

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 582 of 2007

**Rahamat Ali
-Vs-
The State of West Bengal**

For the Appellant : Mr. Prabir Majumdar

For the State : Mr. Joydeep Roy
Ms. Sujata Das

Heard on : 20.12.2023, 19.01.2024, 07.02.2024, 24.04.2024

Judgment on : 10.05.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 26.07.2007 and 27.07.2007 passed by the Learned Additional Sessions Judge, Fast Track Court – 1, Krishnagar, Nadia, in connection with Sessions Trial No. 11 (January) 2007, arising out of Sessions Case No. 43(9)2006 convicting the appellant under Section 235 of the Code of Criminal Procedure, 1973, for commission of offences punishable under Sections 489B/489C of the Indian Penal Code, 1860 and thus directing the appellant to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 1000/-, in default to suffer further rigorous imprisonment for 4 months, for commission of offence punishable under Section 489B of the Indian Penal

Code, 1860 and to suffer rigorous imprisonment for 3 years for commission of offence punishable under Section 489C of the Indian Penal Code, 1860 and the sentences being directed to run concurrently.

2. The prosecution case precisely stated that the informant Golam @Gulam Kuddus the cashier employed in Debnath Auto Fuel Service situated adjacent to Katwa More. On 30.08.2005 at 2.00 a.m., one Tata 407 Car arrived at the petrol pump for procuring diesel and paid a sum of Rs.1336.44/- in denomination of one Five Hundred Rupee Note and several Ten and Twenty Rupees Notes. At the time of checking, the said Five Hundred Rupee Note was found to be counterfeit and the number of the note was 6AA162744. When the driver of the Tata 407 was asked for about this, he was unable to say anything. The informant confined this person and informed the owner of the petrol pump and after receiving the instructions from the owner, the informant reached the R.O.P. and lodged a complaint against the driver, Rahamat Ali who hereby, is the appellant.
3. Subsequently, Kaliganj Police Station Case No. 174 of 2005 dated 30.08.2005 under Sections 489B/489C of the Indian Penal Code was registered for investigation.
4. On completion of investigation charge-sheet was submitted under Sections 489B/489C of the Indian Penal Code, 1860 against Rahamat Ali, the appellant herein and the Learned Trial Judge framed charges against Rahamat Ali who pleaded not guilty and claimed to be tried and commenced the process of trial.

5. During the trial, prosecution examined nine (9) witnesses and exhibited certain documents.

6. Learned Advocate for the appellant submitted that –

- i. There has been non-seizure of essential articles, pertaining to the case.
- ii. The Learned Judge has failed to appreciate the ‘omissions amounting to contradictions’ in the testimony of the prosecution witnesses.
- iii. The Learned Judge in convicting the appellant, has totally ignored the contradictions between the statements made by the witnesses in the court and during their examination by the police.
- iv. The charge as was framed against the appellant, suffered from inherent lacunae, which caused severe prejudice to the appellant.
- v. In conducting of the prosecution of the instant case, there has been a non examination of material witnesses.
- vi. The prosecution has totally failed to adduce any evidence in regard to the presence of the necessary *mens rea* on the part of the appellant in committing the acts, which allegedly constituted offences charged.
- vii. The Learned Judge passed the impugned judgment and order of conviction and sentence, on vague surmises and conjectures, in totally disbelief the defence plea of ‘innocence’, without assigning any cogent reason for such disbelief.

7. The Learned Advocate for the State submitted that a single piece of fake currency note will not comprise the alleged offence and left it to the discretion of the Court.

8. A circumspection of the evidence prosecution witnesses revealed as follows:

- i. PW-1 S.I. H.M. Koley of Kaliganj Police Station received a complaint from the R.O.P. and initiated Kaliganj Police Station Case No. 174 of 2005 dated 30.08.2005 under Sections 489B/489C of the Indian Penal Code for investigation.
- ii. PW-2 S.M. Pandit, Assistant Work Manager attached to Currency Note Press, Nashik examined the said Five Hundred Rupee Note. During his cross-examination, he stated that he was unable to state from whose possession the Five Hundred Rupee Note was recovered and seized Five Hundred Rupee Note did not bear the signature of any person.
- iii. PW-3 informant Golam @ Golum Kuddus, worked as a cashier at Debagram Auto Fuel Service. PW-3 deposed that on 29.08.2005 at 2.00 a.m., he received Rs.1336.44 from Rahamat Ali for purchasing of 43 liters of fuel. The payment was received in the denominations of one Five Hundred Rupee Note and various Ten and Twenty Rupee Notes. PW-3 suspected that the said Five Hundred Rupee was counterfeit. He possessed the Five Hundred Rupee Note detained Rahamat Ali. On 30.08.2005 at about 11.35 a.m., he rendered Rahamat Ali and the note in question to the Officer-in-Charge present at Debagram R.O.P.
- iv. PW-3 identified his signature on FIR marked as Ext. 1/1. The police seized the fake currency notes through a seizure list and the signature of the PW-3 on the same was marked as Ext-5. The fake currency note was identified as Mat Ext. 1. The papers concerning the vehicle was seized and the signature of the PW-3 on the said seizure list was marked as Ext. 6. The same receipt, the note checking machine was

seized through seizure list marked as Ext. 8. The signature of the PW-3 on the jimmanama in connection with note checking machine was marked as Ext. 9.

- v. During cross-examination PW-3 stated that police did not sign on the fake notes at the time he produced it before them. PW-3 did not sign on the said note. The appellant had given him a single 500 rupee note amongst other denominations which could not be mentioned by PW-3. He further could not depose as to whether the 500 rupee notes were deposited at their cash counter or not on the relevant date.
- vi. PW-4/Swapan Debnath, the owner of "Debagram Auto Fuel Service" confirmed to the deposition of PW-3 and further submitted that the appellant was asked to change the fake note on its detection who declined to the same as he did not possess further money with him. The deposition of PW-4 based on hearsay.
- vii. PW-5, the fuel delivery man at the aforesaid fuel service center reiterated the testimony of PW-3 and had been a seizure list witness with his signature marked as Ext. 5/1, 6/1 and 7/1 respectively.
- viii. During his cross-examination PW-5 stated that he did not receive the fake currency notes marked as Ext. 1 in his hand. He did not test the same personally or detected to be counterfeit.
- ix. PW-6, 7, 8 were declared hostile by the prosecution.
- x. PW- 9 and 10 were the Investigating Officer to have discharged their respective functions and on completion of the investigation the charge-sheet was filed against the appellant.

- xi. The appellant in his examination under Section 313 of the Criminal Procedure Code replied to the specific questions delineated as follows:

“Q.3. P.W. 3 Golam Kuddus has stated in his evidence that on 29-08-2005 at about 2 am, you went to their petrol pump named Debnath Auto Fuel Services with your Tata 407 matadore and at there, you filled 43 your vehicle with liters of diesel fuel and gave him one Rs.500/- note along with other notes of Rs. 1000/- ad Rs. 20/- respectively as the cost of the said fuel. What do you have to say in this regard?”

Ans. After I had refilled and zoomed off from there, they called me back and implicated me falsely in this case.

Q.4. The said witness has further stated in his evidence that he checked the said Rs. 500 note in their note checking machine after the said note seemed to him to be a counterfeit one. As the note turned out to be a counterfeit one, he asked you to change the same. What do you have to say in this regard?”

Ans. I had only one Rs. 500/- note with me and that is why I could not change the said note.

Q.5. the said witness has further stated that you had informed him that you have no alternate note of Rs. 500/- or any other currency note with you at that time. Is it?”

Ans. Yes, I had other currency note with me, but not any Rs. 500/- note.

...

Q9. P.W. 5 Babu Debnath has stated in his evidence that he was present there at the night of the incident. He was on duty at the said petrol pump as a delivery man. You reached there driving your Tata 407 vehicle and filled the tank of the vehicle in full with diesel. What do you have to say in this regard ?

A. Yes, I had purchased 43 liters of diesel.

Q.9. the said P.W. has further stated in his evidence that thereafter you gave one fake Rs. 500/- note along with other notes to the

cashier of the said petrol pump. What do you have to say in this regard?

A. I gave the note to them, but after I had made exit from there, they informed me that the note is a counterfeit one.

Q.10. The said witness has further stated that thereafter, the cashier asked you to change the said note, but you refused to do the same. What do you have to say in this regard ?

A. As I did not give the said note, I refused to change the same.

Q.11. The said P.W. has further stated that on examination in the testing machine, the note was found to be a fake one and you were detained at the said petrol pump and later, you were taken to the Debagram R.O.P. and handed over to the police. What do you have to say in this regard?

A.- I did not see any testing machine. They had multiple Rs. 500/- notes in their cash.

...

Q.23:- Do you want to say anything in your self defence in the Court?

A.:- I did not give the fake note to the petrol pump. The petrol pump has implicated me. They complained of fake note when I had left the place after paying money. As I paid, the checked all before receiving and did not say anything then?"

xii. Swapan Debnath, owner of the Debnath Auto Fuel Service, was examined as PW-4. In his examination-in-chief, stated that he got to know about the incident on 30.08.2005 at 12 in the noon. He also stated that he first went to Debagram R.O.P. and from there, he went to the petrol pump after police told him that such incident took place at his petrol pump.

xiii. Bablu Debnath, fuel refilling staff of Debnath Auto Fuel Station was examined as PW-5. In his cross-examination, he stated that he did not

test the alleged counterfeit Five Hundred Rupee Note personally or found the said note to be counterfeit. Golum @ Golam Kuddus, PW-3 wrote something on a paper and he also signed it.

- xiv. Surprisingly, the Investigation Officer of this instant case, was examined as PW-9. In his examination-in-chief, he stated that he visited Debnath Auto Fuel Service and apprehended Rahamat Ali and seized the Five Hundred Rupee Note from the fuel station. In his cross-examination, he stated that he has no signature to show that he seized the counterfeit note. Also, he stated that not a fact that he got the Mat. Ext. i.e. the counterfeit note sitting at the police station from PW-3 and prepared the seizure list at the police station.
- xv. In the examination of the accused/appellant under Section 313 of the Code of Criminal Procedure, Rahamat Ali stated that after he had refilled the Tata 407 vehicle and zoomed out from the petrol pump, he was recalled by PW-3 and was implicated in this case falsely. Also, he stated that after making exit from the petrol pump, PW-3 informed him that the note was counterfeit.

9. Section 489B of the Indian Penal Code states as follows:

“Counterfeiting currency-notes or bank-notes. - *Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

10. Section 489C of the Indian Penal Code states as follows:-

“Possession of forged or counterfeit currency notes or bank-notes. -

Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

11. Section 14 of the Indian Evidence Act, 1872 speaks about “Facts showing existence of state of mind, or of body or bodily feeling.”

Illustration (b) states that: “A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.” The fact is that at the time of its delivery, A was possessed of a number of other pieces of counterfeit coins is relevant.

12. Section 15 of the Indian Evidence Act, 1872 speaks about “Facts bearing on question whether the act was accidental or intentional”.

Illustration (c) states that: “A is accused of fraudulently delivering B a counterfeit rupee. The question is that whether the delivery of the rupee was accidental.

13. The Hon’ble Supreme Court in the case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat***¹, held the following:-

“9. It is the further case of the appellant that the ingredients of Sections 489-B and 489-C IPC have not been established. In regard to Section 489-C, he sought support from the judgment of the Lahore High Court in Bur Singh v. Crown [Bur Singh v. Crown, 1930 SCC OnLine Lah 61 : ILR (1930) 11 Lah 555 : 1931 Cri LJ 351] . Still further, he sought some support from the judgment of the learned Single Judge of the Punjab and Haryana High Court viz. M.M.

¹(2019) 16 SCC 547

Punchhi, J. (as his Lordship then was), in Bachan Singh v. State of Punjab [Bachan Singh v. State of Punjab, 1981 SCC OnLine P&H 47]. The Court held as follows: (Bachan Singh case [Bachan Singh v. State of Punjab, 1981 SCC OnLine P&H 47], SCC OnLine P&H paras 10-11)

“10. In order to sustain the convictions of Joginder Kaur, appellant, the prosecution has not only to prove that she had the possession of counterfeit note, Ext. P-1, ensuring it or having reason to believe it as such, but further to prove circumstances which lead clearly, indubitably and irresistibly to her intention to use the notes on the public as has been held in Bur Singh v. Crown [Bur Singh v. Crown, 1930 SCC OnLine Lah 61 : ILR (1930) 11 Lah 555 : 1931 Cri LJ 351]. It has further been held that such intention could be proved by a collateral circumstance that she had palmed off such notes before, or that she was in possession of such notes in such large numbers, that her possession for any other purpose was inexplicable. The facts as found are that she had on her person only one made-up note, that she was an illiterate lady and that anybody as Shri Darshan Kumar Ahluwalia, PW 2, would have us believe could be misled to treat it as a genuine note. She gave the note to Kundan Lal, PW 2 and he told her that it was not a genuine note and his belief was confirmed when he showed it to others as well. It has nowhere been asserted that the note was ever returned to her and having known fully well or having reason to believe the same to be forged for counterfeit she yet made another attempt to palm it off. Thus, tendering alone such note to Kundan Lal, PW, unless the prosecution could prove that it was with dishonest intention so as to cause wrongful loss to him and wrongful gain to herself would not make her act to fall squarely within Sections 420/511, Penal Code, or to have come within the mischief of Section 489-B or 489-C, Penal Code. The inference sought to be drawn that she must have known or reason to believe the note, Ext. PI, to be counterfeit because her

husband accompanying her was found to be in possession of similar notes is entirely misplaced for no common intention has been attributed to them and they have not been charged with the aid of Section 34, Penal Code. For the individual act of Joginder Kaur she cannot be convicted for the above-named offences and must be extended the benefit of doubt.

11. With regard to the case of Bachan Singh [Bachan Singh v. State of Punjab, 1981 SCC OnLine P&H 47] it is to be noted that he was found in possession of 13 counterfeit ten rupee notes. He is an ironsmith by profession and barely literate. How could he have the knowledge or reason to believe the same to be counterfeit is one part but the other important part is whether he intended to use the same as genuine or that they may be used as genuine has further to be proved by the prosecution. It was held in Bur Singh v. Crown [Bur Singh v. Crown, 1930 SCC OnLine Lah 61 : ILR (1930) 11 Lah 555 : 1931 Cri LJ 351] , that mere possession of a forged note is not an offence under the Penal Code and in order to bring a case within the purview of Section 489-C, Penal Code, it was not only necessary to prove that the accused was in possession of forged notes but it should further be established that:

(a) at the time of his possession he knew the notes to be forged or had the reason to believe the same to be forged or counterfeit; and

(b) he intended to use the same as; genuine. No further collateral circumstances in the case have been brought forth such as the accused had palmed off such notes before, or that he was in possession of such and similar notes in such large numbers, that his possession for any other purpose was inexplicable.”

10. Finally, he also drew attention to the judgment of this Court in Umashanker v. State of Chhattisgarh [Umashanker v. State of Chhattisgarh, (2001) 9 SCC 642 : 2002 SCC (Cri) 758] wherein he emphasised on paras 7 and 8, which read as follows: (SCC pp. 643-44)

“7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

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 [M. Mammutti v. State of Karnataka, (1979) 4 SCC 723 : 1980 SCC (Cri) 170]).”

14. In this case, appellant handed over a bunch of notes to the petrol pump staff against the payment of refueling the vehicle out of which, the Five Hundred Rupee Note was found to be counterfeit which clearly resembled that the delivery of the note was entirely accidental as explained under Section 15 of the Indian Evidence Act, 1872.
15. Prosecution also failed to establish the fact that the said Five Hundred Rupee Note in question was handed over to PW-3 by the appellant only.
16. In the instant case, prosecution failed to adduce any evidence with regard to the existence of the necessary Mens Rea on the part of Rahamat Ali, the appellant herein, in committing the acts, which allegedly constituted the offences charged.
17. The prosecution further failed to justify the knowledge of the appellant to have possessed the counterfeit currency notes with in intention to utilize the same for wrongful gain. Amongst the number of notes the fake currency note was delivered to PW-3. Prosecution did not take any steps to unravel the course in which the appellant gleaned the same and his subsequent mala fide intention and knowledge of acquiring the same to be deliberately utilized to objectify ulterior motive.

18. Mere possession of a single fake currency note will not constitute the offence as alleged barring the evidence to constitute the knowledge and intention of possessing the same for countering illegal means.
19. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
20. Accordingly, the judgment and order of conviction dated 26.07.2007 and 27.07.2007 passed by the Learned Additional Sessions Judge, Fast Track Court – 1, Krishnagar, Nadia, in connection with Sessions Trial No. 11 (January) 2007, arising out of Sessions Case No. 43(9)2006 convicting the appellant under Section 235 of the Code of Criminal Procedure, 1973, for commission of offences punishable under Sections 489B/489C of the Indian Penal Code, 1860 is set aside.
21. Accordingly, the instant criminal appeal stands disposed of.
22. There is no order as to costs.
23. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
24. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)