(2014) 04 BOM CK 0268

In the Bombay High Court

Case No : Criminal Appeal No. 484 of 2013

Ferjalali Munloji Ali Shaikh APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:
Penal Code, 1860 (IPC) — Section 34, 489B, 489-B, 489C, 489-C

Citation : (2014) ALLMR(Cri) 4303

Hon'ble Judges : P.N. Deshmukh, J

Bench : Single Bench

Advocate : Santosh S. Jadhavar, Advocates for the Appellant; S.M. Jadhav, APP, Advocates for the Respondent

Judgement

P.N. Deshmukh, J.—This appeal takes exception to the judgment dated 28th October, 2013 passed by the learned Sessions Judge, Ahmednagar in Sessions Case No. 188 of 2013 convicting the Appellants for the offences punishable under Sections 489B read with Section 34 of the Indian Penal Code sentencing to undergo R.I. for five years each and to pay fine of Rs. 2,000/- each, in default, to suffer R.I. for six months. The Appellants are further convicted for the offence punishable under Section 489C read with Section 34 of the Indian Penal Code sentencing to undergo R.I. for five years each and to pay fine of Rs. 2,000/- each, in default, to further suffer R.I. for six months. Both the substantive sentences are directed to be run concurrently. Prosecution case can be briefly stated as under:

On 29th April, 2013, there was a weekly market at village Shrigonda, District Ahmednagar where P.W.1 - Shivaji Kisan Kadam, Police Naik, Buckle No. 1841, was on patrolling duty alongwith P.W.4 - Tulshidas Vitthal Satpute, Police Naik, Buckle No. 377 and one police constable when they found the Appellants shouting in the market. Suspecting the Appellants, the Police Officers interrogated them, when the Appellants avoided to disclose their names and whereabouts and could not satisfy the queries of the Police Officers. On further interrogation it was disclosed that they were having in their possession fake currency notes in the denomination of Rs. 1000/- and Rs. 500/-. As such the Appellants were brought to Shrigonda Police Station.

2. P.W.5 - Shivaji Santu Gaikwad, A.P.I., thus called two independent Panch witnesses including P.W.3 - Prakash Trimbak Tade and one Bandu Navnath Nilankar and in their presence, obtained personal search of the Appellants. When from the possession of Appellant No. 1, 37 numbers of currency notes of Rs. 1,000/- each in denomination and from the possession of Appellant No. 2, 4 currency notes of Rs. 500/- each in denomination came to be recovered and seized under the panchanama.

The currency notes recovered as above were forwarded by Investigating Officer to State Bank of India, Shrigonda Branch for its verification to ascertain if the same are genuine or fake notes. On receipt of opinion from above Authority certifying the currency notes to be fake, P.W. 1 Shivaji Kisan Kadam, Police Naik lodged this complaint on 30th April, 2013. On the basis of said complaint, offence came to be registered against the Appellants vide Crime No. 59 of 2013 for the offence punishable under Sections 489B and 489C read with Section 34 of the Indian Penal Code, which was further investigated by P.W.5 - Shivaji Gaikwad, A.P.I.

3. During the course of investigation, statements of Branch Manager of State Bank of India, Shrigonda Branch and others were recorded. It is further case of prosecution that on 1st May, 2013, P.W.2 Sunil Bharat Tade, on visiting Shrigonda Police Station, produced one currency note in the denomination of Rs. 1000/- bearing serial No. 6CH578430 and disclosed that said note was given to him by the Appellants in the weekly market towards price of mutton purchased by them on 29th April, 2013. Said currency note was also accordingly seized.

4. P.W.5 - Shivaji Gaikwad, Investigating Officer sent all the seized currency notes, which were seized from the possession of the Appellants as stated above as well as the currency notes produced by P.W.2 - Sunil to Currency Note Press, Nashik Road on 28th May, 2013, for its verification. The Authority of the Currency Note Press, Nashik Road on verification of the seized notes, opined that all the currency notes in denomination of Rs. 1000/- and Rs. 500/- respectively, were counterfeit notes.

On completing investigation, chargesheet is filed against the Appellants in the Court of J.M.F.C. Shrigonda. In due course of time, it came to be committed to Sessions Court for trial. Charge was framed against the Appellants for the offence punishable under Section 489-B and 489-C read with Section 34 of the Indian Penal Code. The contents of the charge were read over and explained to the Appellants to which they pleaded not guilty and claimed to be tried. The learned Sessions Judge on considering the evidence on record, convicted both the Appellants as aforesaid.

5. Heard Mr. S.S. Jadhavar, learned counsel for the Appellants and Mr. S.M.

Jadhav, learned APP for the Respondent/State. To effectively evaluate the submissions advanced by both the sides I have scrutinized the evidence with the assistance of the learned counsel.

6. The learned counsel for the Appellants mainly stressed that evidence of P.W. 1 Shivaji Kadam, Complainant and P.W.4 - Tulshidas Satpute, Police Naik is not convincing as though, according to the case of prosecution, both these witnesses on the day of incident were present in the weekly market at Shrigonda. It has come in the evidence of Shivaji Kadam that on 29th April, 2013 when he was present in the weekly market at about 04:00 pm, he received information on phone from P.W.2 - Sunil Tade about crowd having gathered in the hens market. While P.W.4 stated that on that day while he was patrolling alongwith Kadam, Kadam received phone call referring to suspected accused and accordingly, they reached Hens market where P.W.2 - Sunil Tade pointed them the suspects. The learned counsel submitted that in view of the contrary evidence of above two witnesses and from their evidence since two versions are coming before the Court, one which is in the benefit of the Appellants be accepted and the Appellants be thus given benefit of doubt.

7. In the background of above submissions, when the evidence of P.W. 1 Shivaji Kadam is perused, he has stated that on 29th April, 2013, he was on patrolling duty alongwith P.W.4 - Tulshidas Satpute, Police Naik in the weekly Bazar of Shrigonda, when at about 04:00 pm, they received some information of gathering of crowd in the market where sale of hens is carried out. According to this witness, said information was received from P.W.2 - Sunil Tade and thus, they reached to that place when Sunil Tade pointed the Appellants to the Police Officers. P.W.1 - Shivaji Kadam thus obtained personal search of both the Appellants. They were found, having in their possession, 37 currency notes in the denomination of Rs. 1000/- each and 4 currency notes in the denomination of Rs. 500/- each respectively. They Appellants were therefore, taken to Shrigonda Police Station alongwith currency notes. When P.W.5 - Shivaji Gaikwad, Investigating Officer, in the presence of two independent witnesses drew seizure panchanama of recovery of said notes from the Appellants. The currency notes recovered as above were forwarded for its verification to State Bank of India, Shrigonda Branch and on being informed that the notes sent for the verification are fake and not genuine notes, on 30th April, 2013, he lodged his report vide Exhibit - 16.

8. In the cross-examination, P.W.1 - Shivaji Kadam admitted that information received from P.W.2 - Sunil was to the effect that two unknown persons were in the market and were shouting. Admittedly, said information received from P.W.2 - Sunil was nowhere reduced into writing by the Police nor it is the case of prosecution, nor I found that to be any material irregularity or necessary requirement, in view of the evidence of Shivaji Kadam, that on receiving the information from P.W.2 - Sunil, about crowd gathering in the market and Appellants raising shouts, he alongwith P.W.4 - Tulshidas Satpute, Police Naik

immediately visited the spot and apprehended the Appellants. From the evidence of the Complainant, in fact, it has come on record that the Appellants initially avoided to disclose their identity and were therefore, suspected. It is therefore, seen that since the Police Officers suspected the Appellants, their personal search was obtained when they were found having in their possession currency notes as stated above. On considering cross-examination of this witness, nothing material could be elucidated from his evidence so as to doubt the case of the prosecution.

9. Evidence of P.W.4 - Tulshidas Vitthal Satpute, Police Naik, Buckle No. 377 when perused, reveals that on 29th April, 2013, he alongwith P.W.1 - Shivaji Kadam was patrolling in weekly market of Shrigonda, when Kadam received some phone call about suspecting Appellants and therefore, he went to the hens market where P.W.2 - Sunil Tade pointed the Appellants and as such they were interrogated. Evidence of this witness further corroborate the evidence of P.W.1 - Shivaji Kadam about conduct of the Appellants initially being reluctant to disclose their identity, however, after interrogation the Appellants were found in possession of 37 currency notes in the denomination of Rs. 1000/- each and 4 currency notes in the denomination of Rs. 500/- each respectively. Further evidence of P.W.4 corroborates evidence of Shivaji Kadam about his lodging complaint on 30th April, 2013 and on the basis of which, P.W.4 - Tulshidas Satpute registered Crime No. 59 of 2013. Above stated evidence of these two witnesses therefore, materially corroborate to each other except for the fact of P.W.4 - Tulshidas deposing that P.W. 1 - Shivaji Kadam receiving phone call suspecting Appellants while evidence of P.W. 1 - Shivaji Kadam to that effect is silent since he has deposed that he received information, as such evidence of P.W. 1 - Shivaji Kadam is silent about suspecting Appellants and mode of his receiving information. However, said contradiction by itself does not dislodge the case of prosecution as it cannot said to be material.

In the cross-examination of P.W.4 - Tulshidas, in fact, it has come on record that P.W.1 informed him that information was received by him on phone from Mr. Tade and has denied that the Appellants were brought to the Police Station merely because they were not Maharashtrian, however, in view of evidence of above mentioned two witnesses, there is no substance in this suggestion.

10. P.W.2 - Sunil Bharat Tade has stated that on 29th April, 2013, there was weekly market at Shrigonda where he was present in his mutton shop when two unknown persons came to his shop at about 03:45 pm. and purchased 3 kg of mutton and against the said purchase, gave him one currency note of Rs. 1000/- in the denomination. However, he suspected the currency note given to him being fake by showing it to his brother Nandkumar Tade and thus, both of them went to Renukamata Patsanstha for verifying the same and were informed that it was a fake currency note. According to this witness, serial number of this note was 6CH578430. He has further stated that then as he saw the Appellants in the market, he informed the Police and has pointed the Appellants, who were

accordingly brought to the Police Station.

P.W.2 - Sunil further stated that on 1st May, 2013 he has produced one fake currency note of Rs. 1000/- in denomination, before the Police, which was given to him by the Appellants. In his cross-examination again nothing is elucidated to doubt the case of the prosecution. On the contrary, it has come on record that he required 10 minutes to verify the note from the Patsanstha. As such, when his evidence is considered, it appears that on 29th April, 2013 at about 03:45 pm, the Appellants visited his shop for buying mutton and against said purchase, gave one fake currency note, which was suspected by Sunil Tade and therefore, got it verified from nearby Patsanstha and on being informed that the currency note was fake. Finding Appellants in the weekly market at about 04:00 pm, informed Police and also pointed the Appellants. As such, it is noted that evidence of P.W. 1 - Shivaji Kadam and P.W.2 - Sunil Tade in fact, corroborate each other on this material aspects of the case of prosecution. Where from the prosecution can said to have established fact of Police apprehending both the Appellants from the weekly market of Shrigonda as they were pointed by P.W.2 - Sunil as suspects as he was supplied with fake currency note by the Appellants. From the evidence of Police Officers as above, prosecution is further found to have established that the Appellants on being interrogated by the Police, initially avoided to disclose their identity and thus, the Police suspected them and in that event, when they were searched, they were found having in their possession fake currency notes. On the basis of said suspicion, both the Appellants were thus brought to Shrigonda Police Station where their personal search was obtained by P.W.5 - Shivaji Santu Gaikwad, A.P.I. in the presence of panch witnesses and fake currency notes were recovered from their possession.

11. In the background of above discussed evidence and for the reasons, I find the authority in the case of Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969) relied by the Appellants, cannot be made applicable as from the evidence of above discussed evidence, there is nothing to hold that the said witnesses are suppressing some part of incident. As such, accused cannot held to be entitled for benefit of doubt. Similarly, for the same reason, Authority in the case of Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969) relied on behalf of the Appellants, also cannot be applied in their favour wherein it is observed that when two versions are before the Court, the version which is supported by objective evidence cannot be brushed aside lightly unless it has been properly explained.

12. In fact, on considering the evidence of P.W. 1 - Shivaji Kisan Kadam, Police Naik, P.W.2 Sunil Bharat Tade, P.W.4 - Tulshidas Vitthal Satpute and P.W.5 - Shivaji Santu Gaikwad, A.P.I., it cannot be said that two different versions are coming on record from the evidence.

13. Prosecution case as per the charge levelled against the Appellants is further found substantiated by P.W.3 - Prakash Tade when he has stated that on 29th April, 2013, he was called at Shrigonda Police Station as panch alongwith one

Bandu Nilankar, copanch, where the Appellants were present and in their presence, Appellant No. 1 produced 37 currency notes of Rs. 1,000/- each in denomination and Appellant No. 2 produced 4 currency notes of Rs. 500/- each in denomination which came to be seized by Police under Panchanama Exhibit - 16. Said panch witness has also proved on record the envelop wherein said currency notes were seized at Exhibits - 20 and 21.

P.W.3 Prakash Tade further stated that on 1st May, 2013, he was called at Police Station when P.W.2 Sunil produced one currency note of Rs. 1000/- in the denomination, which was seized by the Police under Panchanama at Exhibit - 22 and was kept in envelop Exhibit - 23, as such his evidence as above corroborate evidence of P.W.2 Sunil.

14. Learned counsel for the Appellants has submitted that since services of P.W.3 - Prakash Tade were obtained for seizure of currency notes on two occasions as above, he was a stock panch, however, there is no substance in the submissions, without bringing on record any proof in support thereof, as nothing is suggested to this witness, that apart from above incident, he has acted as panch for Shrigonda Police Station on various other crimes. On the contrary, in the cross-examination of this witness, it has come on record that the currency notes came to be recovered on obtaining personal search of the Appellants and are seized and it is not that the Appellants produced the notes as stated in his examination-in-chief. As such, the case of prosecution is in fact, more substantiated by this witness by way of evidence as above. Nothing is brought on record to doubt the evidence of this witness.

15. P.W.5 - Shivaji Santu Gaikwad, A.P.I., has stated that on 29th April, 2013, P.W. 1 - Shivaji Kadam and P.W.4 - Tulshidas Satpute while patrolling in the weekly market suspected the Appellants and brought them in the Police Station at about 04:15 pm. to whom he interrogated and obtained their personal search in the presence of two panchas, when 37 currency notes in the denomination of Rs. 1000/- each and 4 currency notes in the denomination of Rs. 500/- each were recovered from the possession of the Appellants respectively, which came to be seized as per Exhibit - 19. According to the Investigating Officer, serial number of all the currency notes recovered from the possession of the Appellants, were recorded in the panchanama, which is also signed by Appellant No. 1 and upon which Appellant No. 2 gave his thumb impression.

16. P.W.5 - Shivaji Gaikwad further stated that on recovering notes as above, he forwarded the said notes alongwith requisition memo to Branch Manager, State Bank of India, Shrigonda vide its letter Exhibit - 26 on 30th April, 2013 as on 29th April, 2013 the bank working ours were over by the time the notes were recovered by the Police from the Appellants. The Investigating Officer further stated that on the same day, letter was received from the State Bank of India certifying the currency notes to be fake vide letter Exhibit - 27. According to the evidence of Investigating Officer, on receipt of said verification report Exhibit - 27, P.W.1 - Shivaji Kadam lodged his report and on the basis of same, crime

came to be registered against the Appellants.

Evidence of the Investigating Officer corroborates the evidence of Sunil when it is stated that on 1st May, 2013 P.W.2 - Sunil produced one currency note in the denomination of Rs. 1000/- stating that it was supplied to him by the Appellants in the market on purchasing mutton, which was accordingly seized under the panchanama Exhibit - 22. The Investigating Officer further stated that all the currency notes recovered from the Appellants as well as currency note which was produced by P.W.2 - Sunil, were thereafter, sent for its verification in three different envelopes to SBI Security Press, Nashik Road on 28th May, 2013 under requisition memo at Exhibit - 28, which was received in the said Security Press on the following day as per its acknowledgment Exhibit - 29 and the Authorities of said Press certified that all the currency notes were not genuine.

It is noted that, as per the requisition memo at Exhibit - 28 on record, sent by the Investigating Officer to Manager, Security Press, Nashik Road, 37 numbers of currency notes of Rs. 1000/- each in denomination, are having serial number in the series of "9BW" while 4 currency notes of Rs. 500/- each in denomination were in the series of "7LD". From its contents, it further reveals that one note in the denomination of Rs. 1000/- having serial number 6CH578430, was also forwarded for its verification in sealed condition, which according to the case of prosecution is produced by P.W.2 - Sunil.

17. From the verification report received from the Currency Note Press, Nashik Road on record Exhibit - 14, it is revealed that on examining in details and on comparing the notes with genuine notes with the modern scientific instrument, they are found to be counterfeit notes. The report, in respect of 37 notes of Rs. 1000/- each in denomination and 4 notes of Rs. 500/- each in denomination recovered from the Appellants alongwith one note produced by P.W.2 - Sunil established that all the currency notes recovered and seized by the Police as above are fake notes.

18. When the entire evidence as above is considered into its totality, prosecution can be said to have proved the charges levelled against the Appellants beyond reasonable doubt as it is established that counterfeit notes were found in possession of the Appellants, which came to be recovered from their person and the Appellants were found using them as genuine having knowledge, or reasons to believe that the same were counterfeit notes.

19. In the background of above facts, I find it useful to refer to the judgment of the Supreme Court in the case of Ponnusamy Vs. State, reported in [1997 Supreme Court Cases (Cri) 217]. In that case, the case of the prosecution against the appellant was that he had purchased paddy from a peasant on payment of 130 forged currency notes of Rs. 100 denomination. On the arrest of the appellant, further forged currency notes were alleged to have been found in his possession for which he had to face a trial separately. All the same, the appellant had no explanation to offer as to wherefrom had he obtained those

forged currency notes. It is thus, observed that silence on the part of the appellant in such circumstances would by itself be a telling circumstance which would weigh against him in the consideration of the prosecution evidence led against him. In these circumstances, the convictions recorded were found to deserve no alteration. Having considered above evidence and for the reasons stated above, there is no substance in the appeal. The appeal is accordingly, dismissed. The order passed by the learned trial Court convicting the Appellants as stated above, stands confirmed.