

BAIL SLIP

The Petitioner/Appellant/Accused Tamilarasi @ Ranganayagi W/o. Krishnan was released on bail dated 22/04/2010 made in MP.1 of 2010 in Crl.A.222/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2018
Delivered on : 29.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal No.222 of 2010

Tamillarasasi @ RanganayagiAppellant/Accused

Vs

State by:

Inspector of Police,
B4, Race Course Road,
Coimbatore.

(Crime No.1167 of 2006)

.... Respondent/Respondent

Appeal under Section 374 of the Code of Criminal Procedure against the judgment dated 30.1.2009 passed in S.C.No.246 of 2008 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore.

For Appellant : Mr.R.Rajasekaran

For Respondent : Mrs.T.P.Savitha

Government Advocate (Crl. Side)

JUDGMENT

The present appeal is preferred against the judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore in S.C.No.246 of 2008 in convicting the appellant for the offence under Section 489-B IPC (3 counts) and sentencing her to undergo rigorous imprisonment for 4 years and to pay fine of Rs.3,000/- in default to undergo 3 months rigorous imprisonment. The trial Court also convicted the appellant under Section 489-C IPC and sentenced her to undergo 3 years and the sentence shall run concurrently.

2. The case of the prosecution is that on 21.6.2006 at 3.00 p.m., the appellant purchased swetter, gullah etc. from P.W.1-

Dalma by tendering 1000 rupee counterfeit currency note. As there was no change, PW1 through her husband tried to get the change from the petrol bunk and the cashier of the petrol bunk found that the note was counterfeit one and with the help of tempo driver, the appellant was taken to police station, where she has given Ex.P1 complaint statement. Based on Ex.P1-complaint, the respondent police registered Ex.P9-FIR. After registering the case, PW10-Inspector of Police took up the case for investigation and arrested the accused and obtained confession statement from her. Based on the confession statement, PW10 seized M.O.3-purse, wherein he found 1000 rupee xerox notes - 4 Nos; 500 rupee xerox notes - 4 Nos. and 50 rupee note - 1. Thereafter, PW10 rushed to the spot and prepared observation mahazar and rough sketch. P.W.10 also sent the seized articles to the forensic science department for chemical analysis and after completion of the investigation and on examination of the witnesses, he laid charge sheet against the appellant under Section 489-B and 489-C IPC.

3. In order to prove the case, the prosecution examined 10 witnesses and exhibited 9 documents and marked 13 material objects.

4. Out of the witnesses examined, P.W.1 is the seller of swetter and gullah etc. in front of the Central Prison, Nanjappa Road, Coimbatore, where the appellant/accused was trying to change 1000 rupee counterfeit note and she filed a complaint. Based on her complaint, crime was registered. P.W.2 is the husband of P.W.1, who had went to Mahalingam petrol bunk to get the change of 1000 rupee counterfeit note. P.W.3 is the tempo driver, who was having stand at Jail Gate road. P.W.4 is the tempo driver, turned hostile. P.W.5 is the cashier working in Manalingam petrol bunk. P.W.6 is the owner of Motherland textile shop running at Uppukinar, Coimbatore, who had stated that on 21.6.2006 at 1.00 P.M., one lady came and purchased clothes worths Rs.750/- and had given 1000 rupee currency. After taking Rs.750/-, he had returned Rs.250/- to her. Through P.W.6, the prosecution has marked M.O.2-currency note bearing No.8AB30001 and clothes said to have been purchased by the appellant and the bill as Ex.P3 to P9 respectively. P.W.7 is the then Branch Manager of State Bank of India, Main Branch, Coimbatore, who deposed that while he was on duty, the respondent police came and shown 500 and 1000 rupee currency notes and required to say whether those currency notes were genuine or fake. On seeing the same, he informed the police that the same were fake. P.W.8 is the Scientific Assistant working in the Forensic Department and had given Ex.P5-report and through him, M.O.12 was marked. P.W.9 is the witness to the observation mahazar. P.W.10 is the Inspector of Police, who had received the complaint, registered the FIR, investigated the

case and filed charge sheet against the appellant.

5. The above incriminating materials were put to the appellant. The appellant denied the same. The appellant has not examined any witness and no documents were marked. Considering the oral and documentary evidence, the trial Court convicted the accused as mentioned above. Challenging the conviction and sentence imposed on her, the appellant had filed the present appeal.

6. I heard Mr.R.Rajasekaran, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent.

7. The learned counsel for the appellant submitted that the trial Court erred in convicting the appellant on the interested and discrepant testimony of the prosecution witnesses. He would submit that the trial Court ought to have noted it down that the prosecution has failed to prove that the appellant was having the knowledge in trafficking the counterfeit currency notes in the public. He would further submit that the trial Court ought to have noted it down that the appellant was shown arrest at 6.00 p.m., but the mahazar was prepared at 5.30 p.m., which itself shows that the prosecution case was a false one and the alleged recovery cannot be relied upon.

8. The learned counsel next contended that the trial Court failed to note it down that the complaint was not speaking about the trafficking the counterfeit currency notes in Motherland shop in the early morning house and therefore, the recovery from PW6 was not sustainable. Finally, he argued that there were lot of contradictions in the evidence of prosecution witnesses and prayed for setting aside the same.

9. Per contra, the learned Government Advocate (Criminal Side) has submitted that appellant was caught red handed while changing the counterfeit currency note in the shop of PW1, and immediately she took the appellant to the police station and handed over to PW10-Inspector of Police. The counterfeit currency notes were seized from her and the same was sent for chemical examination to the Forensic Science Department. The prosecution also established that appellant had knowledge and intention to use the counterfeit currency notes. Hence, the prosecution proved the case beyond any reasonable doubt. Hence, prayed for dismissal.

10. The materials collected by the investigating agency and also the evidence placed before the trial Court, in my opinion, establish that the seizure of counterfeit currency notes from

the custody of the appellant. Therefore, I don't find any reason to differ from the observations made by the trial Court that fake currency notes were recovered at the instance of the appellant.

11. But the prime question mere recovery of the currency notes from the custody of the appellant is sufficient to hold the appellant guilty of the offence under the above said provisions, the answer must be 'No', because of the simple reason mere custody of the currency notes, bereft of any intention, any knowledge, any reason on the part of the appellant to believe that the said currency notes were counterfeit currency notes and knowing fully well that she has presented one currency note in the shop of P.W.1 or so as to make herself wrongful gain.

12. In the above context, it would be appropriate to extract the provisions of Section 489 (B) and 489(C) IPC, which reads thus:

"489-B. Using as genuine, forged or counterfeit currency-notes or bank-notes-
Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489-C. Possession of forged or counterfeit currency-notes or bank-notes-
Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

13. The above said provisions admittedly makes it clear that the knowledge of the accused and reasons to believe that the currency notes which the accused has possessed were forged and counterfeit that shows that the knowledge or reasonable belief of the accused is kept on par with mens rea of the accused i.e. to say only all these things that he has the currency notes knowing fully well those currency notes are fake and in spite of that he wanted to circulate the said currency notes amongst the public at large for the purpose of making himself unlawful gain.

14. On plain reading of the above said Section 489-B and 489-C IPC, it imposes burden on the prosecution to prove beyond reasonable doubt that at the time when the accused was possessing the alleged counterfeit currency note he knew that it was forged one. It is not sufficient on the part of the prosecution to prove mere possession of it by him and it does not shift the burden to the accused to prove his innocence in possessing of the forged note. Similarly, under Section 489-C, it is to be proved by the prosecution that the accused intended to use the forged or counterfeit currency note as genuine. It is for the prosecution to prove the circumstances which would irresistably prove to the satisfaction of the Court, that the accused had an intention to circulate counterfeit notes on the public. Therefore, it is clear that it is the burden on the prosecution and not the conduct of the accused, as such play important role in the case.

15. In the decision in Umashankar Vs. State of Chattisgarh, reported in 2001 AIR SC 3074, the Hon'ble Supreme Court held as under:

"A perusal of the provisions, shows that mens rea of offences under Section 489-B and 489-C is, "knowing or having reason to believe the currency-notes or bank-notes are forged or counterfeit". Without the afore-mentioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes is not enough to constitute offence under Section 489-B of Indian Penal Code. So also possessing or even intending to use any forged or counterfeit currency-notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of PW-2, PW-4 and PW-7 that they were able to make out that currency note alleged to have been given to PW-4, was fake "presumed" such a mens rea. On the date of the incident the appellant was said to be 18 years old student. On the facts of this case the presumption drawn by the trial Court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency-notes being fake or counterfeit was put to the appellant in his examination under Section 313 of Criminal Procedure

Code. On these facts we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C of Indian Penal Code and acquit him of the said charges".

16. In the above said decision, the Hon'ble Supreme Court observed that merely on the basis of the conduct of the accused or the evidence of witnesses who does not say about the knowledge of the accused is not sufficient to hold the accused guilty. The Hon'ble Supreme Court also referred to the examination of the accused under Section 313 of Cr.P.C., it is the bounden duty of the trial Court to put the ingredient of Section 489-C with reference to the knowledge of the accused and belief of the accused that the said currency notes were fake notes, in spite of that he was in possession of those currency notes and he made attempts to circulate the said currency notes amongst the public.

17. In this background, if it is seen from the trial Court record the 313 statement of the appellant no where it is put to the mouth of the appellant in such manner in order to elicit her exact answer. Perhaps, the learned trial Judge has not put that question from the mouth of the appellant for the simple reason that, none of the witnesses have stated in such a manner before the Court in order to extract the same and putting it into mouth of the appellant. Even the witnesses have not stated in such a manner the learned Judge would have put such question as to whether the accused admit that he had any knowledge of such currency notes with him knowing fully well and having belief that those currency notes are fake currency notes. In the absence of providing such opportunity to the appellant to explain whether he had currency notes with such knowledge or he has no knowledge or belief or reason to believe that those currency notes were fake notes and in spite of that she was holding those notes. Therefore, in my opinion, the above said decision of the Hon'ble Supreme Court will be applicable to the present facts and circumstances of the case.

18. One thing needs to be mentioned that investigation has not been properly conducted to ascertain, from where the appellant has secured these currency notes and who actually responsible for circulating those currency notes amongst the public. This Court, categorically observed that the appellant though possessed the counterfeit currency notes cannot be said to be having guilty of any offence that has to be established independently irrespective of the fact that currency notes were recovered at the instance of the accused person.

19. Looking from any angle, this Court is of the view that none of the witnesses have stated anything about the mens rea of the appellant, knowledge, the reasonable belief on the part of the appellant that the currency notes which she was possessing were fake currency notes, nor established the guilt of the appellant. Therefore, it is categorically to be held that the possession of the currency notes from the appellant bereft of any intention or knowledge coupled with mens rea, it cannot be said that the prosecution has proved the case against the appellant beyond reasonable doubt, which make the appellant entitled for an acquittal.

20. Coming to the judgment of the trial Court, so far as finding the appellant guilty under Section 489-B and 489-C with reference to the knowledge of the appellant, the trial Judge come to the conclusion only on the basis that on P.W.1 explaining that note produced by the appellant was fake note. Whether this conduct alone is sufficient to come to a definite conclusion that the appellant had knowledge or reasonable belief that the currency note produced by her was a fake currency note. There may be some circumstances where the fake currency notes were circulated extensively by some anti-social elements. In such circumstances, even an ordinary innocent man may come across such currency notes with them. Bearing in mind such circumstances, the provisions under Indian Penal Code are made so stringent and provided safeguards to protect innocent persons, by imposing responsibility on the prosecution to prove beyond reasonable doubt about the knowledge and also reasonable belief on the part of the accused regarding possession of the fake currency notes.

21. Looking to the above said circumstances, it cannot be ruled out that the appellant might have come in contact with some person and in that context she might have received some currency notes unknowingly that those notes are fake currency notes. Therefore, the prosecution has not proved beyond reasonable doubt about the mens rea of the appellant. The mere conduct of the appellant is not sufficient particularly the conduct which has been shown in this particular case to establish the guilty of the appellant.

22. This Court is of the considered view that the trial Court though right in holding that the accused was found in possession of fake currency notes with her but failed to appreciate the existence of mens rea on the part of the appellant, which has not been proved by the prosecution beyond reasonable doubt. Hence, the appellant is entitled to be acquitted.

23. In the result, the appeal is allowed. The conviction

and sentence passed by the trial Court against the appellant under Section 489-B and 489-C IPC are hereby set aside. The appellant shall be set at liberty forthwith. Fine amount, if any deposited by the appellant, the same shall be refunded.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Additional District and Sessions Judge,
Fast Track Court No.I,
Coimbatore.
2. The Judicial Magistrate No.III,
Coimbatore.
3. The Chief Judicial Magistrate,
Coimbatore.
4. The Superintendent,
Special Prison for Women,
Coimbatore.
5. The Inspector of Police,
B-4 Race Course Road,
Coimbatore.
6. The Public Prosecutor,
High Court, Madras.

Criminal Appeal No.222 of 2010

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