

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. 277 of 2016

Habibur Rahaman

-Vs-

State of West Bengal

For the Appellant : Mr. Goutam Wilson, Adv.
Mr. Ashok Kumar Jha, Adv.
Ms. Moumita Mondal, Adv.

For the State : Mr. Angshuman Chakraborty, Adv.

Heard on : 07.01.2022, 27.01.2022, 04.02.2022, 16.02.2022 & 24.02.2022

Judgment on : 24.02.2022

Joymalya Bagchi, J. :-

The appellant has assailed the judgment and order dated 30th March, 2016 and 31st March, 2016 passed by the learned Additional Sessions Judge, 4th Court, Malda, in Sessions Case No. 216 of 2015 corresponding to Sessions Trial Case No. 55(5) of 2015 arising out of Baisnabnagar Police Station Case No. 435 of 2014 dated 05.11.2014 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.5,000/-, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 489B of the Indian Penal Code and to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for six 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 4th November, 2014, Md. Shakur, S.I. of BSF at Baisnabnagar Police Station (P.W. 1) received secret information that two persons are going from Malda to NTPC with fake Indian currency notes. He along with others went to the local police station and with police force proceeded towards the Township More. At that spot, they found two persons sitting in a tailor shop. Upon search, eight bundles of currency notes suspected to be fake in denomination of Rs.1000/- (each bundle containing 800 pieces) valued at 8 lakhs wrapped in a coffee colour cloth bag was recovered from the appellant, Habibur Rahaman and two bundles of fake Indian currency notes in denomination of Rs.1,000/- and Rs. 500/- (one bundle containing 176 pieces and another containing 48 pieces respectively) valued at Rs. 2 lakhs was recovered from his nephew, Nasiruddin Sheikh, who was a juvenile at the time of occurrence. Other articles including genuine currency notes were also recovered. Suspected currency notes were seized under a seizure list and the aforesaid miscreants were arrested. P.W. 1 lodged written complaint at the police station resulting in registration of Baisnabnagar Police Station Case No. 435 of 2014 dated 05.11.2014 under Sections 489B/489C/120B of the Indian

Penal Code. Seized notes were sent for examination and upon receipt of the report from the expert (Exhibit 3) charge-sheet was filed against the appellant and the juvenile. Case of the juvenile was sent to the Juvenile Justice Board while the appellant was tried in regular court. Charges under Sections 489B/489C were framed against the appellant. He pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined nine witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgement and order dated 30th March, 2016 and 31st March, 2016 convicted and sentenced the appellant, as aforesaid.

Mr. Wilson, learned Counsel appearing for the appellant submits that prosecution case is out and out false. Independent witnesses have not supported the case. On the other hand, version of official witnesses are at variance to one another. While in F.I.R. it was stated that appellants were standing near a tailor shop at Township More, P.W. 1 in court stated that they were sitting in the tailor shop. P.W. 7 stated that the accused persons were found loitering at PTS More. P.W. 1 claimed that the operation took place between 7 p.m. to 11 p.m. but P.W. 5 stated they reached the spot at 8 p.m. It is also submitted that all incriminating circumstances had not been put to the accused persons during their examination under Section 313 of the Code of Criminal Procedure. It is also submitted that there is no evidence with regard to use of currency notes. Hence, conviction under Section 489B is unfounded. He prays for acquittal of the appellant.

On the other hand, Mr. Chakraborty, learned Counsel appearing for the State submits that the prosecution evidence has clearly established the ingredients of the alleged offences. Appellant along with juvenile was apprehended with a large volume of FICNs in public place. They could not give any explanation with regard to carrying such counterfeit notes. Hence, ingredients of the offence under Sections 489B and 489C have been proved. Charge under Section 489B was framed with regard to “trafficking in currency notes” and therefore the appellant was put on notice with regard to the accusation of transportation of fake Indian currency notes. Independent witnesses had been won over and, therefore, did not support the prosecution case. Variation in the deposition of the official witnesses are minor and do not go to the root of the prosecution case.

P.W. 1, Md. Shakur, is the informant and leader of the raiding party. He deposed in the evening at 6p.m. he received a secret information that two persons are going from Malda to NTPC and carrying fake currency notes. He along with Ajit and another constable at first went to local police station and then took police force from local police station and went to Township More. They found two persons were sitting in a tailor shop and they searched them. Upon search, they recovered counterfeit notes valued at Rs. 8 lakhs from the appellant and Rs. 2 lakhs from Nasiruddin Sheikh, who is the nephew of the appellant. Other articles were also recovered. Seizure list was prepared. Number of counterfeit notes were noted down in the seizure list. Accused persons were apprehended and were taken to the police station along with the seized articles. He prepared written complaint and lodged it at the local police

station. He identified the seized counterfeit notes in court as material Exhibits I and II.

P.Ws. 2, 3 and 5 are the constables attached to BSF at Baisnabnagar 16 Mile. They accompanied P.W. 1 to the raid. They have substantially corroborated the evidence of P.W. 1.

P.W. 7, Koushik Sarkar is an ASI attached to Malda PS. He deposed he along with constable Akhtar Hossain went to PTS More and was instructed to keep in touch with BSF personnel. After reaching there, he found two suspected persons loitering. BSF personnel apprehended them and recovered counterfeit currency notes to the tune of Rs. 10 lakhs. He stated that local persons signed on the seizure list. He identified the accused persons in Court.

Mr. Wilson, learned lawyer appearing for the appellant argues that there are grave contradictions in the evidence of the official witnesses. P.W. 1 stated the accused persons were sitting in a tailor shop at township more where they were searched but P.W. 7 deposed they were found loitering near PTS More and were searched. It is also submitted there is variation with regard to time when the search operation commenced.

I have examined evidence of the witnesses in the light of the aforesaid submission. All the witnesses stated seizure list was prepared at the spot. They had also signed on the seizure list. In the seizure list place of seizure has been described as "township area" approximately 1.6 km from BNHQ and 2.5 km from Baishnabnagar. Investigating officer P.W. 9 has prepared rough sketch map of the place of occurrence wherefrom it appears that the place of

occurrence was at the Township More and western side of the Township More is noted as PTS side.

From the aforesaid materials on record it appears that the description of the place of occurrence by P.W. 7 as PTS More is a loose and casual one. Incident occurred at Township More which was noted in the seizure list contemporaneously prepared by P.W. 1. Contents of the seizure list have not been challenged. On the other hand, P.W. 1 and other witnesses have clearly proved the place of occurrence as Township More. Version of P.W. 7 with regard to place of occurrence is, therefore, to be assessed in the backdrop of other evidence on record. As appearing from the sketch map, western side of Township is described as PTS area, hence, P.W. 7 may have loosely described the place of occurrence as PTS More. Version of P.W. 7 with regard to place of occurrence is clearly reconcilable with regard with other evidence on record and does not affect the credibility of the prosecution case.

P.W. 1 stated he received secret information with regard to two persons carrying counterfeit currency notes from Malda to NTPC at 6 p.m. and proceeded to work out the information. He went to the local police station and obtained police assistance. Then he proceeded to Township More and apprehended the accused persons. Entire operation continued from 7 p.m to 11p.m. But P.W. 5 claimed they conducted raid at 8.10 p.m. This minor variation with regard to time of commencement of raid is of little consequence when the witnesses are ad idem on the search and seizure of FICNs from the appellant. Thus, I am of the view the evidence of the official witnesses have proved the prosecution case.

It is contended independent witnesses P.Ws. 4 and 8 have not supported the case. Both of them appear to have been won over and stated in a parrot-like manner they had signed the seizure list in the police station. Falsehood in their deposition was clearly exposed when they were confronted with their earlier statements to the police. P.W. 7 categorically stated that the local witnesses had signed the seizure list at the place of occurrence.

It is settled law if the evidence of the official witnesses are clear, convincing and inspire confidence, lack of support from the independent witnesses who have been won over and had turned hostile would not make a dent in the prosecution case. Hence, I am of the opinion, seizure of counterfeit notes suspected to be forged valued at Rs. 8 laks from the appellant and Rs. 2 lakh from the juvenile accused has been proved.

P.Ws. 9 and 10 are the investigating officers of the case. PW 9 was the first investigating officer. He visited the place of occurrence and prepared rough sketch map with index Exhibit 5 and 5/1. He took steps to send the FICN at Salboni Mint for examination. Thereafter he handed over the case to IC Baisnabnagar P.S.

P.W. 8 collected the report from Salboni Mint and submitted charge sheet. Report from Salboni Mint has been proved as Exhibit 3. Evidence of the investigating officers clearly establish the chain of custody between the counterfeit currency notes which were seized from the possession of the appellant and those examined at Salboni Mint. Exhibit 3 proves the seized notes are counterfeit.

Lastly, it is argued ingredients of offence under section 489B IPC have not been proved. Prosecution evidence clearly shows that the appellant and the co-accused was apprehended in front of a tailor shop while carry counterfeit currency notes totaling to Rs 10 lakhs.

When the appellant was found carrying a large volume of FICNs in a public place and he is unable to give any explanation for the said possession, one can safely held the appellant was knowingly trafficking in counterfeit currency notes. Section 489B of the Indian Penal Code makes selling, buying, receiving or trafficking in counterfeit currency notes culpable. In this regard, it may be apposite to refer to the charge framed against the appellant under section 489B of the Indian Penal Code which reads as follows:-

“that you on 4.11.2014 at township More on NH 34, under Baisnabnagar PS Dist Malda attempted to use/traffic forged or counterfeit Indian currency notes of Rs. 9,76,000/- of denomination of Rs. 1,000/- each (976 pieces) and Rs. 24,000/- of denomination of Rs. 500/- each (48 pieces) and totaling Rs 10,00,000/- knowing the same to be counterfeit and as per seizure list dated 4.11.2014, a copy of which was served to you, knowing the same to be forged or counterfeit.”

Plain reading of the aforesaid charge shows the prosecution had put the appellant on notice that he was being accused of “attempt to sell/trafficking” in counterfeit notes. As discussed above, evidence on record unequivocally shows the appellant and co-accused were apprehended while carrying a large volume of counterfeit notes in a public place. Thus, transportation of counterfeit notes by the appellant is clearly established. Facts of the instant

case are clearly distinguishable from that in ***Hoda Sk. vs. State of West Bengal***¹. In that case, no charge for trafficking of counterfeit notes had been framed by the trial court and on such premise this court was of the view the conviction under section 489B IPC on the score of trafficking could not be upheld. On the other hand, in the present case appellant had been charged of trafficking in counterfeit currency notes. Thus, conviction of the appellant under section 489B IPC does not call for interference.

In the light of the aforesaid discussion, conviction and sentence of the appellant is upheld.

Appeal is accordingly dismissed.

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

Copy of the judgment along with Lower Court Records be sent down to the trial court at once for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)