

Bashir @ Kallu Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : Sep-12-2013

Appellant : Bashir @ Kallu

Respondent : State of Haryana

Judgement :

CRA No.S-1425-SB OF2002(O&M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRA No.S-1425-SB OF2002(O&M) DECIDED ON : 12.09.2013 Bashir @ Kallu ...Appellant versus State of Haryana ...Respondent and CRA No.S-1487-SB OF2002(O & M) Rajesh Kumar ...Appellant versus State of Haryana ...Respondent CORAM : HON'BLE Mr.JUSTICE K.C.PURI Present : Ms.Monika Thakur, Advocate, for the appellant (s).Mr.Amit Kaushik, Senior DAG, Haryana.K.C.

PURI, J.

(ORAL) Vide this common judgement, I intend to dispose of two criminal appeals bearing No.S-1425-SB of 2002 titled as, Bashir @ Kallu versus State of Haryana.

and No.S-1487-SB of 2002 titled as, Rajesh Kumar versus State of Haryana., as the same have arisen out of the same FIR.

For convenience, the facts are being taken from CRA No.S-1425-SB of 2002.

Brief case of the prosecution is that on 30.03.2001, Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh CRA No.S-1425-SB OF2002(O&M) -2- Inspector Tulla Ram along with police party was present at Petrol Pump, Bhima Road, Ferozepur Jhirka, where Inspector Tulla Ram received a secret information that accused Bashir and Rajesh were likely to come to Bus Stand Ferozepur Jhirka with forged currency notes in order to search a customer.

He accordingly planned a raid.

HC Chander Bhan was made to act as decoy.

Inspector Tulla Ram initiated six currency notes of denomination of `100/- each (hereinafter referred to as the genuine currency) and handed over the same to HC Chander Bhan.

The secret informer had shown the accused to the police from a distance.

HC Chander Bhan then approached the accused and after negotiation, handed over the genuine currency notes to Bashir accused, who in return, gave him two forged currency notes of `500/- each and two fake currency notes of `100/- each.

Thereafter Chander Bhan gave signal to the police party.

Both the accused were arrested.

On personal search of accused Bashir @ Kallu, genuine currency and 28 fake currency notes of `500/- denomination were recovered and were taken into possession vide separate recovery memo.

From the personal search of accused Rajesh, 48 currency notes of `100/- denomination were recovered and taken into possession vide separate recovery memo.

HC Chander Bhan handed over to Inspector Tulla Ram, the fake currency notes of `100/- each which were given to him by the accused Bashir in exchange of genuine currency notes.

The case was registered against the accused.

During investigation, one printer bearing HEWLETT PACKARD OFFICE Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh CRA No.S-1425-SB OF2002(O&M) -3- NET PRO1170 and 28 fake currency notes of denomination of `500/- and 41 fake currency notes of denomination of `100/- from a shop located in House No.176, Sector-3, Faridabad, were also recovered.

After completion of investigation, challan against the accused was presented in Court.

On presentation of challan, copies of same were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C. The case was committed to the Court of Session as the offence alleged were exclusively triable by the Court of Session.

Thereafter charge under Sections 489-B and 489-D of the Indian Penal Code was framed against both the accused, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined HC Shobha Ram as PW-1, C.Suresh Kumar as PW-2, HC Hawa Singh as PW-3, SI Daya Nand as PW-4, Nishu Kumar as PW-5, Naresh Kumar Civil Draftsman as PW-6, HC Chander Bhan as PW- 7, Inspector Tulla Ram as PW-8 and closed the evidence after tendering certain documents.

Both the accused were examined under Section 313 Cr.P.C., wherein all the incriminating evidence was put to them to which they pleaded innocence and false implication.

The accused were called upon to lead their defence evidence.

They examined Sanjay Verma as DW-1, Vidhi Adhlakha Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh CRA No.S-1425-SB OF2002(O&M) -4- as DW-2 Ram Lal Gera as

DW-3, Toshir as DW-4, Parkash Lal as DW-5, M.S.Verma as DW-6 and closed their evidence after tendering some documents.

The learned trial Court, after appraisal of the evidence, found both the accused guilty under Sections 489-B and 489-D IPC and vide judgment of conviction dated 03.09.2002 and vide order dated 05.09.2002, sentenced them to undergo rigorous imprisonment for a period of 05 years each and to pay fine of `2000/- under Section 489-B IPC.

In default of payment of fine, to further undergo rigorous imprisonment for two months; further sentenced them to undergo rigorous imprisonment for a period of 03 years each and to pay fine of `1000/- under Section 489-D IPC.

In default of payment of fine, to further undergo rigorous imprisonment for one month.

However, both the sentences were ordered to run concurrently.

Feeling dissatisfied with the above said judgement of conviction dated 03.09.2002 and order of sentence dated 05.09.2002, both the appellants have preferred separate appeals as detailed above.

Learned counsel for the appellant has submitted that false case has been registered against Rajesh Kumar (appellant).Telegram Exhibit D-1 and its postal receipts Exhibit D-2 and D-3 have been proved on the record and from the perusal of same, it is revealed that Rajesh Kumar has been brought from his house and has been falsely implicated in the case.

Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh CRA No.S-1425-SB OF2002(O&M) -5- I have carefully considered the said submission but do not find any force in the said submission.

The documents (Exhibits D-1 to D-3) does not prove the fact that telegram was issued prior to the arrest of the appellant Rajesh Kumar.

The testimonies of the defence witnesses have been dealt with by the trial Court.

DW-1 Sanjay Verma, DW-3 Ram Lal Gera, DW-4 Toshir and DW-5 Parkash Lal are the interested witnesses.

DW-2 Vidhi is the wife of accused/ appellant Rajesh Kumar.

According to these witnesses Rajesh Kumar was taken on 26.03.2001 but no reasoning has been given for not making any complaint till 30.03.2001, when the accused was arrested.

These witnesses wanted to save Rajesh Kumar by hook and crook.

Learned counsel for the appellant Rajesh Kumar has further submitted that it is a case of secret information and no independent witness has been joined.

According to the Investigating Officer, the accused tried to sell away or exchange fake currency notes from the shopkeepers but no name of any of the shopkeeper has been given.

I have carefully considered the said submission.

The joining of independent witness is not the Rule of Law but Rule of Prudence.

In case the prosecution story inspire confidence, in that case the same cannot be thrown away merely on the ground that independent witness has not been joined.

The testimonies of official witnesses cannot be discarded merely on the ground of their status as official witnesses.

The testimony of Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh CRA No.S-1425-SB OF2002(O&M) -6- official witness in case inspire confidence of the Court, the same can be accepted.

In the present case also, the testimonies of official witnesses accompanied by the recovery of fake currency notes from the accused lend support to the case of prosecution.

Learned counsel for the appellant Rajesh Kumar has further submitted that according to prosecution, 48 fake currency notes of denomination of `100/- were recovered.

The prosecution story further states that the accused made disclosure statement regarding recovery of machine used for forging the currency notes.

It is further submitted that the prosecution story further lends that Bashir accused also made disclosure statement regarding recovery of machine.

It is submitted that the story of prosecution that both of them made disclosure statements is an after thought.

The recovery, according to the prosecution, has taken place from the shop of Bashir accused.

No recovery of machine can be planted upon appellant/accused Rajesh Kumar.

It is further contended that according to prosecution story, the notes were exchanged by the police official with accused Bashir and not with Rajesh Kumar.

So in case all the allegations are taken as it is, then also, it is a case of mere possession of fake currency notes and accused Rajesh Kumar can be convicted under Section 489-C IPC only and not under Sections 489-B and 489-D IPC.

There is no evidence that Rajesh Kumar has prepared the fake currency notes.

According to the prosecution, all the acts have been mentioned against accused Bashir.

It is further contended that as per the custody certificate, appellant Rajesh Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh CRA No.S-1425-SB OF2002(O&M) -7- Kumar has undergone incarceration for a period of 01 year 06 months and 25 days.

It is further submitted that there is no case pending against appellant Rajesh Kumar.

He is facing trial for the last about 12 years. So, it is submitted that accused Rajesh Kumar be acquitted under Section 489-B and 489-D IPC and convicted under Section 489-C IPC only and his sentence be reduced to the period already undergone by him.

I have carefully considered the said submissions and find force in the same.

According to the prosecution story, 48 fake currency notes of denomination of `100/- were recovered.

The recovery of machine used for making fake currency notes was recovered from the shop of Bashir accused.

The prepared fake currency notes were also recovered from his shop.

The disclosure statement regarding recovery of machine could be made by Bashir as the same was lying in his shop.

In these circumstances, the conviction of Rajesh Kumar under Section 489-B and 489-D IPC stands set-aside.

He is convicted under Section 489-C IPC only for having been found in possession of 48 fake currency notes of denomination of `100/-.

There is no other case pending against him, as per the conviction slip.

He is facing trial for the last more than 12 years. He has already undergone incarceration for a period of 01 year, 06 months and 25 days.

In these circumstances, the sentence of appellant Rajesh Kumar stands reduced to the period already undergone by him.

Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh CRA No.S-1425-SB OF2002(O&M) -8- Learned counsel for the appellant Bashir @ Kallu has contended that without mens rea, he cannot be convicted for an offence punishable under Sections 489-B and 489-D IPC.

To support this contention, she has relied upon authority *Umashanker versus State of Chhattisgarh.*, AIR 2001 SC3074 I have gone through the said authority.

The same is distinguishable from the facts of the present case, as in that case, the accused gave `100/- note for purchasing 1 kg mango amounting to `5/-.

In that case, police recovered 13 more fake currency notes from her but in the present case, 28 fake currency notes of denomination of `500/- have been recovered from the accused at the spot and other currency notes along with machine used for making the fake currency notes was recovered from his shop.

Without there being any mala fide intention or mens rea, the accused would not have kept such a huge quantity of fake currency notes.

The recovery of machine used for preparing fake currency notes further support the case of prosecution.

In view of the above discussion, I find no merit in the appeal filed by appellant Bashir.

Consequently, the same stands dismissed.

He is stated to be on bail.

He be taken in to custody to undergo remaining part of his sentence awarded by the trial Court.

Both the appeals stand disposed of accordingly.

Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh CRA No.S-1425-SB OF2002(O&M) -9-SEPTEMBER12 2013 (K.C.PURI) shalini JUDGE Bhatia Shalini 2013.09.23 17:20 I attest to the accuracy and integrity of this document High Court Chandigarh

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