

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 622 of 2014

1. Nasir Khan, S/o Farukh Musalman, aged about 21 Years, R/o. Rajnagar Bazar, P.S. Kale Chowk, Civil & Revenue District-Malda West Bengal.
2. Palas @ Aashu @ Aasiruddin Sheikh S/o . Aasir Musalman Aged About 22 Years R/o. Rajendranagar Bazar, P.S. Kale Chowk, Civil And Rev. District-Malda West Bengal.

---- Appellants

Versus

- State of Chhattisgarh Through SHO, P.S. Kotwali, Raigarh District-Raigarh, Chhattisgarh

---- Respondent

For the Appellant : Mr. Harish Khutiya, Advocate.

For the State/Respondent : Mr. Rahim Ubwani, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

05/04/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 10.4.2014 passed by Additional Sessions Judge (FTC), Raigarh, Chhattisgarh, in Sessions Trial No.104/2012, convicting the accused/appellant under Sections 489-B & 489-C of Indian Penal Code (for short 'IPC') and sentencing him to undergo RI for 10 years with fine of Rs.1000/- & RI for 5 years with fine of Rs.500/- with usual default clauses.
2. The prosecution case, in brief, is this that on 22.3.2012 at about 1:00 p.m. in the afternoon, two boys came to the shop of complainant

Rajesh Karsh PW-1, purchased a China mobile set worth Rs.1800/- and gave four currency notes of Rs.500/- towards payment of mobile set. After minutely seeing the currency notes, the complainant found that the same were forged / counterfeit currency notes. On making inquiry from the boys, they told their names as Nasir Khan and Palas, both of them then tried to escape from there but they were chased and caught hold off. Unnumbered FIR (ExP-1) was lodged in the Police Outpost Jutemill, on the basis of which offences were registered against the appellants. Later on, numbered FIR ExP-4 recorded in the police-station-City Kotwali, Raigarh. Counterfeit currency notes of different series and serial numbers were seized. The case was investigated and after completion of investigation, charge-sheet was filed against the appellants before the Court below concerned.

3. Charges under Sections 489A, 489B & 489C of IPC were framed against the appellants, they abjured their guilt and sought trial. The prosecution in order to prove its case examined 6 witnesses in all. Statement of appellants were also recorded under Section 313 of CrPC, in which, they denied all the incriminating evidence appearing against them, pleaded innocence and false implication. No witness was examined by appellants in their defence. On conclusion of trial, appellants stand convicted and sentenced in the manner as mentioned in Para-1 of this judgment.
4. It is submitted by counsel for the appellant that the appellants have been erroneously convicted for offences which they have not

committed. Evidence of the prosecution witnesses in this case being unreliable and untrustworthy was not sufficient to convict the appellants. From the statement of complainant Rajesh Karsh PW-1 itself it is clear that all the currencies were seized from his possession vide Ex.P-2, which shows that these appellants were not in possession of said counterfeit notes. Therefore, it is prayed that the appeal be allowed and the appellants be acquitted of all the charges. In alternative, it is submitted that if this Court is not inclined to allow this appeal then, in the given facts and circumstances of the case, the sentence imposed upon the appellants may be reduced to the period already undergone by them as the sentences awarded by the trial Court is too harsh.

5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by learned counsel for the appellants. It is submitted that prosecution has proved its case beyond reasonable doubt. The judgment impugned passed by the trial Court is strictly in accordance with law and needs no interference by this Court in exercise of its appellate jurisdiction. Hence, the appeal is liable to be dismissed.
6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. The question that requires determination in this appeal is whether the prosecution has been able to establish guilt of accused/appellants, on the basis of evidence, beyond reasonable doubt ?

8. Rajesh Karsh PW-1 has stated that on the date and time of incident the appellants came to his shop, purchased one mobile hand set and gave four currency notes of denomination of Rs.500/- each. On having doubt that currency notes are fake, he inquired from appellants and they admitted it. Then they tried to flee from there, who were chased and caught. Thereafter, he informed to the police on which basis FIR (Ex.P-1) was registered at Police Outpost Jutemill. He has further stated that counterfeit currency notes were seized by the police from him vide ExP-2. In cross-examination, he has admitted that he had seen the appellants for the first time, but no TIP (Test Identification Parade) was got conducted by the police. No such other admissions has been made by this witness in his cross-examination which contradicts his version in examination-in-chief. The complainant was again examined by the Court below on another date in which also he has made the same statement.

9. S.I. Albert Tirky PW-2 has lodged numbered FIR ExP-4 in police-station Kotwali, Raigarh. ASI B.S. Dahariya PW-5, is the person who investigated the case. He lodged unnumbered FIR ExP-1 on the basis of information given by the complainant. He made seizure of counterfeit currency notes of Serial No.4FN-619956, 4FN-619936, JFD-530801, JFD-530-72, JFD-535031, JFD-535087, JFD-530805, JFD-535037, JFD-535084 vide ExP-6 from appellant Palash and counterfeit currency notes of Serial No 8BE-593439, JFD-535073, JFD-535065, JFD-535061, JFD 535075, JFD-535073, JFD-535061, JFD-535075 from appellant Nasir Khan. He has also made the

seizure of counterfeit currency notes from complainant Rajesh Karsh PW-1 vide ExP-2. During investigation he recorded statement of the witnesses. In cross-examination, his statement has remained un rebutted.

10. Salikram PW-6 has stated that on being asked by SHO, he took one sealed envelope containing fake currency notes to the Currency Notes Press, Nasik and deposited the same over there. Statement of this witness has also remained un rebutted in his cross-examination.

11. Unnumbered and unexhibited report of Currency Note Press, Nasik Road Maharashtra is available in the record of the trial Court. Under Section 293 of CrPC this report can be read in evidence directly and according to this report, all the currency notes seized vide ExP-2, 6 & 7 were found to be forged and counterfeit.

12. After perusing and closely scrutinizing the entire evidence available on record of the trial Court, I am of this opinion that the prosecution has successfully proved its case beyond reasonable doubt. Both the appellants were the persons, who were in possession of the counterfeit currency notes and had made the use of the counterfeit currency notes as genuine by making payment for the purchase made to complainant Rajesh Karsh PW-1. Therefore, the conviction recorded by the trial Court against the appellant is without any error and needs no interference.

13. Considered on the prayer made by the counsel for appellant for

reduction in sentence that the appellants are in jail since 22.3.2012 and they have completed more than 7 years in jail. After looking to the facts and circumstances of this case, I feel inclined to allow this prayer.

14. On the basis of discussion made herein above, this appeal is allowed in part. Conviction against the appellants in the impugned judgment is upheld. However, the sentence imposed upon the appellant by the Court below is modified and now they are sentenced to the period of detention already undergone by them in jail so far for offence u/s 489B of IPC. Sentence of fine is however maintained along with its default clause. The sentence imposed u/s 489C of IPC against the appellant in the impugned judgment is maintained as it is.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nisha