

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Appeal No.S-1240-SB of 2004 (O&M)
Date of Decision: August 27, 2018

Joginder Singh
.....APPELLANT(s).

VERSUS

State of Haryana
.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ramnish Puri, Advocate
amicus-curiae for the appellant (s).

Mr. Deepak Grewal, D.A.G. Haryana.

SURINDER GUPTA, J.

This is appeal against the judgment of conviction dated 27.05.2004 and order of sentence dated 29.05.2004, whereby the appellant was convicted for the offences punishable under Sections 120-B and 489-A read with Section 120-B of Indian Penal Code (for short-IPC) in case FIR No.161 dated 11.05.1999 registered at Police Station Shahabad and sentenced as follows:-

Sr. No.	Under Section	Sentence.
1	120-B IPC	Rigorous imprisonment for a period of two years and to pay fine of Rs.1000/- and in default of payment of fine, further RI for a period of six months.
2	489-A read with S.120-B IPC	Rigorous imprisonment for a period of two and half years and to pay fine of Rs.4000/- and in default of payment of fine, further RI for a period of six months.

Case of prosecution, in brief, is that on 11.05.1999, ASI Siyanand along with his police party was present near Barara Chowk, Shahabad in connection with investigation of a case when he received a secret information that four boys on two motorcycles, who were present near Markanda Temple, were alluring the public to double their money by showing them new currency notes of the same number on which they have changed number of the original currency notes. ASI Siyanand with his police party reached there and apprehended 3 out of 4 boys as per the secret information, who disclosed their names as Rajpal @ Raju, Sanjay Kumar alias Sanjay and Joginder Singh alias Nikka (present appellant). The boy, who escaped from the spot was Jitender @ Pinda.

On search, two currency notes of ₹10/- each were recovered from back pocket of pair of pants of Rajpal, both bearing No.82K-495848. From the pocket of shirt of Sanjay Kumar @ Sanjay, two currency notes of ₹10/- each both bearing No.82K-495844 were recovered. These currency notes were put in two separate envelopes, converted into parcels and were sealed with seal of 'SN'. Appellant Joginder Singh was carrying a briefcase in his hand and on search, two toy type pistols were recovered from the briefcase, which were also taken into possession, after preparing a separate parcel which was also sealed with the same seal. A ruqa Ex.PJ was sent to the police station on the basis of which formal FIR (Ex.PJ/1) was registered. Currency notes were later sent to Forensic Science Laboratory Haryana, Madhuban (for short-FSL), which reported as follows:-

“(a) There are marks of addition in the existing figure '8' at units place in the printed numbers 82 K 495848 marked Q1 & Q1/1. When deciphered, the original

figure reads as '3' at units place.

- (b) There are marks of addition in the existing figure '4' at units place in the printed numbers 82 K 495844 marked Q3 & Q3/1. When deciphered, the original figure reads as '1' at units place.
- (c) There are no marks of alteration in the printed numbers of currency notes marked Q2, Q2/1, Q4 & Q4/1.”

The report suggested that in the currency notes having figure 82 K 495848, additional figure 8 had been added. Similarly, in the currency notes having figure 82 K 495844, additional stroke 4 had been added. After completion of investigation, challan against the appellant and other co-accused was presented in Court.

On finding a prima facie case, the appellant was charge-sheeted for the offences punishable under Sections 120-B, 489-A read with Section 120-B and 489-C read with Section 120-B of Indian Penal Code, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined SI Sher Singh PW1, HC Parveen Kumar PW2, Constable Satpal PW3, HC Rampal PW4, ASI Ram Dutt PW5 and ASI Siya Nand PW6.

On conclusion of prosecution evidence, statement of appellant under Section 313 Code of Criminal Procedure was recorded, wherein he denied the allegations levelled by the prosecution and pleaded his false implication. Appellant, however, did not produce any evidence in his defence.

Learned trial Court while convicting the appellant for the offence punishable under Section 120-B, 489-A read with Section 120-B

IPC and acquitting him of the charge for the offence punishable under Section 489-C read with Section 120-B IPC, observed in para 12 of the judgment as follows:-

“12. Learned counsel for accused Joginder has vehemently contended that in fact no recovery of the counterfeit notes were made from the custody of Joginder and only two toy pistols were found from his custody and as such, no offence is made out against the accused Joginder. I am unable to agree with the said contention of the learned counsel for the accused. It is clear that he was part and parcel of the entire gang. Merely because no recovery of counterfeit notes was not made from him and only toy pistols (were) recovered from him, does not in any way absolve him once he is part of the gang and he can not be acquitted of the charges just because the recovery of counterfeit notes has been made only from his co-accused Raj Pal and Sanjay Kumar. All the members of the gang are equally liable irrespective of the recovery of incriminating article from one person alone once every body was found present in furtherance of common intention, common plan and common designs. The meeting of minds and being part of gang is important and not the recovery. In these circumstances, there is sufficient evidence on record to warrant conviction of the accused Joginder though others might have escaped or are declared proclaimed offenders. Thus, I do not find any ground to acquit the accused Joginder merely on the ground that counterfeit notes were not recovered from him and only two (toy) pistols were recovered from him once he was part of the entire gang.”

Learned Amicus Curiae for the appellant has argued that the

appellant was charge-sheeted for the offence punishable under Section 120-

B, 489-A and 489-C read with Section 120-B IPC. No counterfeit currency was recovered from his possession and no witness from the public was examined to prove that he had planned to cheat any person in connivance with his co-accused. There is no evidence that he has indulged in conspiracy with his co-accused to commit the offence of cheating or counterfeiting the currency notes, as such, no offence under Section 120-B IPC or 489-A read with Section 120-B IPC is disclosed against him. Findings of learned trial Court that appellant is found guilty of the offence punishable under Section 120-B, 489-A read with Section 120-B IPC is based on no evidence.

Learned State Counsel has argued that from the report of FSL, it is proved that currency notes recovered from the possession of co-accused Rajpal and Sanjay had been tampered. Appellant was apprehended with them. He was having two toy-type pistols, which show that he was having common intention and entered into conspiracy with his co-accused to cheat the public. Learned trial Court has rightly observed that offence of conspiracy and counterfeiting currency, which was recovered from his co-accused, is duly proved against the appellant.

The appellant had faced trial for the charge under Section 120-B IPC, which was framed by the trial Court as follows:-

“FIRSTLY:- That on 11.05.1999 in the area of Shahabad you Joginder and Raj Pal along with one Sanjay since proclaimed offender agreed to do any illegal act namely to cheat the people by showing the forged currency notes and thus you thereby committed an offence punishable under Section 120-B of Indian Penal Code and within the cognizance of this court.”

As is clear from the language of above charge, allegation

against appellant is that he had entered into a conspiracy to cheat the people by showing forged currency notes and thereby committed offence punishable under Section 120-B IPC. The prosecution has relied on statement of official witnesses, who have nowhere stated that all the accused have entered into any conspiracy to cheat the public. No witness from the public was examined to prove that he was allured by the appellant with promise to double his currency or was shown forged currency notes. In the absence of any such evidence, no offence under Section 120-B IPC is made out against the appellant.

Charge framed against the appellant for offence punishable under Section 489-A reads as follows:-

“SECONDLY:- On the aforesaid date and place in furtherance of aforesaid conspiracy you both along with Sanjay since proclaimed offender, counterfeited two currency notes of denomination of Rs.10/- and thus you thereby committed an offence punishable under Section 489-A of Indian Penal Code and within the cognizance of this Court.”

The word 'counterfeit' as defined in Section 28 IPC, does not connote an exact reproduction of the original currency but reference to one thing resembling other thing to such an extent that a person might be deceived thereby.

PW4 Head Constable Ram Pal and PW6 ASI Siyanand, the two material witnesses have deposed regarding recovery of four currency notes of the denomination of ₹10/- each from the possession of Rajpal and Sanjay. Both currency notes were having same serial number, one digit of which had been added by interpolation. They have nowhere stated that the

appellant was found cheating the public. From the possession of appellant, two toy-typed pistols were recovered. No counterfeit or tampered currency was recovered from the possession of appellant. Learned trial Court while convicting the appellant, just on the basis of presumption, has observed that he was member of the gang, as such equally liable even for the recovery of tempered currency from the possession of his co-accused. The emphasis of learned Court was on discussing the reason for not acquitting the appellant than to discuss the evidence on the basis it could be concluded that offence punishable under Section 120-B, 489-A read with Section 120-B IPC is proved against the appellant.

A person who counterfeits or knowingly performs any part of processing of counterfeiting any currency note or bank note is guilty for offence punishable under Section 489-A IPC. In this case, there is not an iota of evidence that appellant had counterfeited or knowingly performed any part in the process of counterfeiting currency notes recovered from his co-accused, as such, the offence under Section 489-A IPC is not proved against the appellant.

Criminal conspiracy punishable under Section 120-B IPC has been defined in Section 120-A IPC as follows:-

“120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

- (1) an illegal act, or
 - (2) an act which is not illegal by illegal means,
- such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or

more parties to such agreement in pursuance thereof.”

Perusal of the above Section shows that following are the ingredients of Section 120-A IPC:-

- “(1) There should be an agreement between two or more persons who are alleged to conspire;
- (2) The agreement should be to do or cause to be done:-
 - (i) An illegal act, or
 - (ii) an act which may not itself be illegal by illegal means.”

The entire case of the prosecution is based on secret information. However, no evidence was produced to prove that the secret information received by the police was having any basis. Mere recovery of four currency notes of ₹10/- each from co-accused and two toys pistols from the appellant is not sufficient to infer the meeting of minds of the appellant and his co-accused to tamper Indian currency notes with the intention to cheat the public.

From the above discussion, I am of the considered opinion that the offence punishable under Section 120-B, 489-A read with Section 120-B IPC are not proved against the appellant beyond shadow of reasonable doubt. Learned trial Court has committed grave error of law while concluding that the offence punishable under Section 120-B, 489-A read with Section 120-B IPC is made out. The judgement of the trial Court is set aside and the appellant is ordered to be acquitted of the charge framed against him.

August 27, 2018

Sachin M.

(SURINDER GUPTA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No