

(2002) 06 MAD CK 0019

In the Madras High Court

Case No : Criminal R.C. No's. 268, 269 and 270 of 1991

Chennimalai Gounder, K. Kandaswamy, Prakash @ Durai @
Sivaprakasam, Arumugham, Arumugha Gounder, Jayakumar
and Periyasami Ambalam @ Krishnan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-06-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120(B), 489(A), 489(B), 489(C)

Citation : (2002) 06 MAD CK 0019

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : Selvarangam, for T. Venugopal, in Crl.R.C. Nos. 268 and 269 of 1991 and V. Kathirvelu, for T. Sudanthiram, in Crl.R.C. 290 of 1991, for the Appellant; O. Srinath, Public Prosecutor in all the revisions, for the Respondent

Judgement

A.K. Rajan, J.—Between the years 1972 and 1975, at various places including Kerala and Tamil Nadu, A.1 to A.15, originally accused

before the lower Court entered into a conspiracy to counter-feit 10 rupee currency notes and in pursuance of the conspiracy, they acquired

materials for counter-feiting currency notes and they printed counter-feit currency notes. Therefore, they were charged for the offences under

Sections 120B, 489A, 489B, 489C and 489D.

2. P.W.1 was a photographer running a photo studio on lease. He knew fourth accused; fourth accused introduced first accused to P.W.1 and he

asked him to take a photograph of 10 rupee note for the purpose of making a block for printing. First and fourth accused went to the field of ninth

accused and they manufactured block. Thereafter, they purchased chemicals for printing at Coimbatore and other places and photo lenses were

also purchased at various places including Coimbatore, Palani, Madurai and Dindigul. In the year 1975, eleventh accused purchased a hand-

printing machine. Thereafter, making use of the printing machine and blocks, they printed counter-feit currency notes, in a house at N.G.O.

Colony, Dindigul and after printing the counter-feit notes, they were circulated.

3. On information, P.W.106, some time in the year 1975 December, searched the house of the first accused at Narasingapuram and on further

investigation, he got the information regarding the complicity of all the accused and on the identification of the first accused, fourth accused was

arrested at Tambaram. From his possession, number of material objects were seized. From the house of the first accused also, number of material

objects were seized. Thereafter, the Investigating Officer searched Pandian Lodge at Dindigul and seized number of counter-feit currency notes

from the accused-5 and 6 and the house at N.G.O. Colony where the first accused was residing, was also searched and material objects were

seized. P.W.108, another Investigating Officer continued the investigation and arrested other accused and number of material objects were seized.

All the other accused were arrested, except Accused-12 and 14 who had surrendered before the Magistrate. Thereafter, charge-sheet was filed.

4. The Second Additional Assistant Sessions Judge, Coimbatore framed charges for various offences and on the evidence available on record, the

trial Court found all the accused, except A.3, A.10, A.13 and A.15, guilty u/s 120B I.P.C., read with Sections 109, 120B, 489A, 489B, 489C

and 489D.

and sentenced A.1 to undergo R.I for one year for each count for the offence u/s 489D (9 counts), seven years R.I for the offence u/s 489A and

three years R.I for the offence; u/s 489C; sentenced A.2 to undergo R.I for two years u/s 120B, five years R.I for the offence u/s 489A, one year

R.I for the offence u/s 489D (5 counts); sentenced A.4 to undergo R.I for two years, five years R.I u/s 489D and imposed a fine of Rs.250/- and

in default to undergo three months" simple imprisonment; sentenced R.5 to undergo R.I for two years u/s 120B, R.I for three years for the offence

u/s 109 read with Section 489A, two years R.I for the offence u/s 489C, one year R.I for each count for the offence u/s 109 read with 489D(2

counts) and imposed a fine of Rs.250/- and in default to undergo three months"

simple imprisonment and R.I for one year R.I for each count for the offence u/s 489D (2 counts); sentenced A.6 to undergo R.I for two years for the offence u/s 120B, four years R.I for the offence u/s 489A, imposed a fine of Rs.250/- and in default to undergo three months" simple imprisonment, R.I for two years u/s 489C, R.I for one year for the offence u/s 109 read with 489D, R.I for one year for each count for the offence u/s 109 read with Section 489D (2 counts); sentenced A.7 to undergo R.I for two years for the offence u/s 120B, R.I for four years for the offence u/s 489A, R.I for one year for the offence u/s 489C, one year R.I for the offence u/s 109 read with Section 489D, one year R.I for each count for the offence u/s 489D (2 counts), imposed a fine of Rs.250/- for the offence under Sections 489A and 489D and in default to undergo three months" simple imprisonment; sentenced A.8 to undergo one year R.I for the offence u/s 489C; sentenced A.9 to undergo R.I for two years for the offence u/s 120B, one year R.I for the offence u/s 489C, one year R.I for the offence u/s 489D and imposed a fine of rs.250/- and in default, to undergo three months" simple imprisonment; sentenced A.11 to undergo R.I for two years u/s 120B, R.I for one year for each count for the offence u/s 109 read with Section 489D, R.I for three years for each count for the offence u/s 489D (2 counts), imposed a fine of Rs.250/- and in default to undergo three months" simple imprisonment; sentenced A.12 to undergo R.I for two years for the offence u/s 120B, one year R.I for the offence u/s 489D, one year R.I for each count for the offence u/s 109 read with 489D; sentenced A.14 to undergo R.I for two years for the offence u/s 120B, one year R.I for each count for the offence u/s 109 read with Section 489D (4 counts) and imposed a fine of Rs.250/- and in default to undergo three months" simple imprisonment; all the sentences imposed against the respective accused were to run concurrently.

5. Against the conviction and sentence, all the accused, except A.2 filed appeal. During the pendency of the appeal, A.1 died. A.2 has already served the sentence.

6. The lower Appellate Court confirmed the conviction and acquitted some of the accused with respect to certain charges and modified the sentence of imprisonment to a maximum period of two years. All the sentences

were to run concurrently. Against the judgment of the lower

Appellate Court, A.4 to A.7 and A.9 filed CrI.R.C.No.268 of 1991; A.11 filed CrI.R.C.269 of 1991; A.12 and A.14 filed CrI.R.C.270 of 1991.

A.8 did not file any revision against the judgment of the lower Appellate Court, as he has served one year imprisonment and paid the fine.

7. The counsel appearing for the revision petitioners took me through the evidence recorded in the trial Court and argued that the lower Appellate

Court erred in coming to the conclusion that the charges levelled against the revision petitioners were proved. The counsel for the petitioners mainly

contested that P.W.1 was an approver and his evidence alone cannot be based upon to confirm the conviction in the absence of corroborative

evidence. The learned counsel also submitted that since the approver's evidence is in the nature of the evidence of accomplice, it has to pass the

double tests of credibility as well as corroboration in material particulars. When such a test is applied, the approver's evidence does not pass the

test of corroboration and therefore, the finding of the appellate Court cannot be accepted as legal and valid. In support of his argument, he cited a

decision reported in Jasbir Singh v. Vipin Kumar Jaggi 2001 CrI.L.J.3993. But in that judgment, it was held,

In any case, the evidence of an approver does not differ from the evidence of any other witness except that his evidence is looked upon with

great suspicion. But the suspicion may be removed and if the evidence of an approver is found to be trustworthy and acceptable then that evidence

might well be decisive in securing a conviction.

Therefore, the only test is whether the approver's evidence is trustworthy. Once the approver's evidence is found to be trustworthy, that alone

could be the basis for conviction; to that extent, it appears that the Hon''ble Supreme Court has watered down the principle of double test which

was insisted upon earlier. Therefore, in view of this decision of the Supreme Court, even in the absence of corroboration, if the approver's

evidence is found believable and acceptable, then a conviction can be based on that. Having this view in mind and perusing the evidence adduced

before the lower Court and the finding given by the first Appellate Court, this Court cannot find any perversity in its conclusion. This Court does

not find the conclusion of the lower Appellate Court as grossly erroneous. It

cannot also be said that the finding of the fact of the first Appellate

Court is not based on evidence; and it does not also appear that any material evidence was not considered and the finding also cannot be said to

be arbitrary.

8. With respect to the accused-4 to 7, 9, 11, 12 and 14 who were charged u/s 120B, the lower Appellate Court has found that when P.W.1 was

running a studio by name, ""Minerva Studio"" at Kozhinjamparai, he got acquaintance with fourth accused who took him to the first accused and the

first accused wanted photographs of 10 rupee notes to be taken. Fourth accused took P.W.1 to Kunchipalayam Garden house where the first

accused was drawing a sketch for the purpose of preparing a block. Thereafter, 9th accused gave money for the purchase of chemicals for printing

of counterfeit notes and they went to Thiruppur, Coimbatore and Madurai. Then the 9th accused further gave Rs.1,200/- for the purpose of

purchase of camera and photograph lense. This was corroborated by P.W.9 also. From this, the lower Appellate Court has come to the

conclusion that the accused Nos.4 and 9 participated in the conspiracy to commit counterfeit. Further, during July, 1975, the first accused met

P.W.1 and one week thereafter, the first accused sent 7th accused to bring P.W.1. When P.W.1 went near Kovai Annapoorna Lodge,

Coimbatore, he found the accused Nos.1 and 7 standing there. Thereafter, P.W.1 along with the accused-1, 2 and 7 went to Dindigul. After

reaching there, they went to the house bearing No.88 at N.G.O. Colony. That house belongs to P.W.4, from whose evidence, it is seen that it was

taken on rent by 6th accused. P.W.1 saw M.O.1 printing machine and M.Os.1 to 5 papers and other materials used for printing. The first accused

gave 10 rupee notes to P.W.1 and asked him to take photograph of the numbers in the note. He went to Palakad and took photographs of the

numbers and went back to Dindigul where he found accused Nos.5, 6 and 7. He also saw the first accused working in the printing machine printing

counterfeit notes. The second accused was pasting ""jarigai"" to the notes. The accused-5, 6 and 7 were found along with the first accused. These

counterfeit notes are M.Os.7 and 8 series and also M.O.9 to M.O.11 series. Apart from that, in M.O.20 wooden box, M.Os.12 to 19 (8 blocks)

where found. The lower Appellate Court found that it proves that the accused-5,6

and 7 also took part in the conspiracy. There is also other evidence to corroborate the presence of the accused-6 and 7 in the house at Dindigul. The Manager, Pandian Lodge, one of the witnesses, also stated that the accused-5, 6 and 7 used to stay in his lodge. Accused-5 used to sign the Register. Exs.61 to 67 are such signatures between November and December, 1975. P.W.14, Assistant in the tea stall of one Thangavelu in Chettipalayam stated that the 11th accused wanted a house for rent and he arranged the house of P.W.12 and in that house, the first and second accused were staying. P.W.12 corroborates this evidence. P.W.18 who is a resident nearby also speaks to that effect. From A.11, M.O.108 printing machine was seized; that proves that the 11th accused was also the part of the r conspiracy. Further, the Appellate Court has stated that when P.W.2 who was working in a lorry service by name ""Jagadeesan Lorry Service"" at Madurai, 14th accused used to frequent very often to see the owner. During that period, A.14 got acquainted with P.W.2. Thereafter, P.W.2 was working in Gudalur Seghu Vilas Rice Mill. When he used to go to Madurai and stayed at Seghu Vilas Lodge, he used to see the accused A.14 in that lodge. P.W.2 also stated that A.14 asked Rs.4,000/- for printing counterfeit notes and asked P.W.2 to contact Anandha Photo Studio through phone and contact 12th accused. A.12 has told that since he did not get finance, there was delay in taking negatives. The fact that P.W.2 was staying at Kumaran Lodge is proved by Exs.P.3 to P.6 and it is corroborated by the evidence of P.Ws.73 and 74. Thereafter, P.W.2 along with A.14 went to Coimbatore and met 12th accused. For that P.W.2 has spent Rs.300/-. Thereafter, P.W.2 , A.12 and A.14 went to Madurai. They went to Puvanthi village to see 15th accused; there A.12 had stated that A.1 should not have met A.14 and scolded him. Therefore, it is proved that 12 and 14th accused took part in the conspiracy. Further, as planned by 14th accused, accused-1, 2 and 12 along with P.W.2 went to Theethampatti village and saw P.W.24 and took a house for rent. 12th accused gave the negative films for printing counterfeit notes. P.W.2 also told that he saw 12th accused taking negatives for counterfeit. For all these reasons, the lower Appellate Court has found that the accused-4 to 7, 9, 11, 12 and 14 were indulged in the conspiracy and therefore, confirmed the finding of the trial Court that they are

guilty of offence u/s 120B.

9. The lower Appellate Court has found that the accused-6 and 7 were printing the notes and the fifth accused was also aiding him. Therefore, it

held that the accused-6 and 7 were guilty of the offence u/s 489A and the 5th accused was guilty of 489 I.P.C. read with Section 109 I.P.C. From

the seizure of M.O.39, papers for printing counterfeit notes and M.O.42, counterfeit notes from the 6th accused, the offence u/s 489C is proved

against A.5 and A.6. A.7 was found to be in possession of 10 rupee counterfeit notes and when he was arrested, he was in possession of

counterfeit notes and on the confession of A.7, a tin containing 25 nos. of 10 rupee counterfeit notes were recovered. Therefore, the offence u/s

489C was held proved against A.7. A.9 was found in possession of 25 nos. of 10 rupee notes and on his confession, another 25 counterfeit notes

kept by him in his shed was recovered. Therefore, the evidence u/s 489A is proved against 9th accused. A.11 was arrested by P.W.18 and on his

confession, he took the Investigating Officer and produced the printing machine M.O.26 concealed in hay-stack. Further, A.11 took the

Investigating Officer to Numbermuthur village and from that place where he pointed out , M.O.136 series was seized. Therefore, against 11th

accused, the offence u/s 489D is proved. From the evidence of P.W.2 it is seen that P.W.2 went along with A.14 to Coimbatore and met A.12 at

Ananda Photo Studio at Peelamedu; A.12 and A.14 were discussing for some time. Thereafter, they left for Madurai. In the meanwhile, A.12 gave

papers kept ready for printing counterfeit notes. From the evidence of P.W.12 , the lower Court has found A.12 and A.14 aided for manufacturing

of three sets of blocks for counterfeit.

10. A perusal of the relevant portion of the evidence as pointed out by the counsel for the revision petitioner and the corresponding finding given by

the first Appellate Court, this Court does not find any ground to interfere with the conclusion arrived at by the first Appellate Court. There is

absolutely no reason to come to the conclusion that the first Appellate Court's judgment is erroneous. Learned Public Prosecutor also pointed out

that the finding given by the first Appellate Court is based on legal evidence. Further, the approver's evidence is corroborated by material objects

seized from the accused. Therefore, the conviction imposed by the first Appellate

Court does not appear to be against law. Therefore, the conviction against all the accused is confirmed.

11. Coming to the sentence, A.4 was found to be in possession of various objects including printing materials, blocks, raw materials which were

seized from the house under his possession. A.5, A.6, A.7 and A.7 were also arrested in the process of preparing materials for printing. A.11

financed for purchase of materials used for counter-feiting the currency notes. A.12 is the photographer who was assisted in making blocks and

other things. A.14 is the person who financed for all these illegal activities. The lower Appellate Court has imposed a sentence of two years

imprisonment, taking a very lenient view. Therefore, the request for further leniency regarding sentence made by the counsel for the revision

petitioner cannot be considered, in view of the nature of the offence committed by these accused. Counsel for the revision petitioner submitted that

this is an offence which took place some time between 1972 and 1975 and it is more than 30 years and now it may not be necessary to send them

back to jail and that the conviction may be reduced taking into consideration that were in jail for some period. This submission though would be

appealing to the Court in other offences, considering the nature of the offence, viz., counter-feiting of currency notes which will affect the economy

of the country, this Court cannot take a lenient view than the one taken by the lower Appellate Court. Therefore, the sentence is also confirmed.

These revision petitions are dismissed.

This matter has come up as ""being mentioned."" Learned counsel for A.14 submitted that he is aged more than 80 years and taking into account the

fact the offence took place some 30 years ago and he has suffering the agony of trial for the past 30 years, sentence may be reduced to the period

already undergone and that he need not be sent to the prison. This Court cannot reduce the sentence, only on the ground of the age of the accused

alone. But, it is for the accused to approach the Government and the Government may consider his case sympathetically and pass appropriate

orders.