

Vijay Kumar Vs. State

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Court : Delhi

Decided On : May-09-1974

Reported in : 1975RLR223

Judge : R.N. Aggarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 489C; Evidence Act - Sections 114

Appeal No. : Criminal Appeal No. 69 of 1974

Appellant : Vijay Kumar

Respondent : State

Advocate for Pet/Ap. : R.L. Tandon,; D.R. Sethi and; R.L. Mehta, Advs

Judgement :

R.N. Aggarwal, J.

(1) Vijay Kumar Bindra, appellant herein, was tried in the court of Shri O.P. Singla, Addl. Sessions Judge, on the charge under Section 489C of the Indian Penal Code, The Addl. Sessions Judge found the accused guilty of the offence charged with and sentenced him to rigorous imprisonment for 3 years and a fine to undergo R.I. for six months.

(2) Broadly the case for the prosecution is this : On May 1, 1969, Dsp Daryao Singh (PW 6) received information that a person trafficking in foreign currency is likely to visit Chandni Chowk area, Public Witness 6 organized a raiding party consisting of Dr. Jai Kishan Sod (PW 3) and Dwarka Das (PW 11), witnesses from the public, besides some Police officials. At about 8 30 P.M., on the pointing out of the informer, Vijay Kumar was accosted and apprehended by Public Witness 6. Vijay Kumar was carrying a ladies' rexine bag. The bag was slung on the shoulder. On search of the bag, 88 Pakistan currency notes (Ex, P1 to P 88), five or six inland letters and two or three visiting cards were recovered and they were seized by the Police vide Memo. Ex Pa The Police registered a case under Section 4(1) and 19 read with Section 27 of the Foreign Exchange Regulation Act. During investigation it was discovered that the currency notes are forged. The notes were sent to the International Crime Police Organisation (Interpol) for an opinion whether the notes were forged or genuine. Mr. Jacques Cogniard, an expert from the Interpol, on examination of the notes gave the opinion that the notes are forged. Thereafter, the Police altered the charge from one under the Foreign Exchange Regulation Act to under Section 489C 1PC.

(3) The accused in his statement at the trial denied the allegations of the prosecution. The version of the accused in regard to the occurrence is that he was stopped by Gian Chand, Police Sub-Inspector and while he was talking to Gian Chand another man carrying a ladies' rexine purse was stopped by the Police and that man had run away after dropping the bag and he was caught by the Police. The accused stated that it is a case of mistaken identity. The factum of the recovery of the currency notes in question from the accused was not seriously challenged by Shri Tandon on behalf of the appellant. There is, in my view, convincing and reliable evidence on the record that the currency notes Ex. Pi to P 88 were recovered from the accused as alleged to by the prosecution. Pw 6 gave evidence at the trial that on 1st May. 1969 on receipt of a secret information a picket was held near Fatehpuri, Chandni Chowk and at about 8.30 P.M. the accused was seen going towards Fatehpuri from the side of Clock Tower and that the accused was apprehended and his person was searched and on a search of the ladies' purse carried by the accused 88 forged Pakistani currency notes were recovered. The witness further stated that on being questioned the accused did

not give any Explanationn about the possession of the Pakistani currency notes Dr. Jai Kishan Sud (PW 3) and Dwarka Das (PW 11) have fully supported the statement of Public Witness 6 Nothing has been brought out in the cross-examination of PWs 3 and li to show that they had any motive to make a false statement against the accused. The defense of the accused, as stated earlier, was that the ladies' bag out of which the alleged currency notes were recovered was thrown by another man This defense was not put to any of the prosecution witnesses and is clearly an after-thought and has no substance in it. I have no hesitation in finding that the forged Pakistani currency notes Ex. P 1 to P 88 were recovered from the accused.

(4) The fact that the currency nots in question are forged was not disputed by Shri Tandon. Pw 13 Mr. Jacquis Cogniard gave evidence that he had examined the notes Ex. P1 to P 83 and the note Ex. P 89 (a genuine Pakistan currency note of Rs. 100.00) and that the notes Ex. P.I to P 88 are counter-feit currency. The witness further gave evidence on the points of difference between the two notes.

(5) In order to bring home the guilt to the accused of an offence under section 489C Ipc, the essential ingredients to be proved by the prosecution are : (a) that he had in his possession any forged or counterfeit currency notes or bank notes ; (b) that he had the knowledge or there were reasons for him to believe that the currency notes or the bank notes which he possessed were forged or counterfeit ; and (c) that he was having such counterfeit or forged currency notes or bank notes with the intention of using the same as genuine or that it may be used as genuine.

(6) I have earlier found that the forged currency notes Ex. P 1 to P 88 were recovered from the accused. The real point that requires determination is whether the accused had the knowledge or reason to believe that the currency notes in question were forged. The finding on this essential condition, to my mind, will determine the finding on the third condition as well for if it is found that the accused knew or had reason to believe the currency notes to be forged there will be little doubt that the intention was to use them as genuine notes. Beyond the fact that the currency notes in dispute are forged and they were recovered from the accused, there is no other circumstance to prove that the accused knew or had

reason to believe the currency notes to be forged.

(7) On the facts of this case two inferences are possible : one that the accused had received the currency notes in question believing them to be genuine Pakistani notes for unlawful trading in them and secondly, that the accused had the knowledge or reason to believe that the currency notes are forged and he was carrying them to be used as genuine. Where two inferences are possible, the one favorable to the accused should be drawn. Shri Mehta on behalf of the State contended that a large number of forged Pakistani currency notes were found in possession of the accused and in the absence of some reasonable Explanationn as to how the accused came to possess these notes, a presumption arises that the accused knew or had reason to believe the notes to be forged. The counsel in support of his contention relied upon State of Mysore v. Sthapathi Natrajan, 1971 (1) M L J 503 and and re : Satyanarayna, : AIR 1961 AP213 . Besides the cases relied upon by Shri Mehta being distinguishable on facts, there is one important distinction which is being overlooked. In the cited cases the fake notes found in possession of the accused were of Indian currency. The possession of any amount of genuine Indian Currency in India would be no offence. There could be no trafficking in Indian currency in India. thereforee, in the case of possession of forged Indian currency in the absence of a reasonable Explanationn about its possession, the only inference could be that the person in possession of counterfeit currency had the knowledge or reason to believe that the notes were counterfeit.

(8) Shri Mehta referred to illustration (a) in Section 114 of the Evidence Act and contended that the currency notes having been found to be counterfeit it has to be presumed that the accused knew that the notes were fake unless he can account for his possession. Section 114 of the Evidence Act allows the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Whether in given circumstances a presumption can be raised or not would depend upon the facts of each. The words 'may presume' in Section 114 leave it to the Court to make or not to make the presumption according to the circumstances of the case see Emperor

v. Sibnath Banerjee and others, . I have earlier observed that on the facts of this case two inferences are possible. The circumstances of this case do not warrant that the presumption contended to by Shri Mehta should be raised.

(9) Shri Mehta next contended currency notes in dispute on the appeared to be forged and any person handling such notes would have reason to believe that they are forged. The counterfeit currency notes in question were examined by PW13 Mr. Jacquis Cogniard. In his report dated November 3, 1969 (Ex. PW9/D) he has given the opinion that the notes in question are counter feits of fairly good execution previously unknown to their forged currency section. In fact, a request was made by the Interpol for being permitted to retain one of the notes in dispute for insertion in their publication 'Counterfeits and Forgeries'. Shri Mehta produced the notes in court and I saw the fake Pakistani currency notes and genuine Pakistani note of Rs. 100.00 denomination. In appearance the fake notes are very much similar to the genuine currency note. The currency notes in dispute are completely new, of one series with consecutive Seriall numbers and are stitched together with an iron staple. Beyond the fact that the accused was in possession of 88 Pakistani counterfeit notes of Rs. 100.00 denomination, there is no other material on the record pointing out that the accused had the knowledge or reason to believe the notes to be counterfeit. In the above view, it cannot be found that the accused knew or had reason to believe that the currency notes in dispute were forged.

(10) BE-FORE parting with the case, one contention of Shri Tandon, counsel for the appellant, needs to be noticed. Shri Tandon contended that under section 489C only possession of forged or counterfeit Indian currency notes is an offence and possession of forged foreign currency notes will not be an offence under the said section. I do not agree in this contention. Section 489C makes punishable the possession of any forged or counterfeit currency note provided the conditions specified thereon are satisfied. There appears to be no reason to give any restricted meaning to the expression " any forged or counterfeit currency note" in section 489C. Section 230 to 269A of the Indian Penal Code deal with offences relating to coins and Govt. stamps. Part one of sec. 230 defines the word 'coin' and part two of the same section defines the word 'Indian coin'. Section 231

makes punishable the counterfeiting of com. Section 232 makes punishable the counterfeiting of Indian coin. A reading of the other sections as well shows that wherever the legislature wished to draw a distinction between the Indian coin and any other coin, it has manifested its intention clearly in the section by the use of the expression 'Indian coin'. There is nothing in the provision of section 489C to show that it deals only with forged or counterfeit Indian currency notes.

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