

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : May 22, 2017

+ CRL.A. 831/2001

KAMAL LAL

..... Appellant

Through: Mr.Mukesh Kaushik, Adv.

versus

STATE

..... Respondent

Through: Mr.Panna Lal Sharma, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this appeal filed under Section 374(2) of Cr.P.C., the appellant seeks to challenge the impugned judgment dated 16.10.2001, passed in SC No.296/1997 in a case registered as FIR No.83/1992 under Section 489-B/34 of IPC, at Police Station Greater Kailash, Delhi whereby the appellant has been convicted under Section 489C IPC and order on sentence dated 16.10.2011 vide which he has been awarded the rigorous imprisonment for a period 3 years and fine of Rs.25,000/-, in default of payment of fine to further undergo simple imprisonment for 6 months.

2. The facts emerging from the record are that on 10.04.1992, accused Daya Nand came to a petrol pump while driving his car bearing registration No.DIA 5470 and asked for 5 litres of petrol. After taking petrol, he handed over Rs.500/- currency note to the salesman Nand Kishore who did not find water mark and security thread on the note. He showed the note to his colleague Badam Singh and also informed his owner. The police was called thereafter, and accused Dayanand was handed over to the police along with the currency note. Thereafter, accused Dayanand made a disclosure statement stating therein that this note was handed over to him by Kamal Lal and he took the police to the General Taxi stand, Khanna Market where 92 counterfeit currency notes in the denomination of Rs.500/- were recovered from appellant Kamal Lal and were seized by the police. The accused Nand Lal took the police to the house of the accused Satnam Singh, where further he took the police to the house of Dinesh Bhatt. Genuine currency notes amounting to Rs.50,000/- were recovered from the house of Dinesh out of which the first and last note of five packets amounting to Rs.25,000/- were found signed by the accused Kaman Lal.

3. On the basis of apprehension of accused persons and recovery of counterfeit currency notes, FIR under Section 489B/34 IPC was recorded and accused persons were arrested. After completion of investigation, charge sheet was filed in the Court.

4. Charge under Sections 489B and 489C IPC were framed against the accused persons. Accused persons pleaded not guilty and claimed

a trial.

5. The prosecution had examined as many as ten prosecution witnesses namely PW 1 Nandkishor, PW 2 Harjeet Singh, PW 3 Parasnath, PW 4 HC A.K. Sharma, PW 5 Hashim A.Rizvi, PW 6 HC Jagpal Singh, PW 7 ASI Ved Prakash, PW 8 HC Suresh Pal, PW 9 Const. Mahavir, PW 10 V.K. Khanna.

6. After conclusion of prosecution evidence, statements of the accused persons were recorded under Section 313 Cr.P.C. Two defence witnesses were examined by the accused persons.

7. Upon considering the facts, evidence led and the material on record, the appellant was held guilty by the learned Additional Sessions Judge, Delhi and by an order dated 16th October, 2001, the appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 25,000/- and in default of payment of fine to undergo simple imprisonment for 6 months under Section 489-C of IPC. However, the remaining accused persons were acquitted of the charges framed against them.

8. The main grounds of challenge are that the learned Trial Court failed to appreciate that there was no evidence on record to connect the accused/appellant with the commission of the alleged offence. The appellant was not named in the FIR and it was only on the disclosure statement of the accused Daya Nand that the accused/appellant Kamal Lal was arrested. The arrest as well as the seizure of 92 counterfeit notes was not done before any independent witness although there were number of persons present there. But the prosecution did not

bring any independent witness in the trial ; also that one prosecution witness PW3 namely Paras Nath who as per the prosecution was said to have provided 3 counterfeit currency notes to the police as per his statement under Section 161 Cr.P.C., these counterfeit currency notes were alleged to have been provided by the 3 taxi drivers to him. PW3 had further said that the counterfeit notes were sealed in his presence with the seal of “MS”, but this prosecution witness did not support the prosecution story and was declared hostile by the Ld. ASJ. It was further contended that there was no testimony of any of the prosecution witness that the alleged counterfeit currency was in the possession of the accused as the police did not try to lift any finger prints on the said counterfeit notes. It is further contended that it was never alleged that those counterfeit were to be used as genuine currency by the appellant in this case and using a counterfeit currency note is the most important ingredient of section 489-C.

9. Per contra, learned Additional Public Prosecutor for the State has opposed the aforesaid contentions raised on behalf of the appellant and submitted that there is no illegality or infirmity in the impugned judgment and order on sentence as passed by learned Trial Court. Accused Kamal Lal was arrested from Taxi stand Lodhi Colony on pointing by the accused Daya Nand and was searched and 92 fake currency notes in the denomination of Rs.500 were recovered and the same were deposited in malkhana on the same day. Also, there could have been no reason for the police officials to plant 92 currency notes upon the accused Kamal Lal. Therefore, the appeal filed by the

appellant is liable to be dismissed.

10. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as impugned judgment and order on sentence passed by the learned Trial Court.

11. Let us scrutinise the deposition of ASI Ved Prakash (PW-7). PW7 had deposed that on 10.04.1992 he along with Cr. Satinder went to petrol pump Hemkunt Colony where he recorded the statement of Nandkishore. The currency note given to him by Nandkishore was wrapped in a piece of cloth, seized and sealed with the seal of "MS". The co-accused Dayanand was produced before him with Rs.500 currency note and car no.DIA 5470. He further deposed that the car was also seized vide memo Ex.PW1/3. He further stated that personal search of co-accused Dayanand was done. The co-accused Dayanand while in police custody took him to Taxi Stand, Khanna Market where the accused Kamal Lal was present and upon searching him, 92 currency notes in the denomination of Rs.500 were recovered which were also wrapped in cloth and sealed with a seal of "MS". He identified the counterfeit notes recovered from appellant Kamal Lal as Ex.P3 (collectively).

12. Similarly, HC Jagpal Singh (PW-6) in his deposition before court corroborated the statement of ASI Ved Prakash (PW-7) to the effect that 92 currency notes in the denomination of Rs.500/- were recovered in the personal search of the accused Kamal Lal. He also identified the 92 recovered currency notes as Ex.P3.

13. Sh. V.K. Khanna (PW10) had also deposed that he was working as an expert and had given reports in almost about 2400 cases received from various agencies and appeared as an expert witness in about 1200 courts. He further stated that in his report ExPW10/1 the referred notes received by him in a sealed condition were counterfeit notes.

14. Thus, it is clear from the testimony of ASI Ved Prakash (PW-7) that on 10.04.1992 accused Kamal Lal was arrested and he was searched and on his search 92 currency notes in the denomination of Rs.500 each were recovered, which were wrapped in a cloth and was sealed in the seal of "MS" and were seized vide memo Ex PW6/1. There could have been no reason for the police officials to plant 92 currency notes upon the accused Kamal Lal. Also, the currency notes which were recovered from the accused/appellant were said to be counterfeit currency as opined by the expert Sh. V.K Khanna (PW10) vide ExPW10/1.

15. After a careful scrutiny of the statement of the ASI Ved Prakash (PW7) duly corroborated by PW6 HC Jagpal Singh, deposition of other relevant witnesses and the facts of the case, this court observes that it stands proved that the accused/appellant was found in possession of 92 counterfeit currency notes of Rs.500/- and the number of the said currency notes were recorded in seizure memo. The statement of PW 7 has been duly corroborated by the statement of PW6 & PW10.

16. All the above witnesses were cross-examined at length but the

defence failed to put any dent to their testimony. They remained unshaken with regard to their statements.

17. The contention of the appellant that no recovery of said 92 fake currency notes was effected from him and the same were planted upon him, is without any basis. From the evidence and material placed on record, the prosecution has successfully established the recovery of fake currency notes from the appellant. The appellant had not produced any evidence or material to show any enmity or ill-will by the police officials against the appellant to frame him in the instant case falsely.

18. So far the contention of the appellant that there was no evidence to show that the alleged recovery of currency notes was for the purpose of using the same, there is no basis in the said contention for the reasons that it was not contended by the appellant during the course of evidence. Also, no such defence was taken by the appellant before the trial court. The only defence raised by him was that no such recovery was effected from him, but the prosecution has successfully established the same otherwise.

19. In view of the aforesaid discussion, scrutiny of testimonies of prosecution, it is clear that the guilt of the appellant has been successfully proven by the prosecution beyond all reasonable doubts. Therefore, giving a cumulative consideration to the overall evidence in the facts of the present case, this court finds no irregularity or infirmity in the order passed by the learned trial court. Accordingly,

the appeal filed by the appellant is dismissed and the impugned judgment and order on sentence dated 16.10.2001 are upheld.

20. Appellant is on bail. His bail bond is forfeited and surety bonds are discharged. Appellant is directed to surrender before the trial court within fifteen days, to serve out the remainder of his sentence.

21. A copy of this order be sent to the Trial Court for information and necessary steps.

22. With aforesaid directions, the present appeal filed on behalf of the appellant is disposed of.

(P.S.TEJI)
JUDGE

MAY 22, 2017
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