
(2016) 05 CAL CK 0001
In the Calcutta High Court
Case No : C.R.A. No. 31 of 2014

In Re: Rakesh @ Chhotu Kedia

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

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

Citation : (2016) 167 AIC 464 : (2016) 3 CalLT 238

Hon'ble Judges : Rajiv Sharma and Shivakant Prasad, JJ.

Bench : Division Bench

Advocate : Mr. Sanjoy Banerjee, Advocate, for the Appellant; Mr. Pawan Kumar Gupta, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Shivakant Prasad, J.—Rakesh @ Chhotu Kedia and Bharat Keshari appellants have individually preferred the aforesaid two appeals against a common judgment and order of conviction and sentence dated 19.3.2013 & 20.3.2013 passed by the Additional District & Sessions Judge, Fast Track, 3rd Court, Asansol, Burdwan, in Sessions Trial No. 27 of 2009 arising out of Sessions Case No. 36 of 2009 corresponding to G.R. Case No. 415 of 2003 for the offence punishable under Sections 489B/489C/120B of the Indian Penal Code. As such, they can be disposed of by a common judgment.

2. The brief fact is that on 23.5.2003, Inspector of D.D., CID, Asansol Sri Santo Kumar Mitra received a source information that two persons were going to transact fake currency notes near old Mejia Ghat to the North of Damodar river under P.S. Raniganj, he along with another D.D. Inspector Abdul Hye, S.I. Chandra Sekhar Chakraborty and constable Susanta Chatterjee went to the said place. They reached there at about 5.30 P.M and the appellants came to that spot and started to transact something between them. Then Inspector Santo Kumar Mitra and other police personnel rushed towards them and found that one person was offering currency notes to another. They found 17 number of fake

500 rupee notes and 10 number of fake 100 rupee note which were appearing in the same serial number from the possession of the said appellants. They disclosed their names as Rakesh Kedia who was handing over to the recipient Bharat Keshri. Inspector Santo Kumar Mitra seized those fake currency notes under seizure list and brought them to Raniganj P.S. and lodged written complaint before the Officer-in-Charge, Raniganj P.S and Raniganj P.S. Case No. 71/2003 dated 23.5.2003 under Sections 489B/489C/120B IPC was started. As per request of Santo Kumar Mitra, D.D., S.I. Asansol, Sri Dayal Prasad Tiwari was entrusted with the case by the O/C Raniganj P.S. for investigation.

3. On usual investigation I.O. submitted Charge-sheet against the appellants accused Rakesh @ Chhotu Kedia and Bharat Keshri for offence punishable under Sections 489B/489C/120B of the Indian Penal Code. After the case was committed by ACJM Asansol to court of Sessions, Learned Additional Sessions Judge took cognizance and framed charges against the appellants to which both of them pleaded not guilty and claimed to be tried. Thereafter, prosecution examined as many as 8 (eight) witnesses to substantiate charge against the accused appellants. Prosecution has relied on some documents which are marked as Exhibits 1 to 8 and material exhibits being fake currency notes which are marked as MAT Exhibits I & II.

4. Learned Trial Judge after completion of the evidence of the prosecution, examined the accused persons under Section 313 Cr. P.C. and after final hearing found the accused/appellants namely Rakesh @ Chhotu Kedia and Bharat Keshri guilty of the offence under Section 489B/489C/120B of the IPC and both of them were accordingly convicted by the impugned judgment dated 19.03.2013 and after an opportunity of reflection in segregation on the question of sentence given to them and on hearing them and further considering the offence being an economic offence sabotaging national economy creating security risk for the country's sovereignty, appellants were sentenced to suffer rigorous imprisonment for ten years for Offence under Section 489B IPC and to pay fine of Rs. 10,000/- with default clause to suffer rigorous imprisonment for 6 months. They were also sentenced to suffer rigorous imprisonment for seven years for committing offence under Section 489C of the IPC and to pay fine of Rs. 5,000/- in default to suffer three months? rigorous imprisonment. They were also sentenced to suffer rigorous imprisonment for 5 years for committing offence under Section 120B of IPC and also to pay fine of Rs. 5,000/- in default to suffer further three months? rigorous imprisonment.

5. Accordingly the appellants have challenged the judgment of conviction and sentence inter alia on the grounds that learned Additional District & Sessions Judge ought to have considered that there was no evidence regarding possession of the fake currency note or counterfeit on record to convict the appellant under Sections 489B/489C/120B IPC, it alleged that prosecution seized some defaced currency note from the appellant. That apart, Central Forensic Science Laboratory Report was not proved in view of the Section 293 of the Cr.P.C. but

the learned Additional District & Sessions Judge solely relying upon the oral evidence of the prosecution passed the sentence of rigorous imprisonment.

6. Mr. Banerjee further submitted that P.W.-1 Sub-Inspector of Police was present when the raid was conducted and the accused persons were arrested on the spot but he could not say from whom and as to how many fake currency notes were found and that first information report is virtually silent in this regard.

7. According to P.W.-3, Shanta Kumar Mitra appellants disclosed about one racket but the police did not take any step to find out as to who were the other persons alleged to be involved in the racket. It is contended that P.W.-4 subsequently took charge of investigation on 23rd May, 2003, re-endorsed by DDI, Asansol, Shanta Kumar Mitra but it could not say as to from whom fake notes were recovered.

8. It is also submitted that P.W.-8 deposed that he saw Bharat giving money and another accused was receiving money but surprisingly there is no whisper in the Charge-sheet, though they were all present at the time of arrest of the accused persons and no local person has been cited as witness to the seizure list though the area is thickly populated.

9. To bring home the offence under Section 489B IPC (i) the prosecution is required to prove that the currency note was fake or counterfeit (ii) that the accused sold to or received from some person or trafficked thing, or used as genuine the aforesaid currency note or bank note (iii) that when the accused did so, he had knowledge or reason to believe about its being forged or counterfeit.

10. In order to sustain the conviction of an accused, the prosecution has not only to prove that he had the possession of counterfeit note, having reason to believe it as such, but also to prove circumstances which lead indubitable and irresistible to his intention to use the notes on the public. Such intention can be proved by a collateral circumstance that he had palmed off such notes before, or that he was in possession of such notes in such large a number, that his possession for any other purpose was inexplicable whereas to substantiate the charge under Section 489C of the IPC the prosecution is required to establish that (i) there was or were one or more forged or counterfeit currency notes; (ii) that the said note or notes were in conscious possession of the accused; (iii) that the accused knew or had reason to believe said currency notes as counterfeit or forged; (iv) the accused intended the same to be used as genuine or that it might be used as genuine.

11. Thus, it was not only necessary to prove that the accused was in possession of forged notes but it should further be established that at the time of his possession he knew the notes to be forged or had the reason to believe the same to be forged or counterfeit and he intended to use the same as genuine.

12. Mr. Banerjee has submitted that there is no prove as to the possession of fake currency notes or counterfeit note on record by the appellants in as much as

no independent witness was cited in the seizure list to prima facie show the seizure of the counterfeit notes from the possession of the appellants and inviting our attention to the evidence of P.W.-1, in his cross examination to show that the alleged place of occurrence from where the seizure was made in respect of the alleged currency notes is a congested and populated area where there could be presence of local people but no attempt was made by the investigating agency to cite any witness from the local people and that the learned trial Judge relying on the evidence of Police personnel convicted the appellants based on hypothesis and conjecture. It is also contended that there is no mention in the First Information Report as to from whose possession fake currency notes were recovered and further invited our attention to the deposition of P.W.- 3 and P.W.- 8. P.W.- 3 deposed that Rakesh @ Chhotu Kedia was giving something to Bharat Keshri and P.W.-8 deposed that Bharat Keshri was giving something to Rakesh @ Chhotu Kedia which according to defence is a material contradiction in the statements of these two witnesses.

13. It would appear from evidence on record that the incident took place in the year 2003, whereas P.W. -3 was examined in the year 2012 i.e. nine years and P.W. -8 was examined on 10.01.2013 ten years of the incident. P.W.- 8 is a Police Constable whose role was not that active as the DD Inspector (P.W.- 3) at the time of conduct of raid. Thus such minor contradiction is not fatal to the prosecution. It is also evident from seizure list dated 23.05.2003 (Ex.-1/1) that Rs. 9,500/- in total, that is, total number of 17 fake currency notes of 500/- denomination each bearing the same Serial No. 4CD 834310 with marked exhibit (i) A1 to A13 printed three notes individually in separate five paper sheets (29.7cm x 21.1 cm approx.) and 10 number of fake currency notes of Rs. 100/- denomination each bearing the same serial No. 179925 with marked exhibit B1 to B10 were seized from a place near old Mejia Ghat, Sashan Kali Temple on the northern bank of river Damodar, Raniganj, Burdwan from the possession of the appellants.

14. It would further appear from the seizure list that both the accused persons appellants herein have put their signatures as token of receipt of a copy of the seizure list on the date of seizure of fake currency notes. Mr. Banerjee further submitted that priest of Sashan Kali Temple was not even asked to be present at the time of seizure who was expected to remain present in the temple. In our considered view the seizure list clearly speaks of the situation of Sashan Kali Temple on the Northern side of the Damodar River situated which in a lonely place where the local people may hardly be found between 17.45 to 18.15 hours. Non examination of the priest or any local people is not fatal to the prosecution case, so as to doubt the seizure of fake currency notes from the possession of the accused appellants. P.W.-3 during cross-examination has given explanation for non-citation of local witnesses stating that the place of occurrence is a solitary place and none was available in that place at the time of incident. It would appear that police party had chased and caught the appellants red-handed when they were doing transactions. P.W.- 8 a Constable has also testified the fact

that he had hid himself behind the tree in an abandoned construction along with other Police personnel. So the reasons for not citing the local people as witness to the seizure list is well depicted from their evidence.

15. It appears from (Ex.-2) that seized articles were sent to Central Forensic Science Laboratory (CFSL), 30 Gorachand Road, Park Circus, Kolkata, West Bengal to ascertain as to whether the articles under seizure list are forged currency notes and whether it was possible to print them with the help of computer. It was sent under the signature of Sub-Divisional Judicial Magistrate Asansol in connection with case No. 71/2003 dated 23.05.2003 P.S. Raniganj, U/s. 489B/489C/120B IPC.

16. FIR depicts that Inspector of Police Santa Kumar Mitra DDI Asansol had informed the incident to the Officer in Charge on the basis of which the OC had started a specific police case against the accused appellants being case No. 71/2003 dated 23.05.2003 P.S. Raniganj, U/s. 489B/489C/120B IPC and it finds corroboration by its maker.

17. It is submitted by Mr. Sanjoy Banerjee, learned Counsel for the appellants that pursuant to order dated 4th May, 2012 of the learned trial Court, the alleged fake currency notes were sent to the Central Forensic Science Laboratory for forensic test and the Central Forensic Science Laboratory placed the report on the seized articles but no one has come from the said department of the Central Forensic Science Laboratory to prove the expert report marked Exhibit-3 which is not permissible under the provision of Section 293(1) of Cr.P.C., but the learned Judge relying on the oral evidence of the prosecution witnesses passed the order of conviction and sentence of rigorous imprisonment by the judgment impugned.

18. We are unable to accept such contention on behalf of the appellants. It would be profitable to reproduce the provision of Section 293 of the Code of Criminal Procedure which enjoins as under:

"293. Reports of certain Government scientific experts. ? (1) Any document purporting, to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) the Court may, if it thinks fit, summon and examine any such expert as to the subject matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts namely:-

- (a) any Chemical Examiner or Assistant Chemical Examiner to Government.
- (b) the Chief Controller of Explosive;
- (c) the director of the Finger Print Bureau;
- (d) the Director, Halfkine Institute, Bombay;
- (e) the Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
- (f) the Serologist to the Government.
- (g) any other Government scientific expert specified, by notification, by the Central Government for this purpose."

19. It is settled position of law that it is not incumbent on the prosecution to examine any or other concerned officials within the office of the Chemical Examiner with regard to the safe custody of the sample therein and its failure to do so does not introduce any infirmity in its case. The use of the word "document" in this section can lead to inference that only the opinion of the Chemical Examiner but all that is said in the report is admissible before the Court. As per Section 293 Cr. P.C. there is no necessity to examine any witness to prove the report. In this case the learned Trial Judge had clearly analysed the situation and has found that the report of the articles which reported by CFSL after expert report were opened in open Court during trial and he found the seal intact and the reference of the case number was well revealed and there was no doubt with regard to the sample not having been sent to the CFSL and bearing in mind the learned Judge has rightly considered that to be sufficient and accepted the report after dispensing with formal proof. It must be borne in mind that Senior Scientific Expert CFSL is an expert and his opinion is a relevant piece of evidence under Section 45 of the Evidence Act.

20. It would reveal from the materials on record that there was no request made by the defence to summon the expert of CFSL and its report does not appear to have been challenged when it was taken on record as an exhibit after formal dispensation of proof during the trial at the time of production of evidence by the Investigating Officer, the same was rightly accepted in the evidence and relied thereupon by the learned trial Judge. Pursuant to the requisition, B Manna, Senior Scientific Officer CFSL gave his expert opinion after forensic test of counterfeit currency notes which were received in two sealed brown paper envelopes on 03.09.2003. It is axiomatic from the CFSL report (Ex-4) that description of exhibits were received by CFSL for their testing which were seized under the seizure list by the investigating agency at the time of raid from the possession of the appellants and the CFSL report reflects that currency notes are counterfeit currency notes.

21. As regard the contention of Mr. Banerjee that the learned trial Court relying on the sole evidence of police personnel convicted and sentenced the appellant.

We observe that the learned trial court accepted the evidence on record in finding the appellants guilty of the offence punishable under Section 489B, 489C, 120 B IPC on the facts and circumstances of the case relying on the authorities and principles as laid down in case of *Aher Raja Khima v. State of Saurashtra* (AIR 1956 SC 217), *Gian Singh v. State of Punjab* AIR (1974 SC 1024), *Dalbir Kaur v. State of Punjab* (AIR 1977 SC 472) and *C. Ronald & Anr. v. State of U.T. of Andaman & Nicobar* reported in (2011) 8 SCLR 041 wherein the Hon'ble Apex Court has observed in clear crystal term that-

"It is not that all policemen will tell lies. There are good and bad people in all walks of life. There are good and bad police men as well. We cannot assume that every statement of policeman is necessarily false."

22. We are of the view that in a case of this category, police witnesses are material witnesses for the prosecution and their integrity and honesty in the conduct of raid at the place of occurrence, seizure of fake notes and arrest of the appellant are not doubtful.

23. Mr. Banerjee referred to a decision reported in AIR 1979 SC 1705 *M. Mammutti v. State of Karnataka* wherein it has been observed by the Hon'ble Supreme Court that-

"There was no evidence of any witness to show that the counterfeit notes were of such a nature or description that a mere look at them would convince any person of average intelligence that it was a counterfeit note."

24. In the cited case the appellant was convicted under Sections 489B and 489C and sentenced for one year rigorous imprisonment and to rigorous imprisonment for six months respectively in default to pay fine of Rs. 500/- as the appellant was found in possession of a counterfeit two rupees note handed over to him by a friend to purchase a ticket for a circus show. The facts situation was not convincing to presume that accused knew that note in possession was counterfeit and such presumption could not be drawn. Accordingly, the Hon'ble Court was pleased to acquit the appellant by setting aside the order of conviction and sentence. This decision is not apposite to the facts and circumstances of the instant case where we have found 17 number of fake currency notes of Rs. 500/- denomination and 10 number of fake currency notes of Rs. 100/- denomination seized from the appellants which are counterfeit currency notes as per CFSL report.

25. In case of *Md. Muktarul Islam @ Suman v. State of West Bengal* (2014) 2 CAL LT. 260 the appellant went to Co-operative Bank to deposit 16 notes of Rs. 500/- denomination each which were tested by the Bank in a machine and found the same to be fake and counterfeit. It was observed in paragraph 11 as follows:

"It is not possible to accept the case of the prosecution for various reasons. According to the witness for the prosecution once it was detected that the notes were fake by running them through a machine, the accused was requested to

meet the Branch Manager. He was returned the fake currency notes, his pass-book and the pay-in-slip. The accused remained in the bank till the police arrived on the scene. It is impossible to believe this story. Had the accused knowledge of the notes being fake when he went to deposit the same, he would continue to remain in the bank till the police arrived there. If the accused had intention to pass off fake currency notes as genuine, he would have certainly fled from the bank once it was detected that the notes were counterfeit. Instead he continued to remain in the bank as requested by the bank staff and the manager. There is no evidence on record to indicate that he was detained there forcibly. This would not be the natural conduct of a person who had culpable knowledge of the notes being counterfeit."

26. In case of *Umashanker v. State of Chhattisgarh* (AIR 2001 SC 3074), the accused aged 18 years a student was alleged to have been paid fake currency note of Rs. 100/- to a shop-keeper, 13 more such fake currency notes were received from him but there was no material brought on record to show that accused had requisite mens rea. It was held that merely on the basis of evidence of shop-keeper and other witnesses that they were able to make out that currency notes alleged to have been given to shop-keeper was fake, mens rea cannot be presumed. There was no specific question with regard to currency note being fake put to accused. Hence he was acquitted by the Hon^{ble} apex Court.

27. On the above set of facts, it was observed in paragraphs 7 and 8 of the cited decision which read thus-

"7. Sections 489-A and 489-E deal with various economic offences in respect of forged or counterfeit currency-notes or banknotes. The object of Legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency-notes and bank-notes. The currency-notes are, in spite of growing accustomedness to the credit cards system, still the backbone of the commercial transactions by multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mens rea or offences under Section 489-B and 489-C is, "knowing or having reason to believe the currency notes or bank notes are forged or counterfeit". Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes is not enough to constitute offence under Section 489-B of IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C. in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea???"

28. Mr. Banerjee also relied on the authority of *Roney Dubey v. State of West Bengal* reported in (2008) 1 CHN 883 in which a coordinate Bench of this Court

while setting aside the conviction, was of the view that mere submission of seizure list and production of seized articles, no other evidence was produced to show that the Xerox machine, the voltage stabiliser, the blank papers and the paper containing some impression of the Indian currency belong to the convict.

29. We have considered the above cited decisions referred to by Mr. Banerjee. In our opinion that ratio of decisions are distinguishable from the facts and circumstances of the instant case as we do not find the finding of the learned Trial Judge in the impugned judgment devoid of any merit. The report of CFSL (Ex.- 4) reflects that the articles produced in connection with the case were not genuine currency being 17 fake currency notes of 500/- denomination each bearing only one Serial No. 4CD 834310 marked exhibit A1 to A13 printed three notes individually in five paper sheets (29.7cm x 21.1cm approx.) and 10 number of fake currency notes of Rs. 100/- denomination each being same serial No. 179925 marked exhibit B1 to B10. That is to say, fake currency notes worth Rs. 9,500/- were seized from the possession of the appellants under the seizure list.

30. We have for our assurance, to find out the genuineness of those fake currency notes directed for the production of alams before us and we have verified them with our bare eyes and found them to be fake currency notes bearing the same numbers in all the currency notes. When the fake and counterfeit currency notes were found in possession of the appellants from the place of occurrence, is an extenuating circumstance, to presume that they intended to traffic the currency notes between each other with a view to use them on the public.

31. In the context of the above discussions and having given an anxious consideration to the facts and circumstances of the instant case, we do not find any ground to interfere into the findings of the learned Trial Judge for having convicted the accused appellants for the offence under Sections 489B, 489C and 120B of the Indian Penal Code.

32. With regard to quantum of sentence, Mr. Banerjee, learned Counsel for the appellants has submitted that the appellants are young in age and has submitted for reduction in terms of sentence as awarded by the learned trial Court. Question of sentence is a matter of discretion primarily resting with the trial Court. The question of sentence has to be determined with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime. Charge under Section 489B IPC prescribes for punishment with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, with liability to pay fine. Thus, there is provision for reducing the sentence and further considering the counterfeit currency notes seized worth Rs. 9,500/- in total, and young age of the appellants we are pleased to modify the terms of sentence of rigorous imprisonment for 10 years awarded against both the appellants by reducing the sentence to a term of rigorous imprisonment for 7 years for charge under Section 489B of the IPC but

without altering the terms of sentence punishable under Sections 489C and 120B IPC.

33. With the aforesaid modification, these two appeals being CRA No. 31 of 2014 and CRA No. 269 of 2013 are partly allowed.

34. Let a copy of this judgment along with the Lower Court Records be sent down to the learned trial Court for necessary action.

35. Let a copy of this judgment be given to the convicts free of cost.

36. Urgent Photostat certified copy of this Judgment, if applied for, shall be supplied to the Advocates for the parties upon compliance with all requisite formalities.

37. Rajiv Sharma, J.—I agree.