

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 216 of 2019

Rakesh Ghosh & Anr.
versus
The State of West Bengal

For the Appellants : Mr. Prabir Majumder

For the State : Mr. Debasish Roy, Ld. P.P.
Ms. Trina Mitra

Heard On : 29.07.2024, 31.07.2024 & 01.08.2024.

Judgement On : **01.08.2024**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and sentence dated 18.02.2019 and 19.02.2019 passed by the learned Additional District and Sessions Judge, 3rd Court, Krishnagar in Sessions Trial No.3(10)/2018 arising out of Sessions Case No.274(9)2018, thereby convicting the appellants under Section 489C of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for four years and to pay fine of Rs.5,000/- i.d. to suffer S.I. for two months each.

The genesis of the case was on the basis of a complaint which has been submitted by Prokash Kr. Guha, Sub-Inspector of Police, attached to Kotwali

P.S., Nadia with the Inspector-in-Charge Kotwali Police Station, Nadia, subsequent to which, Kotwali Police Station Case No.161 dated 06.05.2018 was registered for investigation under Sections 489B/489C of the Indian Penal Code. The allegations, as was made before the Inspector-in-Charge, were to the effect that on 06.05.2018 while the informant namely, Prokash Kr. Guha, S.I. of Police was performing his evening duty, he received information that illegal procurement and transportation of fake Indian currency notes may take place near Java Petrol Pump within the aforesaid police station. The informant communicated with the Inspector-in-Charge Kotwali Police Station and as per direction proceeded to work out on the information along with one constable and civic volunteer force. On reaching Java Petrol Pump in and around Lokenath hotel in front of Java Petrol Pump, they noticed that two persons were standing at Lokenath hotel. On being identified the raiding team became alert and followed them. The persons were detained and the raiding team disclosed their identity. Two persons being passersby were called and the detained persons were requested to search them. Thereafter search was carried on Sangram Sikdar @ Luchi and Rakesh Ghosh and after search, six FICN of denomination of Rs.2,000/- were recovered from the exclusive possession of Sangram Sikder and seven numbers of FICNs of denomination of Rs.2,000/- were recovered from Rakesh Ghosh. After seizure under proper seizure list and being signed by the witnesses and after compliance with the formalities, the accused persons were taken into custody and a request was advanced to the Inspector-in-Charge for registration of the case.

The investigation of the case was assigned by the Inspector-in-Charge to Sub-Inspector, Anup Kr. Samanta who investigated the case and after completion of investigation submitted charge-sheet being No.260 of 2018 dated 28.07.2018 under Sections 489B/489C of the Indian Penal Code before the jurisdictional court.

The case was thereafter committed to the court of sessions and subsequently the records were transmitted to the learned Additional District and Sessions Judge, 3rd Court, Krishnagar. The learned trial court was pleased to frame charges against the present appellants on 6th October, 2018 under Sections 489B & 489C of the Indian Penal Code. The contents of the charges were read over to the accused/appellants to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon seven witnesses which included PW-1, Prokash Kr. Guha, informant/S.I. attached to Kotwali Police Station; PW-2, Dayamoy Mukherjee, Constable and member of raiding party; PW-3, Mahadeb Das, Civic Volunteer and member of raiding party; PW-4, Gorachand Adhikary @ Babulal, seizure list witness; PW-5, Swarajit Halder @ Chattu, seizure list witness; PW-6, Anup Kumar Samanta, S.I. attached to Kotwali Police Station and investigating officer of the case; PW-7, Sk. Ramesh, Manager Production in Bharatiya Reserve Bank Note Mudran (P) Limited, Salboni.

The prosecution in order to prove its case also relied upon number of documents which were marked as Exhibits which included the seizure list

dated 06.05.2018 being exhibit-1; typed complaint, exhibit-2; memo of arrest of Sangram Sikdar @ Luchi, exhibit-3, memo of arrest of Rakesh Ghosh, exhibit-3/1; formal FIR, exhibit-4, rough sketch map along with index (2 sheets collectively), exhibit-5; requisition (5 sheets collectively), exhibit-6; signature of Sk. Ramesh (PW-7) on requisition, exhibit-7; FSL report (3 sheets), exhibit-8.

The signatures of the persons in the seizure list were also marked after being identified by the particular witness concerned.

Mr. Majumder, learned advocate appearing for the appellants submitted that the prosecution evidence, if it is accepted in its entirety has failed to make out any case as not only the independent witnesses have turned hostile, but also one of the members of the raiding party was declared hostile. Learned advocate emphasised that in the present case even the witnesses, who have supported the prosecution case, have failed to bring out a clear picture regarding the place of occurrence as to whether the accused persons were intercepted inside the hotel or in front of the hotel and to that effect there are contradictions available.

The attention of this Court has been drawn to the cross-examination of the witnesses which includes both the complainant and the investigating officer of the case. It was emphasised that the present appellants have been falsely implicated because of political vendetta and the seizures which have been effected from the persons concerned do lack reliability for arriving at a finding of guilt.

Learned advocate for the appellant has relied upon paragraph 8 of a judgment *Umashanker –vs- State of Chhattisgarh* reported in [(2002) SCC (Cri) 758], which is set out as follows:

“8. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is “knowing or having reason to believe the currency notes or banknotes are forged or counterfeit”. Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of PW 2, PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, “presumed” such a mens rea. On the date of the incident the appellant was said to be an eighteen-year-old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C IPC and acquit him of the

said charges (see: M. Mammutti v. State of Karnataka [(1979) 4 SCC 723 : 1980 SCC (Cri) 170 : AIR 1979 SC 1705]).”

Mr. Roy, learned Public Prosecutor, appearing on behalf of the State opposes the contentions advanced on behalf of the appellants and submits that the series of the numbers appearing in the FICN would reflect that both the appellants were in collusion with each other and there was a design involved for circulating the same.

According to the learned Public Prosecutor, the witnesses could not be shaken except to the extent that one out of the two independent witnesses, namely, Swarajit Halder –P.W. 5, deposed that he signed on a blank paper in the police station. According to the learned Public Prosecutor, so far as the factum of seizure is concerned, it is the settled proposition of law that until and unless the same is shaken by way of cross-examination, the evidence of the witnesses are to be accepted.

It is pointed out that the seizure list and other material exhibits were marked in evidence without any objection from the defence. So far as the other witness is concerned, i.e., P.W.-4, no plea was taken by the said witness that he had signed on a blank paper, rather, he corroborated his signature as was appearing in the seizure list.

According to the learned Public Prosecutor, no specific defence was also taken up on behalf of the accused so far as the issue relating to the political vendetta is concerned and, as such, the Judgment and Order of conviction and sentence do not call for any interference.

I have considered the submissions advanced by the learned advocate for the appellant as well as that of the learned Public Prosecutor, prior to dealing with such submissions the authority on which the learned advocate for the appellants relied upon i.e., *Umashanker (supra)* needs to be taken into consideration.

In the relevant paragraph so emphasized by the appellant the Hon'ble Supreme Court took into account two factors. Firstly, the appellant therein was 18 years old, secondly, there was no specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Code of Criminal Procedure and on such foundation, the Hon'ble Supreme Court proceeded to acquit the appellant (therein) in respect of the charges under Sections 489B and 489C of the Indian Penal Code.

In the present case, the learned trial court in relation to P.W.7 has specifically asked a specific question to the appellants i.e. P.W.7 also identified his signature in his requisition received by him along with the FICNs and identified his signature being exhibit 7 and in his opinion MAT Ext.1 and MAT Ext.2 (13) FICNs. are low quality counterfeit notes and proved his report (3 sheets) being Ext.8. Do you have anything to say about this?

In respect of other witnesses also reference was made in respect of the FICNs. Therefore, the appellants had the opportunity at the stage of Section 313 of the Code of Criminal Procedure to answer in respect of the queries or the incriminating materials which were confronted with by the learned trial

court in respect of the counterfeit currencies. Thus, the issues on which the acquittal was granted by the Hon'ble Supreme Court in case of Uma Shankar (supra) do not apply to the facts of the present case.

Having regard to the totality of the circumstances involved particularly the search, seizure and the oral evidence which have been adduced in support of the prosecution case, I am not convinced in respect of the plea which has been taken of political vendetta also, as the same falls short in overcoming the charges of recovery of FICNs and the seizure which has been made.

So far as the documentary evidence is concerned, the same is consistent and there were no confrontation on the issues regarding its genuinity/authenticity when the same were admitted in evidence. Having considered the same, I am not inclined to interfere with the order of finding of guilt/conviction held by the learned Additional District and Sessions Judge, 3rd Court, Krishnagar in connection with Sessions Trial No.03(10)2018 arising out of Sessions Case No.274(9)/2018.

It has been reflected from the records of the case that both the appellants have served almost 15 months and the quantum of seizure relates to 13 FICNs. from two appellants. There has been no investigation on the source from where such FICNs were obtained and, as such, the appellants cannot be termed more than a carrier.

In view of the observations made by the Hon'ble Supreme Court in the case of *Sk. Mustafa v. State of Maharashtra*, reported in (2019) 16 SCC 726,

paragraph 7 of the said judgment is relevant for the purposes of the present case which is set out as follows:

“7. After going through the entire record, we find no reason to disagree with the judgment rendered by the trial court or of the High Court. We, therefore, uphold the conviction of the appellants. However, as far as sentence is concerned, it is submitted by the learned counsel for the appellants that the appellants are very poor and they are daily wagers and rickshaw pullers. On examination of the record, it appears to us that the appellants are not the masterminds but are mere carriers used to exchange the counterfeit notes. It is submitted by the learned counsel for the appellants that all the accused have undergone sentence of more than 18 months. We are, therefore, of the view that the sentence already undergone by the appellants is more than sufficient keeping in view the nature of offence and the role of the appellants.”

Having considered the principles of sentencing in similar set of facts and circumstances and having regard to the fact that both the appellants have already undergone about 15 months custody in connection with the instant case, I am of the view that the sentence already undergone is sufficient in the facts and circumstances of the present case.

Accordingly, the sentence so imposed by the learned trial court is reduced to the sentence already undergone by both the appellants, namely, Rakesh Ghosh and Sangram Sikdar @ Luchi. The appellants are on bail. As such, they may be discharged from the bail bonds.

Consequently, CRA 216 of 2019 is partly allowed.

Pending connected applications, if any, are also disposed of.

Department is directed to send back the LCR immediately. A copy of the judgment be forwarded to the learned Trial court immediately for compliance regarding the directions given above.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)