

In Re: Basi Reddy and ors.

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Court : Karnataka

Decided On : Aug-10-1971

Reported in : 1972CriLJ1141

Judge : C. Honniah, J.

Appellant : In Re: Basi Reddy and ors.

Judgement :

C. Honniah, J.

1. These appeals arise out of the judgment of the Sessions Judge. Bellary. in Sessions Case No. 21 of 1969, convicting appellants 1, 2 and 4 under Section 120-B of the Indian Penal Code and sentencing each of them to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 500/-with a default sentence, convicting appellants 1 and 2 under Section 489-C read with Section 120-B of the Indian Penal Code and sentencing each of them to undergo rigorous imprisonment for 3 years and further convicting appellant 3 under Section 489-C of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 3 years, The learned Sessions Judge acquitted appellant 4 of the charge under Section 489-C read with Section 120-B of the Indian Penal Code and directed the sentences to run concurrently. Aggrieved by this decision, A-2 and A-3 have filed Criminal Appeal No. 184 of 1970. A-I has filed Criminal Appeal No. 185 of 1970 and A-4 has filed Criminal Appeal No. 200 of 1970.

2. The facts relating to the prosecution of these 4 accused briefly stated are these: A-1 Thimappa was a resident of Yerragunta village in Rayadurga taluk of Ananthpur District. A-2 Basava Reddy and A-3 Thimmappa son of Ramappa were residents of Kappa-gal in Bellary District at the relevant time. A-2 was living in a locality called Cowl Bazaar in Bellary town. A-4 Venkatappa Chowdry was a resident of Ananthpur. One Venkatarama Reddy who is stated to be still absconding was a resident of Konavaripalli near Tadapatri in Cuddapah District. Govinda Reddy. P. W. 7 at the relevant time was residing at Voddahatti and before that he was residing at Cowl Bazaar of Bellary town. He is related to A-2.

3. The case of the prosecution was that in the first week of December 1966 A-2 went to the house of Govinda Reddy P. W. 7 and showed him a currency note of the denomination of Rs. 5/- and offered to give similar notes to the latter in the ratio of 2 :1 on questioning A-2 from whom he was getting such notes, A-2 went out and brought A-1 to the house of Govinda Reddy, A-1 showed one Rs. 5/- note to Govinda Reddy and according to the evidence of Govinda Reddy it was a regular currency note. A-1 informed Govinda Reddy that such notes were available with A-4 at Ananthpur. On the same day A-1 and Govinda Reddy went to Ananthpur. Govinda Reddy had taken, with him Rs. 500/- in cash, They went to the house of A-4. After a talk between A-1. and A-4, A-4 told A-1 and Govinda Reddy to stay on that night and that he would meet them on the following day. On the next day, A-4 took A-1 and Govinda Reddy to a School where A-1 asked A-4 to give currency notes to Govinda Reddy. A-4 told him that the notes that were with him were exhausted and that he had got only one of that kind and having said so showed it to Govinda Reddy. Govinda Reddy asked A-4 to get such notes. On the assurance of A-1 Govinda Reddy gave Rs. 500/-. A-4 asked A-1 and Govinda Reddy to wait for him near the hotel and that he would bring the currency notes there.

Some time later A-4 met them and told them that the person, with whom the notes were, was out of station, and had gone to bring such currency notes and would be coming within a day or two. Govinda Reddy requested A-4 to return Rs. 500/- but A-4 promised that he would bring the currency notes to Bellary, On his assurance A-1 and Govinda Reddy returned to Bellary the next day. Govinda Reddy waited for a week but A-1 and A-4 did not turn up. Therefore he approached A-2 and asked

him to accompany him to Ananthpur. A-2 could not accompany him as he was not free.

Govinda Reddy alone went to Ananthpur and there he was not able to meet A-4 as he was out of Ananthpur. Govinda Reddy left his address in the house of A-4 and requested the ladies in the house to intimate A-4 soon after his arrival to write to him (Govinda Reddy). 3 or 4 days later, Govinda Reddy received an express letter, which is not marked in this case, by which Govinda Reddy was asked to go to Ananthpur on the following Saturday or Sunday without fail. Govinda Reddy went to Ananthpur with A-2 on the day stated in the letter but he could not meet A-4, On the following day A-2 and Govinda Reddy met A-4. A-4 informed him that there was great demand for those currency notes and asked Govinda Reddy to give some more amount. On the intervention of A-2 Govinda Reddy paid another sum of Rs. 500/- to A-4 for which A-4 executed a pronote Ex. P-5. After the execution of the pronote, Govinda Reddy returned to Bellary taking an assurance from A-4 that he would see him at Bellary 3 or 4 days later.

4. A-4 as promised did not go to Bellary and meet Govinda Reddy. Govinda Reddy met his elder brother and his relative by name Bhima Reddy at the Bus Stand in Bellary. Govinda Reddy informed his elder brother and Bhima Reddy about his transaction with A-4. The elder brother of Govinda Reddy scolded him and advised him to get back his amount. Govinda Reddy therefore went to Ananthpur taking with him his elder brother and Bhima Reddy to get back the amount of Rs. 1000/- that he had paid to A-4. Govinda Reddy asked A-4 to return his amount for which he told him that he would give currency notes within a few days. A-1 was also present at that time. A-4 told Govinda Reddy that he had given the amount of Rs. 1000/- to a person to give currency notes and if Govinda Reddy doubted this statement, he could follow him and A-4 would see that Govinda Reddy gets back Rs. 1000/- paid by him. Then A-1, A-4, Govinda Reddy, his elder brother, and Bhima Reddy went to Coimbatore.

The next day after they reached Coimbatore A-4 took Govinda Reddy to the house of one Narasiah Naidu (who is not examined in this case) who told him that he had received Rs. 1000/- from Accused-4. Narasiah Naidu asked A-4 how Govinda

Reddy would bring into circulation the currency notes that he would be giving. Govinda Reddy asked him to show the currency notes but Narasiah Naidu did not show him any currency notes but asked Govinda Reddy to meet him again in the evening. When Govinda Reddy and others went to the house of Narasiah Naidu, he was not available. A-4 then informed Govinda Reddy that Narasiah Naidu would be returning within 3 or 4 days with the currency notes and that he would in turn bring those currency notes to Bellary. Govinda Reddy insisted A-4 to pay his amount for which A-4 replied that he had no money then as he had given the money to Narasiah Naidu and only on Narasiah Naidu's return, he could pay him. Then Govinda Reddy, his brother and others returned to Bellary

5. Govinda Reddy after waiting for a few days for the arrival of A-4, went to Ananthpur on 12th January 1967 and met A-4 in his house and asked him to return his amount, Again A-4 promised to bring the currency notes within 10 or 12 days. On that assurance, Govinda Reddy returned to Bellary.

6. This time again. A-4 did not come to Bellary and meet Govinda Reddy. Govinda Reddy came to know that A-1, A-2 and A-3 had gone to Ananthpur. He also went there and met A-1, A-2 and A-3. There at the instance of A-4, all these person met 2 strangers. From one of them. A-1 according to the prosecution, purchased currency notes said to be counterfeit, by paying Rs. 1.000/-The strangers asked A-1, A-2 and A-4 to circulate those currency notes carefully. A-4 offered to give counterfeit currency notes to Govinda Reddy but he insisted his money being paid to him for which A-4 agreed and promised him that he would pay the same some time later.

7. On 30th January 1967 at about 8 a. m. P. W. 11 Siddeswara Gouda, Sub Inspector of Police got credible information that A-1 had gone to the house of A-2 with counterfeit currency notes. He therefore went to the house of A-2 along with panchas. On approaching the house of A-2, he saw A-1 standing in front of the house of A-2 and on seeing the Sub Inspector A-1 attempted to rush into the house of A-2. At that point of time, he was caught. A-1 was searched by P. W. 11 in the presence of panchas P. W. 11 found on the person of A-1. 38 currency notes of the denomination of Rs. 5/- (M. O, 1) and one 100/- rupee note (M, O. 7) and they

were seized under Ex. P-3. These notes admittedly were fake notes. A-1 was arrested and on his information the Police Sub Inspector went to Siruguppa Bus Stand in Gona Bakery Circle with a view to search A-2. One Veeranna Bhai along with other panchas accompanied the Sub Inspector of Police. The case of the prosecution was that the person of A-2 was searched and on his person 176 notes of Rs. 5/- denomination were found and they were seized under Ex. P-7.

8. On the information given by A-1, the Sub-Inspector of Police went to Kappagal village about 9 miles from Bellary to the house of Accused-3. A-3 according to the prosecution, produced a plastic bag. M.O. 12 which contained 150 currency notes (M, O. 5) and they were seized under Ex. P-8. Currency notes seized from the person of A-2 and A-3 have been proved to be fake notes. Nothing was recovered from the person of A-4. On these facts, the case of the prosecution was that these 4 accused persons hatched a conspiracy to circulate fake currency notes from 2nd December 1966 to 31st January 1967 and in pursuance of that conspiracy, they circulated currency notes or they were found in possession of the currency notes.

9. So far as the conspiracy is concerned, the only evidence on which reliance is placed by the prosecution is that of P. W. 7 Govinda Reddy, The evidence of P. W. 7 in substance has already been stated. His evidence merely shows that one or the other accused persons showed him the currency notes and told him that they would supply such currency notes in the ratio 2:2 against real currency notes and in that connection they took Rs. 1000/- made him to go from place to place and ultimately none of the accused gave him any currency notes for Rs. 1000/- that he is said to have paid to A-4, The prosecution have produced the promissory note which is marked as Ex. P-5, said to have been executed by A-4 for Rs. 1000/-. A-4 has denied having executed the same. Assuming for the sake of argument that A-4 executed the promissory note in question, that would not lead to the inference that A-4 was in possession of counterfeit currency notes and that he has promised to give counterfeit currency notes of the value of Rs. 1000/-. At the most what could be stated is that there might have been a monetary transaction between Govinda Reddy and A-1. Admittedly A-1 did not pay the amount to Govinda Reddy. It is therefore likely that he is implicating these accused persons. Even if his evidence is accepted, it is difficult to hold that the accused had hatched a

conspiracy to traffic in counterfeit currency notes or possess them knowing them to be not genuine.

A criminal conspiracy as defined in 'Section 120-A of the Indian Penal Code is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all the work in furtherance of the 2ommon design. Each conspirator plays his separate part in one integrated and united effort to achieve common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all his secrets or the means by which the common purpose is to be accomplished. The scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop on successive stages. On the evidence of P. W. 7. it is difficult to hold that these accused persons had entered into an agreement with a common design and a common intention of all to work in furtherance of the common design, viz., to traffic in counterfeit currency notes and to possess them. As a matter of fact he has stated in his evidence that he was not shown counterfeit currency notes. What was shown by one of the accused persons was a genuine currency note and if that were to be so. the story of the prosecution that the accused had entered into a criminal conspiracy for the purpose stated earlier cannot be spelled out from the evidence of P. W. 7. Currency notes recovered from the possession of A-I were shown to this witness in court and he has denied that such notes were drawn to him by any one of the accused persons. It is therefore clear that the prosecution have not proved satisfactorily that the accused had entered into a criminal conspiracy for the purpose stated above.

10. The evidence of Govinda Reddy (P. W. 7) is in the nature of accomplice, 'The law as to accomplice evidence is well settled. The Evidence Act in Section 133 provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The effect of this 'provision' is that the Court trying an accused may legally convict him on the single evidence of an

accomplice. To this there is a rider in illustration (b) to Section 114 of the Act which provides that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This cautionary provision incorporates a rule of prudence: an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that Courts, before they act on accomplice evidence, insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice. In this way, the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated. This rule of caution or prudence has become so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law.' : [1968]2SCR641 . Here there was no corroboration to the evidence of accomplice. The prosecution have not examined the elder brother of Govinda Reddy and Bhima Reddy who actually according to P. W, 7 had accompanied him to Coimbatore and had occasion to see the activities of the accused persons. In the absence of their evidence, we are left with the uncorroborated testimony of Govinda Reddy P. W, 7, who is an accomplice and it is unsafe to act upon the unconfirmed testimony of this witness.

11. The only other evidence on which reliance is placed by the prosecution is the recovery of the counterfeit currency notes from the possession of Accused A-1, A-2 and A-3. I would like to consider the case of the prosecution about the recovery of counterfeit currency notes from the possession of A-2 and A-3. P. W. 11, has no doubt, stated that on the information of A-1 he traced A-2 and when he searched him, he found in his possession 176 counterfeit currency notes of five rupee denomination (M.O. 3) and seized them under Ex. P-7, At the time of seizure, there was one Veeranna Bhai, who acted as panch witness' along with others. Veeranna Bhai was examined in the committal Court and he could not be examined at the time of the trial as he was dead by then. A-2 during the course of his examination under Section 342 Cr. P.C. has produced the deposition of Veeranna Bhai to be read as evidence. Under Section 33 of the Evidence Act read

alongwith Section 540 of the Code of Criminal Procedure, in the interest of justice, this evidence ought to have been admitted by the learned Sessions Judge and read as evidence. The learned Sessions Judge was in error in rejecting this evidence, when that evidence was in favour of the accused. Veeranna Bhai has been examined in the Committal Court and a perusal of his evidence shows that he has deposed in examination-in-chief itself that he saw the forged notes not in the possession of A-2 when he was apprehended, but in the hands of a police constable. His evidence also shows that he was taken by the Sub Inspector of Police from the Bazaar and in his presence A-2 was apprehended. If by that time the fake currency notes were in the hands of a police constable, it cannot be stated by any stretch of imagination that they were in the possession of A-2.

12. So far as the recovery of the counterfeit currency notes from A-3 is concerned, the prosecution case is that A-3 produced from his house a bag which contained 150 currency notes of five rupee denomination (M.O. 5). P. W. 11 has given evidence in this behalf. No independent witness has been examined to support the version of the police officer. The learned Public Prosecutor before the Trial Court has conceded that if any doubt arose on the question of conscious possession of these currency notes by A-3 in his house, he might be given the benefit thereof. The learned Public Prosecutor, on the facts of this case, was justified in conceding on this point. Admittedly A-3 was living along with other members of his family and at the time A-3 is said to have produced the fake currency notes, the other members of his family were residing with him and his wife was actually present. Unless the prosecution establishes that the bag which contained the counterfeit currency notes belong to the 3rd accused and that he had kept the same in his exclusive possession in his house, it is difficult to hold that he was in actual or conscious possession of the currency notes. Apart from this, the notes said to have been seized from A-2 and A-3 were not packed and sealed in the presence of panchas. That gives room to doubt whether 'the identical notes said to have been seized from these two accused persons were sent to P. W. 1. At any rate the prosecution evidence in regard to the recovery of the counterfeit currency notes from the Possession of A-2 and A-3 is not satisfactory. It is difficult to hold that the currency notes, which were sent to P. W. 1 were the identical notes said to have been seized from the prosecution of A-2 and A-3. At any rate, considerable doubt

arises on this aspect of the case.

13. So, far as the recovery of counterfeit currency notes from the possession of A-I is concerned there is indisputable evidence of P. Ws. 3 and 11. of them P. W. 3 an independent witness, that 38 counterfeit currency notes of five rupee denomination and one counterfeit currency note of rupees one hundred denomination were recovered from the possession of A-I. They have been tested by P. W. 1 and he has certified that they are not genuine notes. The number of counterfeit currency notes found in the possession of A-I and the circumstances in... ..which. they were so sound may by themselves constitute a sufficient ground for drawing the inference that the intention was to use them as genuine or that they may be used as genuine. The possession by A-I of 38 counterfeit currency notes of five rupee denomination and one counterfeit currency note of one hundred rupee denominations under the circumstances, will undoubtedly constitute sufficient ground for drawing the inference that the intention of A-I was to use them as genuine or that they may be used as genuine, in which case he is liable to be punished under Section 489-C of the Indian Penal Code.

14. For the reasons stated above, the prosecution have failed to establish the charge of conspiracy against any of the accused. I, therefore, acquit all of them of the charge of conspiracy under Section 120-B of I. P.C. The prosecution have also failed to prove the charge under Section 489-C read with Section 120-B I. P.C. against A-2 and A-3. I, therefore, acquit them of that charge.

15. As already stated, the prosecution have failed to prove the conspiracy against A-I and therefore he has got to be acquitted of the charge under Section 120-B.

16. In the result. I confirm the conviction and sentence passed against A-I and the appeal filed by A-I is dismissed subject to the above modification. The appeals filed by A-I. A-3 and A-4 are allowed.