(2014) 06 MAD CK 0299

In the Madras High Court

Case No : Crl.A. Nos. 421 and 471/2013

R. Raja APPELLANT

Vs

The Inspector of Police CBCID RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

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

Citation : (2014) 06 MAD CK 0299

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—These Criminal Appeals are filed against the judgement dated 12.03.2013 made in SC.No.146/2009 by the learned III Additional District Judge, Kallakurichi, Villupuram District, thereby (a) convicting and sentencing each of the Appellants/A1 to A3 under Sections 489(A), 489(B) and 489(D) of IPC to undergo 10 years Rigorous Imprisonment for each offence and to pay a fine of Rs. 500/- for each offence, in default to undergo two years Rigorous Imprisonment, (b) convicting and sentencing each of the Appellants/A1 to A3 u/s 489(C) to undergo Rigorous Imprisonment for two years and to pay a fine of Rs. 500/- each, in default to undergo Rigorous Imprisonment for two years and (c) ordering the sentences to run concurrently.

2. The case of the Prosecution is that on information about the involvement of a gang, on 14.11.2007 at 8.00 p.m. in printing and circulation of Indian Counterfeit Currency notes at Arulambadi Village, Moongilthuraipattu Police Station Limit, Sankarapuram Taluk, Villupuram District, PW.1, the Inspector of Police, CBCID, Namakkal and PW.5 the Inspector of Police, CBCID, Salem proceeded to the House bearing Door No. 1/89, Vinayagar Koil Street, Arulambadi Village and found the Appellants/accused involving in the process of printing fake indian currency notes using HP Colour Xerox Printer, paper cutting

machine, heater machine, electronic junction box, electronic adopter, silk screen boards, cartridges , green and white colour foil paper roll, etc. On 15.11.2007 at 22.00 hours all the above items were seized from the accused in the mahazar in the presence of the witnesses and the accused were arrested on 15.11.2007 at 23.00 hours. After completing investigation, the Appellants/accused were charge sheeted for the offence under Sections 489(A), 489(B), 489(C), 489(D) read with 511 and 34 of IPC for possession, circulation and printing of counterfeit Indian Rupee notes.

3. The case was taken on file in SC.No.146/2009 by the learned III Additional District Judge, Kallakurichi, Villupuram District and necessary charges were framed. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.16 and also marked Exs.P1 to P9 and Mos.1 to 41. On completion of the evidence on the side of the prosecution, the accused were questioned u/s 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in this case. The court below, after hearing the arguments advanced on either side and looking into the materials available on record, found the accused/appellants guilty and awarded punishments as referred to above, which is challenged in these Criminal Appeals.

4. Mr. M. Venkataraman, the learned senior counsel for the Appellants strenuously contended that the Prosecution has miserably failed to prove the case and it is highly unsafe to place reliance on such evidence to base conviction of the Appellants. The learned senior counsel pointed out that the Prosecution failed to prove that A1 to A3 were in occupation of the house at the time of occurrence. The Villagers PW.7 to PW.9 having not supported the Prosecution, there is no other evidence to show that A1 to A3 were occupying the house. Neither the owner nor the landlord was examined to prove that A1 to A3 were the tenants in the house.

5. The learned senior counsel pointed out to the glaring discrepancy in relation to recording of confessional statement of the accused, wherein PW.6 the Village Administrative Officer deposed that the confessions were recorded at 9.00 p.m. on 14.11.2007 in the premises, whereas contra to his evidence, PW.16 stated that those confessional statements of the accused were recorded on 15.11.2007 between 9.00 a.m to 1.00 a.m. at CBCID Office, Chennai. The evidence PW.6 clearly indicated that he straight away went home from the place of occurrence and in fact, met his Higher Officer in his Department on the next day i.e. on 15.11.2007. Therefore, the learned senior counsel would submit that the above material contradiction would destroy the foundation of the Prosecution case.

6. It is further pointed out that the observation mahazar and the sketch claimed to have been prepared in the scene of occurrence have not been marked. Even with regard to the preparation of counterfeit notes, the original Indian rupees, which is alleged to have been used to print counterfeit notes, have not been

seized, Neither the original Indian Rupee was sent for chemical examination. The learned senior counsel also pointed out to the opinion given by the Expert that he was unable to offer opinion in the absence of relevant data bank as to whether the serial number found on the notes, items 1 to 698 tallies with any genuine note and the area in which these notes are distributed and the serial number of the notes was previously surfaced in any case. The learned senior counsel contended that the offence under Sections 489(A), 489(B), 489(C) and 489(D) are not attracted and therefore, the conviction recorded by the Trial Court is unsustainable, both on facts and law.

7. On the other hand, Mr. V. M. R. Rajendran , the learned Additional Public Prosecutor supported the conviction and sentence passed by the Trial Court and strenuously contended that PW.6 Village Administrative Officer was very much present at the time of seizure of notes from the possession of the accused and under the said circumstances, he submits that the order of conviction does not call for interference.

8. This court heard the submissions of the learned counsel on either side and also perused the material records placed.

9. The proceedings in this case commenced by filing of a suo motu complaint by the Inspector of Police, CBCID on 15.11.2007. It is mentioned in the complaint that on 14.11.2007 at about 8.00 p.m., he received credible information that a gang is preparing counterfeit notes and he along with PW.9 and the raiding party went to the premises at Door No. 1/89, Vinayagar Koil Street, Arulampadi Village and found A1 to A3 were in possession of genuine Indian Rupee Notes and were preparing counterfeit currency notes and seized those materials under Ex.P1 mahazar. Ex.P1 series mahazar and the special report (complaint) speak about PW.6 accompanying the raiding party. From Ex.P1, it discloses that suspected material for preparing counterfeit currency notes were found at Door No. 1/89, Vinayagar Koil Street, Arulambadi Village. The witnesses speak about preparation of observation mahazar, seizure mahazar, recording of confession statements of the accused and sketch even on 14.11.2007. But, the observation mahazar and the sketch were not marked before the court. In the cross examination, PW.1 has said that no sketch was prepared, but PW.6 categorically stated that observation mahazar and plan were prepared on 14.11.2007 in the place of occurrence.

10. In order to establish the charges u/s 489(A) to (D), the Prosecution has to conclusively prove the fact that on 14.11.2007, the accused were present in the house, they were involved in printing the notes and were in possession of counterfeit currency notes. Further, the machinery, instrument or material found in the possession of the accused is such as would be used for the production of counterfeit notes. If that is proved, the next element to be proved for offence u/s 489(D) of IPC is that the accused knew or contended that such articles would be used for the purpose of counterfeiting currency notes. It may be that in some cases a mere inspection of the articles would satisfy the court that they are capable of being used in the counterfeiting of currency notes. But, where that is

not the case, it is the duty of the Prosecution to adduce evidence of a competent and qualified person who would be able to explain to the court the process by which the instruments or materials in question could be used in making a counterfeit note.

11. In this case, the material documents namely the observation mahazar and the plan showing the place of occurrence were not filed though according to PW.6, those documents were prepared on 14.11.2007. No explanation is forthcoming from the Prosecution side except PW.1 saying that it was not prepared.

12. In the instant case, yet another material discrepancy is regarding recording of confession of accused persons and seizure of articles from the house. At the outset, there is no material to indicate as to whether the accused were in occupation of the house. It is admitted by PW.1 that none of the witnesses from neighbourhood has been examined. The Prosecution has not taken any efforts to find out whether the accused were in occupation of the house as owner or they were only tenants.

13. According to PW.1, the confessional statements were recorded on 15.11.2007 at 9.00 p.m. in the CBCID Office. But, PW.6, Village Administrative Officer has stated that all the accused gave confessional statements at the place of occurrence on 14.11.2007 at 9.00 p.m. He has assertively stated that immediately after recording of confessional statements and preparation of mahazar, he went to his office and he has further stated that he never went to the Moongilthuraipattu Police Station. It is his further statement that on the next day i.e. on 15.11.2007 he went and reported to the Tahsildar. So, his evidence is that though he appended his signature along with his menial in Ex.P1 and Ex.P2 to Ex.P5, but he signed only in the place of occurrence i.e. On 14.11.2007.

14. Hence, the credibility of Ex.P3 to Ex.P5 are at stake and the aforesaid vital discrepancy would demolish the very foundation of the Prosecution case. Therefore, the seizure becomes doubtful.

15. It is the case of the Prosecution that original (genuine) Indian Rupee note was used to print those papers, which is called as notes, but the original Indian Rupee note has not been seized. PW.2 to PW.5 clearly admitted that original notes used for counterfeiting notes were not seized. PW.15 Scientific Expert would admit in his cross examination that no genuine Indian Rupee note was sent by the prosecuting agency. PW.15 has further stated that special paper used for counterfeiting notes was not found in this case and on a mere looking at the notes, one can easily say that it is a toy note. The Prosecution has not established how mere printing alone without the computer could be used to print the counterfeit notes. It is also not established that the counterfeit note seized were printed from the printer seized on 14.11.2007. In fact PW.15 has not given his opinion regarding the fact that the seized printer was used to print the alleged counterfeit notes. PW.15 has further stated in the cross examination that

the counterfeit notes have been printed by screen printing machine, but no such screen printing machine or device was found in the premises.

16. Seeing this case in its varied aspects and from all possible angles of view, there remains a serious doubt that the Appellants are guilty of the offences charges and in the facts and circumstances of the case, I am of the opinion that the accused are entitled to the benefit of doubt and accordingly, they are entitled for an order of acquittal.

17. In the result, these criminal appeals are allowed. The impugned judgement of conviction and sentence are set aside. The Appellants are acquitted of the charges levelled against them. The bail bond if any executed by them shall stand cancelled and the fine amount if any paid by them shall be refunded to them.