

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.09.2019

DELIVERED ON: 18.09.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.497 of 2012 & M.P. No.4 of 2012

Deva Arulraj

Appellant/Accused

vs.

State represented by

The Inspector of Police

T.15, S.R.M.C. Police Station

Porur

Chennai 600 116

(Cr. No.334 of 2005)

Respondent/Complainant

Criminal Appeal preferred under Section 374(2) Cr.P.C. against the judgment and order dated 27.06.2012 passed by the II Additional Sessions Judge, Thiruvallur at Poonamallee in S.C.No.142 of 2010 convicting the appellant under Section 489-A,B,C and D IPC and sentencing him to undergo rigorous imprisonment for five years each and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for six months each.

For appellant Mr. R.C. Paul Kanagaraj

For respondent Mrs. P.Kritika Kamal

Government Advocate (Crl. Side)

JUDGMENT

The instant criminal appeal has been preferred calling into question the legality and validity of the judgment and order dated 27.06.2012 passed by the II Additional Sessions Judge, Thiruvallur at Poonamallee in S.C.No.142 of 2010 convicting and sentencing the appellant as detailed in para 2.11, infra.

2 A précis of the germane facts necessary for the disposal of this criminal appeal are as under:

2.1 Swaminathan (P.W.3), an octogenarian, gave an advertisement in the newspaper for selling his VCD player, seeing which, the appellant went to his residence on 21.03.2005 around 4.00 p.m., negotiated with him, fixed the price for it at Rs.4,000/- and gave eight currency notes of Rs.500/- each.

Swaminathan (P.W.3) became a little suspicious about the genuineness of the currency notes and so, he called his neighbours, viz., Somasundaram (P.W.1) and Balasubramaniam (P.W.2), to his apartment. The appellant introduced himself as Mohan. The trio (P.Ws.1 to 3) checked the currency notes and were convinced that they were counterfeit ones and so, they handed over the appellant and the currency notes to the respondent police, viz., S.R.M.C. Police Station, along with a written complaint (Ex.P.1) given by Swaminathan (P.W.3).

2.2 The respondent police registered a case in Cr. No.334 of 2005 on 21.03.2005 under Sections 420 and 489-(A) & (B) IPC against the appellant and placed him under arrest. From the possession of the appellant, four counterfeit currency notes, each valuing Rs.500/-, were recovered. Thus, totally, twelve counterfeit currency notes, each valuing Rs.500/-, were seized by the police under the cover of mahazar (Ex.P.9) immediately after the registration of the First Information Report.

2.3 The seizure was effected by Chandrasekaran (P.W.8), Investigating Officer, in the presence of two independent witnesses, viz., Jagadeesan (P.W.4) and Kannan (not examined) and Somasundaram (P.W.1), Balasubramaniam (P.W.2) and Swaminathan (P.W.3).

2.4 The confession statement of the appellant was recorded by the police, pursuant to which, a huge haul of counterfeit currency notes and equipments (M.Os.4 to 6) used for printing such notes were seized from the appellant's residence at No.1/6, Kalamegam Street, Mogappair, under the cover of mahazar (Ex.P.11) in the presence of Jagadeesan (P.W.4) and Kannan (not examined).

2.5 The seized currency notes were sent through the Court to the Tamil Nadu Forensic Sciences Laboratory, where, Hemalatha (P.W.6) examined them and gave a report (Ex.P.6). Hemalatha (P.W.6), in her evidence as well in her report (Ex.P.6), has stated that the seized currency notes were counterfeit ones. She has also given reasons for arriving at such a conclusion.

2.6 After completing the investigation, the police filed a final report in P.R.C. No.11 of 2010 in the Court of Judicial Magistrate No.I, Poonamallee, for the offences under Sections 489-A, B, C & D, IPC against the appellant.

2.7 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C. No.142 of 2010 and was made over to the II Additional Sessions Court, Tiruvellore at Poonamallee, for trial.

2.8 The Trial Court framed charges as detailed in para 2.6, supra, against the appellant, who, when questioned, pleaded not guilty.

2.9 To prove the case, the prosecution examined 9 witnesses and marked 13 exhibits and 6 material objects.

2.10 When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same and did not give any explanation at all. No witness was examined on his behalf nor any document marked.

2.11 After considering the evidence on record and on hearing either side, the Trial Court, by judgment and order dated 27.06.2012 in S.C. No.142 of 2010, convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
489-A IPC	Rigorous imprisonment for five years and fine of Rs.1,000/-, in default to undergo six months simple imprisonment.
489-B IPC	Rigorous imprisonment for five years and fine of Rs.1,000, in default to undergo six months simple imprisonment.
489-C IPC	Rigorous imprisonment for five years.
489-D IPC	Rigorous imprisonment for five years and fine of Rs.1,000/-, in default to undergo six months simple imprisonment.

2.12 Challenging the aforesaid conviction and sentences, the appellant is before this Court.

3 Heard Mr. R.C. Paul Kanagaraj, learned counsel for the appellant and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 The occurrence in this case had taken place in 2005 and the trial commenced only in 2014. Swaminathan (P.W.3) was 85 years old when he testified on 16.08.2011. He, in his evidence, has stated that he issued an advertisement in the newspaper for selling some old items, which included a VCD player; on 21.03.2005, around 4.00 p.m., a person introducing himself as Mohan, came to his house and offered to purchase the VCD player for Rs.4,000/-; he gave eight currency notes of Rs.500/- each, which he suspected to be counterfeit ones; so, he called his

friends Somasundaram (P.W.1) and Balasubramaniam (P.W.2) and all of them handed over the said person to the police with the currency notes. However, Swaminathan (P.W.3) has stated that he is not able to identify either the accused or the currency notes. He identified the complaint (Ex.P.1) given by him. In the chief-examination, he has stated that on account of age, he does not remember the events. Therefore, he was declared hostile. But, in the cross-examination by the Prosecutor, he has spoken to about the sequence of events set out above. His evidence stands amply corroborated by the versions of his two friends, viz., Somasundaram (P.W.1) and Balasubramaniam (P.W.2).

5 During the course of investigation, it came to light that the actual name of the appellant was Deva Arulraj, son of Ponnumani. Somasundaram (P.W.1) was able to identify the appellant and also the eight counterfeit currency notes, which were marked as M.O.1 series.

6 The learned counsel for the appellant submitted that the 12 currency notes that were seized by the police in the police station under the cover of mahazar (Ex.P.9) were not sent for expert opinion and only the currency notes that were allegedly seized by the police from the appellant's residence were sent. He built up his arguments further by contending that the independent witness Jagadeesan (P.W.4), who was the witness for the seizure of the currency notes in the police station as well from the appellant's residence, turned hostile to the prosecution case and hence, the appellant cannot be convicted for the seizure of 12 currency notes in the police station in the absence of expert opinion and in the absence of satisfactory evidence for the seizure of the currency notes from his residence in view of Jagadeesan (P.W.4) turning hostile, the conviction of the appellant cannot be sustained.

7 Refuting the contentions of the learned counsel for the appellant, the learned Government Advocate (Crl. Side) brought to the notice of this Court that the twelve currency notes that were seized under the cover of mahazar (Ex.P.9) in the police station were also sent to the expert, but, the Magistrate through whom they were sent, did not specify in his letter that those currency notes also should be examined by the expert. In support of this contention, she took this Court through the endorsement in the report of the expert (Ex.P.6) which reads as follows:

"Please note that 12 numbers of 500 rupee notes sent along with the above items are returned unexamined as they have not been mentioned in the Court letter (vide ref.2)."

8 This Court gave its anxious thought to the rival submissions.

9 It is true that Jagadeesan (P.W.4), independent witness, turned hostile. But, it is trite that even if the panch witness turns hostile, the evidence of the recovery officer will not be vitiated and conviction can be based on his testimony if it inspires the confidence of the Court (See Mohd. Aslam vs. State of Maharashtra¹ and Rameshbhai Mohanbhai Koli vs. State of Gujarat²). Further, no mala fides have been attributed to Chandrasekaran (P.W.8), Deputy Superintendent of Police, for foisting a case of this nature on the appellant. In fact, it was the private citizens, viz., P.Ws.1 to 3, who handed over the appellant with counterfeit currency notes and only thereafter, recoveries of counterfeit currency notes and equipments were effected from the appellant's residence. Hence, just because Jagadeesan (P.W.4) turned hostile, the evidence of Chandrasekaran (P.W.8), who effected the seizure from the appellant's residence cannot be jettisoned.

10 As regards the submission of the learned counsel for the appellant that twelve currency notes that were recovered from the police station were not examined by the expert, it is seen that they were marked as M.O. 1 series, out of which, eight currency notes bear the same number, viz., 8 EV 571643. This Court can take judicial notice of the fact that the Government Press at Nashik would not have ever printed more than one currency note with the same number. On this short ground itself, albeit the absence of the opinion of the expert qua twelve currency notes recovered at the police station, an inference can safely be drawn that eight notes that were given by the appellant to Swaminathan (P.W.3) at the latter's residence towards purchase of VCD player, were counterfeit ones.

11 In view of the foregoing discussion, this Court does not find any infirmity in the judgment and order of the Court below warranting interference.

¹ (2001) 9 SCC 362

² (2011) 3 SCC (Cr.) 102

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As a sequitur, this criminal appeal fails and is accordingly dismissed as being devoid of merits. Connected M.P. No.4 of 2012 is closed. The Trial Court is directed to secure the appellant and commit him to prison to undergo the period of sentence.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

cad

To

1 The Inspector of Police
T.15, S.R.M.C. Police Station
Porur
Chennai 600 116

2 The II Additional Sessions Judge
Thiruvallur at Poonamallee

3 The Public Prosecutor
High Court of Madras
Chennai 600 104

4 The Deputy Registrar
(Crl. Side)
High Court of Madras
Chennai 600 104

} with a direction to transmit
the original records to the
Court below

5.The Superintendent of Police
Central Prison puzhal Chennai

+1 cc to Mr.A.K.Manoj Kumar Advocate sr79906

Crl.A. No.497 of 2012

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