

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 685 of 2016

Madhab Barman

Vs

State of West Bengal

For the Appellant : Mrs. C. Alam.

For the SLSA : Mr. A. Sen,
Mr. R. Sen,
Mr. S. Bhattacharrya,
Mr. R. Gupta.

For the State : Mr. S. Banerjee,
Ms. Puspita Saha.

Heard on : 05.12.2022

Judgment on : 16.12.2022

Shampa Dutt (Paul), J.:

This appeal has been preferred against the judgment and order dated 26.09.2016 and 28.09.2016 passed by the learned Additional Sessions Judge, Coochbehar in Sessions Trial No. 2(05)/2015 and Sessions Case (MTB) No. 10 of 2014, convicting the appellant under Section 489B of the Indian Penal Code and sentencing him to suffer simple imprisonment of 7 years and to pay a fine of Rs. 10,000/- in default to suffer simple imprisonment for 6 months and also under Section 489C of the Indian Penal Code and sentencing him to suffer simple imprisonment of 5 years and to pay a fine of Rs. 5,000/- in default to suffer simple imprisonment for 3 months.

All the sentences were to run concurrently.

The appellant/convict's case is that the prosecution case before the Trial Court was to the effect that on 12.01.2013 at about 15.30 hours BSF personnel of BOP Mahishmuri and BOP Gautam acting on specific information nabbed one Indian national Madhab Barman (appellant) who was moving around suspiciously near IBBR under Mahishmuri BOP. The BSF personnel apprehended him and on search being conducted, 62 Fake Indian Currency Notes amounting to Rs. 50,000/- out of which 38 notes were of Rs. 1000/- denomination and 24 notes were of Rs. 500/- denomination, were recovered from his

possession. Sitalkuchi Police Station Case No. 11/2013 dated 12.01.2013 under Sections 489B/489C of the Indian Penal Code was registered. Upon conclusion of the investigation the investigating agency submitted charge sheet under Section 489B/489C of the Indian Penal Code against the present appellant. Charge was framed. The appellant pleaded not guilty and claimed for trial. On completion of trial the appellant was sentenced as above.

Hence this appeal.

Mrs. Chandreyi Alam, learned Legal Aid Counsel for the appellant has submitted that the learned Judge failed to appreciate that out of the 10 witnesses examined on behalf of the prosecution, only 3 of them were independent witnesses. The learned Judge failed to appreciate that while PW 1 being an independent witnesses to the prosecution case had categorically deposed to the effect that on search being conducted nothing was recovered from the possession of the appellant. PW 2 on the other hand had failed to throw any light on the factum of seizure. The learned Judge failed to appreciate that there are clear contradictions in the evidences of the witnesses regarding the actual place of apprehension of the appellant. The seizure lists would bring to light that the same do not bear the signature of any independent local witness.

The currency notes were sent for examination only on 04.02.2013, long after seizure, which was not in accordance with law. It is the case of the prosecution that the appellant had allegedly procured the fake currency notes from one Jalal Mia of Bangladesh. In fact even formal charges against the appellant had been framed on the alleged factum of having had procured the fake notes from Jalal. However, there had been no investigation to that effect by the prosecuting agency for reasons best known to them. The said Jalal Mia was never apprehended or even made a charge sheet accused during the course of the trial.

The ingredients required to constitute the offence alleged were not proved by the prosecution. The total trial being not in accordance with law, the judgment and order of conviction under appeal being erroneous, is thus liable to be set aside and the appellant should be acquitted of all charges.

Mr. Swapan Banerjee, learned Counsel for the State submits that the judgment and order under appeal is in accordance with law and that the prosecution before the Trial Judge was able to prove was charged against the accused person beyond all reasonable doubt. The evidence on record was sufficient to justify the conviction and sentence of the appellant and as such the appeal is liable to be dismissed.

Evidence on record

Ten witnesses were examined by the prosecution.

Prosecution witness no. 1 Bisadu Barman is a co-villager and he saw the BSF personnel apprehending the appellant. He said nothing was seized from the appellant though later he heard that the appellant was arrested for possession of fake currency notes.

Prosecution witness no. 2 Namita Shil saw the incident.

Prosecution witness no. 3 Raghuveer Meena Company Commander of G. Company 88 BN BSF in the defacto complainant. He has proved the FIR and seizure.

Prosecution witness no. 4 Indrashan Singh is a constable in the BSF.

Prosecution witness no. 6 Aswini Pradhan, prosecution witness no. 7 Raju Baidya, prosecution witness no. 8 Chottu Yadav are also with BSF. They have corroborated the case including the seizure.

Prosecution witness no. 9 Sudhir Shil is an independent witness. He saw the incident.

Prosecution witness no. 10 S.I. Subhash Chandra Roy is the Investigating Officer.

Documentary evidence

Exhibit	Description
Exhibit 1	Seizure list (in two sheets) dated 12.01.2013.
Exhibit 2	Written complaint.
Exhibit 2/1	Endorsement on the written complaint.
Exhibit 3	Signature of PW3 on seizure list dated 12.01.2013.
Exhibit 3/1	Signature of PW 4 on seizure list dated 12.01.2013.
Exhibit 3/2	Signature of PW 5 on seizure list dated 12.01.2013.
Exhibit 3/3	Seizure list dated 12.01.2013.
Exhibit 4	Formal FIR.
Exhibit 5 (collectively)	Rough sketch map with index.
Exhibit 6 (collectively)	Analysis report of FICN.
Material Exhibit A (collectively)	Thirty eight numbers of Rs. 1000/- (38xRs.1000) FICN.
Material Exhibit B (collectively)	Twenty four numbers of Rs. 500/- (24xRs. 500) FICN.

Analysis of evidence

The evidence of PW 3, 4, 5, 6 and 7 are corroborative and have proved the prosecution case including the search and seizure (Exhibit 1 and 3 series) beyond reasonable doubt.

Exhibit 6 is the report of FICN. Exhibit A and B are the FICN. (38 x Rs. 1000) and (24x Rs. 500). Which all support the prosecution case.

The findings of the learned Sessions Judge is also on proper appreciation of evidence and materials on record and is thus in accordance with law and needs no interference by this Court.

During hearing the counsel for the appellant has submitted that the appellant/convict has already undergone the period of sentence and lower court records were sent down on the prayer of the appellant so that he can avail of his liberty on deposit of requisite fine as imposed by the trial court in the sentence passed.

A report as called for has been submitted by the Superintendent, Jalpaiguri Central Correctional Home through the Secretary State Legal Services Authority, wherein it has been stated:-

“His total detention period in custody as UTP from 19.01.2013 to 23.03.2013 & 26.09.2016 to 27.09.2016 as convict

from 28.09.2016 to till date as such his total period of detention with UT set-off till date is 6 years 3 months and 9 days”.

Accordingly the Criminal Appeal being **CRA 685 of 2016 is thus dismissed.**

No order as to costs.

Let a copy of the judgment along with the lower Court records be sent to the Trial Court at once.

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

(Shampa Dutt (Paul), J.)