

(2016) 09 CAL CK 0043

In the Calcutta High Court

Case No : Criminal Appeal No.267 of 2016, 3145 of 2016.

**Rahul Sk. alias Ruhul Sk. - Appellant @HASH State of West Bengal -
Opposite Party**

Date of Decision : 06-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 489C

Citation : (2016) CriLJ 4721 : (2017) 2 Crimes 591

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Mr. Deep Chaim Kabir, Ms. Sujata Das, Mr. Mazhar Hossain Chowdhury, Mr. Ali Ahsan Alamgir, Advocates, for the Appellant; Mr. Imran Ali, Advocate, for the opposite party/State

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J. - This appeal is directed against judgment and order dated February 22, 2016 passed by learned Additional Sessions Judge, 4th Court, Malda in Sessions Trial no.57(06) of 2015 corresponding to Sessions Case no.237 of 2015 arising out of Baishnabnagar Police Station Case no.517 of 2014 dated 30.12.2014 under Sections 489-B/489-C/120-B of the Indian Penal Code convicting the appellant for commission of offence punishable under Section 489-C of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to suffer imprisonment six months more.

2. Prosecution case against the appellant is that on 30.12.2014 at about 11.10 hours SI Dhananjay Kumar Tiwari, P.W.1 of 20 Battalion BSF, 17 Mile, Malda Baisnabnagar P.S. received a source information that dealing of FICN will take place at 18 Mile, NH-34 and as per information he along with ASI P. Babu (P.W.2), Constable Rakhal Das, (P.W.3) and Constable Driver Vikash Kumar came to the Link Road near brick field connecting border area to 18 Mile and laid in ambush at the spot. When two persons came down the road in a black coloured motorcycle they apprehend them in presence of local persons. The suspects

disclosed their names as Rahul Sk and Jamirul Sk and upon search Rs.2,97,000/-, i.e., 199 pieces of FICNs of denomination Rs.1,000/- each and 196 pieces FICNs of denomination Rs.500/- each were recovered from the possession of Rahul Sk and Jamirul Sk. Three mobile phones and Rs.350/- Indian currency notes were also recovered. The complainant seized the said FICNs along with other articles in presence of two independent witnesses on the spot and labelled them. The accused persons admitted that the seized notes were fake and they were planning to deliver the same to Jharkhand. Thereafter P.W.1 handed over the accused persons along with the seized notes to the Police Officer attached to Baishnabnagar Police Station (P.W.7) and on the written complaint of P.W.1 Baishnabnagar Police Station Case no.517 of 2014 dated 30.12.2014 under Section 489-B/489-C/120-B of the Indian Penal Code was registered against the appellant namely, Rahul Sk. and Jamirul Sk. Jamirul Sk. being a juvenile his case was separated and sent to Juvenile Justice Board for enquiry. Upon investigation charge sheet was filed against Rahul Sk. and Jamirul Sk for the offence under Section 489-B/489-C/120-B of the Indian Penal Code and the case against the appellant was committed to the Court of Sessions. Charge was framed under Section 489-B/489-C of the Indian Penal Code against the appellant who pleaded not guilty and claimed to be tried. Prosecution examined as many as seven witnesses and exhibited a number of documents. Defence of the appellant was that nothing had been seized from their possession and they have been falsely implicated in this case. In conclusion of trial, the trial judge by the judgment and order convicted and sentenced the appellant, as aforesaid. However, by the selfsame judgment and order the trial court acquitted the appellant of the charge levelled under Section 489-B of the Indian Penal Code.

3. Mr. Deep Chaim Kabir, learned counsel appearing for the appellant submitted that seizure of FICNs from the possession of the appellant has not been proved beyond reasonable doubt. Although the witnesses spoke of seizure list being prepared at the place of occurrence, P.W.1 in cross-examination stated that the seizure list was prepared before the superior at the BSF office. It is further submitted that there is no evidence that FICNs and other seized articles were put in envelopes although the police officer, P.W.7 claimed that he resealed the FICNs kept in envelopes. It is strenuously argued that there is snap in the live link between the seized articles and the articles sent for forensic examination as the malkhana register or general diary with regard to the custody of the seized notes have been produced in the instant case. There is also considerable delay in despatch of the seized notes for forensic examination. He, accordingly, prayed for acquittal of the appellant in the instant case.

4. Mr. Imran Ali, learned counsel for the State submitted that the evidence of the prosecute witnesses with regard to seizure of FICNs from the appellant is consistent and, therefore, ought not to be discarded. He submitted that at the time of preparation of seizure list numbers and their particulars relating to the seized FICNs were recorded in the seizure list and the selfsame notes were sent for forensic examination as would be evident from the report itself. There is no

snap in the live link between the seized articles and those which was subjected to forensic examination in the instant case. Accordingly, he prayed for dismissal of the appeal.

5. P.W. 1 to 4 are the B.S.F. officials who were present at the time of search and seizure resulting in the recovery of 199 pieces of FICNs of denomination Rs.1,000/-, that is, Rs.1,99,000/- from the possession of the appellant. P.W.1 deposed that on 30.12.2014 he received source information that two persons were coming down Link Road with FICNs by riding a motor cycle. He along with three other BSF personnel, namely, ASI Prabhakar Babu, Constable Rakhal Das and one constable driver went to 18 Mile Link Road and they waited there for sometime and found one motorcycle with two persons coming down the road and on suspicion they detained the said persons. On interrogation they disclosed their identities and a large quantity of FICNs., that is, Rs.2,97,000/- comprising of 199 pieces of denomination Rs.1,000/- each and 196 pieces of denomination Rs.500/- each were recovered from the appellant and the other accused person. Three mobile phones and Rs.350/- of Indian currency notes were also recovered. Two local witnesses were called. Recovery was effected in presence of the local witnesses and after search seizure list was prepared. Witnesses signed on the seizure list. He proved the seizure list (exhibit 1). The accused persons were arrested and brought to the police station. He lodged the written complaint and it bears his seal and signature. It was typed in his office (exhibit 2). He went to the police station and lodged the complaint. He handed over the label, seized notes and the accused persons to the local police station. He prepared the label (exhibits 3 and 3/1). Sealed envelope containing the seized fake currency notes was opened in Court in presence of the witnesses. He identified FICNs of denomination Rs.1,000/- MAT Exbt 1 and FICNs of denomination of Rs.500/- MAT Exbt II, three mobile phones as MAT Exbt III and Indian currency notes of Rs.350 MAT Exbt IV. In cross-examination, he stated that he did everything as per instruction of the Commander and the Commander knew of the said raid. He deposed that after arresting the accused persons they were brought to the superior and prepared seizure list. He did not take signature of the superior in the seizure list. The place where they arrested the accused is not border area where they used to patrol. The local police station is looking after the law and order situation. P.Ws.2, 3 and 4 are members of the ruling party. They have corroborated the evidence of P.W.1. They have also proved their signatures on the seizure list. P.Ws. 5 and 6 are independent witnesses. In examination in chief, they stated that they signed the seizure list while they were going to 18 Mile Link Road. They identified their signatures on the seizure list. However, in cross examination they stated their house is situated outside the fencing near the border area and they signed on the seizure list on the impression that they are entering after crossing the fencing. P.W. 7 is the investigating officer of the instant case. He drew up formal FIR (exhibit 5). During investigation he prepared draft sketch map with index (exbt 6 and 6/1). He recorded the statements of witnesses. He resealed FICNs under the seizure list (exbt 7). He collected report

of FICNs (exbt 8) and submitted charge-sheet. In cross-examination, he stated that he resealed notes at police station. He stated that when he deposited FICNs to Malkhana he did not make any General Diary. He sent FICNs to learned CJM on 9.1.2015. When he signed the seized notes he also did not make any General Diary. He did not seize Malkhana register or General Diary book or log book of the vehicle.

6. The evidence on record particularly the official witnesses, namely, P.Ws. 1 to 4 show that on secret information received by P.W.1 that two persons in a motorcycle would come down 18 Mile Link Road with FICN ambush was raid by B.S.F. officers. In course of such ambush two persons riding a motorcycle were apprehended and upon search a large number of FICNs., that is, 199 pieces of Rs.1,000/- each denomination and 196 pieces of Rs.500/- each denomination was seized from the possession of the appellant and Jamirul Sk, juvenile, respectively seizure list was prepared in connection with such seizure by P.W.1 and the notes were labelled by him. The appellants along with seized notes were thereafter brought before the police officer, P.W.7, who resealed the notes and sent them for forensic examination by expert. Expert opinion (exhibit 8) establishes that the seized notes were counterfeit.

7. Prosecution case has been seriously challenged on the ground that B.S.F. personnel ought not to have worked out the aforesaid incident with regard to trafficking of FICNs in the area in question falls within the civil police administration. I am unable to accept such submission. In view of the fact that control of inter country trafficking of currency notes is one of the prime concern of BSF, P.W.1 on receipt of information with regard to transportation of notes down the road leading to the border was duty bound to work out such information forthwith and apprehend the offenders. P.Ws.1 to 4, therefore, rightly lay in ambush and on apprehending the offenders promptly handed them over to local police for investigation as the incident had occurred in civilised area. The other aspect of challenge to the prosecution case is that very factum of seizure from the possession of the appellant has not been proved beyond reasonable doubt. The evidence on record clearly shows that a large number of FICNs were recovered at the spot from the possession of the appellant and the co-accused. It is the evidence of the prosecution witnesses that seized FICNs. were labelled promptly by P.W.1 and seizure list/memo was prepared at the spot. However, in cross-examination, P.W.1 claimed that the seizure memo was prepared in presence of the superior. Relying on this solitary line in cross-examination of P.W.1 it has been argued that seizure list was not prepared at the spot. The consistent evidence on record is that the seizure list was prepared at the spot. There is nothing in the seizure list to show that it was not prepared contemporaneously at the spot but later on. When the contemporaneous documentary evidence (Exbt.1) supports the oral evidence of the prosecution witnesses that the seizure list was prepared at the spot, I am unwilling to give credence to a stray sentence in the cross-examination of P.W.1 to come to conclusion to the contrary. That apart, the seized notes were promptly labelled

and numbers and other particulars of the notes are also noted in the seizure list. The seized notes in a labelled envelope was produced before P.W.7 and re-seized. The independent witnesses P.W. 5 and P.W.6 have also admitted their signatures on the seizure list. It is true that in cross-examination they claimed that they signed the seizure list presuming that they were signing the document while entering the fence. However, the independent witnesses have not denied their presence at the place of occurrence. Admittedly, place of occurrence is far away from the fencing area and, therefore, taking the evidence of the independent witnesses as a whole, I am of the opinion that the version of the independent witnesses that they signed the seizure list presuming that they were signing document while entering into the fencing does not inspire confidence. Hence, I discard their version of the independent witnesses that they signed the seizure list believing the same to be a document for entering the fencing. On the other hand, their admission that they signed the seizure list while going to 18 Miles tends credence to the factum of seizure of FINCs from the appellant at the place of occurrence. The next assault on the prosecution case is with regard to re-seizure of the articles at the police station. P.W.7 deposed that the articles were re-seized at the police station under a seizure list (exhibit 7). From exhibit 7 it appears that the numbers of the FICNs has been noted on the labels attached to the envelope in which the FICNs were kept. The said numbers tally with the inventory recorded in the seizure list (Exbt.1) prepared at the spot. It is, therefore, clear that the notes seized, labelled and inventoried by P.W.1 were produced by P.W.7 at the Police Station. Thereafter, it is the evidence of P.W. 7 that the said notes were kept in Malkhana, produced before learned CJM and finally sent for forensic examination. It is argued that neither the Malkhana register nor the corresponding general diary has not been proved and hence there is a snap in the live link between the seized notes and those examined by the expert. Reliance has been placed on *State of Orissa v. Sitansu Sekhar Kanungo* reported in 2003(1) ACR 313 (SC), *State of Rajasthan v. Gurmail Singh* reported in 2005(121) ECR 146 and *Sk. Mithun alias Md. Kalim, Sanjoy Khan alias Sanjaia v. State of West Bengal* reported in 2006 (2) CHN 603 in support of the contention that in the absence of deposit of articles in the malkhana register the live link between the seized articles and the forensic report is snapped. In the aforesaid reports narcotic substance has been seized from the possession of the accused and in the absence of deposit of articles in the malkhana there was no evidence on record to establish the seized articles were in fact sent for chemical examination. There was no labelling or identification mark on the seized narcotic substance so as to establish the live link in absence of the particulars of the malkhana register. On the other hand, the numbers of the seized FICNs were contemporaneously recorded in the seizure memo (Ext.1) prepared by P.W.1 who thereafter labelled the said notes and produced them before the police officer in an envelope. The notes were re-seized by P.W.7 at the police station under another seizure list (Ext.&) which also reflected the numbers of the notes which tallied with those in the seizure memo prepared by P.W.1. There is also no variation between the number of the notes, which was examined by the forensic

expert as would be evident for the documents appended to his report (exhibit 8). The notes seized from the appellant at the place of occurrence was, therefore, clearly identifiable with those examined by the expert in the instant case and the live link between them has been clearly established beyond reasonable doubt. In this factual matrix, I am of the opinion that non-production of the malkhana register or the general diary does not create a dent in the prosecution case and the aforesaid reports are clearly distinguishable on facts, as aforesaid.

8. In view of the aforesaid discussion, I am of the opinion that the prosecution has been able to prove its case beyond reasonable doubt. Conviction of the appellant is accordingly upheld.

9. Finally coming to the issue of sentence, I find that the maximum sentence has been imposed on the appellant. The appellant does not have any criminal antecedent and is a family man having strong roots in society. Accordingly, I am of the opinion that the sentence imposed upon the appellant may be reduced to a certain extent. Accordingly, I direct that the appellant shall suffer rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to suffer imprisonment for six months more.. The period of detention undergone by the appellant during investigation, enquiry and trial of this case shall be set off against the substantive sentence, as aforesaid, in terms of Section 428 of Cr.P.C.

10. The appeal is, accordingly, disposed of. The application for bail is also disposed of.

11. Let the lower court record along with the copy of the judgment be sent down at once.