(2001) 09 AP CK 0121

In the Andhra Pradesh High Court

Case No : Criminal A. No. 248 of 1996

Chanduri Lakshmanachary and Others — APPELLANT

Vs

State of AP — RESPONDENT

Date of Decision : 05-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2001) 3 APLJ 51

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : T. Pradyumna Kumar Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—This appeal is filed against the Judgment of the learned Metropolitan Sessions Judge, Vijayawada in S.C. No. 89 of 1992 dated:19-2-1996 convicting the appellant herein, who are A-1, 2 and 3 for an offence u/s 489C IPC and sentencing them to under go rigorous imprisonment for three years.

During the pendency of the sessions case, itself, A-4 died and therefore, the case against A-4 has been abated.

2. The charge against the appellants is that on 19-9-1991 at 1:30 P.M. in Room Nos. 10 and 11 of Golden Cafe Lodge, Poornandampet, Vijayawada, the accused were found in possession of five hundred denomination fake currency notes. A-1 was having one hundred numbers of Rs. five hundred denomination currency notes; A-2 was having five bundles containing one hundred numbers of Rs. five hundred denomination currency notes; A-3 was having four bundles each containing one hundred numbers of Rs. Five hundred denomination currency notes.

3. The case of the prosecution, briefly, is as follows: The accused are residents of

Ongole. A-2 is running a block making shop under the name and style of Sivasakti Block Makers at Ongole; A-3 is running a printing press at Ongole. One Mohd. Shammi, who is cited as a list witness was doing cloth business at Vijayawada and one Mittapapalli Samba Siva Rao, who is one of the accused in the case, who expired before filing of the charge sheet, was also doing cloth business. On 3-9-1991 the said Sambasiva Rao met Shammi and purchased some cloths worth Rs.500.00 and gave five notes of hundred rupee denomination notes. The said money received by Mohd. Shammi was given to Bandela Suryam (PW-3), as hand loan. PW-3 was doing business in purchase of empty tins etc. She gave Rs.346.00 to PW-1 towards the cost of purchase of some empty oil tins. Out of the said Rs.346.00 notes three counterfeit hundred notes are there.

4. Ms. Sister Marian (PW-1) received those notes believing them to be genuine. On 6-9-1991, PW-3 went to the medical shop of one Boyapati Rama Mohan Rao and gave Rs.100.00 rupee note, who identified it as counterfeit note and informed the same to PW-3. Then immediately PW-3 went to PW-1 and asked her to return the three one hundred rupee notes given to her earlier. PW-1 did not return. Instead she gave a report to PW-8, the SI of Police of Nunna Rural Police station on 7-9-1991 at 5:00 P.M. PW-8 registered it as Cr.No.96 of 1991 u/s 489C IPC and accordingly the FIR, Ex P-7 was issued. The complaint is marked as Ex P-1.

5. On 7-9-1991 at about 6.00 PM, PW-9, the Inspector of Police, North Circle, Vijayawada took up investigation, visited the scene of offence along with PW-8 and examined PWs 1 to 3 and others. On 19-9-1991 PW-9, on information, went to Golden Cafe lodge at Poornanandampet, Vijayawada and arrested Mettupalli Sambasiva Rao (since deceased) and A-1 in room No.10 and recovered four bundles of fake counterfeit notes from Mettupalli Samba siva Rao. Then the mediators report Ex P-5 was drafted, in the presence of PW-7 and one Guntupalli Subba Rao. Mos 4 to 7 are the currency notes recovered from Mettupalli Samba siva Rao. Then he arrested A-1 and recovered four bundles of notes under Ex P-5 panchanama. Mos 8 to 11 are the fake currency notes. Thereafter, PW9 went to room No.11 in which A-2 and A-3 were present. He seized five bundles of currency notes, marked as Mos 12 to 16, from A-2 under Ex P-5. Thereafter he recovered four bundles of currency notes, Mos 17 to 20, from A-3 under Ex P-5. Thereafter, PW-9 examined the manager of the lodge (PW-4). Subsequently the accused were remanded to judicial custody. On 23-3-1991 he arrested A-4 at Vijayawada Railway station and seized fifty fake currency notes of Rs.500.00 denomination under Ex P-6 in the presence of PW-7 and another Guntupalli Subba Rao. Mo-21 are the fake currency notes recovered from A-4. Thereafter A-4 was also remanded to judicial custody. On 10-10-1991, PW-9 examined PW-5 & 6. After receiving Ex P-10, Expert opinion from the Forensic Science Laboratory, he filed the charge sheet on 25-3-1992.

6. In support of the case of the prosecution PWs-1 to 9 were examined and Ex P-1 to P-10 and Mos-1 to 22 are marked. On behalf of the accused a portion of

statement of PW-2 recorded u/s 161 Cr.P.C., is marked Ex D-1.

7. In the instant case, except the investigating officer, who is examined as PW-9, all other prosecution witnesses have turned hostile and the learned Judge relying on the solitary testimony of the Investigating officer (PW-9), convicted the accused against which the present appeal is directed.

8. Sri C. Padmanabha Reddy, learned Senior Counsel appearing for the accused submits that merely because huge quantity of fake currency notes have been recovered from the accused, it cannot be said that all these fake currency notes are found in possession of the accused. One of the panch witnesses, who is examined as PW-7 turned hostile to the prosecution and there is no evidence to corroborate the evidence of PW-9, who is a highly interested witness. Therefore, his evidence having not been corroborated by any other evidence cannot be believed as trustworthy and it is not safe to convict the accused mainly basing on the solitary testimony of PW-9.

9. The learned counsel also submitted that the story of the prosecution is not believable to say that the accused are found in Golden cafe lodge on 19-1-1991 at about 10:00 A.M. in room Nos. 10 and 11, as admittedly, no baggage or any clothes were recovered from the room except the wearing apparels. Therefore, it is not correct to say that the accused having taken the rooms on rent for staying there. He also submitted that according to PW-9 and the mediator report, Ex P-5, when he questioned A-3 to show the bundles in the lodge, he removed five bundles from his right side pocket each containing hundred pieces of five hundred rupees denomination worth Rs.2.5O Lakhs. Thus he submitted that it is not possible to get five bundles from his right side pocket.

10. PW-1, who lodged complaint, Ex P-1 says that she is residing at St. Annn Rural Centre, Nunna, where she is working as a Nurse. On5-9-1991, one Bandla Suryam (PW-3) gave her Rs.346.00 towards the cost of empty containers. On 7-9-1991 morning the said lady came and asked her to return the three one hundred rupee notes which she gave her, saying that she will substitute those notes with others. She did not give proper reason when she questioned. Then she suspected that those notes may be counterfeit currency notes and accordingly gave complaint to the police under Ex P-1, itself. The police seized the said three hundred fake currency notes from her. She retained Xerox copies of those fake currency notes and she identified the original fake currency notes as Mos 1 to 4. She was not cross examined.

11. PW-3 is the aunt of PW-2. PW-2 is the sister''s son of PW-3. PW-2 stated that he knows one Shammi and his aunt Bandela Suryam, who was doing business in waste paper, empty tins etc. He does not know Mettapalli Sambasiva Rao. Shammi is a pairavicar. He was declared as hostile and cross-examined. In the cross examination he stated that PW-3 was taken to police station and was questioned there; but he do not know the details. Police took Shammi also to police station, but he does not know whether he was detained or not.

12. PW-3 (Bandela Suryam) stated that she is residing at K.L. Raonagar, Vijayawada and she deals in waste paper etc., and do not know shammi. PW-2 is her elder sister''s son. She stated that she never borrowed money from Shammi and she never purchased any tins from PW-1. She was also declared hostile.

13. PW-4, Manager of the Golden Cafe lodge, stated that registers of their lodge were seized by police, but he do not know why. He stated that he cannot say whether accused ever stayed in their lodge.

14. PW-5 is a resident of Ongole. He stated that A-3 is a tenant in a portion of his house, where he was running Vinayaka Printing Press. A-3 was having printing press machinery in his house, which is taken by him on rent. He does not know whether A-3 is incapable of doing any printing press work on account of bad eye sight.

PW-6 is also a resident of Ongole. She stated that A-2 was a tenant in a portion of her house. A-2 was running Shiva Sakthi block makers in her house.

15. PW-7, Chilakapbati Venkataratnam is a resident of Payakapuram, Vijayawada and is a panch witness for Ex P5 and P6. He stated that he was asked to sign on the mediator''s report, Ex P-5 on which he signed. Two or three days after, he also signed another mediator''s report Ex P6. This witness was also declared hostile.

PW-8 is the Sub Inspector of Nunna Rural Police station, Vijayawada, who registered the case and issued FIR Ex P-7 based on Ex P-1 complaint given by PW-1.

16. PW-9 is the CI of Police, North circle, Vijayawada, who recovered money under cover of panchanama and investigated the case, deposed that on 7-9-1991 at 6:00 P.M. he received a copy of the FIR, Ex P-7 and then took up the investigation. He visited the scene of offence at Nunna along with the Sub Inspector of Police and examined the scene of offence and examined PWs 1 to 3 and others. On 19-1-1991 on information he went to Golden Cafe lodge at Poornanadam street, Vijayawada and arrested one Mettupalli Sambasiva Rao, A-4 in this case, who died subsequently. He also arrested A-1 in Room No.10. He recovered four bundles of fake currency notes from Sambasiva Rao in room No.10 on the basis of the confession under Ex P-5 in the presence of PW-7 and Guntupalli Subba Rao. Mos 4 to 7 are those bundles. He then arrested A-1 and recovered four bundles of fake currency notes which are marked as Mos 8 to 11. In Ex P-5 currency note numbers are mentioned. He then went to room No.11 where A-2 and A-3 were present. He seized five bundles of fake currency notes from A-2, which are Mos 12 to 16 under Ex P-5, itself. He then arrested A-3 and recovered four bundles of counterfeit currency notes, which are Mos 17 to 20 under Ex P-5, itself. Subsequently they were remanded to judicial custody.

17. On 23-3-1991, PW-9 arrested A-4 at Vijayawada Railway station and seized fifty fake currency notes of Rs.500 denomination in the presence of PW-7 and

Guntupalli Subba Rao. Mo-21 are the fake currency notes recovered from A-4. He got remanded him later. On 20-11-1991 he deposited Mos 4 to 21 in the court with a request to forward them to the Chemical examiner with letter of Advice. Ex P-8 is the requisition and Ex p-9 is the letter of Advice. Ex P-10 is the report of the Expert. He filed charge sheet in the court on 25-3-1992.

18. PW-9 was cross examined by A-1 and A-2 and A-3 while adopting the same further cross examined PW-9. During the course of cross examination PW-9 stated that ExP-5 mediators'' report was commenced after both rooms were searched and the four accused were apprehended along with fake currency notes. It took four and half hours to complete Ex P-5. There are no articles or baggage in the room Nos. 10 and 11.

19. Ex P-10, the Forensic Science Report reveals that one sealed card board box from III Metropolitan Magistrate, Vijayawada was received under unbroken seals which tallied with the sample seal and opined that they are counterfeit currency notes of one hundred and five hundred rupee denomination.

It is not in dispute that huge quantity of fake currency notes were seized. The learned senior counsel submits that the concerned person Shammi is not examined and is not made as an accused in the case and as such it can be inferred that fake currency notes were recovered from Mettupalli Samba Siva rao and planted the accused as if they were recovered from the possession of A-1 to A-3, as per the Panchanama Ex P-5.

20. It is the case of the prosecution that the accused have taken the lodge on the same day of the search and seizure and the money was recovered from the pockets of the accused. The learned senior counsel submits that it is not possible to keep five bundles of fake currency notes in the pocket and the probability of keeping five bundles can be disbelieved. No doubt, the prosecution has not taken the normal care and caution of investigation and it had also not examined the other panch witness and the other police officers, who are stated to have been present at the time of conducting panchanama. The prosecution had also not examined the neighbours. But on account of the recovery of huge quantity of counterfeit currency notes from the accused, it cannot be said that PW-9 has concocted a false case against the accused. Possession of counterfeit currency notes is a crime not only against the Society, but also against the nation. It is a serious offence, as it would imbalance the financial stability of the country. Possession of large number of counterfeit currency notes itself justifies the drawing of presumption that the accused persons are in possession of counterfeit currency notes.

21. If really the counterfeit currency notes were recovered from some one else, such as Mettapalli Sambasiva Rao alone, no motive as such is attributed to PW-9 to falsely implicate the accused in the present case. The quantity of currency notes seized is very huge and the such currency notes were recovered from the possession of the accused, themselves and therefore, I have no hesitation to

hold that the evidence of PW-9 is believable and trustworthy. There is no reason as to why PW-9 would falsely implicate the accused, if they are totally unconnected. One can easily put in the pocket of five bundles of currency notes each bundle containing hundred.

22. Therefore, I am inclined to accept the case of the prosecution that the counterfeit currency notes were recovered from the possession of A-1 to A-3 and accordingly they were rightly held guilty of the offence punishable u/s 489C IPC. I do not find any illegality in the judgment of the learned Metropolitan Sessions Judge, Vijayawada. Accordingly the appeal is liable to be dismissed.

Insofar as the sentence is concerned, having regard to the facts and circumstances of the case, I am inclined to reduce the sentence from three years rigorous imprisonment to two years. Accordingly the appellants A-1 to A-3 are sentenced to under go rigorous imprisonment for a period of two years for the offence u/s 489C IPC.

23. Accordingly with the modification in sentence the appeal is dismissed.

