

Murugan Vs. State

Murugan Vs. State

SooperKanoon Citation : sooperkanoon.com/1167464

Court : Chennai

Decided On : Jun-25-2013

Judge : T.Sudanthiram

Appellant : Murugan

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

25. 6.2013 CORAM THE HONOURABLE MR.JUSTICE T. SUDANTHIRAM
Crl.A.Nos.528 and 594 of 2012 Murugan .. Appellant/Accused No.2 in
Crl.A.No.528 /12 Sagayam @ Sagayaselvan .. Appellant/Accused No.1 in
Crl.A.No.594/12 Versus State represented by, The Inspector of Police, CB-CID-
Counterfeit Currency Prevention Section Chennai,(Cr.No.8/2004) ..
Respondent/Complainant in both cases Prayer:- Criminal Appeals filed under
Section 374(2) of Cr.P.C., to set aside the judgment passed in S.C.No.205/2011
dated 03.08.2012 on the file of XIX Additional Sessions Court at Chennai. For
Appellant in Crl.A.No.528 of 2012 : Mr.R.Sankarasubbu For Appellant in
Crl.A.No.594 of 2012 : Mr.M.Mohana Sundaram For Respondent in both appeals :
Mr.P.Govindarajan, Additional Public Prosecutor. COMMON

JUDGMENT

The appellants in Crl.A.Nos.594 of 2012 and 528/2012 are accused 1 and 2 respectively on the file of XIX Additional Sessions Court at Chennai. The first accused/appellant in Crl.A.No.594/12 is convicted for the offence under Sections 489-B and 489-C of I.P.C and he is sentenced to undergo 7 years rigorous imprisonment for each offence and also to pay a fine of Rs.1000/- for each offence and in default to undergo simple imprisonment for a period of three months. The second accused/appellant in Crl.A.No.528/12 is convicted for offences under Sections 489-A, 489-D of I.P.C and he is sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- and in default to undergo three months simple imprisonment for each offence and further he is convicted under Section 489-C of I.P.C and sentenced to undergo 7 years rigorous imprisonment and also to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for a period of three months. These sentences of imprisonment were ordered to run concurrently.

2. Totally, there were four accused in this case. A3 and A4 were acquitted by the trial Court. A1 and A2 were convicted by the trial Court. Challenging the said conviction and sentence, the accused 1 and 2 have preferred the above said criminal appeals.

3. The case of the prosecution, in brief, is as follows:- P.W.1, the Sub-Inspector of Police in the CB-CID- Counterfeit Currency Prevention Wing, on receiving information on 09.08.2004 went near Aarthi Hotel, Tiruvallikeni along with P.W.2, Constable and others and kept surveillance. At about 4 p.m., the first accused was identified by informant. P.W.1 went and intercepted the accused and searched him. On search from his right pocket, he took out 109 numbers of counterfeited currency notes in hundred rupee denominations. From his left pocket, he took out 119 numbers of counterfeited currency notes in hundred rupee denominations. Along with the seized counterfeit currency notes and with the accused, he went to CBCID office at 5 p.m., and gave a complaint-Ex.P.1 to the Inspector of Police. (ii) P.W.7, the Inspector of Police, received the complaint-Ex.P.1 from P.W.1 and registered a case in Crime No.8/2004 for offences under Sections 489-B and 489-C of I.P.C, prepared Ex.P.6-First Information Report and seized counterfeit currency notes. He recorded the confessional statement from the accused in the

presence of mahazar witnesses P.Ws.3 and 6 and thereafter, P.W.7 along with first accused went to the place, namely, Arasamara street, Aminjikai. The first accused identified the second accused. P.W.7 recorded the confessional statement from the second accused and in pursuance of the confessional statement, he made a search of the premises and prepared Ex.P.3-search list in which the second accused has signed. He recovered M.O-7 series/currency notes. Printing machine, camera and other items were also found in the same premises. Except the counterfeit currency notes, other items were kept in the room and the room was sealed. Subsequently, on investigation, accused 3 and 4 were also included as accused in this case. P.W.5, who was employed in Government Press was asked to inspect the machine and the camera on 07.2.2005 and he also gave a report-Ex.P.4. P.W.8, Inspector of Police, who took up further investigation in this case completed the investigation and laid the final report against accused 1 to 4. (iii) In order to prove the case, the prosecution examined P.Ws.1 to 8, marked Exs.P.1 to P.22 and produced M.Os.1 and 8. With the permission of the Court, photographs of the machines were taken and they were marked as Ex.P.12 series. The accused were questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances and they denied their complicities. (iv) The Trial Court, after analyzing the oral and documentary evidence, convicted and sentenced first and second accused alone as already stated above and acquitted third and fourth accused.

4. Learned counsel appearing for the appellant/first accused submitted that for the alleged seizure of M.Os.1 and 2 series from the first accused, no independent witness has been examined and no mahazar was prepared by P.W.1. P.W.1 did not attempt to procure any independent witnesses though the place was busy. Learned counsel further submitted that though charge against the accused was only under Section 489-B r/w 511 of I.P.C, the trial Court erroneously convicted him under Section 489-B of I.P.C. There is absolutely no material evidence to attract the ingredients of the offence under Section 489-B I.P.C.

5. Learned counsel appearing for the second respondent submitted that P.W.3 is the mahazar witness for the alleged confession given by the second accused and for the recovery of materials, but, he did not identify the second accused in Court

and he identified only the fourth accused. The other mahazar witness, P.W.6 did not support the case of the prosecution. Learned counsel further submitted that the evidence of P.W.7, Inspector of Police is contradictory and though the machines were stated to have been seized, they were not produced before the Court and they were not marked as material objects before the Court. Further, learned counsel submitted that there is no documentary evidence to show that the second accused was running a printing press. Learned counsel also submitted that except the alleged confession of the second accused, there is no material to connect him with the alleged crime.

6. Per contra, the learned Additional Public Prosecutor submitted that P.W.1 during cross examination, had given explanation for not calling the independent witnesses at the time of seizure of counterfeit currency notes from the first accused. P.W.1 had stated that in order to keep the enquiry secret, he had not called any witnesses. Learned Additional Public Prosecutor also submitted that the second accused was searched in pursuance of the confession given by the first accused and based on the confession given by the second accused, the search was made and Ex.P.3-search list was also prepared. Printing machine, camera and other items which were used for preparing the counterfeit currency notes were seized and M.O.7 series-counterfeit currency notes 33,848 numbers in hundred rupee denominations were also seized from the same premises. Learned Additional Public Prosecutor further submitted that as the printing machinery was very heavy with the weight of 4 tonnes, an application was filed by the prosecution and permission was given by the trial Court to take photographs and they were marked as Ex.P.12.

7. This Court considered the submissions and perused the records.

8. It is the evidence of P.W.1 that on information, he went near Aarthi Hospital, Tiruvallikeni. He searched the first accused being identified by the informant and seized counterfeit currency notes-M.Os. 1 and 2. Of course, P.W.1 has not called for any independent witnesses at the time of searching the first accused. When he was questioned on that aspect in the cross examination, he admitted that he did not call for any independent witnesses since he wanted to keep the information

secret and wanted to make the search secretly. Even though, no independent witness has been examined in support of the said seizure, P.W.2, the constable had given evidence with regard to the said search and seizure and his evidence corroborated with P.W.1. The evidence of P.W.1 has not been shattered in the cross examination by the defence. There is nothing suspicious in the evidence of P.Ws.1 and 2, the police officers. Further P.W.1 had given complaint-Ex.P.1 to P.W.7, the Inspector of Police and in pursuance of that, a case has been registered by the Inspector of Police. Hence, the possession of counterfeit currency notes by the first accused has been established by the prosecution.

9. However, this Court finds that conviction of the first accused under Section 489-B of I.P.C is not proper, since there is no material by way of substantive evidence to show that he was either selling buying or trafficking with the counterfeit currency notes. It could be stated that he was having the counterfeit currency notes to be used as genuine. The conviction of the first accused under 489-C alone is proper.

10. It is the evidence of P.W.7, Inspector of Police that he received Ex.P.1-complaint from P.W.1 and recorded the confessional statement of first accused in the presence of P.Ws.3 and 6 and in pursuance of the said confession, he went to the place where printing press was kept that is near Arasamara street, Aminjikarai. The first accused identified the second accused. P.W.7 recorded the confessional statement of the second accused. He also made a house search and prepared house search list-Ex.P.3. When Ex.P.3 was prepared, the second accused, who was present had signed the same and he did not deny his signature found in Ex.P.3 and not given any other explanation. In the house, counterfeit currency notes 33848 numbers in hundred rupee denominations were seized. P.Ws.3 and 6 are the mahazar witnesses for the same. Though it was contended by the learned counsel for the second accused that P.W.3 did not identify second accused, he identified only the fourth accused, this Court is of the view that it is only a mistake since the seizure was made in the year 2004, but the trial was conducted in the year 2012 after 8 years. Identifying a person in the Court wrongly will not affect the case of the prosecution and the documents prepared in the year 2004. P.W.3 has signed in Ex.P.3-search list and he also stated in his evidence that the name of the accused is Murugan. Murugan was identified by the first accused. The evidence of

P.W.7 is corroborated by the evidence of P.W.3 and other materials. The evidence of P.W.4, owner of the premises is to the extent that the second accused had taken the premises for monthly rent and the second accused was running the printing press. P.W.4 had no reason to depose falsely against the second accused. In the premises, printing machine, camera and other incriminating articles were found. P.W.5 working as a Manager in Government Press gave a report-Ex.P.4 in which he had stated that printing machinery and camera were in working condition and counterfeit currency notes could be printed in that printing machine. The evidence of P.W.7 and other documents established the fact that the second accused was in the process of making counterfeit currency notes and for that purpose, there was a machinery and other instruments. The prosecution has proved its case against the second accused.

11. In the result, criminal appeal filed by the first accused in CrI.A.No.594 of 2012 is partly allowed. The conviction and sentence imposed on the first accused by trial court for the offence under Section 489-B is set aside. The conviction imposed for the offence under Section 489-C is confirmed and the sentence of imprisonment is reduced to a period of two years rigorous imprisonment and fine amount of Rs.1000/- imposed by the trial Court is confirmed.

12. As far as the second accused is concerned, the conviction imposed by the trial Court for offence under Section 489-A, 489-D and 489-C are confirmed. But the sentence of imprisonment imposed for the offences under Section 489-A and D is reduced to a period of 6 years rigorous imprisonment and sentence of imprisonment imposed for the offence under Section 489-C is reduced to a period of 3 years. The fine amount imposed by the trial Court is confirmed. Except the above modification with regard to sentence of imprisonment imposed on the second accused, the Criminal Appeal No.528 of 2012 is dismissed. kua To 1. XIX Additional Sessions Court at Chennai.

2. State represented by, The Inspector of Police, CB-CID- Counterfeit Currency Prevention Section Chennai,(Cr.No.8/2004) 3. The Public Prosecutor, High Court Madras