(2018) 01 CAL CK 0031

In the Calcutta High Court

Case No : 275 of 2015

Hilal Ahmad Mallick APPELLANT

Vs

The State of West Bengal RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

Indian Penal Code, 1860, Section 120B, Section 489 - Punishment of criminal conspiracy - Tampering with property mark with intent to cause injury

Citation : (2018) 01 CAL CK 0031

Hon'ble Judges : Debi Prosad Dey

Bench : Single Bench

Advocate : Dipanjan Chatterjee, Sujoy Sarkar, Anasuya Sinha

Judgement

1. This appeal is directed against the judgement and order dated 25th March, 2015 passed by learned Assistant Sessions Judge, Bolpur, Birbhum in connection with sessions case no. 78 of 2014 whereby and whereunder learned Judge has convicted the appellant for the offence under Section 489B/489C/120B of the Indian Penal Code and thereby sentenced him to suffer simple imprisonment for 4 years and to pay a fine of Rs.20,000/- for the offence under Section 489B and 3 years simple imprisonment and Rs.10,000/- only as a fine in respect of the offence under Section 489C of the Indian Penal Code in default simple imprisonment for the 1 year and 6 months simple imprisonment for the offence under Section 120B of the Indian Penal Code. Learned Judge has further directed that the sentences shall run concurrently.

2. Being aggrieved by and dissatisfied with such order of conviction and judgement the appellant has preferred this appeal on amongst other grounds that learned trial Judge did not consider the discrepancy in the number of alleged fake currency notes at the time of seizure and at the time of examination of the same by the expert. Secondly, learned trial Judge also did not consider that the independent witnesses did not support the case of the prosecution and in fact

there was absolutely no evidence of Section 489B of the Indian Penal Code whereby the appellant may be convicted for the offence of using the alleged fake currency.

3. The further ground of appeal is that the factum of seizure being doubtful, learned trial Court ought not to have convicted the present appellant for the aforesaid offences and such doubt in the case of the prosecution is apparent from the face of the judgement. It would not be out of place to mention in brief about the fact of the case as unfolded from the materials on record.

4. On the basis of a tip-off the appellants raided near Chaiti Lodge at Bolpur and intercepted the appellant along with one Bilal Ahamed Sk. both are men of Kashmir, and recovered the following articles from their possession. "1. One bundle of FICN containing 100 pieces notes having denomination of Rs.500/- each (9BA series from accused Hilal Ahmad Malik)

2. One bundle of FICN containing 96 pieces notes having denomination of Rs.500/- each (three 9BA and remaining other 9NS series from accused Hilal Ahmad Mallick)

3. One bundle of FICN containing 97 pieces of notes having denomination of Rs.1000/- each (7GR series from accused Bilal Ahamed Sk)

4. Above article one and two were found in one black and orange colour nylon bag in which "M/S Krishna Footwears, 449 Katranabi Bux, Sadar Bazar, Delhi-" written.

5. Article three is found in a hidden chamber of a black coloured bag in which on pink back ground "RBK with logo to Reebok drawn" written.

6. One railway vide PNR no. 2833256775, New Delhi Howrah Rajdhani Express, Two AC tickets for two persons which were confirmed in the A2-5,6 seized from the shirt pocket of Hilal Ahamed Malik.

7. One blank Cheque of SDFC Bank for account No.50100008436290 in which Hilal Ahmed Malik name is printed seized from the shirt pocket of Hilal Ahamed Malik.

8. One boarding pass in the naem of Sk Bilal Ahamed, from Srinagar to New Delhi PNR No. AQV 36J, for flight No.G8/199 dt. 21st May, 2014 seized from the pant pocket of Bilal Ahamed Sk."

5. The aforesaid articles were seized from the possession of the appellant and one Bilal Ahmed Sk. The appellants were already requested by the raiding party to conduct search of the raiding party but they refused to do so. Thereafter a written complaint was lodged by the defacto complainant at Bolpur police station resulting in registration of Bolpur police station case no. 248 of 2014 dated 25th May, 2014 under Section 489B/489C/120B of the Indian Penal Code and ultimately the investigation was taken up by a criminal investigation department of West Bengal and finally the investigation culminated in filing of charge sheet

being no. 264 of 2014 dated 24th July, 2014 against the aforesaid sections. The appellant along with another Bilal Ahamed Sk. pleaded ''not guilty'' and claimed to be tried to the charges framed against them under Section 489B/489C/120B of the Indian Penal Code. The prosecution in order to bring home the charges against the appellant and another has examined as many as 13 witnesses and exhibited a good number of documents as well as envelope, blank cheque, boarding pass etc. vide exhibit 1, 2 to exhibit 10 and Mat exhibit 1,2 to Mat exhibit 9. The fake Indian Currency Notes recovered from the possession of the appellant and another were sent for forensic examination by expert and the report reveals that such currency notes were fake.

6. The defacto complainant Krishnendu has been examined as prosecution witness no.1, who has proved the written complaint. As per the prosecution witness no.1 the police personnel ambushed near Chaiti lodge and on being identified by the source, they intercepted the appellant and another and thereafter they recovered from their possession huge number of fake Indian Currency Notes. On search of the person of the appellant 100 pieces of fake currency notes being denomination of Rs.500/- and 96 pieces of fake Indian Currency having denomination of Rs.500/- were recovered from the possession of the appellant. 96 pieces of fake Indian Currency Notes having denomination of Rs.1000/- were recovered from the possession of another person. All such fake Indian Currency Noes were produced in the trial Court and were marked as material exhibit.

7. During investigation it has been proved that both the persons stayed in Chaiti lodge for some time and on the date of alleged occurrence they left the hotel at about 9.30 a.m. It is apparent from the cross examination of prosecution witness no.1 that the case number was not there in the label pasted with the seized article. Admittedly, the prosecution witness no. 1 and other police personnel were ambushing outside the Chaiti lodge on the basis of source information and thereafter they intercepted the appellant and another with such fake Indian Currency Notes. Naturally the case was not started at that point of time and that is why there was no case number in the label pasted on the seized articles.

8. Prosecution witness no. 2 Kamal Chakraborty is the owner of Chaiti lodge and prosecution witness no.3 Sanjeep Lohar is one of the attendants of Chaiti lodge. According to them the appellant and one Billal Ahmed Seikh stayed at Chaiti lodge from 24th of May, 2014 till 9.45 a.m. of 25th May, 2014. They also recorded their arrival and departure in the hotel register. The necessary entries in the hotel register have been marked exhibit. They have duly identified the appellant Billal Ahmed Seikh on dock during trial. Prosecution witness no. 4 Tapan Mahara another attendant of Chaiti lodge had also deposed in support of the case of the prosecution. Prosecution witness no.4 has further stated that the appellant and another Billal did not make any hue and cry during their stay in that lodge.

9. Prosecution witness no.5 has stated that police seized some fake currency

notes from the bags kept in the possession of the appellant and another person and he signed on the seizure list vide exhibit 4/3. Prosecution witness no. 5 is a rustic village folk and that is why he could not identify the articles in Court. However he has atleast supported that such fake Indian Currency Notes were recovered from the possession of the appellant and another person. Prosecution witness no 6 Ritwick Banerjee sub-inspector of police has however fully supported the case of the prosecution regarding the factum of seizure of such fake Indian Currency Notes from the possession of the appellant as well as one Billal Ahmed. Prosecution witness no. 7 Kaji Najrul Islam, police constable has also supported the case of the prosecution.

10. Prosecution witness no. 8 Riyajul Hawk has identified his signatures over the exhibits as well as material exhibits and has also identified the appellant and another on dock as the persons who were arrested by the police on the fateful date. Prosecution witness no.8 is also a rustic village folk and accordingly he could not match with the time of such seizure. That further goes to show that the evidence adduced by prosecution witness no. 8 is natural and not tutored one. Had there been any such tutoring of prosecution witness no. 8, he could have corroborated the case of the prosecution in material particulars, which could have raised suspicion in the mind of the Court that the witness had been tutored by the prosecution. That having not been done, it may safely be stated that the evidence of prosecution witness no.8 is natural one and he has fully supported the case of the prosecution atleast with regard to the factum of seizure of such fake Indian Currency Notes from the possession of the appellant and one Billal Ahmed. Prosecution witness no. 9 Biswanath Madhyasta Assistant General Manager of Bharatiya Reserve Bank, Paschim Medinipore has been examined as expert who had examined such fake Indian Currency Note and gave a report consisting of 5 sheets stating inter-alia that the currency notes examined by him were all fake Indian currency notes.

11. Prosecution witness no. 10 Ramkanai chakraborty sub-inspector of police filled up the formal First Information Report after receipt of the written complaint from Krishnendu Bose, PW1. Prosecution witness no.10 Ramkanai proved the formal First Information Report along with his signature vide exhibit 7. On the fateful date Ramkanai sub-inspector of police was incharge of Bolpur police station in absence of the inspector in charge and that is why he filled up the formal FIR. Prosecution witness no. 10 is a formal witness. Prosecution witness no.11 Sourendra Bhattacharya accompanied prosecution witness no.1 and fully corroborated the case of the prosecution regarding seizure of such fake Indian Currency Notes from the possession of the appellant and one Billal Ahmed.

12. Prosecution witness no.12 Nirmal is the first investigating officer who investigated the case for some time and thereafter charge sheet was filed by prosecution witness no. 13 Sandip Ganguly.

13. Learned Advocate appearing on behalf of the appellant contended that the appellant left the Chaiti lodge at about 9.45 a.m. on the fateful date and there

was absolutely no occasion on his part to remain stayed in front of that lodge till 1.45 p.m. that is the alleged time of his arrest. Secondly, the independent witnesses did not support the case of the prosecution and for that reason the entire case of the prosecution ought to be view with suspicion. Thirdly, there is/ was absolutely no evidence that the present appellant along with another person were using the fake Indian Currency Notes having knowledge that such notes were fake and therefore learned trial Court was not at all justified in convicting the appellant and another person for the offence under Section 489B of the Indian Penal Code. Learned Advocate appearing on behalf of the appellant has drawn the attention of the Court with regard to the doubt expressed by the trial Court regarding the factum of seizure. Learned Advocate for the appellant further contended that the report of expert reveal that there was discrepancy in the serial number of alleged fake Indian currency notes which was seized by the police and which was examined by the expert. In that view of this case the entire case of the prosecution ought to have been rejected by the learned trial Court instead learned trial Court after recording his suspicion, has, erroneously convicted and sentenced the appellant.

14. Learned Advocate appearing on behalf of the state submitted that on the basis of a source information police ambushed near Chaiti lodge and in front of that lodge the appellant and another person were intercepted and huge amount of fake Indian currency notes were seized from their possession. Learned trial Court has recorded the argument of learned Advocate for the appellant in the Court below but ultimately held that the factum of seizure has been well proved by the independent witnesses as well as by the police witnesses. There is absolutely no law that the factum of seizure cannot be proved or relied upon simply because of the ground that the independent witness did not corroborate the factum of seizure. In the case under reference the independent witnesses have admittedly corroborated the factum of seizure but there may be some sort of discrepancy from the evidence solely on the ground that they are rustic village folk and they gave a natural version of the incident. Had there been any such tutoring of the independent witnesses by the prosecution, they would have corroborated the entire factum of seizure by stating in details about the factum of seizure of alleged fake Indian currency Notes from the possession of the appellant and another person.

15. Learned Advocate for the State further contended that the investigating officer has clarified about the mistake of serial number of such fake Indian Currency Notes in respect of written complaint / seizure list vis a vis the report of the expert. Learned Advocate has drawn my attention to the observation of learned trial Court that the investigating officer has clarified the aforesaid discrepancy by saying that the serial number of the fake Indian currency notes was correctly recorded in the written complaint but there may be mistake of a single digit at the time of preparation of seizure list. I do not find any valid reason to reject the entire case of the prosecution since the alleged mistake has been amply clarified by the evidence of investigating officer. Moreover, the

appellant also did not take anything in the cross examination of the expert with regard to the alleged mistake in the serial number of the fake Indian Currency Notes. Secondly, the appellant and another person also did not admit that such fake Indian currency notes were recovered from their possession. In that view of this case, it may safely be stated that the prosecution has been able to prove beyond all shadow of doubt that huge fake currency notes was recovered from the possession of the appellant as well as one Bilal Ahmed and such currency notes were fake Indian currency Notes.

16. Section 489B also includes in its ambit trafficking of fake Indian Currency Notes. The appellant and one Bilal Ahmed could not justify about their possession of such fake Indian Currency and therefore learned trial Court was justified in holding them guilty for the offence under Section 489B for trafficking of such fake Indian currency.

17. On careful consideration of the materials on record, evidence on record and the documents exhibited on behalf of the prosecution I have no hesitation to say that learned Trial Court was justified in convicting the appellant and one Billal for the offence under Section 489B/489C/120B of the Indian Penal Code. In the premises set forth above the criminal appeal fails. The criminal appeal stands dismissed.

18. Let a copy of this order be forwarded to the Court below for information and necessary action. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.