IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 557 of 2017

Amit Kamti
-Vs-
State of West Bengal

For the Appellant: Mr. Avishek Sinha, Adv.

For the State : Mr. Sanjoy Bardhan, Adv.
Md. Kutubuddin, Adv.

Heard on : 03.01.2023

Judgment on : 03.01.2023

Joymalya Bagchi, J. :-

1. The appellant has assailed the judgment and order dated 28th July, 2017 and 31st July, 2017 passed by the learned Additional Sessions Judge, 9th Court, Alipore, in Sessions Case No. 19(8) of 2014 corresponding to Sessions Trial Case No. 03(03) of 2015 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 simple 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 simple imprisonment for six months more for the offence punishable under Section 489C of the Indian Penal Code. Both the sentences to run concurrently.

2. The prosecution case as alleged against the appellant is to the effect that on 27th December, 2011 at 11.30AM he came to the Barisha Super Market, Sakherbazar and handed over a 500 Rupee note to one Samir Podder, a shop owner who was selling fruits. Samir suspected the currency note to be fake and showed it to other shop owners. They also opined that the note was fake. They searched the appellant and three more currency notes suspected to be fake of denomination Rs.500/- each were recovered along with cash to the tune of Rs.1365/- ingenuine currency notes from him. Samir Podder lodged written complaint at the police station resulting in registration of Thakurpukur Police Station Case No. 591 dated 27.12.2011 under Sections 489B/489C of the Indian Penal Code against the appellant. Appellant was arrested and the currency notes were sent for examination. Examination report established the suspected currency notes as fake. In the course of investigation a co-accused namely Joseph Bag was arrested but he was subsequently discharged.

3. Charge-sheet was filed against the appellant and charges were framed under Sections 489B/489C of the Indian Penal Code. He pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined nine witnesses and exhibited a number of documents.

4. In conclusion of trial, learned trial Judge by the impugned judgement and order convicted and sentenced the appellant, as aforesaid.

5. PW 1 (Samir Podder) is the de facto complainant. He is a seller of fruits outside Barisha Super Market. He deposed on 27.12.2011 at 11.30AM the appellant came to purchase fruits. He had handed over one 500 Rupee note. He suspected the note to be fake. He showed it to the nearby shopkeepers who opined likewise. Upon searching the appellant three other fake 500 Rupee notes were found. Police was informed. Police came to the spot and seized fake currency notes. He signed on the seizure list. He lodged the written complaint.

6. PW 1 is corroborated by the other shopkeepers namely PWs. 2, 4 and 5.

7. PW 2 (Debasis Sengupta) was the scribe of the FIR.

8. PW 4 (Bikash Majumder) and PW 5(Subal Das) signed the seizure list as well as on the fake currency notes. All the aforesaid witnesses identified the fake currency notes in Court.

9. PW 3 (Prabir Kumar Das) was the Assistant Secretary of Barisha Super Market. He deposed PW 1 used to sell fruits in front of the market. He is a post occurrence witness. He also identified the fake currency notes in Court.

10. PW 9 (SI Pryanko Mondal) is the Investigating Officer. He deposed he was on patrol duty when he received information that a person had been detained at Bazar Committee Office. He went to the spot. One Samir Podder disclosed the incident to him. He received written complaint from Samir Podder. He seized the four fake 500 Rupee currency notes and a sum of Rs.1365/- ingenuine currency notes. He prepared the seizure list marked as Ext.-8. He put label and seal on the currency notes. Appellant was arrested at the spot. In the course of investigation, one Joseph Bag was arrested. SI Kalidas Dutta assisted him in the course of investigation. The fake Indian currency notes were sent to Salboni Mint for opinion. He proved the requisition marked as Exbt.-9. PW 6 (Chandan Nath), constable, went to Salboni Mint to collect report. After receiving the report charge-sheet was filed.

11. PW 6 has corroborated by the Investigating Officer (PW 8) Bibek Dutta Chowdhury (PW8), an officer attached to Bharatiya Note Mudran Pvt. Ltd. at Salboni has proved the examination report marked as Exbt.-5 which states that the notes were not genuine.

12. Mr. Sinha, learned Counsel appearing for the appellant argues recovery of the currency notes have not been proved. No signature on LTI of the appellant is appearing on the seizure list.

13. I find little substance in the aforesaid submission. PWs 1, 2, 4 and 5 have proved the recovery of the fake currency notes from the appellant. These witnesses have signed on the seizure list. PWs 4 and 5 have also signed on the fake currency notes. It is argued PW 2 deposed for the first time in court and PWs 4 and 5 were unaware of the contents of the seizure memorandum. PW 4 also failed to identify the appellant in Court. Appellant has been identified by all the aforesaid witnesses except PW 9. Investigating officer (PW 9) deposed he found the appellant detained at the Bazar Committee Office and arrested him. Failure on the part of the PW 4 to identify the appellant in Court was due to imperfect recollection and cannot erode the consistent evidence of other witnesses with regard to identification of the appellant.

14. Signatures of the witnesses are found on the seizure list as well as on the seized fake currency notes which were recovered from the spot.

15. In view of the aforesaid materials on record absence of signature of the appellant on the seizure list does not improbabilise his presence at the spot and recovery of the fake currency notes from his possession.

16. Use of one of the fake currency notes has also been proved. PW 1 stated the appellant had handed over one 500 Rupee note to him. Upon visual inspection, he suspected it to be fake. He showed the note to other shopkeepers who supported his version. PWs. 2, 4 and 5 are the other shopkeepers. They have corroborated PW 1 in Court. Mr. Sinha, learned Counsel strenuously argued appellant did not have knowledge that the currency note used by him was not genuine. Only four fake currency notes were recovered in addition to a large volume of cash ingenuine currency notes. This probabilises the defence of the appellant. I have given anxious consideration to the submission. Appellant had handed over a 500 Rupee note to PW 1. On visual inspection PW 1 suspected the note to be fake. Other shop owners also endorsed his version. Discrepancy in the currency note was immediately noticed by PW 1 on mere visual inspection. Hence, it is difficult for me to accept that the appellant being a prudent person had not noticed such discrepancy and doubted the genuineness of the notes. During trial appellant did not probabilise this defence by disclosing the source wherefrom he had received the currency notes. This was within the special knowledge of the appellant. Failure on his part to disclose the source of the fake currency notes used by him as genuine bolsters the prosecution case with regard to his requisition '*mens rea'* in commission of the crime. Authorities relied upon by the appellant are factually distinguishable. In ***M. Mammutti vs. State of Karnataka***[1] the appellant had categorically disclosed during his examination under Section 342 of the Code of Criminal Procedure (Section 313 of new Code) circumstances in which he had come into possession of the fake currency notes and had believed them to be

[1] (1979) 4 SCC 723

genuine. In ***Umashanker vs. State of Chhattisgarh***[2] no question was put to the appellant under Section 313 of the Code of Criminal Procedure that the seized currency notes were fake and he had not been given an opportunity to explain how he had come into the possession of the notes. In the present case, the appellant is completely silent with regard to the manner of acquisition of the fake currency notes. In response to the question put to him during his examination under section 313 Cr.P.C that the currency notes were fake he merely stated he is innocent and did not offer any explanation.

17. Under such circumstances, I am of the opinion that the appellant had knowingly used the fake currency notes as genuine.

18. Lastly it is argued there is inordinate delay of over 10 months in dispatching the notes and the chain of custody between the seized currency notes and the ones examined at Salboni Mint had snapped.

19. I am unable to accede to this submission too. Numbers of the fake currency notes have been specifically stated in the seizure memo. Fake currency notes bore the signatures of the witnesses. They were labelled and had been dispatched for examination at Salboni Mint in an envelope. PW 9 proved the envelope in Court. Numbers of the notes recovered and those examined at Salboni Mint matched each other as per examination report (Ext 5). The fake notes were also produced in Court and identified by the witnesses.

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[2] (2001) 9 SCC 642

20. In view of the aforesaid irresistible evidence on record mere delay in dispatching the notes would not snap the live chain and the examination report (Ext 5) showing that the notes are fake cannot be discarded on this score.

21. In the light of the aforesaid discussion, I uphold the conviction of the appellant.

22. Coming to the issue of sentence, I note only four currency notes were recovered from the possession of the appellant. He does not have criminal antecedents. Balancing the aggravating and mitigating factors, I am of the opinion interest of justice would be served if the substantive sentence imposed on the appellant on the score of section 489B IPC is modified.

23. Accordingly, appellant is directed to suffer rigorous imprisonment for eight years under section 489B IPC. Fine imposed on the appellant on this score shall remain unaltered. Sentence imposed on the appellant under section 489C IPC also remains unaltered. Both the sentences shall run concurrently.

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

25. Appeal is, accordingly, disposed of.

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

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

I agree.

(Ajay Kumar Gupta, J.) **(Joymalya Bagchi, J.)**

sdas/tkm/PA