
(2013) 07 CAL CK 0055
In the Calcutta High Court
Case No : CRA 320 of 2012

Mahasin Ali @ Bangru

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 489A, 489B, 489C

Citation : (2013) 07 CAL CK 0055

Hon'ble Judges : Toufique Uddin, J

Bench : Single Bench

Advocate : Anjan Datta, Amicus Curiae, for the Appellant; Binay Kumar Panda, for the Respondent

Final Decision : Dismissed

Judgement

Toufique Uddin, J.—This appeal arose out of judgment and order of conviction dated 18.04.2012 & 26.04.2012 passed by learned Additional District & Sessions Judge, 2nd Court, Dakshin Dinajpur in Sessions Trial No. 57 of 2010 arising out of Sessions Case No. 202 of 2007 and thereby convicting the appellant for commission of offence punishable under Sections 489(C) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven years and to pay fine of Rs. 1,000/- with default clause. In the background of this appeal, the fact in a nutshell is as follows:-

On 01.04.2006, one S.I., Saumyajit Roy, Officer-in-Charge of Harirampur Police Station having got an information that one person is going to Masjid More from Kharua side with fake currency note. He formed a police team and rushed to Masjid More and arrested the accused person namely Mahasin Ali @ Bangru and recovered 36 numbers of Rs. 100 denomination of counterfeit Indian currency notes. On 06.04.2006, five such other counterfeit Indian currency notes were received from the house of the accused persons and the same were seized under proper seizure list and this incident triggered off the instant case against the

accused person.

2. After investigation police submitted charge-sheet u/s 489(B)/489(C) of the Indian Penal Code against the accused person.

3. The case was committed to the learned Court of Sessions by the learned Magistrate.

4. On hearing of both sides, learned Trial Court framed charges against the accused person u/s 489A/489B/489C of the Indian Penal Code. The contents of the charges were read over and explained to the accused person who pleaded not guilty and claimed to be tried.

5. To contest this case, prosecution had examined as many as 16 witnesses while none was examined from the side of the defence.

6. However, the accused persons were examined u/s 313 of the Code of Criminal Procedure.

7. The defence case as appeared from the trend of cross-examination of the witnesses and the replies given by the accused person at the time of examination u/s 313 of the Code of Criminal Procedure is denial of offence with a plea of innocence.

8. On trial the learned Court convicted the appellants for committing offence u/s 489(C) of the Indian Penal Code by the impugned judgment.

9. Now the points for consideration is, if the judgment suffers from any infirmity and calls for any interference or not.

Section 489(C) of the Indian Penal Code runs as follows:-

489(C). Possession of forged or counterfeit currency-notes or bank notes.

Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit note, and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment or either description for a term which may extend to seven years, or with fine, or with both.

10. To appreciate the case from a better angle some relevant pieces of evidence needs to be examined.

11. Needless to mention that PWs 4, 5, 6, 10, 11 and 12 have been declared hostile, rendering nothing to the prosecution. They are local shopkeepers.

12. PW-1 is a police personnel. On 01.04.2006, on receipt of a secret information, he along with other police personnel reached Masjid More, requested some public to be witness and intercepted the accused and found currency notes without authority of possession.

13. PWs 1, 2, 3, 7 and 8 all being police personnel supported the prosecution

case.

14. PW-13, a retired person from the post of Deputy Works Manager, Currency Note Press, Nasik submitted report showing that notes were fake.

15. PW-14, an Officer of Anti Corruption Branch supported the prosecution case and stated that on interrogation the accused revealed he received the notes from one Shajahan to put the same in circulation.

16. PW-15 and PW-16 being the police personnel and I.O. supported the prosecution case.

17. Learned Amicus Curiae submitted that six persons turned hostile. Regarding the hostility, it is well-settled principle that to become a witness hostile, does not leave the prosecution case crippled if there is available materials therefrom and other materials-on-record to prove the case. It is not expected that in such type of incident the witnesses coming from locale would support the prosecution case. They will hesitate to give evidence. Other witnesses are police officer. They all elegantly and soundly proved the factum of raid, apprehension of the accused person, seizure of the notes after observing all formalities, when the accused person could not account for such possession,.

18. In the judgment of the learned Court below dealt with exhaustively the evidence. Simply the impact of the consideration of evidence is a matter of question. The analysis done by the Court below appears to be reasonable and yielding nothing favourable to the defence side. Of Course, the learned Court below was quite justified in holding that the offence u/s 498A/498B could not be substantiated.

19. This being the position, the findings of the learned Trial Court appears to be reasonable and acceptable. Accordingly, the sentence and the order of conviction are affirmed and the appeal stands dismissed.

20. A copy of this judgment and the Lower Court Record be sent down to the leaned Court below immediately. Urgent Xerox Certified copy of this order be given to the parties, if applied for, upon compliance of necessary formalities.