

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL No. 189/2007.

Rajesh @ Chhotu Ramesh Solanke,
Aged about 28 years, Occupation -
Labour, resident of Akot, Taluq Akot,
District Akola. ... **APPELLANT.**

VERSUS

State of Maharashtra,
through Police Sub-Inspector,
Police Station, Akot, Taluq Akot,
District Akola. ... **RESPONDENT.**

Mr. Anil Mardikar, Senior Advocate with Shri R. Khemuka,
Advocate for the Appellant.
Ms. M.H. Deshmukh, A.P.P. for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 22, 2020.

ORAL JUDGMENT :

Heard learned Counsel for the parties.

2. Being aggrieved and dissatisfied with the judgment and order of conviction in Sessions Trial No. 81/2005 dated 30.04.2007, delivered by the Adhoc Additional Sessions Judge, Akot, the appellant/convicted accused has preferred this appeal. The Sessions Court held the appellant/accused guilty for the offence punishable under Section 489-C of the Indian Penal Code, and sentenced him to suffer rigorous imprisonment for three years and pay fine of Rs.1000/-, with stipulation of default.

3. Initially in all 6 accused were charged for the offence punishable under Sections 489-A, 489-B, 489-C and 489-D of the Indian Penal Code. The trial Court acquitted accused nos. 2 to 6 from all the charges. Likewise, the trial Court also acquitted the appellant/accused namely Rajesh Solanke from all the charges except for charge under Section 489-C of the Indian Penal Code, for which the aforementioned order of conviction was passed. The State has not challenged acquittal of rest of the accused, nor challenged the acquittal of the appellant Rajesh under other charges. Thus, the appeal remained only to the extent of charge against the appellant /accused for the offence punishable under Section 489-C

of the Indian Penal Code.

4. The prosecution case in nutshell is that on 09.06.2005, P.W.1 Head Constable Jagdish Chavan was on patrolling duty on 09.06.2005, along with other policemen. They received information through secret informant that, accused Rajesh along with co-accused namely Kishore, were possessing counterfeit currency notes having denomination of Rs.50/-. On the basis of said information, they went to the concerned place namely – Yatra Chowk, where they saw both the accused near pan shop. On their identification, the informant Head Constable Chavan disclosed his identity and took personal search of accused Rajesh. In the said search, 9 currency notes having denomination of Rs.50/- each were found in his trouser pocket. On verification, head constable Chavan found that all the currency notes were fake. He has drawn panchnama [Exh.39], under which the fake currency notes were seized. The seized currency notes were verified by the police inspector and later on head constable Chavan lodged report [Exh.40] for the commission of offence punishable under Section 489-C of the Indian Penal Code, against the appellant and co-accused Kishore.

5. During the course of investigation, complicity of some more accused was revealed. It was found that co-accused have counterfeited currency notes, used them as genuine as well as instruments for making counterfeit currency notes were found. Accordingly rest of the accused were apprehended. After completion of investigation, charge sheet was filed against total 6 accused persons, whilst one was shown to be absconding.

6. On committal, the trial Court framed charge [Exh.24] against all the accused. Particularly charge was framed against the appellant / accused Rajesh for commission of offence punishable under Section 489-C of the Indian Penal Code, which is questioned herein.

7. The prosecution has examined in all 20 witnesses to establish the guilt of accused. The prosecution evidence is spread over various points to prove the culpability of all accused for the offence punishable under Sections 489-A, 489-B, 489-C and 489-D of the Indian Penal Code. As noted above, this appeal only relates to conviction under Section 489-C of the Indian Penal Code, hence, it is not necessary to go through the evidence led by the witnesses on

other points.

8. So far as the charge against the appellant/accused for the offence punishable under Section 489-C of the Indian Penal Code is concerned, the evidence of P.W.1 Head constable Jagdish Chavan, P.W.8 – Head constable Chandrakant Gomase and P.W.9 Police Constable Ranjeet Khedkar carries importance, since they have apprehended the accused and seized fake currency notes. Rest of the witnesses are panch on different seizures, and most of them have turned back before the trial Court. Evidence is led from the government printing press to establish that the seized notes were fake.

9. P.W.1 informant Chavan stated that on 09.06.2005, while they were on patrolling duty, they received information that accused Rajesh was possessing counterfeit currency notes having denomination of Rs.50/- each. On the basis of said information, they went near Yatra Chowk and apprehended accused. They seized 9 currency notes having denomination of Rs.50/- each, which were found to be fake. He deposed that the counterfeit currency notes were seized under seizure memo [Exh.39]. The evidence of P.W. 8

Head constable Chandrakant and P.W. 9 – Police constable Rajeet was on similar line. They equally stated that in their presence 9 fake currency notes were seized from the possession of the appellant/accused.

10. Shri Anil Mardikar, the learned Senior Counsel appearing on behalf of the appellant/accused vehemently argued that the prosecution evidence is totally silent on the material aspect to establish that the accused has possessed the counterfeit currency notes with an intention to use them as genuine, for circulation. According to him in order to establish an offence punishable under Section 489-C of the Indian Penal Code, three essential ingredients are required to be proved. Mere possession of counterfeit note is not enough, but, conscious knowledge of accused and his intention to use those notes as genuine has to be simultaneously established. In support of said contention, he has relied on the decisions of Hon'ble Supreme Court in cases of **Umashanker .vrs. State of Chattisgarh – (2001) 9 SCC 642**, **Dipakbhai Jagishchandra Patel .vrs. State of Gujarat and another – (2019) 16 SCC 547** and a decision of this Court in case of **Shashikant Gulabchand Bora .vrs. State of Maharashtra – 2010 All MR (Cri) 3883**.

11. The Hon'ble Supreme Court in case of Umashanker [supra], has very succinctly laid down in paragraph no.8 as under :

"8. A perusal of the provisions, extracted above, shows that mens rea of offences under Section 489-B and 489-C is, "knowing or having reason to believe the currency notes or banknotes are forged or counterfeit". Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of P.W.2, P.W.4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4, was fake, "presumed" such a mens rea. On the date of the incident the appellant was said to be an

eighteen year old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under Section 313 of Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C I.P.C. and acquit him of the said charges.”

12. Thus, it is abundant clear that requisite *mens rea* to constitute the offence punishable under Section 489-C of the Indian Penal Code is *sine qua non* to establish the offence. Mere possession of counterfeit notes is not enough, but, the further requirements are to be complied with. In present case, no *mens rea* has been made out. Moreover, in statement under Section 313 of the Code of Criminal Procedure, no question was put to the appellant that he had reason to believe that notes were counterfeit. In view of that, the aforesaid judgment in case of Umashanker [supra], squarely applies in the present case.

13. The evidence of P.W.1 Jagdish, P.W.8 Chandrakant and P.W.9 Ranjeet nowhere disclose that the accused had knowledge or has reason to believe that the notes were forged and further he intended to use the same as genuine. Thus, the essential requisites to constitute the offence are totally missing.

14. Apart from that, the learned Senior Counsel has criticized the prosecution case from some other angle. It is argued that though raid was conducted on 09.06.2005 at 10 p.m., however, the first information report was belatedly lodged on the next date around 1 p.m. According to him, the prosecution has not explained as to where the currency notes were lying during the meanwhile. It is pointed out that the seized currency notes were not sealed, and therefore, according to him there were chances of tampering. Moreover it reveals that the police officer has not followed the procedure while taking personal search of the appellant/ accused.

15. The learned A.P.P. appearing on behalf of the respondent State though supported the judgment of trial Court, but, was unable to point out the evidence on the point of essential ingredients about the knowledge of the accused and his effort to circulate the currency

notes. Merely on the basis of evidence of the investigating officer, the prosecution case cannot be believed.

16. For the above reasons, it is held that the prosecution has failed to prove the offence against the appellant/accused punishable under Section 489-C of the Indian Penal Code beyond reasonable doubt. The learned trial Court has erred in returning the finding of guilt, therefore, the appellant / accused deserves to be acquitted by reversing the impugned judgment and order. In view of that Criminal Appeal is allowed. The judgment and order of conviction dated 30.04.2007 in Sessions Trial No. 81/2005, delivered by the Adhoc Additional Sessions Judge, Akot, District Akola is hereby quashed and set aside. The appellant/accused is acquitted of the offence punishable under Section 489-C of the Indian Penal Code. He be set at liberty forthwith, if not required in any other offence. His bail bond stands canceled. Fine amount if deposited by the appellant, be refunded. Muddemal property be dealt with in accordance with law.

JUDGE

Rgd.