

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 11 of 2016

Sahangir Molla @ Rana

-Vs-

State of West Bengal

For the Appellant : Mr. Sandip Chakraborty, Adv.
 Mr. Suwendu Das, Adv.
 Mr. Koustav Das, Adv.

For the State : Mr. Saibal Bapuli .. Ld. Addl. Public Prosecutor
 Mrs. Manasi Roy, Adv.

Heard on : 25.11.2021

Judgment on: 25.11.2021

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 21st December, 2015/22nd December, 2015 passed by the learned Additional Sessions Judge, Fast Track Court-3, Barrackpore, North 24-Parganas in Sessions Trial No. 05(06)/2014 (Sessions Case No. 137 of 2014) convicting the appellant for commission of offence punishable under Sections 489B/489C of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs.20,000/-, in

default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 489B IPC and to suffer rigorous imprisonment for five years and to pay fine of Rs.10,000/, in default, to suffer rigorous imprisonment for three months more for the offence punishable under Section 489C of the Indian Penal Code; both the sentences to run concurrently.

The prosecution case as alleged against the appellant is to the effect that on 28th November, 2013 at about 00:30 hrs. SI, Sahabuddin Mondal of Airport Police Station (PW1) received a source information that one notorious criminal namely, Rana of Louhati area was operating in fake currency notes of denomination of Rs.500/- and Rs.1000/- in a clandestine manner. Source further informed that the miscreant was expected to come between 1:00 to 1:30 hrs. in the vicinity of Michael Nagar and Jessore Road in connection with clandestine trafficking of FICN. The aforesaid information was diarised as G.D. Entry No. 1522 dated 28.11.2013. After obtaining permission of ADCP, Airport Police Station, SI Sahabuddin Mondal, (PW1) along with ASI, Hasan Imam Mallick, Constable Sanjoy Garai (PW5), Constable Sajal Kumar Dey (PW3) went to the spot in vehicle No. WB-74X-6875 after diarising such fact in G.D. Entry No. 1523 dated 28.11.2013. At about 00:55 hrs., they reached near Michael Nagar Dhaba on Michael Nagar-Jessore Road and kept watch. At around 01:30 hrs they noticed a chaos inside Michael Nagar Dhaba. They rushed to the Dhaba and the source pointed out to a person who was engaged in altercation with the shopkeeper of the Dhaba as the trafficker of the FICN. Police intercepted him inside the Dhaba. Shyamlal

Ghosh (PW7), cashier of the Dhaba stated that the detained person had come to the Dhaba and ordered food. He had offered two currency notes of Rs.500/- each against the food bill of Rs.755/-. Shyamlal suspected the notes to be fake and asked him to change the notes. At this the detained person insisted that the notes were genuine. Upon interrogation, the detained person disclosed his identity as the appellant. Thereafter, the police personnel searched the appellant and 30 nos. of Indian Currency notes in denomination of Rs.500/- each amounting to Rs.15,000/- in all wrapped in an old Bengali newspaper dated 23rd September, 2013 was recovered from the right side pocket of his trouser and cash memo dated 28.11.2013 of Rs.755/- was also recovered from the right side shirt pocket of the appellant. Police also recovered one black colour money bag containing Rs.120/- in genuine currency notes. The aforesaid currency notes suspected to be fake were seized under a seizure list and the police personnel obtained the signature of the accused thereon. The seized articles were sealed and labelled at the spot in the presence of witnesses. After reaching the police station, PW1 lodged written complaint resulting in registration of Airport Police Station Case No. 343 of 2013 dated 28.11.2013 under Sections 489B/489C of the Indian Penal Code. During investigation, seized currency notes were sent for expert opinion and upon receipt of expert opinion, charge-sheet was filed. Case was committed to the Court of learned Additional Sessions Judge, Barrackpore, North 24-Parganas and transferred to the Court of the learned Additional Sessions Judge, Fast Track Court-3, Barrackpore, North 24-Parganas for trial and disposal. Charges were framed under Sections 489B/489C IPC. The

appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 9 witnesses and exhibited the expert opinion (Exhibit-7) that the seized currency notes were fake. In conclusion of trial, the trial Judge by the impugned judgment and order dated 21st December, 2015/22nd December, 2015 convicted and sentenced the appellant, as aforesaid.

Mr. Sandip Chakraborty, learned counsel appearing for the appellant submits that the prosecution case has not been proved beyond doubt. There are discrepancies in the seizure and labelling of the suspected FICNs. It is unclear when the seized articles were sent to the expert for examination. While the Investigating Officer (PW9) stated that the seized amount was sent for examination after he had assumed charge of investigation on 6th December, 2013, PW6 (D. Purnachandra Rao) expert attached to Bharatiya Reserve Bank Note Mudran Pvt. Ltd. deposed that they received the sealed envelope on 28th November, 2013. He accordingly, prayed for acquittal.

Mr. Saibal Bapuli, learned Additional Public Prosecutor, argues that the prosecution case is proved through the evidence of PW1 and other witnesses. Expert opinion (Exhibit-7) shows that the seized currency notes were fake. There is no breach in the chain of custody as the seized notes bore the signature of the appellant and the seal of the envelope was also intact. He prayed for dismissal of the appeal.

P.W. 1 SI- Sahabuddin Mondal is the leader of the raiding party as well as the first informant in the present case. On receipt of source information which was diarised as G.D. Entry No. 1522 dated 28.11.2013,

P.W. 1 along with A.S.I. Hasanimam Mallick, Constable Sajal Kr. Dey, P.W. 3 and Constable Sanjoy Garai, P.W. 5 left for Mikelnagar, Dhaba in a vehicle. They kept watch over the Dhaba. At around 1.30 AM there was a hot altercation inside the Dhaba. Source identified the appellant. PW 7, cashier of the Dhaba told P.W. 1 that the appellant had come to Dhaba to purchase food. He sold food to him for Rs. 755/- and the appellant had handed over two notes of Rs.500/- each. As the notes appeared to be suspicious, the cashier requested the appellant to replace them. He refused and altercation ensued. Under such circumstances, P.W. 1 decided to search the appellant. Cashier of the Dhaba, Shyamlal Ghosh, P.W. 7 and another employee Tapas Mondal, P.W.2 offered themselves as witnesses. Offer was made to the appellant to search the police personnel and a nil seizure list (Exhibit -1) was prepared. Thereafter the appellant was searched and 28 currency notes wrapped in a piece of old Anandabazar Bengali News Paper were recovered from the right side of his pocket of his pant. Two currency notes were recovered alongwith cash memo of the Dhaba from his shirt pocket. Currency notes were seized under a seizure list marked as Exhibit 2. Seized items were labelled and sealed. Signatures of the appellant were obtained on the currency notes. Seizure list witnesses signed on the envelope. Thereafter, the appellant was taken to police station with the seized alamats. Written complaint (Exhibit- 5) was lodged by PW 1. PW 1 identified the FICNs in Court, MAT Exhibit 1/1. The witness was extensively cross-examined but nothing worthwhile was elicited out of him.

On the other hand, his evidence is corroborated by the other members of the raiding party, PWs 3 and 5, the cashier of the Dhaba (P.W. 7) and the cook (P.W. 2). The aforesaid witnesses proved their signatures on the seizure list as well as on the envelope.

In view of the aforesaid evidence on record it appears that the prosecution has been able to prove the seizure of 30 pieces of currency notes suspected to be fake from the possession of the appellant.

P.Ws. 8 and 9 are the Investigating Officers in the instant case.

P.W. 8, SI Pratapaditya Mondal deposed that he commenced his examination by examining S. I. Sahabuddin Mondal and other members of the raiding party. He prepared a rough sketch map with index. In cross-examination he stated that upon receipt of alamats from Court he deposited it with the Malkhana Officer.

P.W. 9, SI Sahidullah Sana deposed that he took over investigation on 06.12.2013. He sent the alamats namely FICNs for expert opinion. Upon receipt from expert, he submitted charge sheet.

P.W. 6, D. Purnachandra Rao is the expert. He deposed that he is a manager in Printing division of forged note detection cell of Bharatiya Reserve Bank Note Mudran Pvt. Ltd. He was posted at the said place in same capacity on 28.11.2013. On that date he received a sealed envelope containing 30 pieces of currency notes of Rs.500/- denomination each from police for examination. He examined the currency notes and found to be fake. He proved his report and marked as Exhibit -7. He also proved the envelope and his signature thereon. He also proved the seal on each note.

Referring to the aforesaid evidence of PW 6, learned counsel for the appellant has argued that there is a snap in the chain of custody as the said witness claimed that the FICNs were received by his office on 28.11.2013, while the second Investigating Officer, S.I. Sahidullah Sana (P.W. 9) deposed upon taking over the charge of investigation on 06.12.2013 he had sent the notes for expert opinion. On the first blush, versions of the witnesses appear to be contradictory to one another. In order to have a better appreciation of the matter, I have gone through the exhibits particularly, the expert opinion i.e., Exhibit – 7 wherein it is categorically recorded that the sealed envelope was received on 09.12.2013 by the Bharatiya Reserve Bank Note Mudran Pvt. Ltd. It is settled law that documentary evidence prepared in the ordinary course of business has a higher evidentiary value than an oral statement made by a witness in Court.

Hence, we are constrained to hold that the deposition of P.W.6 to the effect that he received the envelope on 28.11.2013 in Court is incorrect and not borne out by the document prepared by him in the ordinary course of business which unequivocally states that the currency notes were received on 09.12.2013 and not on 28.11.2013.

Furthermore, consistent evidence of PWs. 1, 8 and 9 have clearly established the chain of custody between seizure of the currency notes from the place of occurrence to the office of Bharatiya Reserve Bank Note Mudran Pvt. Ltd wherein they were examined. Moreover, the currency notes bore the signature of the appellant and the sealed envelope was also signed by independent witnesses, namely, PWs 2 and 7. Envelope was

found in a sealed condition by PW6 and, therefore, we are of the opinion that there was no case of substitution of the seized alamats in the facts of the case.

In the light of the aforesaid discussion, I uphold the conviction recorded against the appellant.

Coming to issue of sentence, I find a rule of enhancement of sentence was issued at the time of admission of appeal. The appellant does not have any criminal antecedents. Balancing the aggravating and mitigating factors in the present case, I am of the opinion the sentences imposed upon the appellant is reasonable and justified. Under such circumstances, we are not inclined to enhance the sentences imposed upon the appellant.

The appeal is dismissed.

Rule is discharged.

Period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)