

BAIL SLIP

The Appellant namely Govindaraj, S/o.Srinivasan (1st Accused in S.C.No.77 of 2009 on the file of the Additional Sessions Judge, Puducherry Karaikal) was released on bail vide order of this court dated 13.08.2010 in Crl.A.No.127 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A.NO.127 OF 2010

Govindaraj
Appellant/Accused No.1

Vs

State, rep. by the Inspector of Police,
Town Police Station,
Karaikal District,
Puducherry State.
(Crime No.233 of 2006) ...Respondent/Complainant

PRAYER:- This Criminal Appeal is filed under section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the Judgment dated 12.02.2010 passed in S.C.No.77 of 2009 on the file of the Additional Sessions Judge, Puducherry at Karaikal by allowing the present Criminal Appeal before this Court.

For Appellant : Mr.J.Duraisamy
for Mr.D.Veerasekaran

For Respondent : Mr.V.Balamurugane,
APP (Puducherry)

JUDGMENT

This Criminal Appeal is filed against the judgment of conviction and sentence, dated 12.02.2010 made in SC.No.77/2009 passed by the learned Additional Sessions Judge, Mahila Court, Puducherry at Karaikal finding the appellant/accused and yet another accused guilty of the offence under Section 489(C) IPC

r/w 34 of IPC and convicting and sentencing them to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.1,000/- and in default, to undergo Simple Imprisonment for a period of 6 months for the said offence.

2.The case of the prosecution is that P.W.9/Marie Christian @ Paul, was serving as Sub Inspector of Police, Town Police Station, Karaikal, and that on 24.07.2006 at about 10.30 p.m., he along with Police Constable 1278 and Head Constable 1428 were on routine night patrolling at New Bus Stand, Karaikal. At that time, they had found the appellant and another person moving under suspicious circumstances and they were enquired and since they have given prevaricative answers, P.W.9/Marie Christian @ Paul, had searched A1 and A2, and during the search they were found to be in possession of fake currency notes of Rs.100/- denomination and 27 such notes were recovered from the appellant and 20 notes were recovered from the another person. The accused had admitted to the possession of fake currencies. Thereafter, P.W.9/Marie Christian @ Paul, arrested A1 and A2 in the presence of witness P.W.6/Deva @ Devendiran, and one Kaliaperumal and seized the fake currency notes viz., 27 nos. of Rs.100/- fake currencies from A1 under a Cover of Mahazar (Ex.P2) and 20 nos. of Rs.100/- fake notes from other person under the Cover of Mahazar (Ex.P3) in the presence of the said witness. On the same day, at about 11.30 p.m., P.W.1 had brought A1 and A2 to the Police Station and registered a case in Crime No.233/2006 for the offence under Section 489(C) IPC. The printed FIR is marked as Ex.P5 and thereafter, P.W.9 had took up the case for investigation and when he had interrogated the accused, they had voluntarily confessed and the said confessions were recorded by P.W.9 in the presence of P.W.6. Thereafter, P.W.9 handed over in the case to the Inspector of Police P.W.10/Ramaraju, for further investigation, since, the case was to be investigated only by P.W.10, the Inspector of Police, Karaikal Town Circle. P.W.10 - Inspector of Police, after perusing the case records, visited the place of occurrence at New Bus Stand, Karaikal and prepared the crime details Form/Rough Sketch (Ex.P1) at 8.30 a.m., on 25.07.2006 in the presence of witnesses Bharath and Sundar. Thereafter, P.W.10, had sent the fake currency notes M.Os.1 and 2 to the Court under Form-95, which were marked as Exs.P6 and P7 and on the same day, at 19.30 hours and sent A1 and A2 to the Judicial Custody. Thereafter, he had deputed the policemen to arrest A3 and A4 in this case based on the confession of A1 and A2. While so, on 08.09.2006, one Prakash, A3 in this case, had surrendered before the Town Police Station, Karaikal at 10.00 hours and thereby, he was arrested by Sub Inspector of Police, Karaikal Town Police Station and it was brought to the knowledge of P.W.10/Ramaraju. Thereafter, P.W.10/Ramaraju, rushed to the Town Police Station and interrogated A3 and at that time, A3 had volunteered to give his confessional statement and the same was

recorded by P.W.10 in the presence of witnesses Pannerselvam (P.W.4) and one Selvaraj and thereafter P.W.10 had sent A3 for judicial custody. Thereafter, P.W.10 had sent M.Os fake currency notes to the Currency Note Press, Devas for examination through a requisition letter to the learned Judicial Magistrate-II, Karaikal, and the requisition was marked as Ex.P8. Thereafter, on 28.10.2006, he deputed the police personnel to proceed to the Government press at Madhya Pradesh to examine the genuinity of the currency notes and to obtain a Report. He received a Report from the Currency Note Press, Devas and the Report was handed over to the learned Judicial Magistrate-II, Karaikal on 30.10.2006. P.W.10, then applied for a copy of the Report (Ex.P9) of the Currency Note Press, Devas and on 05.01.2007, he had deputed Head Constable Loganathan, along with two other police constables Ilangovan and Sivanandam to arrest A4 and when A4 was arrested and interrogated by P.W.10 in the presence of witnesses Balasubramaniam (P.W.5) and Vinayagamorthy and he sent A4 to judicial custody on 20.01.2007. P.W.10 had examined the witnesses Loganathan, Ilangovan, Subramanian, Balakrishnan and after completion of the investigation, laid charge sheet against the accused persons under Section 489(C) IPC r/w 34 IPC, before the learned Judicial Magistrate, Karaikal, and the accused persons were furnished with free copies of the documents in compliance of Section 207 Cr.P.C. The learned Magistrate by order dated 03.11.2009, had committed the case to the file of the learned Principal Sessions Judge, Puducherry and thereafter, the case was made over to the Trial Court on 10.11.2009. After hearing the learned Additional Public Prosecutor and the learned counsel for the appellant/accused, the Trial Court framed the charge against the appellant/accused and other accused for offence under Section 489(C) IPC r/w 34 IPC.

3.The charges were read over to the accused and the accused, pleading not guilty, had sought for trial. The prosecution in order to prove the guilt of the accused, had examined P.Ws1 to 10 and marked Exs.P1 to 9 and M.Os.1 and 2 and no oral or documentary evidence was adduced on the side of the defence.

4.When the accused were questioned with regard to the incriminating evidence on record under Section 313 (1) (b) Cr.P.C., they denied the same as false.

5.The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

6.Assailing the judgment of conviction and sentence, A1 filed Criminal Appeal No.127 of 2010 and A2 filed Criminal Appeal No.102 of 2010, and during the pendency of these appeals,

A2 had passed away and the charge against him, got abated on 25.07.2018. A1 is the present appellant who has challenged the judgment of conviction and sentence.

7.The learned counsel for the appellant/accused while assailing the judgment of conviction and sentence would submit that the prosecution has failed to prove the case beyond all reasonable doubt and would submit that the case of the prosecution is tainted with contradictions and exaggerations. The prosecution has failed to prove by adducing proper evidence and ingredients requisite for convicting the appellant/A-1 for the offence under Section 489(C) IPC r/w 34 of IPC. The learned counsel would submit that none of the witnesses have spoken that the notes were apparently counterfeit and would submit that presumptions of knowledge from possession can be drawn only if the notes were apparently found to be counterfeit. He would submit that the presumption can be reasonably drawn in this case, the presumption has to be specifically questioned to the appellant in order to find out the accused that whether the notes were counterfeit. Further none of the witnesses have spoken that on seeing the notes, they were able to find out whether they are counterfeit notes. He would further submit that the burden lies on the prosecution to prove the circumstances, which lead to infer that the accused had knowledge and intention to use those notes as knowing them to be counterfeit. When no such evidence have been brought in by the prosecution to prove the guilt against the accused and to prove such ingredients, the Trial Court had erred in convicting the appellant/A-1. He would further submit that there are discrepancies and contradictions in the evidence of witnesses with regard to the recoveries made at the Town Bus Stand, Karaikal. He would submit that the accused were arrested and kept in illegal confinement and thereafter, the case was foisted and as if the appellants were in possession of counterfeit notes. The prosecution has failed to prove the source of the counterfeit notes and thereby, the Trial Court had erred in convicting them.

8.The learned counsel for the appellants would rely on the judgment of the Hon'ble Apex Court in Mamutti V State of Karnataka Reported in 1979 AIR SC 1705. He would further submit that expert namely the Examiner, who had examined/analysed the notes in the Government Press, Devas, has not been examined, which is fatal to the case of prosecution.

9.Per Contra, the learned Additional Public Prosecutor appearing for the State would submit that the prosecution has proved the case beyond all reasonable doubts and that the appellant/A-1 along with yet another accused was found loitering in the Karaikal New Bus Stand in a suspicious manner and they were intercepted and on search, they were found to be in

possession of 27 Nos. of counterfeit fake currency notes from A-1 and 20 Nos. of fake currency notes were recovered from other accused/A-2 under the cover of Mahazars under Exs.P2 and 3 respectively. The recovery was made in the presence of P.W.6/Deva @ Devendiran and one Kaliaperumal.

10.He would submit that P.W.6/Deva @ Devendiran has also spoken about his opinion as to the genuineness of the notes on mere perusal. He would further submit that 27 Nos. of fake currency notes were recovered from A-1 and 20 Nos. of fake currency notes were recovered from the A-2, for whom the charges are abetted and he would submit that out of the 27 Nos of fake notes recovered from A-1, serial nos.5 and 6, 9 and 10, 19 and 26, 20 and 21 were having same numbers and in respect of other 20 notes, the serial numbers in several notes matched with that of the notes in respect of possession of the appellant and thereby, it can be inferred that they were aware that the notes in possession of them were counterfeit. When the appellants were in possession of several notes with same serial numbers, it can be inferred that they are having the knowledge of having possession of the same and further it could be inferred that the accused were in possession of these notes with the intention to use the same. Further, the accused have not come out with a valid explanation either during investigation or during questioning under Section 313 Cr.P.C., with regard to how the notes came into their possession and in such circumstances the presumption can be drawn under Section 114 of the Indian Evidence Act. The counterfeit currencies were having similar numbers and thereby, possessed by them with knowledge and that too, only for the purpose of spending and thereby, the prosecution has proved the accused for the offence under Section 489(C) IPC r/w 34 of IPC. He would submit that Mamutti's case [cited supra] reported in 1979 AIR SC 1705 will not be applicable to the case on hand since in that case, the Hon'ble Apex Court found that there is no evidence of any witness to show that the counterfeit note were of such a nature or description that a mere look at it, would convince any person of average intelligent that it was a counterfeit note and in that case, no specific question was put to the accused in order to find out whether the accused knew that the notes were of such a nature. But, in the present case, the accused were in possession of several notes having similar numbers and thereby, it could be presumed that the accused/appellants had the knowledge that the notes were counterfeit and that, it could be safely be presumed that the accused were having possession of the notes only in order to dispose them. He would rely on the judgment of a Learned Single Judge of the Madurai Bench of this Court in CrI.A.[MD] No.297/2007 [V.Muthu and Another Vs. The State represented by the Inspector of Police, CBCID Police [CC Wing], Madurai] dated 21.07.2015 and referred to paragraphs No.7

to 9, which reads thus:-

'7.The learned counsel for the appellants would submit that mere possession of these counterfeit currency notes would not make out an evidence under section 489[C] IPC. According to him, apart from the possession, the prosecution is required to prove that the accused were keeping the counterfeit currency notes with the intention to use the same.

8.In my considered view, there is a vast difference between mere possession and conscious possession. For invoking Section 489[C] IPC, the possession must be conscious possession on the part of the accused. If suppose an accused is able to explain that without knowing that these notes are counterfeit currency notes, he was in possession of these notes, as they were given to him during some transaction, it may be possible for him to succeed on his plea that mere possession would not be sufficient to make out an offence under section 489[C] IPC. But, here, in this case, unfortunately, the accused have no explanation to offer regarding their possession at all. The very fact that the counterfeit currency notes carried the same numbers in number of notes, the quantity of the currency notes they had and the failure of the accused to offer any explanation would all go to show that the accused were in conscious possession of these counterfeit currency notes knowing fully well that they are counterfeit currency notes.

9.The intention of the accused in keeping these counterfeit currency notes is a matter of inference. The learned counsel for the appellants would submit that absolutely, there is no evidence on record that the accused were in possession of these notes with the intention to use the same. As I have already pointed out, the intention of an accused is a matter of inference from and out of the acts, omissions or other circumstances prevailing in the case. It is too difficult to prove the intention of a person by means of a direct evidence, unless the accused himself discloses his intention by way of confession. The words spoken, the act of the accused, the omission committed and the

circumstances under which he was found in possession of the counterfeit currency notes are all the matters which would give reasonable inference to deduce the intention. Here, in this case, the very fact that a bulk of counterfeit currency notes were in the possession of the accused having the same number in many notes and the failure of the accused to offer any explanation for possession those counterfeit currency notes would give an inference that they had the counterfeit currency notes with the intention to use. The counterfeit currency notes cannot be used except for spending. Suppose, an object can be used for different purposes, the intention of keeping that object for a particular purpose is to be proved. If an object can be used only for one purpose, then the mere possession of the object will give rise to the presumption that it was kept for that purpose only. For illustration, if a man keeps a pen, the inference is that he keeps it for the purpose of writing. If he has an intention to use for a different purpose, it is for him to prove that contrary. Suppose, a person had a metal blade in his hand, it cannot be inferred that it was possessed for the purpose of causing injury to somebody. There the prosecution has to prove the intention with which the same was possessed of by the accused. But, a currency note can be used only for one purpose, i.e., for spending. Similarly, a counterfeit currency note can only be used for spending and not for any other purpose. Therefore, in this case, the presumption that can be drawn under section 114 of the Indian Evidence Act is that these counterfeit currency notes were kept by the accused only for the purpose of spending. Thus, in my considered view, the prosecution has proved that the accused had committed the offence under section 489[C] IPC."

In this case, as stated above, the accused were found in possession of counterfeit notes with similar numbers.

11. At this juncture, the learned counsel for the appellants raised the alternate plea stating that the accused persons are rustic villagers and that they were in possession of 27 Nos. of fake currency notes which is a small quantity and would submit that the said notes had been handed over by A3 and A4, who

have been acquitted. However, he would also submit that the accused got a family to take care and that he had already suffered almost 1 year and 3 months in prison, during the time of investigation.

12. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction, including the relevant provisions of Law and authorities of various Courts.

13. The point for consideration is whether the prosecution has proved its case beyond all reasonable doubt and that whether the Trial Court was right in convicting the appellant?

14. While analysing the evidence on the side of prosecution;

- A) P.W.1/Ravi, had stated that he is a resident of Drowpathiamman Koil Street near the New Bus Stand, Karaikal and that on 24.07.2006 at 10.45 p.m., he along with his friend had gone to the lavatory in the New Bus Stand, Karaikal and at that time, he had seen the Sub Inspector of Police, Karaikal Town Police Station and other policeman standing there and they were enquiring for two persons and that saw one person having 27 nos. of Rs.100/- currency notes and another person having 20 nos. of Rs.100/- notes. However, P.W.1 had not identified them and thereby, he has been treated as hostile.
- B) P.W.2/Senguttuvan @ Kumar, had stated that on 24.07.2006, he along with P.W.1 had gone to the lavatory in the New Bus Stand, Karaikal and that he had seen a police Jeep near the place where Nagapattinam buses were parked and at that time, he had seen P.W.9/Marie Christian @ Paul, Sub Inspector of Police, enquiring two persons and that he recovered 27 nos. of Rs.100/- fake notes from one Ramadoss and 20 nos. of Rs.100/- fake notes from another person, and the accused persons have told them that the notes were fake notes and the same were marked as M.Os.1 and 2 series. Thereafter, the police had taken signatures from two or three persons but he did not know their names. During cross examination, he had stated that he did not go to the Town Police Station, Karaikal, and that he had seen the accused only in the Court.
- C) P.W.3/Sundar, had stated that he is a resident of Karaikal and that he is an auto driver and that prior to five years of the date of deposition before the Court, he was driving auto in the New Bus Stand, Karaikal and that he had seen police enquiring A1 and A2 and that he had stood as a witness. He had further stated that the police had informed

that these accused persons were in possession of counterfeit currency notes and thereafter, the accused persons were taken to the police Station and on the next day the police visited the scene of occurrence and prepared the crime details form/rough sketch (Ex.P1) and that he along with one Bharth, auto driver attested the same. In his cross examination, he had stated that police had recorded statement from the accused and that he attested it.

- D) P.W.4/Panneerselvam, is a resident of Nehru Nagar, Karaikal, he received a call from the Town Police Station on 08.09.2006, at 10.30 hours and that he along with one Selvaraj, went to the Police Station and on requisition of the Inspector of Police, he stood as a witness for the confession statement of A3 along with one Selvaraj.
- E) P.W.5/Balasubramanian, had stated that he is a resident of Karaikal, and that on 06.01.2007, he had gone to the Karaikal Town Police Station in connection with the local problem along with one Vinayakamurthy, and at that time A4 was there and the Inspector of Police interrogated A4 and recorded the confession in the presence of Vinayakamurthy.
- F) P.W.6/Deva @ Devendiran, had stated that he was working in the S.P.K.Sweet Stall at Karaikal New Bus Stand and that on 24.07.2006, at about 9.30 p.m., A1 had gone to the shop and gave Rs.100/- note and asked 1/4 Kg sweet and since he has no change and he returned the said note to A1 since he entertained a doubt with regard to the note. He had stated that at that time, Karaikal Town Police came and enquired A1 and A2 and that the Investigating Officer seized 27 nos. of Rs.100/- fake currency notes from A1's pocket and 20 nos. of Rs.100/- fake currency notes from A2's pocket under the cover of two separate Mahazars Exs.P2 and 3 respectively in which, he along with one Kaliaperumal, had signed as witnesses and thereafter, A1 and A2 were taken to the Police station. On the next day, P.W.6 gone to the Police Station along with Kaliaperumal and at that time A1 and A2 volunteered to give confession statements and that the police recorded the confession in their presence and that they attested it.
- G) P.W.7/Balakrishnan, is a Police Constable, and he had stated that on 21.10.2006, on the directions of the Inspector of Police, he along with police constable Subramanian have collected the cover concerned in this case from the learned Judicial Magistrate -II, Karaikal and handed over the same before the Examiner of the Currency Note Press, Devas on 21.06.2006, and on the same day, he had collected a Report from the Examiner and that he reached Karaikal and handed over the Report containing the cover to the learned Judicial Magistrate-II, Karaikal.
- H) P.W.8/Loganathan, is the Head Constable attached to the Town Police Station, Karaikal and while he was in duty, on

05.01.2007, he along with other police constable were deputed to arrest of A4 and thereby, he along with other constable went to Vadapathy and arrested A4 and brought him before the Investigating Officer.

- I) P.W.9/Marie Christian @ Paul, had stated about arrested the accused persons and recovering the fake currency notes and thereafter, handed over the accused to P.W.10/Inspector of Police.
- J) P.W.10/Ramaraju, Inspector of Police had stated that on 25.07.2006, after perusing the case records at 8.30 a.m., had visited the place of occurrence at New Bus Stand, Karaikal and prepared the crime detail Form/Rough Sketch Ex.P1 in the presence of witnesses Bharath and Sundar and thereafter, had sent fake currency notes (Mos.1 and 2) to the Court under separate Form-95 (Ex.P6 series) and that on the same day, at 19.30 hours had sent A1 and A2 to judicial custody. Thereafter, through a requisition (Ex.P8), obtained orders from the learned Judicial Magistrate-II, Karaikal, for deputing the police personnel to send the notes for examination and to receive the Report from the Currency Note Press, Devas and the Report under Ex.P9 was handed over to the learned Judicial Magistrate-II, Karaikal on 30.10.2006. After completion of the investigation, he laid the charge sheet against the accused persons under Section 489(C) IPC r/w 34 of IPC.

15.Now, while analysing the counterfeit currency notes [M.O.1 and M.O.2 series], seized under Mahazars [Exs.P.2 and P.3], this Court is able to see that Item Nos.5 and 6, 9 and 10, 19 and 26, 20 and 21 in Ex.P.2 were having the same serial numbers. Likewise, Item No.1 in Ex.P.3 was having the same serial number as that of item No.3 in Ex.P.2. Item No.2 in Ex.P.3 was having the same serial number as that of Item Nos.9 and 10 in Ex.P.2. Item No.3 in Ex.P.3 was having the same serial number as that of item No.11 in Ex.P.2. Item No.6 in Ex.P.3 was having the same serial number as that of Item No.22 in Ex.P.2. Item No.8 in Ex.P.3 was having the same serial number as that of Item No.14 in Ex.P.2. Item No.9 in Ex.P.3 was having the same serial number as that of Item No.17 in Ex.P.2. Item No.10 in Ex.P.3 was having the same serial number as that of Item No.15 in Ex.P.2. Similarly, item No.14 in Ex.P.2 was having the same serial number as that of Item No.18 in Ex.P.3. Item No.15 in Ex.P.3 was having the same serial number as that of Item No.12 in Ex.P.2. Item No.17 in Ex.P.3 was having the same serial number as that of Item No.23 in Ex.P.2. Item No.18 in Ex.P.3 was having the same serial number as that of Item No.25 in Ex.P.2. Item No.20 in Ex.P.3 was having the same serial number as that of Item No.7 in Ex.P.2.

16.The appellants/accused were unable to give a probable and

plausible explanation for having found in possession of notes with similar serial numbers and that, thereby, a presumption could be drawn under section 114 of the Evidence Act that these currency notes were kept by the appellants/accused only for the purpose of spending and therefore, in the considered opinion of this Court, the prosecution has proved that the appellants/accused had committed the offence u/s.489[c] of IPC read with 34 IPC.

17.Now coming to the question of sentence, the learned counsel for the appellant/A-1 would submit that the Trial Court had not taken into consideration the mitigating circumstances of the accused that even as per his confession, the notes were stated to have been handed over to him by A-3 and A-4 in this case who have been acquitted. He would submit that the appellant/A-1 has a family to take care of and he has suffered about 9 months in jail. Further, he would submit that the appellant is employed as labour and that he has not committed any such offence, subsequent to the occurrence and would pray that the Court has to take into consideration, the mitigating circumstances and would submit that the appellant had no previous case of this nature and subsequently, the appellant/A-1 has not involved in any offence. In view of the above, this Court is inclined to reduce the substantive sentence of imprisonment to the period already undergone.

18.In the result, the Criminal Appeal is partly allowed in the following terms:

a)the conviction of appellant/accused under Section 489(C) IPC r/w 34 of IPC is hereby confirmed.

b)the sentence of imprisonment imposed by the Trial Court is reduced if the period already undergone.

c)the fine amount fixed by the Trial Court is confirmed.

d)since, the period of sentence is modified the period already undergone and the appellant need not surrender.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Additional Sessions Judge, Puducherry, Karaikal.
2. The Principal Sessions Judge, Puducherry, Karaikal.
3. The Judicial Magistrate No.II,
Karaikal.
4. Do Through The Chief Judicial Magistrate,
Puducherry.
5. The Superintendent, Central Prison,
Puducherry.
6. The Inspector of Police,
Town Police Station, Karaikal District, Puducherry State.
7. The Public Prosecutor, High Court, Puducherry.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.66387
+1cc to Public Prosecutor, Puducherry, in sr.no.66278

Crl.A.No.127 of 2010

GJ(CO)
CS/11/10/2019

सत्यमेव जयते

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