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CRA 678 of 2013
IA No: CRAN 1 of 2013
(Old No: CRAN 2579 of 2013)

In the matter of: Kanik Mia

... appellant

Mr. Tapan Dutta Gupta,
Mr. Parvej Anam

.... for the appellant

Mr. Narayan Prasad Agarwal,
Mr. Pratick Bose

.... for the State

Learned counsel for the appellant contends that none of the ingredients of Section 489C of the Indian Penal Code (IPC), on which the appellant was convicted, was proved by any cogent evidence whatsoever.

Learned counsel places particular reliance on the answers given by the P.W.10, the Investigating Officer (IO), in his cross-examination, which, in his submission, are as vague as possible.

It is further contended that most of the prosecution witnesses were members of the raiding party.

Only three of the witnesses were apparently independent. It is contended that even in the evidence of the said witnesses, that is, P.W.7, P.W.8 and P.W.9, most of whom are chance witnesses, the ingredients of Section 489C have not been established.

As such, it is contended that the appellant was convicted without any basis.

Learned counsel appearing for the State contends that the depositions of P.W.7, P.W.8 and P.W.9 were sufficient to corroborate the prosecution case. Since the entire chain of events, as alleged against the appellant, was clearly borne out by such evidence, minor discrepancies and/or technicalities in the deposition of the IO itself cannot vitiate the evidentiary value of the prosecution witness.

Section 489C of the IPC is as follows:

“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.*”

The essential ingredients of the said section is that the accused must have knowledge or reason to believe the currency notes in his possession to be forged or counterfeit and the intention of the accused to use the same as genuine or that those may be used as genuine.

In the present case, as rightly argued by learned counsel for the appellant, the cross-examination of the P.W.10, that is, the IO, is not only vague and evasive, but fails to corroborate the prosecution case on the most important issues. The

statements made by P.W.10 in his cross-examination clearly show that, not only the statements under Section 161 and/or Section 164 of the Code of Criminal Procedure (CrPC) of none of the accused persons were taken, many of the alleged eye-witnesses were not even produced to corroborate the prosecution case, although the place of occurrence is admittedly thickly populated, where there are several kinds of shops. None of such shop-keepers who were, as per the admission of the IO in his cross-examination, surrounding the spot at the time of occurrence, was called by the IO, nor any papers were seized from the raiding party to show that they were part of the raiding party. Even the spot of seizure was not noted in the case diary, nor was there any note in the case diary about the particulars of the bus, from which the appellant allegedly alighted.

The IO could neither say the serial number of the currency notes nor did he call the seizure witnesses at the time of alleged sealing of the packet for their identification.

It is further revealed from the cross-examination of the IO that he has made self-contradictory statements inasmuch as he states first that there is no note about the condition of the currency notes, which were seized by the raiding party in the case, as to whether the notes were in sealed and packed condition or in loose condition whereas, on the other hand, the IO states that the said notes were not in sealed, packed

condition and that the IO himself sealed and packed the currency notes after receiving those.

That apart, the so-called chance witnesses, who corroborated the prosecution case, merely corroborated the alleged events of the appellant getting down from a bus at the relevant point of time and of the raiding personnel seizing the currency notes-in-question from the possession of the appellant.

However, there is nothing in the evidence of the IO or on the record to directly connect the seizure of the particular currency notes-in-question from the appellant.

More importantly, it has not been established at all, let alone beyond reasonable doubt, that the appellant had any knowledge or had reason to believe that the notes-in-question were intended to be used for forging or counterfeiting any currency note or bank account. In the absence of any proof as to the intention of the appellant to use the notes as genuine or knowledge that those may be used as genuine and/or any knowledge on the part of the appellant or even the appellant having any reason to believe the same to be forged or counterfeit, the prosecution failed miserably to prove any of the essential ingredients of Section 489C of the IPC.

Accordingly, there was no justification to convict and sentence the appellant under the said section.

Accordingly, CRA 678 of 2013 is allowed, thereby setting aside the judgment and order of conviction dated July 17, 2012

and July 18, 2012 passed by the Additional District and Sessions Judge, First Fast Track Court at Malda in Sessions Trial No.04(1)/2012 arising out of Sessions Case No.364/2011 and the consequential sentence awarded against the appellant.

The appellant is hereby acquitted of the charges framed against him and is discharged from any bond and/or condition, if furnished by the appellant, in connection with any bail application with respect to the present conviction at any point of time.

IA No: CRAN 1 of 2013 (Old No: CRAN 2579 of 2013) is also disposed of accordingly.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)