

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 26.04.2019

Judgment Delivered on : 25/06/2019

CR.A. No. 1243 of 2015

1. Sunil Kumar Santwani, S/o. Haridas Santwani, Aged About 22 Years, R/o. C/4 Bajaj Colony, New Rajendra Nagar, P.S. Civil Line, Raipur, District Raipur Chhattisgarh.
2. Rajesh Sethiya @ Rajendra Jain @ Raju @ Raja @ Praveen Sethiya, S/o. Shobhagmal Sethiya, Jain, Aged About 30 Years, R/o. Kalyanpura, P.S. Kalyanpura, Civil and Revenue District Jhabhua Madhya Pradesh.

---- Appellants

Versus

State Of Chhattisgarh, Through : District Magistrate, Bilaspur District
Bilaspur Chhattisgarh.

-----Respondent

For Appellants	: Mr. Awadh Tripathi & Mr. Rajat Agrawal, Advocates
For Respondent/State	: Mr. Aadil Minhaj, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

25/06/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned 8th Additional Sessions Judge, Raipur, District – Raipur (C.G.) in Sessions Trial No.141/1996 on 26.09.2015, convicting the appellants for the offence under Section 489 (B) and 120-B of the Indian Penal Code and sentencing them to undergo R.I. 10-10 years, for the offence under Section 489 (C) and 120-B of the Indian Penal Code and sentencing them to undergo R.I. for 7-7 years and for the offence under Section 137 of Railway Act, 1989 and sentencing them to undergo S.I. for 6-6 months with default stipulations.
2. Facts of the case in brief is this that on 10.10.1995, Sub-Inspector, S.N. Tripathi (P.W.19) (retired) received information that one person is travelling in Ahmadabad Howrah Express and he is in possession of counterfeit currency notes. A team was constituted to apprehend the said person in possession of counterfeit currency notes. The said person was apprehended and brought to the Police Station -GRP, Bilaspur. On search, the appellant Sunil Santwani was found in possession of counterfeit currency notes, which was seized vide Ex.P-12. The appellant – Sunil Santwani was in possession of fake counterfeit currency notes of value Rs.10,87,900/-. FIR (Ex.P-20) was lodged.

3. The appellant – Rajesh Sethiya was in accompany of the main accused person. Counterfeit currency notes that were seized were sent for examination to Currency Note Press, Nasik and where from the report was received. The counterfeit currency notes found in possession of the appellant were counterfeited and fake. The appellants were also traveling without ticket in Coach No.S-9 of Ahmadabad Howrah Express train No.8033. On completion of investigation, charge-sheet was filed.
4. The trial Court charged the appellants with offence under Section 489(B), 489(C) of the Indian Penal Code, Section 137 of Railways Act and Section 120-B of the Indian Penal Code. The other co-accused persons namely Hemant Kumar Godra @ Jat, Mohan Chand Baid, Manoj Jain @ Manoj Singh and Sunil Jain @ Sunil Purohit were charged with offence under Section 120-B of the Indian Penal Code. The appellants and the other co-accused persons denied the charges and prayed for trial. The prosecution examined as many as 23 witnesses on its behalf. On examining the appellants and other co-accused persons under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid, whereas rest of the accused persons were acquitted of the charge under Section 120-B of the Indian Penal Code.

5. It is submitted by the learned counsel appearing on behalf of the appellants, that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The prosecution has failed to prove the case against the appellants beyond all reasonable doubts. All the independent witnesses of search and seizure memos have not supported the prosecution case. The appellant No.2 – Rajesh Sethiya has been arrayed as an accused on the basis of the memorandum statement given by the appellant No.1 Sunil Kumar Santwani. There is no specific expert report from Currency Note Press Nasik to this effect that the currency notes seized, were counterfeit. On behalf of the appellant No.1, it is submitted that only offence committed by him was this that he was traveling without ticket in the train. The bag, which was seized by the police did not belong to the appellant. T.T.E., V.B.S.N. Rao (P.W.-6) has testified before the Court below and has not identified the appellant as the person from whom, the seizure has been made. The appellant was a simple passenger in the train and he was not in conscious possession of the bag, which was kept in the seat. S.N. Tripathi (P.W.-19) has made statement, which raises only probability and there is no certainty that suitcase may have belonged to the appellant No.1. Reliance has been placed on the judgment of Bombay High Court in case of ***Munshi Mohammed Ayub Vs. The State of Maharashtra***, passed in ***Cr.A. No.1271 of 2013 dated 1st April, 2015***, judgment

of High Court in ***Dineshwar @ Munna Vs. State of C.G. reported in 2006 (3) C.G.L.J. 340***, in ***K. Hasim Vs. State of Tamil Nadu***, reported in ***(2005) 1 SCC 237***, in ***Umashanker Vs. State of C.G.*** reported in ***(2001) 9 SCC 642***, ***M. Mammutti Vs. State of Karnataka***, reported in ***(1979) 4 SCC 723***. It is prayed that the appellants were entitled for acquittal. Hence, they may be acquitted of all the charges. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellants in that case, at least sentence imposed upon the appellants, which appears to be too harsh, may be reduced.

6. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. It is submitted that the appellants were in conscious possession of the bag, which has been recovered and seized containing counterfeit currency notes. The report of Counterfeit Currency Note Press, Nasik are not exhibited, which is mentioned in Paragraph 39 of the impugned judgment, such report is admissible under Section 292 (2) of Cr.P.C.. The police witnesses concerned have clearly given statement against the appellants to this effect that the appellants were the persons in possession of all the said counterfeit currency notes. There is no such rule that statement of police witness has to be disbelieved only for the reason that they are police men. Therefore, despite hostility of the independent witnesses, the prosecution has proved its case

on the basis of the reliable and trustworthy evidence of police witnesses. It is also submitted that Scientific Officer who has given such report is exempted from giving the evidence before the Court in support of the report given therefore, there is no scope for interference in the impugned judgment. The appeal has no merit and no case is made out for acquittal or for reduction of the sentences. Hence, the appeal be dismissed.

7. I have heard the learned counsel for the parties and perused the record of the Court below.
8. The point in issue in this appeal is whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
9. Sukhdev Singh (P.W.-1) has not identified the appellants and has not supported the prosecution case. Ajay Kumar Jain (P.W.-2) is the landlord of the appellant No.2, who came to know about the incident from the news in newspaper. He has not made any other adverse statement against the appellants. Umesh Kumar Todkar (P.W.-3) is railway employee, who has prepared the charge-sheet against the appellant No.2 for traveling without ticket in Ahmadabad Howrah Express, which is not disputed. Lalji Bhai Kanji Bhai Soni (P.W.-4) is also a hostile witness, who has not supported the prosecution case.
10. Constable – Diwakar Tiwari (P.W.-5) is the person, who had apprehended the accused persons, who were found in

possession of counterfeit fake currency notes. This witness has not identified the appellants as the persons, who were apprehended with counterfeit currency notes. With the permission of trial Court, the prosecutor asked this witness leading question, but he has not made any admission regarding suggestions given and regarding identifying the appellants. Though he supports the incident of recovery and seizure of counterfeit currency notes, but he has not made any statement to link that incident with accused – appellants.

11. V.B.S.N. Rao (P.W.-6) has denied about knowledge of incident and declared hostile. Rikhanchand Babulal (P.W.-7) has also denied acquaintance with the appellants and has refused to identify the appellants before the Court and thus he has not made any other statement in support of the incident, he is also a hostile witness.
12. Dehlavi Safikur Rahman (P.W.-8) is witness of search memo Ex.P-4. He has been unable to remember as to for what reason, he has affixed his signature in Ex.P-4 and he has not made any statement against the appellants and further he has not identified the appellants in dock.
13. Soni Prakash Kantilal (P.W.9) is another witness of Ex.P-4, who has admitted only his signature on the seizure memo and has not supported the prosecution case. Rishi Kumar Sharma (P.W.-10) is witness of search memo Ex.P-9. This witness has admitted his

signature but he has not made any statement against the appellants and has been declared hostile by the prosecution. He has also not identified the appellants. Chhagan Lal Sahu (P.W.-11) is a witness of Panchnama Ex.P-11. This witness has admitted his signature in document Ex.P-11 but has not made any statement in support of the prosecution, therefore, he has declared hostile. He has also not identified the appellants before the Court.

14. Ramanand Mishra (P.W.-12) was railway employee. He has denied the proceeding of seizure of currency notes vide Ex.P-12 to have taken place in his presence, from the appellant Sunil Kumar Santwani. He is a hostile witness. In cross-examination, he has admitted that he is not acquainted with appellant Sunil Kumar Santwani. Gopal Das (P.W.-13) is elder brother of appellant – Sunil Kumar Santwani and he has acquainted with Rajesh Sethiya, the appellant No.2. But he has not made single statement in support of case against the appellants. Therefore, he has been declared hostile by the prosecutor.
15. Mohd. Parvez Alam (P.W.-14) is another hostile witness, who has also not identified the appellants. Sub-Inspector, S.S. Thakur (P.W.-15) states that one information received in GRP, Bilaspur, that one person is traveling in Ahmadabad Howrah Express and he is in possession of counterfeit currency notes. Team raided the said coach, in which the said person was found, traveling then he was apprehended and two suitcases were recovered

from his possession. At first, this witness failed to identify the appellant, but later on he has identified the person Rajesh Sethiya. He has further stated that suitcases were brought to the police station and opened they were found containing counterfeit currency notes of worth Rs.10,87,900/-.

16. Sub-Inspector S.P. Singh (Retire) (P.W.-16) submits that he is acquainted with the appellant – Rajesh Sethiya, he was also a member of raiding team, who raided the train and caught hold of one person in possession of suitcases containing counterfeit currency notes. This witness has not identified the appellant as one of the person from whom this recovery and seizure was made. Therefore, his statement has nothing specific to make any allegation against these appellants.
17. R.K. Jain (P.W.-17) is the neighbour of appellant No.2, he has admitted his signature in search panchnama apart from that he has not made any statement against the appellant. Kejram Devdas (P.W.-18) is another hostile witness, he has not supported the prosecution in any manner.
18. S.N. Tripathi (P.W.-19), S.H.O., G.R.P., Bilaspur has stated that he made seizure of counterfeit currency notes from the possession of the appellant – Sunil Kumar Santwani vide Ex.P-12 worth Rs.10,87,900/-. In cross-examination, he has admitted that suitcase was kept below the berth of the train and it was not tied with any chain. The appellant was found sitting beside the said

berth. He is unable to make any statement as to how many persons were sitting in the said berth. On the basis of this admission, it can be gathered that attache was collected from the place below the sitting berth on which the appellant was sitting. The admission further discloses that the appellant was not the only person on the same berth, on the contrary he was one of them. It is a fact that the counterfeit currency notes were found from the attache but there is no panchnama or no other any statement that any key was provided by the appellant to open that attache in which the counterfeit currency notes were found. Therefore, the defence of the appellant – Sunil Kumar Santwani that he was not in conscious possession of the attache/bag, which contained counterfeit/fake currency notes is a stand in defence, which can not be thrown away or sidetracked directly.

19. M.L. Sandilya (P.W.-20) has stated about the investigation made by him. D.S.P., Chhagan Lal (P.W.-21) has stated that he had recorded memorandum statement of appellant Sunil Kumar Santwani, the appellant No.1 and thereafter, he has made some seizure from co-accused Rajesh Sethiya, vide Ex.P-10. He has not made any statement regarding the seizure of counterfeit currency notes or anything containing that in his examination-in-chief. H.K. Arora (P.W.-22) is a Bank Officer, who has not made any statement with respect to the possession of counterfeit currency notes being found with the appellants and similar is the statement of K. Kumar (P.W.-23), who is also a Bank Officer.

20. After closely scrutinizing the evidence present on record of the trial Court, the issue to be examined is this that the appellants were traveling without ticket in Ahmadabad Howrah Express. This charge have become a fact for the reason that it is undisputed. Therefore, the charge against the appellants for offence under Section 137 of Railway Act is maintainable. But regarding the possession of counterfeit currency notes, the evidence of prosecution is not present with quality beyond reasonable doubt. Only one witness S.N. Tripathi (P.W.-19) has made statement regarding seizure of counterfeit currency notes that have been made from the possession of the appellant Sunil Kumar Santwani. This witness has authority to make statement only to this extent that the appellant Sunil Kumar Santwani was found in possession of currency notes, which may be or may not be counterfeit as it has been argued that the counterfeit currency notes were sent for forensic examination Currency Note Press Nasik, but the report of said currency notes Press Nasik has not been exhibited, therefore, it can not be read as proof against the appellants. Although there is exemption under Section 292 (2) of Cr.P.C. from calling the Scientific Officer giving report, but exemption from calling Scientific Officer, when the documentary evidence, which is available has been brought by the Court by exhibiting it but it has not been done by the prosecution. Therefore, the Court is not compelled to see and consider an un-exhibited document and to regard that as a proof, therefore, I am

of this opinion that prosecution has failed to bring the evidence on this point within the criteria of admissibility and legality, therefore, the statement given by the witness S.N. Tripathi (P.W.-19) does not have any further credence and there is no other evidence against the appellants. Almost all the witnesses have not identified the appellants as the person, who were apprehended and found in possession of currency notes, which are alleged to be counterfeited, hence, such evidence does not inspire confidence of the Court, which could not have been made the basis for conviction against the appellants.

21. Therefore, after due consideration of all the facts and circumstances and the evidence of this case, I feel inclined to allow this appeal partly. Accordingly, the appeal is allowed partly. The conviction recorded against the appellants for the offence under Section 489 (B) and 120-B of the Indian Penal Code and and for offence under Section 489 (C) and 120-B of the Indian Penal Code is set-aside and they are acquitted of the charges. However, the conviction and the sentence of the appellants under Section 137 of Railway Act, 1989 is upheld.
22. As reported, the appellant No.1 was in jail during the course of trial for more than about two months and now he is in jail from the date of judgment. The appellant No.2 is reported to be on bail. He has also served about 7 months and 28 days in jail during the course of trial and the appellate stage.

23. As both the appellants have completed the jail sentence awarded by the trial Court and maintained by this Court under Section 137 of Railway Act, 1989, the appellant No.1 be released forthwith, if not required in any other case. The bail bonds of the appellant No.2 shall continue for a further period of six months as per requirement of Section 437-A of Cr.P.C.
24. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge