.30 p.m. he categorically claimed that *it was wrong, that he never said so to the police, and that he could not assign any reason as to why it was so recorded.*

7 In his evidence, Santosh Poojari (PW2) did speak about the incident. However, there is some confusion as to what

had actually happened, and this confusion cannot be resolved from the evidence of Santosh Poojari. Santosh Poojari (PW2) states that '*one customer*' had given one note to him, *one week before the incident*. According to him, that customer had given a currency note of Rs.500/- to Santosh Poojari (PW2) for purchasing a cigarette packet from the adjoining shop. The cigarette packet was accordingly brought and given to the customer. The cost of the cigarette packet was Rs.30/- and Santosh Poojari returned the remaining amount of Rs.470/- to the customer. The owner of the cigarette shop perhaps realized that the note was counterfeit, and handed it back to Santosh Poojari. Santosh Poojari then collected the amount from the said customer, returned the counterfeit note to him, and paid the amount collected from the customer, to the owner of the cigarette shop. The evidence of Santosh Poojari does not show that, that customer was the appellant. On the contrary, the evidence shows that, that customer was **not** the appellant.

8 The evidence of panch Sayyed Jalal (PW3) shows that the currency note, that was taken charge of by the police in his

presence, was with Ranjan Sharma, and that, the police took it from Ranjan Sharma. Thus, the evidence of this witness is not very significant. He does not speak of any note being recovered in his presence from the appellant. Moreover, he says that the panchnama (Exhibit 16) was drawn between 8.30 p.m. to 9.00 p.m. or 9.15 p.m.; but as aforesaid, this is mysterious, as the incident had taken place between 10.30 p.m. and 11.00 p.m.

9 The next witness Neel Baro (PW4) is a panch in respect of the personal search of the appellant, which appears to have been taken immediately after the panchnama at Exhibit 16, in which panch Sayyed Jalal (PW3) had taken part, was over. Now, when Sayyed Jalal and the other panch, who was called with him were available, why P.S.I. Sawant (PW6) should ask them to go, call a different set of panchas for the personal search, is rather mysterious. However, even if this aspect of the matter is kept aside, there is a material discrepancy in the evidence of panch Neel Baro (PW4), when compared with the case of the prosecution. According to Neel Baro (PW4), five notes were

recovered from the pant pocket of the appellant. The prosecution case is that seven counterfeit currency notes were recovered from the appellant. Anyway, Neel Baro (PW4) does not say that the notes were sealed in his presence.

An interesting aspect of the matter which needs to be noted is that, nothing except the counterfeit currency notes were found with the appellant. No ordinary articles such as handkerchief, comb, wallet etc. or even genuine currency notes, were found with the appellant.

10 In my opinion, the discrepancy about the timing and about the number of notes recovered from the appellant was sufficient – in the light of some improbabilities and infirmities from which the prosecution case, even otherwise suffers, –to create a serious doubt about the truth of the matter. The learned Additional Sessions Judge noticed the discrepancy about the time when the appellant gave a counterfeit currency note to Santosh Poojari (PW2), but dismissed it as 'minor discrepancy.' The learned Additional Sessions Judge was very much impressed by

the fact that panch Sayyed Jalal (PW3) had remembered the serial number of the fake note and identified the note on that basis, without realizing that this was quite improbable and indicated that the panch was a tutored one. The panch even did not say that he remembered the number of the note to have been recorded properly in the panchnama, but stated categorically that he remembered the number.

11 The learned Additional Sessions Judge also did not realize the artificiality in the prosecution case in calling a different set of panchas for the personal search of the appellant, when one set of panchas was already available in the Police station.

12 The learned Additional Sessions Judge also found nothing suspicious or improbable in, that, except the counterfeit currency notes, nothing else was found with the appellant.

13 The learned Additional Sessions Judge appears to have accepted the evidence of the prosecution witnesses only because

the appellant was unable to state as to *why* the prosecution witnesses were deposing falsely against him. Such type of reasoning is not proper. There can be various reasons for the witnesses – who seemingly are independent – to stick to the prosecution case, for proving which they are called. Merely because the prosecution witnesses cannot be shown to be having a motive to implicate the appellant falsely, their evidence cannot be accepted as true. The evidence has to be judged for its intrinsic value, by considering whether it is in consonance with the probabilities, consistent with other evidence and fits in with the material details of the case.

14 The learned Additional Sessions Judge despite observing the weaknesses in the prosecution case, held the appellant guilty and in this process, his reasoning appears to have been influenced by a consideration of the seriousness of the offences. The learned Additional Sessions Judge observed in paragraph 38 of the impugned judgment as follows :

“38. The object of legislature in enacting the provisions under section 489A to 489E is not only to protect the economy of the country, but also, to provide adequate protection to currency notes and bank notes. Therefore, it would not be just to acquit the accused solely as a result of defective investigation.”

There was no question of acquitting the appellant solely as a result of 'defective investigation', and nobody appears to have claimed so. The issue of 'defective investigation' is raised and / or arises in criminal trials on the consideration, whether in view of the 'defective investigation', the requisite degree of satisfaction that the appellant was guilty of the offence, could be arrived at in a given case. The seriousness of the offence had nothing to do in the process of judging whether the accused before the court had indeed committed the offence; and if this aspect is brought into discussion in the process of reasoning undertaken for adjudicating upon the guilt or innocence of an accused, it would only show that the court feels obliged to see that a serious offence does not go unpunished. The court cannot accept unsatisfactory evidence, or hold the case as proved without there being satisfactory and

reliable evidence, because of the seriousness of the alleged offence. The necessity of having clear, satisfactory and reliable evidence against an accused before he is held guilty – cannot be dispensed with on the ground that the offence alleged is a serious one. On the contrary, the seriousness of the offence would require the court to examine the evidence cautiously and carefully, because of the severity of the punishment likely to be given to the accused, if found guilty.

15 Apart from this, there is also one more aspect of the matter. It is that, an incriminating circumstance, namely, 'that the appellant had knowledge of the currency notes being counterfeit' was not at all put to the appellant in his examination under Section 313 of the Code of Criminal Procedure (Code). This was particularly important in this case, in as much as, an attempt was made to prove the existence of such knowledge on the part of the appellant, by saying that the appellant had even previously, attempted to pass off a counterfeit currency note; but this attempt has failed, and Santosh Poojari (PW2) has not related the said

incident :- i.e. 'of giving counterfeit currency note for purchasing cigarette', to the appellant. It related to some other customer, and had taken place a week before.

16 Thus, failure of the learned Additional Sessions Judge to put this incriminating circumstance to the appellant in his examination under Section 313 of the Code, also renders the conviction bad.

17 The prosecution has failed to prove the charge against the appellant beyond reasonable doubt. This was a case where there certainly was a doubt about the truth of the prosecution case. The appellant was entitled to the benefit of the said doubt, and ought to have been acquitted.

18 The appeal is allowed.
The impugned judgment and order is set aside.
The appellant stands acquitted.
Fine, if paid, be refunded to him.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**