

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

**CRA 651 of 2019
(Via Video Conference)**

***Amijuddin Sk*
-vs.-
*State of West Bengal***

For the Appellant : Md. Manuwar Ali,
Ms. Sifa Sultana.

For the State of West Bengal : Mr. S.G. Mukherjee, Ld. P.P.,
: Mr. Sandip Chakraborty,
Ms. Faria Hossain

Heard on : 18.05.2021 & 29.06.2021

Judgment on : 30th June, 2021.

Tirthankar Ghosh, J:-

The present appeal has been preferred against the Judgment and Order of conviction and sentence dated 12.09.2019 & 13.09.2019 passed by the learned Additional District & Sessions Judge, 2nd Fast Track Court, Jangipur, Murshidabad in Sessions Trial No. 1(11)/2018 arising out of Sessions Case No. 94/2018, wherein the learned trial Court was pleased to hold the appellant guilty for commission of offences punishable under Section 489B and 489C of the Indian Penal Code and sentenced him to suffer as follows:

- i. Rigorous imprisonment for 7 years and fine of Rs.10,000/- i.d., to suffer further rigorous imprisonment for 6 months for the offence under Section 489B of the Indian Penal Code.
- ii. Rigorous imprisonment for 5 years and fine of Rs.5,000/- i.d., to suffer further rigorous imprisonment for 3 months for the offence under Section 489C of the Indian Penal Code.

The prosecution case in short is as follows :

One Badal Mondal, Sub-inspector of police attached to Farakka Police Station addressed a letter to the Inspector-in-charge, Farakka Police Station to the effect that on 02.04.2018 at 13.55 hours in course of discharging vehicle checking duty at Khaira Kandi More near Mostofa Garden, vide Farakka PS MCC No.1183/18 dated 02.04.2018 and GDE No. 100 dated 02.04.2018, he received a source information that at New Farakka More a person was moving suspiciously allegedly carrying Fake Indian Currency Note (hereinafter referred to as "FICN"). After seeking verbal permission the informant along with force approached near the spot at about 14.15 hours, when on seeing them, the accused tried to flee away but after chasing him the raiding team was successful in apprehending him. After compliance with all the formalities a search was conducted on the said person named as Amizuddin Sk and from him 350 (three hundred fifty) numbers of FICN, each note of Rs. 2,000/- denomination were recovered. On interrogation the accused could not give any satisfactory answer, however, he said that he collected the said FICN from a businessman of Kaliachak, Malda and

supplied the same to Farakka and its adjacent area. The accused was thereafter arrested and produced before the Court.

The Investigating Officer after completion of investigation submitted charge-sheet under Section 489B/489C of Indian Penal Code. The Investigating Agency in order to prove its case relied upon 10 witnesses and prayed before the learned court for trial of the accused. The case was finally transferred to the learned Additional District and Sessions Judge, 2nd Fast Track Court, Jangipur, Murshidabad and the learned Court after being satisfied with the supply of documents on which the prosecution intended to rely to prove its case, proceeded to frame charge against the present appellant under Section 489B/489C of Indian Penal Code. The charges were read over to the accused/appellant to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 10 witnesses namely PW1, Sasti Sundar Singh; PW2, Md. Rafikul Hasan; PW3, Sk. Azad; PW4, Badal Chandra Mondal; PW5, Bhuban Chndra Karmakar; PW6, Raisal Sk; PW7, Akbar Sk; PW8, Ashok Kumar BN; PW9, Manaulla Sk and PW10, Binay Kumar Das.

The prosecution also relied upon number of documents, being the seizure list with signature of the appellant, arrest memo, the expert report, the sketch map of the area and also the letter of complaint.

PW1, Sasti Sundar Singh, is a constable attached to Farakka Police Station. He deposed before the Court that on 02.04.2018 he along with

Constable Sk. Azad, Constable Rafikul Hossain, NVF Benoy Kumar Das and SI Badal Mondal were on vehicle checking duty and at about 14.00 hours on receipt of information they had been to New Farakka Junction and found one person moving suspiciously. The witness stated that Sub-inspector Badal Mondal collected two witnesses before reaching New Farakka Junction. According to him on seeing the police the accused Amizuddin Sk tried to flee away and he was cordoned and thereafter apprehended. The witness identified the accused on dock and stated that from his two pocket 350 number of FICN denomination of Rs.2,000/- was found and the same was seized by the Sub-inspector under a seizure list where the accused and witnesses put their signatures. Thereafter, the accused was brought to the police station along with the seized alamat. In cross-examination he stated that one road leads to Malda, one leads to Berhampore, one leads to BDO and one goes towards to Barrage. In cross-examination he stated that the said area is not called Farakka Bus stand.

PW2, Md. Rafikul Hasan, is a constable attached to Farakka Police Station. This witness was the member of the raiding team and narrated the incident in the same manner as PW1. In cross-examination he stated the place of occurrence is near NH-34 and Khaira Kandi is situated on the way to Berhampore.

PW3, Sk. Azad, is a constable attached to Farakka Police Station and he narrated the incident in the same manner as PW1 and PW2. In cross-examination he stated that the team ran towards Kaliachawak more from

New Farakka and added that Khaira Kandi and Farakka Barrage are on the opposite side of the same road.

PW4, Badal Chandra Mondal, is the informant and Sub-inspector of police who was attached to Farakka police station on the relevant date i.e., 02.04.2018. He stated that he along with three constables and one NVF were engaged in vehicle checking duty near Kharia Kandi Junction near Mostaba Garden at about 14.00 hours when he got secret information at New Farakka Junction that one person aged about 38 years was moving suspiciously. After informing the matter to Inspector-in-charge, Farakka Police Station and as per verbal direction he carried out the information. The witness narrated the incident and stated that he reached New Farakka Junction and parked their vehicle at a safe distance and saw a person who on seeing them tried to flee away. He cordoned the said person and his movement was restrained. Two passerby were asked to be witness. After apprehending the said accused he disclosed his name as Amizuddin Sk and on search of his person and from his possession i.e. two packets containing 350 numbers of FICN of Rs. 2,000/- denomination were found. According to him the accused failed to give any satisfactory answer regarding the possession of the said FICN and the same as such were seized, the said seizure list was marked as Exbt.1. The witness was thereafter, arrested and the arrest memo was prepared which was marked as Exbt.2 and the signature of witnesses were marked as Exbt.2/1. The witness also identified the complaint which was submitted and marked as Exbt.3 and the signature in the complaint was marked as Exbt.3/1. The envelope which contained FICN was marked as 'A', the said FICN of denomination

Rs.2,000/- was marked as Mat Exhibit.-I (collectively) and the label was marked as Exbt.4 and the signature of witnesses on the said label was marked as Exbt.4/1. In cross-examination the witness stated that there is only one four point crossing before reaching the place of occurrence and one road of the said crossing goes to NTPC Farakka. He also stated that one road of the four point crossing at New Farakka goes to BDO Office and the opposite to Farakka Barrage. The witness acknowledged that towards the west of the place of occurrence is Malda Bus Stand and east of the place of occurrence is Berhampore Bus Stand.

PW5, Bhuban Chandra Karmakar, is a Constable attached to Farakka Police Station who on 20.06.2018 brought the report dated 10.05.2018 from the Office of the General Manager BRBNMPL, from Salboni. The report was acknowledged by him and his signature in the said acknowledgement of receipt was marked as Exbt.5.

PW6, Raisal Sk signed the seizure list, arrest memo and label on 02.04.2018. The witness identified his signatures on the seizure list, arrest memo and label which were marked as Exbt.1(2), Exbt.2(2) and Exbt.4(2).

PW7, Akbar Sk signed the seizure list, arrest memo and label on 02.04.2018, his signature on the said documents were marked as Exbt.1(3), Exbt.2(3) and Exbt.4(3).

PW8, Ashok Kumar BN is the Manager of BRBNMPL at Salboni who prepared the report. The witness identified the report and also his signature

and stated that it comprises six sheets which were marked as Exbt.5(1) (collectively).

PW9, Manaulla Sk, is Sub-inspector of Police, Malda. Who was posted at Farakka Police Station at the relevant point of time and was entrusted with the investigation of the case. The witness stated that he visited the place of occurrence and prepared sketch map. The witness identified the rough sketch map which was marked as Exbt.6 and the index pertaining to the said sketch map was marked as Exbt.6(1). The witness also deposed that he examined the witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure and forwarded the accused to the Court of learned ACJM, Jangipur. Additionally he submitted that he obtained the report from BRBNMPL, Salboni. The said report was marked as Exbt.5(1). The witness lastly stated that after obtaining necessary permission from the superior he submitted charge-sheet in connection with the case. He also identified his signature in the FIR as well as the charge-sheet.

PW10, Binay Kumar Das is NVF who was posted at Farakka Police station on the relevant date. The witness deposed in the same tune as PW1 and PW2.

On completion of examination of the prosecution evidence the learned trial Court examined the accused/appellant under Section 313 of the Code of Criminal Procedure and provided opportunity to the defence to adduce its evidence.

The learned advocate for the appellant submitted that the prosecution has made out a frivolous case and falsely implicated the present appellant. According to the learned advocate different witnesses have stated the place of occurrence to be at different places and as such the prosecution case as a whole failed at the inception and the learned trial Court erroneously arrived at a finding of guilt so far the present appellant is concerned. Learned advocate also submitted that there are no ingredients of Section 489B of the Indian Penal Code and the learned trial Court relied upon conjectures and surmises to arrive at its conclusion by giving an extended meaning to the term conscious possession.

Mr. Sandip Chakraborty, learned advocate appearing for the State supported the conclusions arrived at by the learned trial Court and drew the attention of the Court to the provisions of Section 489B and 489C of Indian Penal Code which are as follows:

“S. 489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

S. 489C. Possession of forged or counterfeit currency-notes or bank-notes.—Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with

imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

Learned advocate stressed on the issue that as the accused was found to be in conscious possession, therefore, it can be very easily presumed that he received the same from other person and as such the provision of Section 489B of the Indian Penal Code would be attracted.

I have perused and assessed the evidence so relied upon by the prosecution in order to establish the charges of Section 489B and 489C of IPC. On scrutiny of the evidence of the prosecution it is glaring on the face of it that the prosecution intended to prove that the present appellant was in possession of FICN and to that extent they relied upon the letter of complaint, the seizure list, the report of the expert and oral evidence of the members of the raiding team as well as the seizure list witnesses. Although, the learned advocate for the appellant has emphasized regarding the issue of the place of occurrence, I am of the considered view that the same is of no relevance in view of the fact that no doubt could be created regarding the seizure being effected from the appellant. In fact in course of cross-examination no doubt also could be created that the seizures were not from the present appellant. To that extent I am of the opinion that the prosecution has been able to prove the charges under Section 489C of the Indian Penal Code. As far as the charges of Section 489B of the Indian Penal Code is concerned the prosecution could neither produce any material nor any investigation was carried out regarding involvement of any other person in the offence, in fact, the prosecution case originates from the factum that the appellant was found along with FICN. Without any materials being

collected or tendered in evidence there cannot be any presumption that the petitioner was involved in selling, buying or receiving from any other person. Under the Indian Penal Code each offence is distinct as well as mutually exclusive and as such different charges are framed. In order to bring home or prove the charges under Section 489B of Indian Penal Code the prosecution should have relied upon materials which could have connected the present appellant with another person. No evidence has surfaced in this case regarding the involvement of any other person except the present appellant. As such in the absence of the same the Court will not presume the charges, so far as Section 489B of Indian Penal Code is concerned to be proved. Accordingly, the charge under Section 489B of the Indian Penal Code fails and the conviction and sentence so imposed under the said charge is hereby set aside.

So far as the offence under Section 489C of the Indian Penal Code is concerned the appellant has been sentenced to undergo five years rigorous imprisonment and a fine of Rs.5,000/- (Rupees five thousand) only, i.d. to suffer further rigorous imprisonment for 3 months.

As the appellant is in custody from inception and was never released on bail, in fact, he has suffered both custodial trial and custodial appeal, I am of the opinion that the sentence of five years so imposed may be reduced to a period of four years. Thus the following conclusions are arrived at:

- a) Appellant is acquitted of the charges under Section 489B of the Indian Penal Code and his conviction and sentence for the said offence is thereby set aside.

b) The order of conviction so passed by the learned trial Court under Section 489C of the Indian Penal Code is hereby confirmed.

c) The sentence so imposed by the learned trial Court is altered and reduced to rigorous imprisonment for four years and fine of Rs.5,000/- (Rupees five thousand) only, i.d., to suffer further rigorous imprisonment for three months.

Accordingly, Criminal Appeal being C.R.A. 651 of 2019 is partly allowed.

Connected pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

Department is directed to communicate this order to the Ld. Trial Court and send the LCR forthwith to the Court below.

All parties shall act on the server copies of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)