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Court : Madhya Pradesh

Decided On : Jul-27-2015

Judge : N.K. Gupta

Appeal No. : Criminal Appeal No. 293 of 1997

Appellant : Jallu Bind and Others

Respondent : State of Madhya Pradesh

Judgement :

1. The appellants have preferred the present appeal being aggrieved with the judgment dated 15.1.1997 passed by the 1st Additional Sessions Judge, Shahdol in S.T. No.7/1995, whereby the appellant nos.3 and 4 have been convicted of offence under Section 489-C of the IPC and sentenced to three years' R.I. with fine of Rs.300/-, whereas the appellant no.2 has been convicted of offence under Sections 489-B and 489-C of the IPC and sentenced to ten years' R.I. and three years' R.I. respectively with fine of Rs.300/-.

2. The prosecution's case in short is that the complainant Ramesh Singh (PW-1) had a shop of grocery at village Rajnagar (Police Station Bijuri District Shahdol). On 2.9.1994 at about 10:00 a.m., the appellant Hari Narayan came to his shop and gave a fake currency note of Rs.100/-. The complainant Ramesh Singh gave him the articles required by the appellant Hari Narayan and also returned a sum of Rs.20/- to him but immediately, he found that the currency note was fake and

therefore, other customers standing on the shop of the complainant Ramesh Singh held the appellant Hari Narayan and he was taken to the Police Station. FIR Ex.P/2 was lodged by the complainant Ramesh Singh. The fake currency note of Rs.100/- was recovered from the complainant Ramesh Singh and a seizure memo Ex.P/4 was prepared by Subinspector Vijay Pratap Singh (PW-6). Thereafter, Shri Singh inquired from the appellant Hari Narayan and on his intimation, one fake currency note of denomination of Rs.100/- was recovered from the house of the appellant Hari Narayan and a seizure memo Ex.P/10 was prepared, thereafter he was arrested. Also the appellant Hari Narayan intimated that he obtained two fake currency notes from the appellant Jallu Bind and hence, Shri Singh called the appellant Jallu. 17 fake currency notes of denomination of Rs.100/- were also recovered from him and a seizure memo Ex.P/12 was prepared. Three fake currency notes of denomination of Rs.100/- were recovered from the appellant Bajrangi and four fake currency notes of same denomination were recovered from the appellant Thakur Prasad. After due investigation, the charge sheet was filed before the JMFC Kotma, who committed the case to the Court of Sessions and ultimately, it was transferred to the 1st Additional Sessions Judge, Shahdol.

3. The appellants abjured their guilt. They did not take any specific plea but they had stated that they were innocent, however no defence evidence was adduced.

4. After considering the prosecution's evidence, the trial Court convicted and sentenced the appellants as mentioned above.

5. During the pendency of this appeal, the appellant no.1, who has received an order of bail but he could not furnish the bail bonds and therefore, he has undergone his entire sentence. Hence, appeal filed by the appellant no.1 has turned infructuous.

6. I have heard the learned counsel for the parties.

7. Learned counsel for the appellants has submitted that the prosecution could not prove that the currency notes received from the appellants were fake. In the support, he has relied upon the judgment passed by the Hon'ble Apex Court in the case of M. Mammutti Vs. State of Karnataka [AIR 1979 SC 1705], in which it is

held that by mere look at the currency notes, it cannot be said that those were counterfeit and therefore, the accused cannot be convicted of such offence. Similarly, a reliance is placed upon the judgment passed by the Single Bench of Kerla High Court in the case of Karunakaran Nadar Vs. State [2000 Cri.L.J. 3748] (Kerla). In the present case, all the notes were sent to the Bank Note Press Dewas, who gave a memo Ex.P/18, in which it was mentioned that all the notes (26 Nos.) received in a sealed condition and those were found counterfeit.

8. The learned counsel for the appellants has also submitted that in seizure memo Exs.P/4, P/6, P/10, P/12 and P/13, it was mentioned by the Sub-inspector V.P. Singh (PW-6) that after seizure of notes, those were sealed. Also, no impression of seal was appended upon any of the aforesaid seizure memo and therefore, the report given by the Bank Note Press, Dewas cannot be considered for the notes seized from the appellants. The contention advanced by learned counsel for the appellants appears to be acceptable. Shri Singh did not mention that after seizure of such currency notes, as to whether, they were sealed and what was the impression of seal on the notes. But, if the evidence of Ramesh Singh (PW-1) is considered then, he found that the notes did not appear to be genuine. If the aforesaid seizure memos are considered simultaneously then, it would be apparent that each counterfeit currency note had a same number of 5- PC375435. If Bank Note Press, Dewas issues a bundle of note then, number of each note should be different. It is not possible for a Bank to issue so many notes of same serial number. If 26 currency notes were found of the same number then, by viewing those notes, anybody could say that those were fake currency notes. Since all the notes have the same serial numbers therefore, due to these peculiar circumstance in the present case, it can be said that by looking at those currency notes, they could be found to be counterfeit notes. The judgment passed by the Hon'ble Apex Court in the case of M. Mammutti (supra) and judgment passed by the Kerla High Court in the case of Karunakaran (supra) cannot be applied in the present case due to specific factual difference. Hence, it was proved that all the seized currency notes were counterfeit and not genuine.

9. The police has alleged against four persons that they kept fake currency notes with them and according to the police, it was the appellant Jallu Bind, who brought

the currency notes from his native place Bihar and distributed amongst other appellants so that such fake currency notes may be paddled. On each of the appellant, there is a charge of offence under Section 489-C of the IPC but against the appellant no.2 Hari Narayan, a charge of offence under Section 489-B of the IPC was also appended that he paddled the fake currency notes.

10. For the purpose of appreciation of evidence, the matter of the appellant no.2 Hari Narayan may be considered on priority. In this respect, Ramesh Singh has stated that Hari Narayan came to his shop and gave one fake currency note of Rs.100/- but in the trial Court, he told that the appellant Jallu Bind came to his shop and gave one fake currency note. When he was asked to identify the person, who gave that note then, he identified the appellant Hari Narayn with the pretext that he was the person, who gave him that fake currency note and whatsoever his name may be, he was the culprit in the eye of Ramesh Singh. If cross-examination of this witness is considered then, he has stated that there was much rush in his shop, when he was keeping that note in his cash box. He found that one note was fake and he immediately rushed from the shop and few steps away, he held the appellant Hari Narayan. However, in further crossexamination, he has accepted that he searched the appellant Hari Narayan in the entire market and he could be held in a Bazar and the witnesses present on his shop has stated that the appellant Hari Narayan was the person, who gave that fake currency note to Ramesh Singh. However, the prosecution did not examine any of the witness before whom the complainant Ramesh Singh held the appellant Hari Narayan.

11. The complainant Ramesh Singh has accepted that he could not take the appellant Hari Narayan to the Police Station because Hari Narayn denied that he did not give any fake currency note. In this context, if FIR Ex.P/2 is perused, which was recorded on a written report Ex.P/1 then, it would be apparent that the FIR was lodged after 2 hours of the incident. FIR was recorded at about 12:30 p.m. in the noon, whereas second fake currency note was recovered from the appellant Hari Narayan at about 4:30 p.m. and he was arrested at 9:15 p.m. Hence, it would be clear that the appellant Hari Narayn could not be taken to the Police Station by the complainant Ramesh Singh.

12. Ramesh Singh could not tell the actual name of the appellant Hari Narayan before the Court then, it appears that he gave his statement on the basis of information that one Jallu Bind was also arrested by the police or he mentioned name of culprit to be Hari Narayan on the basis of customers present at the shop. Hence, though the complainant Ramesh Singh gave the name of Hari Narayan in the FIR, it cannot be said that he had identified the appellant Hari Narayan that he was the person, who gave the fake currency note. Possibility cannot be ruled out that fake currency note was given by the appellant Jallu Bind to the complainant Ramesh Singh and he could not trace the actual culprit and on information given by other witnesses, he had lodged FIR against the appellant Hari Narayan. Since the FIR was a named FIR, no test identification parade was arranged by the prosecution so that actual culprit could be identified. In such circumstances, a dock identification is not a valid identification in the eye of law and therefore, by the statement of Ramesh Singh, it could not be proved that the appellant Hari Narayan was the person, who gave him a fake currency note. It is not proved beyond doubt that the appellant Hari Narayan paddled fake currency notes. The trial Court has committed an error in convicting the appellant Hari Narayan for the offence under Section 489-B of the IPC.

13. So far as the offence of the appellants committed under Section 489-C of the IPC is concerned, Shri V.P. Singh (PW-6) has stated that one fake currency note was recovered from the appellant Hari Narayan and a recovery memo Ex.P/10 was prepared. 17 fake currency notes were obtained from the appellant Jallu Bind and seizure memo Ex.P/12 was prepared. Thereafter, three currency notes were found with the appellant Bajrangi and a seizure memo Ex.P/13 was prepared. On 11.9.1994 four currency notes were seized from the appellant Thakur Prasad. However, the witnesses Ganesh (PW-2), Chanchal Mishra (PW-4) and Kaushal Kishore (PW-5) relating to seizure have turned hostile. Seizure was done from the appellants Bajrangi, Thakur Prasad and Jallu Bind. On the memo given by the appellant Jallu Bind that he distributed the fake currency notes amongst some persons, the appellants Thakur Prasad and Bajrangi were arrested and 3-4 fake currency notes were found with them. When independent witnesses relating to the seizure have turned hostile then, possibility cannot be ruled out that the entire currency notes would have been recovered from the appellant Jallu Bind and to

show that a gang of paddlers of fake currency notes was caught such investigation done by Shri V.P. Singh, he would have shown the seizure of few fake currency notes from the appellant Thakur and Bajrangi, which was done subsequent to the seizure from appellant Jallu Bind whose sentence is executed in-toto. Also after seizure of currency notes (fake) from Jallu, it is not claimed by Shri V.P. Singh that those notes were sealed and hence, he could separate 3-4 notes to implicate some more persons. Hence, a doubt is created that there was no fake currency note in possession of the appellant Bajrangi and Thakur Prasad but the seizure memo was prepared by Shri V.P. Singh only to show his efficient investigation. If a doubt is created that nothing was found with the appellant Bajrangi and Thakur Prasad then, these appellants could not be convicted of offence under Section 489-C of the IPC and the trial Court has committed an error in convicting them.

14. So far as case of the appellant Hari Narayan is concerned, since a named FIR was lodged, his interrogation was done by Shri Singh and in memo Ex.P/9, he gave an intimation that he received two fake currency notes from the appellant Jallu Bind and out of these two notes, one was kept by him in his house. Though, information given by the appellant Hari Narayan was not admissible in-toto, but only one line of that information was admissible due to consequential seizure, that, he kept one fake currency note at his house and at the time of preparation of the consequential seizure memo Ex.P/9, the appellant Jallu Bind was not arrested or he was not available for interrogation. Hence, at the time of interrogation of the appellant Hari Narayan, it was not possible for Shri Singh to get so many fake currency notes to make the case against various appellants. Under these circumstances, the testimony of Shri V.P. Singh is believable against the appellant Hari Narayan. Looking to the document Ex.P/9 alongwith the seizure memo Ex.P/10, testimony of Shri V.P. Singh is believable and it is proved beyond doubt that the appellant Hari Narayan had kept one fake currency note of denomination of Rs.100/- at his house and therefore, he was rightly convicted of offence under Section 489-C of the IPC.

15. So far as the sentence is concerned, the appellant Hari Narayan was the first offender, who has faced the trial and appeal for last 20 years. He remained in the custody from 2.9.1994 to 22.2.1995. Thereafter, he was taken into the custody by

the trial Court on 15.1.1997 and thereafter, he was released on bail vide order dated 8.7.1997. Hence, he remained in the custody for approximately one year, whereas a single fake currency note of denomination of Rs.100/- was found with him and therefore, it would be appropriate that the sentence of the appellant Hari Narayan of offence under Section 489-C of the IPC may be reduced to the period for which he remained in the custody.

16. On the basis of aforesaid discussion, the present appeal filed by the appellant nos.3 and 4 is hereby allowed. Their conviction as well as sentence of offence under Section 489-C of the IPC is hereby set aside. They are acquitted from all the charges appended against them. Appeal filed by the appellant no.2 is hereby partly allowed. His conviction as well as sentence of offence under Section 489-B of the IPC is hereby set aside and he is acquitted from that charge. However, his conviction of offence under Section 489-C of the IPC is hereby maintained but the jail sentence is reduced to the period for which, he remained in the custody. No change in the fine amount.

17. All the appellants are on bail. Their presence is no more required before the Court and therefore, it is directed that their bail bonds shall stand discharged.

18. Copy of the judgment be sent to the trial Court alongwith its record for information and compliance (if any).

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