

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 286 of 2019

***Lutas Sk @ Lotas Sk*
versus
*State of West Bengal***

For the Appellant : Mr. Manas Kumar Das

For the State : Mr. Rana Mukherjee

Heard On : 25.07.2024

Judgement On : 26.07.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order dated 14.03.2019 and 15.03.2019 passed by the learned Additional Sessions Judge, Kandi, Murshidabad in connection with S.T. No. 02(06)/2018 and S.Sl. (CIS) No.80 of 2018 wherein the learned trial court was pleased to hold the appellant guilty for the offence punishable under Sections 489B and 489C of the IPC and sentenced him as follows:

1. For the offence under Section 489B of the IPC – rigorous imprisonment for five years and fine of Rs.25,000/- i.d., S.I. for six months.
2. For the offence under Section 489C of the IPC – rigorous imprisonment for four years and fine of Rs. 25,000/- i.d., S.I. for six months.

The genesis of the case relates to Burwan P.S. Case No. 486 of 2017 dated 18.12.2017 under Sections 489B and 489C of the IPC, which was registered for investigation pursuant to a complaint lodged by an ASI Gadadhar Ghosh with the Officer-in-charge, Burwan Police Station, Murshidabad.

The allegations made in the complaint were to the effect that on receipt of the information at about 12.15 hrs. dated 18.12.2017 from one Jummat Sk, the hotel owner of Rajpath at Belgram village at the highway leading from Kuli to Sainthia under Burwan P.S., the complainant along with three constables formed a raiding team, which was recorded by way of G.D. Entry and proceeded to work out on the information. After reaching the place, they were informed that a person arrived at the hotel Rajpath to take dinner and after taking dinner, he attempted to exchange a Rs.2000/- currency note, which was suspected to be fake. The hotel owner protested to accept such note and informed the same over phone to the police authorities. The accused person, was, thereafter, searched in presence of the witnesses and from the left side

pocket of his trouser, a sum of Rs.24,000/- was recovered, which included 12 FICN of Rs.2,000/- denomination. The accused disclosed his identity on being questioned. He was, thereafter, arrested along with the fake currency notes and his motor cycle seized under proper seizure list which was kept as *Alamat*.

On such complaint being filed, the present case was initiated and was endorsed to one SI Kalimuddin Sk of Burwan P.S. by the officer in charge of the Police Station. Consequently, Burwan P.S. Case No. 486 of 2017 dated 18.12.2017 was registered under the aforesaid sections.

The investigating officer on completion of investigation submitted charge-sheet under Sections 489B and 489C of the IPC. The case was thereafter committed to the court of sessions and the case records were finally transmitted to the learned Additional Sessions Judge, Kandi, Murshidabad. By an order dated 01.06.2018, charges were framed against the present appellant under Sections 489B and 489C of the IPC.

The prosecution, in order to prove its case, relied upon five witnesses, which included P.W.1 – Gadadhar Ghosh, ASI of Police and complainant; P.W. 2 – Jummat Sk, hotel owner of Rajpath Hotel; P.W.3 – Milan Sk, father of P.W.2; P.W.4- an official of Bharatiya Reserve Bank Note Mudran (P) Ltd., Shalbani, West Midnapur; P.W. 5 – Kalimuddin Sk, S.I. of Police and Investigating officer of the case.

The prosecution also relied upon certain documents which were admitted in the evidence which included seizure list dated 18.12.2017 (Ext. 1), Written Complaint dated 18.12.2017 (Ext. 2); Complaint/forwarding Report along with the report of Bharatiya Reserve Bank Note Mudran (P) Ltd (Ext. 3), formal FIR (Ext. 4), Rough sketch map (Ext. 5) and Road Challan of the motor cycle as Ext. 6.

On an assessment of the evidence which has been reflected from the prosecution witnesses, that the petitioner was involved in exchange of fake counterfeit currency note of Rs.2,000/- denomination and from the search of his person 12 FICN were recovered. The records do not reflect that there was further investigation as to how and what manner the appellant received the said FICN.

Having considered the same, *prima facie*, I am of the view that the appellant was a carrier. In fact, the factual circumstances of the present case do have resemblance to 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 and, as such, the same 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.”

The records reflect that the appellant was arrested on 18.12.2017 and was in custody throughout the trial till 15.03.2019 (the date on which judgment was delivered). The records of the Appeal Court reflects that the appellant was granted bail on 14.12.2020. The appellant, as such, has undergone custody in connection with the present case for a period of about three years.

Having considered that the appellant was operating as a carrier and the quality of the counterfeit notes which have been seized from the report of Bharatiya Reserve Bank Note Mudran (P) Ltd. reflecting the same to be ‘low quality counterfeit notes’ and the quantum of the notes to be only 12, I am of the view that the findings of the Hon’ble Supreme Court in the aforesaid judgment aptly applies in the present case.

Consequently, the appellant is held guilty for the offence under Sections 489B and 489C of the IPC. However, having regard to the period which the appellant has suffered in course of trial and during the pendency of the appeal

for about three years, the sentence so imposed by the learned trial court is reduced to the period already undergone by him.

Accordingly, CRA 286 of 2019 is disposed of.

Pending connected application(s), if any, are also disposed of.

If the appellant is not wanted in any other case, he may be discharged from the bail bonds.

Department is directed to send back the LCR immediately. A copy of the judgment be forwarded to the Id. 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.)