
(2016) 06 GUJ CK 0014

In the Gujarat High Court

Case No : Criminal Appeal (Against Conviction) No. 869 of 2014 with Criminal Appeal No. 1032 of 2014 with Criminal Appeal No. 1084 of 2014

Raimal

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 489A, 489B

Citation : (2016) CriLJ 4136 : (2016) 4 Crimes 641 : (2017) 1 GLR 597

Hon'ble Judges : Mr. G.B. Shah, J.

Bench : Single Bench

Advocate : Mr. N.L. Ramnani, Advocate, for the Appellant No. 1; Mr. Jayesh C. Patel, Advocate, for the Appellant No. 1; Ms. R.P. Chandarana, APP, for the Opponent/Respondent No. 1; Mr. Madansingh O Barod, Advocate, for the Appellant No. 1; Ms. R.P. Chandarana, APP,

Final Decision : Allowed

Judgement

Mr. G.B. Shah, J.(Oral)—As these appeals arise out of the same judgment and order, with the consent of learned advocates appearing for the respective parties, they were heard together and are being decided by this common judgment.

2. These three appeals arise out of the same judgment and order dated 26/6/2014 passed by the learned 6th Additional Sessions Judge, Gandhidham, Camp at Anjar-Kachchh in Sessions Case No. 5 of 2011 whereby the present appellants-original accused were convicted and sentenced to undergo SI for five years with fine of Rs. 1,000/- each, in default, to suffer further imprisonment for one month for the offence punishable under section 120-B of Indian Penal Code (hereinafter referred to as "IPC" for short), SI for ten years with fine of Rs. 1,000/- each, in default, to suffer further imprisonment for one month for the offence punishable under section 489-A of IPC, SI for ten years with fine of Rs. 1,000/- each, in default, to suffer further imprisonment for one month for the

offence punishable under section 489-B of IPC, SI for seven years with fine of Rs. 1,000/- each, in default, to suffer further imprisonment for one month for the offence punishable under section 489-C of IPC and SI for ten years with fine of Rs. 1,000/- each, in default, to suffer further imprisonment for one month for the offence punishable under section 489-D of IPC. Criminal Appeal No. 869 of 2014 has been filed by the original accused No. 3, Criminal Appeal No. 1032 of 2014 has been filed by the original accused No. 1 and Criminal Appeal No. 1084 of 2014 has been filed by the original accused No. 2.

3. Heard Mr. N.L. Ramnani, learned advocate for the original accused No. 3 replacing learned advocate, Mr. P.V. Patadiya in Criminal Appeal No. 869 of 2014 and also for the original accused No. 2 in Criminal Appeal No. 1084 of 2014, Mr. Madansingh O. Barod, learned advocate for the original accused No.1 in Criminal Appeal No. 1032 of 2014 and Ms. R.P. Chandarana, learned APP for the State in all these appeals.

4. Short facts, as per submission of the learned advocates for the parties, are that on 9-11-2010 at Adipur Bus Station, original accused No. 3-Raimal @ Viro Rajabhai Somabhai Rabari (Karmta) was caught with 450 fake currency notes of the denomination of Rs. 100/- and therefore, a complaint was lodged by the complainant before Adipur Police Station on the same day. Upon interrogation of original accused No. 3, names of original accused No. 1-Bipin Madhubhai Shamji Thakkar and original accused No. 2-Girish @ Gopal Hemraj Thakkar were disclosed and accordingly, further investigation was carried out on the same day and original accused Nos. 1 and 2 were arrested. On the same day, second complaint was filed by the police against the present accused at Anjar Police Station. Thus, subsequently, two charge sheets were filed before the Courts at Gandhidham and Anjar, Kachchh and accordingly, two cases being Sessions Case No. 5 of 2011 at Gandhidham, Camp at Anjar and Sessions Case No.7 of 2011 at Gandhidham were registered. So far as the case registered at Gandhidham i.e. Sessions Case No. 7 of 2011 is concerned, the judgment had been delivered on 4-5-2015 by the concerned Court during the pendency of these appeals and all the accused of the said case viz., Sessions Case No. 7 of 2011, who are accused in the present case, were acquitted. The learned advocates for the appellants fairly admitted that said fact of pronouncement of aforesaid judgment was not brought on record by submitting an application for amendment raising the said ground in the present appeals and, as such, they are not in a position to take any advantage of the said case because none had put any efforts to see that both the cases are heard by one Court though differently registered, as referred here in above.

5. So far as the present case being Sessions Case No. 5 of 2011 is concerned, learned advocates for the appellants submitted that the raid was carried out in presence of panchas and all the panchas at Exhs.27, 34, 36 and 37 have not supported the case of the prosecution and were declared hostile. Rest of the witnesses are police officials, who gave stereotype versions as stated in the FIR

and tried to support the case of the prosecution and therefore, the court should not place reliance solely on the evidence of police officials as being interested witnesses. Attention of this Court was drawn on the evidence of P.W.No. 7-Piyush Veljibhai Aahir at Exh.50, who is alleged to have rented the premises i.e. Room Nos. 101 and 104 to original accused Nos. 1 and 2 respectively and submitted that the trial court has given much weight-age on the evidence of said witness and came to the conclusion by elaborate discussion that though the panchas have not supported the case of the prosecution and though the numbers of receipts were not in chronological manner apart from the fact that original receipts were not forthcoming on the record, however, relying solely on the evidence of P.W.No. 7-Piyush which, according to the trial court, appears to be trustworthy and reliable witness, based the conviction of the appellants. They vehemently submitted that if at all this Court comes to the conclusion that assumptions and presumptions made by the trial court in the detailed judgment are considered to be correct, then also, the trial court has wrongly presumed that the currency notes recovered from the house were fake because final FSL report is not forthcoming on the record. They further submitted that in absence of final FSL report, no reliance ought to have been placed by the trial court on the document at Exh.82, which is the report prepared on the day of incident by the Mobile FSL Official. In this connection, they heavily relied on the decision of a Division Bench of this Court in the case of Kalubhai Alsibhai Karangia v. State of Gujarat and anr. reported in 2012(4) G.L.R. Page 3394.

6. Learned APP, Ms. Chandarana, for the State, submitted that it is a well settled legal position that if the police officials in discharge of their official duty being members of the raiding party have supported the case of the prosecution, it cannot be said that they are interested witnesses. Drawing attention of this Court towards the depositions of police officials namely, P.W.No. 6-Ramdevsinh Bahadursinh Jadeja-Police Constable at Exh.45, P.W.No.8-Lalit D. Vagdiya-Police Inspector at Exh.61, P.W.No.9-Navinchandra Jayantilal Limbachiya-PSO at Exh.74 and P.W.No.10-Dineshbhai Budhabhai Matang Investigating Officer at Exh.79, she submitted that all these witnesses have supported the complaint as well as the panchanama of scene of offence carried out on the same day at Exh.28. She further drew attention of this Court on the evidence of P.W.No.7-Piyush Veljibhai Aahir at Exh.50 and minutely referred the rental receipts issued by said witness and submitted that so far as rent receipts are concerned, signature of the accused No.2 appears in all the receipts and the Court has taken cognizance of the same and as far as case of the prosecution qua Room Nos. 101 and 104 is concerned, the original accused Nos. 1 and 2 have not denied that aspect in their defense. Moreover, in the further statements recorded by the Court under section 313 of the Code of Criminal Procedure ("the Code for short), the original accused have not put their specific case regarding possession of the said rental rooms and therefore, now they cannot have a defense that such receipts are concocted more particularly when they have specifically admitted in their cross-examination and on their admission, such receipts were exhibited and therefore, they have to

be read as they are. She also drew attention of this Court on the document at Exh.82, which is the report prepared by the FSL official at the initial stage in presence of police officials at the scene of offence, and submitted that if at all this Court has considered that the final report of the FSL is not appearing on the record, then also, the trial court has rightly concluded the said aspect to the effect by holding that the documents at Exh.82 has been prepared by the scientific official, who is expert in the field and the said expert has opined at the initial stage on a bare perusal of the said fake currency that there do not appear water mark, symbol of Gandhi and security thread. Under the circumstances, as per the submission of learned APP, when ingredients of offences punishable under sections 489-A, 489-B, 489-C and 489-D have been convincingly proved and prima facie opinion of the FSL official is obtained on the record, the Court should not show any leniency as the crime having proved against the appellants is severely affecting the economy of the nation and it being the serious offence, certain lacuna, which is rightly considered by the trial court, should be accepted.

7. I have gone through the rival submissions made by learned advocates for the respective parties together with the oral as well as the documentary evidence on record as also the findings arrived at by the trial court in the impugned judgment and order. I have also gone through the decision relied on by the learned advocates for the appellants i.e. Kalubhai Alsibhai Karangia(supra), relevant paragraphs Nos. 11 to 14 read as under:

"11. However, the aforesaid view cannot be expressed for the alleged offence under sections 489A and 498D of the Code. We may first examine the aspect of section 489A for which the charge upon the accused was that he not only knowingly printed the currency but used for putting into circulation as genuine. The prosecution to prove the guilt of A1, on the aforesaid aspect, has examined the witnesses from whom the computer and the printer are said to have been purchased but the relevant and important aspect is that the eye witness Palabhai Devangbhai, PW 29 whose deposition is at exhibit 84 has not at all supported the case of the prosecution and has also been declared hostile. In his cross examination, the prosecution has not been able to show that he had witnessed the incident of printing the currency by A1. On the contrary, the said witness has denied of such statement made before the police for witnessing of the said incident. Therefore, there is no direct evidence led by the prosecution, viz., of any eye witness deposing before the Court that he has seen A1 printing fake currency or any currency with the help of the computer or printer or otherwise. The other most crucial aspect is that the computers and printers which are discovered at the instance of A1 were sent to FSL for the opinion as to whether the muddamals of currency notes of denomination of Rs. 50 and Rs. 100 which have been recovered and sent to FSL as mark A to M have been printed through the computer system marked "O" (O1 to O6) and marked "N" (N1 to N6). The said communication to FSL is produced at exhibit 122. The opinion of the FSL is dated 08.12.2003 produced with the same exhibit 125 of the FSL dated 10.12.2003. As per the said opinion and the observation made by FSL for

computer system of "N" comprising of N/1 to N/5, CPU N/2 which was found in working condition and the image of the currency of Rs. 500 and of Rs. 50 and of Rs. 10 were found. But the pertinent aspect is that as per the FSL opinion, in CPU N/2, no printer has been loaded. Meaning thereby, the CPU did not contain any printer loaded. Therefore, in any case, even as per the opinion of FSL, CPU N/2 could not be said as used for printing. The other opinion given by the FSL to the effect that keyboard of N/3 was not matching/fitting to CPU N/2 when FSL connected copier N/6, it was receiving "error message".

12. Even for the other computer system of "O" comprising of O/1 to O/6, the observation and the opinion of FSL are that CPU O/2 was not functioning. Therefore, the hard disk was taken out and in the hard disk of CPU O/2, no file was found of currency notes. It has also been further opined that the printer of the system O/4 and the scanner O/5 have not been loaded to the hard disk of CPU O/2. It has also been opined on the aspects of currency notes by the FSL in the same report that the serial number of the currency notes of Rs. 50 and Rs. 100 whose images were found in CPU N/2 were not tallying by serial number of currency notes which were recovered as mudammal (A to M) bearing denomination of Rs.50 and it has been further stated in the report that mudammal A to M did not contain any currency note of Rs. 500 or Rs. 10.

13. The aforesaid opinion of FSL clearly goes to show that mudammal sent for scientific investigation contained fake currency notes of denomination of Rs. 100 and Rs. 50 only and not of Rs. 500 or Rs. 10. Further, if no printer was found to have been loaded in the CPU N/2 and if no printer O/4 or scanner O/5 were found to have been loaded in the hard disk of another CPU O/2, it cannot be said beyond reasonable doubt that the computer discovered during the investigation and of which the evidence has been led by the prosecution were the same used for counterfeiting or printing of the currency notes. The said aspect is coupled with the circumstance that the currency notes recovered did not tally with the serial number with the image found of the currency in CPU of N/2. Under these circumstances, we find that even if the evidence produced on behalf of the prosecution for discovery of both the computer systems at the instance of A1 is accepted, such computer system discovered by the police are not as per the opinion of the FSL used for printing of any currency nor the image found in one of the CPU of N/1 of the currency tally by serial number with the muddamal of the currency recovered by the police from A1. As observed earlier, there is no eye witness to the incident of printing currency notes by A1 through which it can be said that the prosecution has been able to prove the case. On the contrary, as observed earlier, the eye witness has not supported the case of the prosecution at all. Therefore, the only other evidence as available to the prosecution was to show the link for printing of the currency notes with the help of the computer system which are said to have been discovered by the police at the instance of A1. There is no other evidence available for showing the link of A1. There is no other evidence available for showing the link of A1 for his involvement in the printing of fake currency. Under these circumstances, we find that the accused

A1 would be entitled to the benefit of doubt since the prosecution has not been able to prove the case for the offence under section 489A of IPC for a part in the process of counterfeiting any currency note.

14. Even on the aspects of constitution of the offence under section 489D, the same situation would arise if the evidence on record is taken into consideration. As per the prosecution case, A1 had purchased the computer for forging or counterfeiting of the currency notes with the help of the printer. Both computer systems with the printer (N & O) sent to the laboratory for testing as per the opinion of the FSL could not be said to have been used for forging or counterfeiting of the currency notes beyond reasonable doubt since the printer or scanner have not been found loaded in the CPU of both the computer systems, viz. N/2 and O/2. Therefore, when the prosecution has not been able to prove beyond reasonable doubt showing that the computer system discovered at the instance of the accused are the very computers used for forging or counterfeiting the currency notes, even if the case of the prosecution is believed to the extent that A1 did purchase and possess both the computer systems at the one point of time, it cannot be said that he possessed the computer for forging or counterfeiting currency notes since the actual forging and counterfeiting of the currency notes showing the link, has not been proved by the prosecution beyond reasonable doubt. We may also state that mere possession of any computer system would not be sufficient to constitute the offence under section 489D of the Code unless the prosecution also proves the further requirement of actual use of the computer system for forging or counterfeiting of currency notes. Then only the intention of the person who possessed the computer could be said to have been proved beyond reasonable doubt as required under section 489D of the Code unless the machinery is such which can be used for any other purpose than that of printing or counterfeiting of the currency. Under these circumstances, we find that as the prosecution has not been able to prove the case beyond reasonable doubt for the offence under section 489D of the Code, the benefit of doubt should go to A1."

8. It is not under dispute that so far as the case on hand is concerned, during the course of investigation, the prosecution has forwarded muddamals for examination of Forensic Scientific Laboratory at Gandhinagar and dispatch note is at pages 154 and 155. Page No. 156 is the certificate issued by Dy.S.P., Anjar dated 18-12-2010. Exh.81 is the letter written by the FSL official, Gandhinagar addressed to Police Sub Inspector, Anjar Police Station, Kachchh at Gandhidham in which it is mentioned that nine sealed muddamal articles had been received for examination by the said FSL official. Exh.82 is the report prepared by the Scientific Officer at the initial stage in presence of police officials of FSL Mobile, Gandhidham, which has been considered by the trial court, as referred here in above.

9. It is an admitted fact that in spite of above referred documents, the final report of FSL authority has not been forthcoming on the record. Neither the

learned advocate for the appellants nor the learned APP is in a position to lay their hands on the said final report which is required to have been forwarded by the FSL authority after examining nine muddamal articles, referred here in above. It is pertinent to note that the learned APP of the trial court has neither drawn attention of the trial court seeking time for getting the said FSL report nor has the Court while considering the document at Exh.82 thought it fit to give any direction either to the prosecution or the FSL to produce final report of nine muddamals sent for analysis through dispatch note. It is surprising that though the learned Judge has considered document at Exh.82 i.e. initial report prepared by the Mobile FSL official, then also, efforts ought to have been made by the concerned Judicial Officer to procure final FSL report if the prosecution has not extended any cooperation. It is the bounden duty of the learned APP at the trial court also to see that such lacuna does not remain on the record while concluding the case. However, for the reasons best known, learned APP at the trial court failed to procure such an important document. It is a sheer negligence on the part of concerned Investigating Officer also as, although he had forwarded the muddamal articles through dispatch note, he had not sent any reminders nor had he tried to get the final report, which is, as such, required to be annexed with the charge sheet. In spite of the fact that the concerned Investigating Officer has been examined by the learned APP, neither the learned APP nor the Investigating Officer thought it fit to draw the attention of each other regarding missing of final report of FSL on the record. Whether it is a deliberate attempt on the part of the Investigating Officer or the learned APP will be decided after inquiry.

10. Under the circumstances, the Legal Department, State of Gujarat and Dy. S.P., Gandhidham at Kachchh are hereby directed to initiate inquiry respectively against the concerned learned APP as well as the Investigating Officer.

11. From the above discussion, the case against the accused has not been proved by the prosecution beyond reasonable doubt and therefore, benefit of doubt is required to be given to the accused and the accused deserve to be acquitted of the charges levelled against them by allowing the appeals.

12. In view of the above, these appeals are allowed. The impugned judgment and order dated 26/6/2014 passed by the learned 6th Additional Sessions Judge, Gandhidham, Camp at Anjar-Kachchh in Sessions Case No. 5 of 2011 is quashed and set aside and they are acquitted of the charges levelled against them. The accused are in jail and they are ordered to be set at liberty forthwith, if not required in any other case. Fine paid by the appellant-accused shall not be refunded. Record and proceedings shall be sent back forthwith to the trial court.