

Sanalkumar vs State of Kerala

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Court : Kerala

Decided On : Jan-24-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRL.A/442/2007

Appellant : Sanalkumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
WEDNESDAY, THE 24TH DAY OF JANUARY 2024 / 4TH MAGHA,
1945 CRL.APPEAL NO. 442 OF 2007 AGAINST THE JUDGMENT
DATED 05.03.2007 IN SC 410/2005 OF THE ADDITIONAL SESSIONS
COURT (ADHOC-II), THODUPUZHA APPELLANT/ACCUSED NO.2:
SANALKUMAR S/O NARAYANAN, AGED 33 YEARS, NELLIKKUNNEL
VEETIL, VANNAPPURAM VILLAGE, THODUPUZHA. BY ADV
SRI.K.V.SABU RESPONDENT/COMPLAINANT: STATE OF KERALA
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM. BY SMT.SEENA C., PUBLIC PROSECUTOR THIS
CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON

12.01.2024, ALONG WITH CRL.A.449/2007, THE COURT ON 24.01.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
WEDNESDAY, THE 24TH DAY OF JANUARY 2024 / 4TH MAGHA,
1945 CRL.APPEAL NO. 449 OF 2007 AGAINST THE JUDGMENT
DATED 05.03.2007 IN SC 410/2005 OF ADDITIONAL SESSIONS
COURT (ADHOC-II), THODUPUZHA APPELLANT/ACCUSED NO.1:
SAJI, S/O KURIAN, AGED 31, MEENAMKIDIYIL VEETIL, KADAVOOR
KARA, KADAVOOR VILLAGE. BY ADVS. SRI.PRADEEP JOY
SRI.M.T.SURESHKUMAR RESPONDENT/COMPLAINANT: STATE OF
KERALA SUB INSPECTOR OF POLICE, KALIYAR, REP. PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY
SMT.SEENA C., PUBLIC PROSECUTOR THIS CRIMINAL APPEAL
HAVING COME UP FOR ADMISSION ON 12.01.2024, ALONG WITH
CRL.A.442/2007, THE COURT ON 24.01.2024 DELIVERED THE
FOLLOWING:

P.G. AJITHKUMAR, J.

----- Dated this the 24th day of
January, 2024

JUDGMENT

The Additional Sessions Judge (Adhoc-II), Thodupuzha

as per the judgment dated 05.03.2007 in S.C.No.410 of 2005 convicted accused Nos.1 and 2 for offences punishable under Sections 489B and 489C of the Indian Penal Code, 1860 (IPC). Accused Nos.3 and 4 were acquitted. The 1 st accused filed Crl.Appeal No.449 of 2007 and the 2 nd accused filed Crl.Appeal No.442 of 2007 challenging the conviction and sentence.

2. The accusation against the accused were as follows: At about 9.25 p.m. on 13.08.2004 accused Nos.1 and 2

were found in possession of counterfeit currency notes near the waiting shed at Plantation Kavala in Vannappuram. The 1 st accused had with him 107 notes of 100 rupee denomination and 94 notes of 50 rupee denomination. The 2 nd accused had with him 76 notes of 50 rupee denomination. They possessed the said currency notes for the purpose of using it as genuine currency notes. Those currency notes were given to them by accused No.3, who had obtained it from accused No.4.

3. It was PW9, who detected the offence. He was the Circle Inspector of Police, Kaliyar. On getting prior information, he went to Plantation Kavala, where he claimed

to have seen accused Nos.1 and 2 in a suspicious circumstance. They were intercepted and questioned. On a body search, currency notes were found concealed by them in the loin. Accordingly, seizure was effected on preparing a mahazar. PW9 conducted a search of the houses of both the appellants. He had searched the shop and house of other accused also. Nothing incriminating was fetched in such searches. The investigation was handed over to the Special

Squad of CBCID. It was PW11 who continued the investigation. PW10 filed the final report.

4. At the trial, PWs.1 to 12 were examined, Exts.P1 to 24 were marked and MOs.1 to 7 were identified. The accused

were questioned under Section 313(1)(b) of the Code. They claimed to be innocent. Exts.D1 to D5 are the contradictions in the evidence of PW9. No other defence evidence was adduced. The trial court, based on the said evidence, found the appellants guilty.

5. Heard the learned counsel for the respective appellants and the learned Public Prosecutor.

6. PW9 is the detecting officer. While he was the Circle

Inspector of Police, Kaliyar, he arrested the accused and effected the recovery. The case of the prosecution is that PW2, an autorickshaw driver, was approached by the 2nd accused offering counterfeit notes for half price. As informed by PW2, the matter came to the knowledge of PW9. He devised a plot to trap and as per that accused Nos.1 and 2 were brought to Plantation Kavala, from where PW9 could arrest them.

7. PW9 deposed before the court that as part of law and order duty, he along with his party, reached the place of occurrence. Accused Nos.1 and 2 were there. Since PW9 felt

suspicious, he intercepted them and searched their bodies. He stated in detail regarding the seizure and currency notes found in possession of each of them. The seizure was effected by him preparing Ext.P9 mahazar. The currency notes seized are MOs.1 to 3 series. The plastic covers in which the said currency notes were enclosed are MO4.

8. Coming back to the Police Station, PW9 registered

a crime and Ext.P10 is the F.I.R. He further deposed that the houses of both of the said accused were searched on the same day night. Based on the confession of the 1st accused, PW9 searched the shop of the 3rd accused and the house of the 4th accused.

9. The court below found that there was no evidence

to connect accused Nos.3 and 4 to the offence. However, evidence of PW9 regarding seizure of MOs.1 to 3 currency notes from the possession of accused Nos.1 and 2 was found trustworthy and accordingly convicted them. PWs.1, 2, 8 and 12 were examined to depose about the seizure of counterfeit notes from accused Nos. 1 and 2 and their dealing with

counterfeit notes. But, they denied having seen such incidents or acts. PW2 is the person who is said to have informed PW9 about accused No.1 and 2 dealing with

counterfeit notes. But PW2 denied his having informed PW9 of such a fact. Therefore, the sole evidence available to prove the seizure is that of PW9.

10. MOs.1 to 3 were sent for examination in the

Security Note Press, Nashik. Exts.P20 and 21 are the reports. The forwarding note for sending the currency notes for examination was submitted by PW11. As per the said reports, MOs.1 to 3 were certified to be counterfeit notes.

11. The learned counsel for the appellants raised a

contention that in the light of the version of PW9 that the said notes could be identified as fake one on a mere perusal, the same cannot be said to be fake notes, but only documents resembling currency notes. Counterfeiting is defined in Section 28 of the IPC, which means making one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely

that deception will thereby be practiced. PW9 deposed that the seized currency notes could be exchanged as genuine deceptively. As per Exts.P20 and 21 the expert in the Security Note Press reported the notes to be counterfeit currency notes. In such circumstances, it cannot be said that MOs.1 to 3 are documents resembling currency notes alone. Those are proved to be counterfeit currency notes.

12. Another contention raised by the learned counsel for

the appellants is that the evidence would not prove the intention on the part of accused Nos.1 and 2 to use the currency notes as genuine and therefore, no offence under Sections 489B and 489C of the IPC could be attracted. I am unable to agree with the said contention as well. If the prosecution case is believed, accused Nos.1 and 2 were found in a suspicious circumstance, possessed with a huge number of counterfeit notes. No further evidence is required to conclude that the counterfeit notes were possessed by accused Nos. 1 and 2 for the purpose of using the same as genuine, and therefore, the alleged offences would certainly be attracted.

13. As stated, the only evidence available to prove that

accused Nos.1 and 2 possessed MOs.1 to 3 is the oral testimony of PW9 and Ext.P9 mahazar. His assertion that he had intercepted accused Nos.1 and 2 on the basis of the information passed on by PW2 is not supported by PW2. Exts.D1 to D5 are the contradictions in the evidence of PW9 with reference to his

statement recorded by PW11. Those contradictions are concerning circumstances leading to the seizure and also the arrest of accused Nos.1 and 2. Even regarding the sequence whether PW9 and his party reached the place of occurrence first or accused Nos.1 and 2 were already there when they were arriving, there is inconsistency. Regarding availability of PW2 there, the evidence in court is against the statement given by PW9 to PW11. Thus regarding the material particulars the evidence of PW9 is not cogent. When there is absolutely no other evidence; even evidence of another member of the police party, the evidence of PW9 is shrouded by doubt.

14. It is true, evidence of a police officer has to be appreciated as that of any other witness. He being an official

witness, more credibility can be given to him. However, in the light of the material contradictions in his evidence and lack of any other evidence to give support, evidence of PW9 alone is insufficient to prove beyond doubt that the recovery of MOs.1 to 3 were effected as stated by him. The result is that the prosecution failed to prove its case beyond reasonable doubt. The conviction of accused Nos.1 and 2, appellants herein, by the court below is therefore incorrect and is liable to be set aside.

15. The appeal is accordingly allowed. The judgment

dated 05.03.2007 in S.C.No.410 of 2005 of the Additional Sessions Court (Adhoc-II), Thodupuzha is set aside. The appellants 1 and 2 are acquitted and set at liberty. Sd/- P.G. AJITHKUMAR, JUDGE dkr