

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. 520 of 2019
+
CRAN 2 of 2020 (Old CRAN 135 of 2020)

Badsa @ Chhatu Sk.
Vs.
State of West Bengal

For the Appellant : Mr. Prabir Majumder, Advocate.

For the State : Ms. Zareen N. Khan, Advocate,
Ms. Trina Mitra, Advocate.

Heard on : 17th March, 2022

Judgment on : 17th March, 2022

Joymalya Bagchi, J. :-

Lower court records have been received. Dispensing with the preparation of paper books and with the consent of the parties the appeal is taken up for hearing.

The appellant has been convicted for commission of offence punishable under Sections 489B and 489C of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and a fine of Rs. 10,000/-, in default, to suffer simple imprisonment for three months more for the offence punishable under Section 489B of the Indian Penal Code and to suffer rigorous imprisonment for five years and to pay a fine of

Rs.10,000/- in default to suffer simple imprisonment for three months more for the offence punishable under Section 489C of the Indian Penal Code; both the sentences to run concurrently.

Mr. Majumder, learned Advocate appearing for the appellant submits that his client has already suffered incarceration for more than eight years. He does not seriously challenge the conviction recorded under Section 489C of the Indian Penal Code. However, he submits evidence on record does not establish the charge under Section 489B of the Indian Penal Code. P.Ws. 2 and 4, the employees of 'Tarama' hotel as well as the owner, P.W. 7 has not supported the prosecution case that the appellant was trying to use fake Indian currency notes in the hotel. Official witnesses also do not establish such fact. Accordingly, he prays for acquittal of the appellant from the charge under Section 489B of the Indian Penal Code.

On the other hand, Ms. Khan with Ms. Mitra, learned Counsels appearing for the State submit though P.Ws. 2 and 4 were declared hostile, official witnesses have proved the prosecution case. Appellant was found moving suspiciously around the hotel and upon search 10 pieces of fake Indian currency notes of denomination of Rs. 500/- each was recovered from his possession. Hence, the appeal may be dismissed.

In view of the submissions made, this Court has restricted its enquiry with regard to the conviction of the appellant under Section 489B of the Indian Penal Code alone.

To appreciate the contention of the appellant that the aforesaid charge has not been proved, it is necessary to advert to the charge framed

against him under Section 489B of the Indian Penal Code which reads as follows;

“Firstly :- That you, on or about the 23rd day of July, 2012 at about 00.30 hours at night at Nabadwip more in front of Tarama hotel under P.S. Kotwali, District Nadia tried to use forged currency notes (10 in number of Rs.500/- each) to a nearby hotel knowing the same to be forged and that you thereby committed an offence punishable under Section 489B of the I.P.C. and within the cognizance of this Court.”

To prove the aforesaid charge, prosecution examined ten witnesses.

P.Ws. 1, 3 and 9 are the members of the raiding party.

P.W. 1, Kanchan Ray Mukhopadhyay deposed he was posted as S.I. of Police at Krishnagar Kotwali Police Station. On 23.07.2012 at 00.15 hours he received secret information that illegal transportation of fake Indian currency notes would take place near Nabadwip more at Tarama hotel. He diarised such information as GDE No. 19 dated 23.07.2012 and along with S.I. Tapan Kr. Chatterjee (P.W.3) and others proceeded to the spot to work out the information. At 00.30 hours they reached Nabadwip more and found a person moving suspiciously in the locality. He called two hotel staff to assist the search. Thereupon, he intercepted the suspect who disclosed his identity as the appellant. He confessed he was carrying fake Indian currency notes. He was searched and 10 pieces of currency notes suspected to be fake of denomination Rs. 500/- each was recovered from the right hip trouser pocket of the appellant in the presence of witnesses. Seizure list was prepared and exhibited as Exhibit-2. P.W. 1 arrested the appellant and took him along with the seized alamats to the police station.

He lodged written complaint which was received by P.W. 5 and formal first information report was drawn up. He identified the seized notes in Court.

Evidence of P.W. 1 with regard to recovery of 10 pieces of currency notes suspected to be fake of denomination of Rs. 500/- each is corroborated by other members of the raiding party viz., P.Ws. 3 and 9. They also proved their signatures on the seizure list.

P.W. 10, Nilratan Ghosh is the Investigating officer of the case. He deposed he sent the seized alamats for examination to General Manager, Bharatia Reserve Bank, Note Mudran Pvt. Ltd. District Paschim Midnapur under forwarding letter, Exhibit-10. After collection of report, he submitted charge-sheet.

P.W. 8, Biswarup Goswami is the Manager of Bharatia Reserve Bank, Note Mudran Pvt. Ltd., Shalbani. He deposed on 23.08.2012, examined the notes which were sent to him in connection with the present case and found them to be fake. He proved the report, Exhibit-7.

P.W. 2, Suraj Dey and P.W. 4, Dany Mondal who were employees of the hotel, however, did not support the prosecution case. They were declared hostile. They admitted their signatures on the seizure list and stated that they had signed on the blank papers. P.W. 7, owner of Tarama hotel deposed he had no knowledge about the incident.

From the aforesaid evidence on record, it appears recovery of 10 currency notes suspected to be fake of denomination Rs. 500/- each from the possession of the appellant has been proved. Evidence of P.W. 10 show that the seized notes were sent for examination at Bharatia Reserve Bank,

Note Mudran Pvt. Ltd. P.W. 8, Manager of Bharatia Reserve Bank, Note Mudran Pvt. Ltd. proved that the notes are fake. Hence, conscious possession of fake Indian currency notes by the appellant is established. However, evidence of the prosecution witnesses do not prove that the appellant used or attempted to use the currency notes, as alleged. Neither employees of the hotel nor the hotel owner, P.W. 7 has supported the prosecution case. Even the depositions of the members of the raiding party viz., P.Ws. 1, 3 and 9 do not support the prosecution case of use or attempted use of the fake Indian currency notes. It is argued that the appellant was found transporting the said notes through a public place. However, I note the charge framed against the appellant in the present case is one of “use/attempted to use of fake currency notes” and not of “trafficking”. Appellant was not put on notice with regard to the accusation of trafficking in counterfeit notes during trial. To hold the appellant guilty on the score of trafficking of counterfeit notes without reframing the charge would cause prejudice to him and occasion failure of justice as held in ***Hoda Sk Vs. State of West Bengal***¹. Moreover, at the appellants stage when he has already suffered incarceration for more than eight years, it would not be in the interest of justice to remand the matter for reconsideration after reframing the charge with regard to trafficking as contended by Ms. Khan.

In the light of the aforesaid discussions, I hold that the prosecution has failed to prove the charge levelled against the appellant under Section

¹ 2020 SCC OnLine Cal 1478

489B of the Indian Penal Code and he is entitled to an order of acquittal on such charge. Conviction and sentence of the appellant under section 489C of the Indian Penal Code is upheld.

Accordingly, the appeal is partly allowed.

The appellant shall be released from custody, if not wanted in any other case, upon executing a bond to the satisfaction of the trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

In view of disposal of the appeal, connected application being CRAN 2 of 2020 (old CRAN 135 of 2020), is disposed of.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

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.)