
(2019) 07 MP CK 0028
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 454 Of 2004

Kabbu

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374
Indian Penal Code, 1860 — Section 34, 489A, 489D, 489(1)

Citation : (2019) 07 MP CK 0028

Hon'ble Judges : S.K. Awasthi, J

Bench : Single Bench

Advocate : Ramesh Gangare, Vikas Yadav

Final Decision : Allowed

Judgement

(1). The appellant has preferred this criminal appeal under Section 374 of Cr.P.C. against the judgment dated 31.03.2004 passed by Additional

Sessions Judge, Bhanpura, District Mandsaur, in Session Trial No.166/2002, whereby the appellant has been convicted for the offence punishable

under Section 489-A and 489-D read with 34 of I.P.C. and sentenced to undergo 6 years R.I. with fine of Rs. 5,000/-each with default stipulation.

(2). The prosecution story in short are that on 05.08.2002 Station House Officer Vikram Singh Bhadoriya, ,Police Station Bhanpura District

Mandsaour received a source information that dealing of counterfeit note will take place at bus stand Bhawani Mandi by accused Kabbu. After

receiving the said information S.H.O. Vikram Singh alongwith ASI R.S. Sikarwar, Ashish Kumar, Kailash, Rajkumar, Dharmveer and Driver Arjun

Singh proceed to the Bus stand Bhesoda Mandi by Government vehicle bearing registration No. MP-03-067. On the way they took two panch

witnesses Gajraj Singh and Arjun together. Thereafter they reached to the Bus Stand Bhesoda Mandi. After seeing the police force appellant run

away however co-accused Jakir apprehended by the police. Upon search 18 counterfeit currency notes of 500 denomination and 12 counterfeit

currency notes of 100 denomination was recovered from the possession of the co-accused Jakir. These articles were seized in presence of independent

witnesses Gajraj and Arjun Singh. Then police registered the FIR bearing crime No 153/2002. Police interrogated Jakir and he disclosed the name of

absconded accused Kabbu then police reached the house of Kabbu and on search recovered two counterfeit currency notes of Rs.100/-

denomination, 100 counterfeit currency notes of Rs.50/- one counterfeit currency notes of Rs.500/-,32 counterfeit currency notes of Rs.100/-,91

counterfeit currency notes of Rs.50/- 100 counterfeit currency notes of Rs.10/-, one Rs. 10/- Pakistan Currency, from the house of the appellant.

Police recorded the statement of witnesses. The counterfeit notes were sent to the General Manager, India Security Press, Nasik for examination and

verification whether these notes are genuine or counterfeit. Thereafter a report was received from the aforesaid press in which it was opined that

suspected notes are counterfeit currency. After completion of the investigation, charge sheet was filed before the Court of Judicial Magistrate First

Class, who committed the case to the Sessions Court and ultimately it was transferred to the Additional Sessions Judge, Bhanpura, District Mandsaur.

(3). The trial court on the basis of material placed on record, framed the aforesaid charges against the applicant. The accused abjured his guilt and claimed to be tried.

(4). The prosecution has examined as many as 15 witnesses and placed exhibits P/1 to P/34 of documents on record. The defence of appellant is that

nothing has been seized from his possession and he has falsely been implicated in the present case.

(5). The Trial Court after considering the evidence adduced by the parties convicted the appellant and sentenced him as mentioned above. Being aggrieved by the aforesaid judgment the appellant has preferred this petition.

(6). Learned counsel for the appellant has submitted that the seizure of counterfeit notes from the possession of the appellant has not been proved beyond reasonable doubt. The prosecution has not collected any evidence to

establish that the house from where counterfeit notes has been recovered is owned or in possession of the appellant. It is further submitted that even at the time of search and recovery, the appellant was not present in the house and according to the prosecution's own story other members of the family was found. Hence fastening any liability upon the appellant is not only erroneous, but is also illegal and unjust. The appellant Kabbu is implicated in the present crime on the basis of disclosure statement of co-accused Jakir which is not admissible in evidence and except the said statement there is no cogent evidence available against the appellant to establish any nexus between the alleged offence. The prosecution case has not been supported by the independent witnesses. The trial court has not properly appreciated the evidence and misread the evidence on record. The trial court has also ignored the material contradiction discrepancies and exaggeration came to the statements of witnesses. Therefore, learned counsel for the applicant prays for acquittal of the appellant.

(7). On the other hand, learned Public Prosecutor for the respondent/State has supported the impugned judgment of conviction by submitting that evidence of prosecution witnesses with regard to seizure of counterfeit currency from the house of the appellant is consistent and therefore ought not to be discarded. He also submitted that at the time of preparation of seizure memo numbers and their particulars relating to the seized counterfeit currency were recorded in the seizure memo and same sent to the General Manager, India Security Press, Nasik and it would be evident from the report itself that seized notes are counterfeit, therefore, he prayed for dismissal of appeal.

(8). I have heard learned counsel for the parties and perused the record.

(9). Vikram Singh Bhadoriya (PW-15) deposed that on 05.08.2002 he was posted as Station House Officer, Bhanpura. On the said date he received source information that two person namely Kabbu and Jakir are coming down bus stand Bhesodamandi and they will hand over counterfeit notes to some other person. The aforesaid information was recorded in the Rojnamsanha and after that he alongwith some other police personnel proceed to Bhesodamandi. On the way two independent witnesses Gajraj and Arjun met them they were informed them about the source information and accompanied them reached to the bus stand Bhesodamandi. After seeing the

policy party appellant-Kabbu fled away whereas co-accused Jakir apprehended from the spot. On search 7 pieces of denomination of 100 rupees, 10 pieces of denomination of 50 rupees and photocopies of denomination 500 rupees and 100 rupees each were recovered from his possession. This recovery has been effected in presence of independent witnesses Gajraj and Arjun. Jakir was arrested and brought to the police station. Mr. Bhadoriya (PW-15) further deposed that after reaching the police station, he recorded the FIR bearing crime No.153/2002 and registered the offence under Section 489-A and 489-D read with section 34 of I.P.C against accused persons. He also prepared a panchnama regarding the absconson of accused Kabbu. He recorded the statement of witnesses. Thereafter, he reached the house of Kabbu but he was not present there. He made search of the house of Kabbu and recovered the counterfeit notes and seizure memo Ex.-6 was prepared in the presence of maternal nephew of the accused Kabbu and it bears his signature. The seized currency notes was sent to the General Manager, India Security Press, Nasik for examination and according to the report received from India Security Press, Nasik, the currency seized from the house of the appellant Kabbu was found to be counterfeit.

(10) The evidence on record particularly the official witnesses namely constable Dharmveer (PW-8), Senior constable Rajkumar (PW-11), Constable

Kailash Singh (PW-12) and ASI Rajendra Sikarwar (PW-14) stated that a secret information received by Station House Officer, Vikram Singh

Bhadoriya that two persons would coming towards bus stand Bhesoda mandi with counterfeit currency. They reached to the spot and seeing the

policy party the present appellant Kabbu fled away whereas co-accused Jakir was apprehended and upon search a large number of counterfeit notes

of Rs. 50, Rs. 100 and Rs. 500 denomination was seized from his possession and seizure memo was prepared. He was brought to the police station

with the seized notes. Thereafter police went to the house of Kabbu and on search counterfeit notes was recovered from his house.

(11). Gajraj (PW-6) and Arjun (PW-7) are the independent witnesses although they have proved their signature on the seizure memo (Ex.P/6)

however, they have not supported the prosecution story and turned hostile. They have accepted that police force arrived in a house and conducted

search of the house but they are not aware that the said house belongs to the which person. It is admitted position that no counterfeit currency notes have been recovered from the physical possession of the present appellant Kabbu. The alleged recovery said to have been made from the house of the appellant Kabbu but at the time of recovery he was not present there and recovery has been made in presence of his nephew. The police has not obtained any documents to establish that the aforesaid house is owned or possessed by the appellant Kabbu. No neighbor of the present appellant was examined to prove that the police arrived to the house of appellant Kabbu and recovered counterfeit currency. It is also pertinent to note that before taking search of the house of the appellant, the investigation officer has not gave search of himself as well as independent witnesses and the police party to the nephew of the appellant. The findings of the court below that search list (Ex.P-5) was prepared legally and it was properly proved. The prosecution was based solely on the Ex.P/5 search list. In order to attract Section 489 (1) of I.P.C., the prosecution has to establish that accused is in possession of the forged counterfeit currency notes or bank notes. In order to constitute offence under Section 489-A the essential ingredients that the accused counterfeiting or knowingly performing any part of the process of counterfeiting any currency notes or bank notes, all the aforesaid ingredients of the offence must exist. In the present case neither the forged notes are seized from the possession of the applicant nor there is any evidence available to prove that the accused has knowledge of the forged or counterfeited nature of the notes and the prosecution has also not established that appellant performs any part of the process of making, or buys or sells or disposes of, or has in possession, any machinery, instrument or material for the purpose of being used or knowing or having reason to believe that it is intended to be used, for forgoing or counterfeiting any currency note or banknote. Thus, the prosecution has failed to establish the recovery of counterfeit notes from the possession of the appellant and also unable to prove that the appellant was preparing the counterfeit currency notes in his house.

(12). Under these circumstances, this court is of the view that the prosecution has failed to prove the charges punishable under Section 489-A and

489-D read with 34 of I.P.C. against the appellant beyond reasonable doubt, therefore, appeal filed by the appellant is allowed and he acquitted from

the aforesaid charges.

Let record of the trial court be sent alongwith judgment for information and compliance.