

(2012) 05 DEL CK 0652

In the Delhi High Court

Case No : Criminal Appeal No. 324 of 2011

Shamim @ Bhura

APPELLANT

Vs

The State of Delhi

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 360, 374

Penal Code, 1860 (IPC) — Section 489B

Probation of Offenders Act, 1958 — Section 4

Citation : (2012) 4 ILR Delhi 284

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : R.S. Juneja, with Mr. Lalit Yadav, for the Appellant; Fizani Husain, APP., for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This is an appeal u/s 374 Cr.P.C. assailing the judgment dated 22.12.2010 whereby the appellant was convicted u/s 489B IPC and was sentenced for a period of 4 years RI with fine of Rs. 15,000/-. It is the case of prosecution that ASI Devender received secret information that the appellant used to sell fake Indian currency notes for half price near Gagan Cinema and such information was noted down by him vide DD No. 6. After directions from the ACP, a raiding party consisting of ASI Devender, Head Constable Pramod, Head Constable Dilawar, Constable Ravinder, Constable Kishan Kumar, Constable Anju and Constable Parvez Alam was formed and the party reached near SDM Office, Sunder Nagri along with the secret informer on 06.04.2007 at about 3.30 P.M. At about 4.15 P.M., the appellant/accused came towards Gagan Cinema and on the direction of the secret informer, Constable Ravinder, who was deputed as a decoy customer, went towards him. Constable Ravinder purchased one note of Rs. 1,000/- and two notes of Rs. 5,00/- from the accused and signaled the raiding party by waving his hands. The abovementioned notes were found to be fake and on search of the accused, 29 fake Indian currency notes of Rs. 1,000/- and

38 fake Indian currency notes of Rs. 500/- were recovered. After completion of investigation, the appellant was chargesheeted u/s 489B IPC. The currency notes were examined by A.M. Behere, Asstt. Works Manager (PW-8) who gave his reports that the notes were not genuine. The prosecution examined eight Police officials as witnesses to substantiate its case and after examining the witnesses and material on record, the appellant was found guilty u/s 489B IPC. Hence the present petition.

2. It is submitted by the learned counsel for the appellant that the Trial Court has not properly appreciated the material contradictions in the statements of prosecution witnesses and hence the judgment passed by the learned Trial Court suffers from infirmity and is liable to be set aside. It is submitted that the FIR was lodged after considerable delay which casts a shadow on the prosecution case. The impugned judgment has further been challenged on the ground that no public witnesses were joined by the Police in spite of the fact that the spot from where the appellant was apprehended is a crowded place and there were a lot of people around at the relevant time. It has been further submitted by the counsel for the appellant that no copy of seizure memo was given to the appellant on the spot or even afterwards. It has been further argued that the prosecution has not been able to show that from where the Rs. 1,000/- currency note was taken by the Police which was used by them in the case for trapping the appellant. Finally, it is submitted that the sentence imposed by the Trial Court is very harsh considering the fact that the appellant has 3 dependent daughters and further the appellant was not given the benefit u/s 360 Cr.P.C. and Section 4 of the Probation of Offenders Act.

3. On the other hand, the learned APP for the State submitted that all the contentions raised by the counsel for the appellant were dealt with in the judgment of the learned ASJ and were answered to the satisfaction of the Trial Court by PW-4, ASI Devender. It has been further submitted that the prosecution has been able to prove the guilt of the appellant beyond reasonable doubt and the order of the learned ASJ requires no interference. It has been further argued that keeping in mind the nature of the offence, which is economic in nature and prejudicial to the economic interest of the country, the sentence of imprisonment is just and reasonable and so need not be disturbed.

4. I have heard rival submissions and perused the impugned judgment as well as Trial Court record.

5. It is noted that the material witnesses examined by the prosecution were PW-2, HC Ravinder, PW-4 ASI Devender and PW-5 HC Pramod Kumar. From the perusal of the Trial Court record, it is seen that HC Ravinder and HC Pramod Kumar were cross examined at length, but nothing could be elicited out of them that would cast any doubt on the prosecution case. They corroborated the statements of each other on all material aspects and their testimonies inspire credence. ASI Devender was not cross examined despite the fact that several opportunities were given to the appellant for the same. Not only that, he was

even recalled for cross examination on the request made by the appellant vide application u/s 311 Cr.P.C., but even then he was not cross examined. Again request was made to recall him for cross examination, which was declined. This order remained confirmed upto the Supreme Court. Hence his testimony remained unassailed and rather accepted as unchallenged. Consequently, nothing can be read into the plea of the counsel for the appellant that there were contradictions in the statements of the witnesses and were wrongly relied upon by the learned Trial Court.

6. Moving on as per the records, the appellant was apprehended with fake currency notes by the Police officials at 4.35 P.M. and the FIR was lodged at 7.25 P.M. I find no merit in the plea of the learned counsel for the appellant that there was delay in the lodging of FIR. There are certain procedures that had to be followed and a gap of three hours from the time of occurrence cannot be termed as inordinate delay.

7. Dealing with the next contention of the learned counsel for the appellant, it is noted that there were no independent witnesses to testify the recovery of the fake Indian currency notes from the appellant. However, from the perusal of the Police officials' statements, it is seen that the passers-by were asked by the raiding party to join, but they declined and went away. It is no doubt correct that there were no independent witnesses to substantiate the prosecution case, but this cannot be made the sole ground for throwing out the entire prosecution case. It is experienced that there is not only general apathy and attitude of indifference and reluctance of general public in joining the police, there is equal amount of insensitivity as well. Neither the Police nor the public could be said to be solely responsible for this state of affairs. The public does not want to be dragged in police and criminal cases and want to avoid them because of long drawn trials and unnecessary harassment. The Courts cannot be oblivious of this general state of affairs. Further, in a case where the statements of Police officials inspire confidence and are corroborated by material evidence, then there is no reason to doubt their testimony only on the ground that they are Police officials. In *Aher Raja Khima Vs. The State of Saurashtra*, it was observed that the presumption that a person acts honestly and legally applies as much in favour of police officers as of other. It is not proper and permissible to doubt the evidence of police officers if there is no proof of ill-will, rancor or spite against the accused. Judicial approach must not be to distrust and suspect their evidence on oath without good and sufficient ground thereof..

8. The next contention of the learned counsel for the appellant is that seizure memo was not handed over to the appellant at any time. This plea is patently absurd and untenable as seizure memo is not for the perusal of the accused, but is for the purpose of being put before the Trial Court for the purpose of proof of recovery of the things mentioned therein as also for the examination of the seized material. There is nothing pointed out to doubt the veracity of seizure memo which was undisputed and signed by the appellant. The seizure memo

duly stands proved in the testimony of PW-2. Assuming that the copy thereof was not given to the appellant, no prejudice is shown to have been caused to him.

9. Regarding the contention of the learned counsel for the appellant that it has nowhere been recorded that from where came the Rs. 1,000/- note, which was allegedly used by the decoy customer HC Ravinder to trap the appellant. From the perusal of record, it is seen that the Rs. 1,000/- note bearing No. 2CL 515305 was handed over by ASI Devender to HC Ravinder after putting his initial on the same and was sealed in an envelope and marked at Sl. No. 2 and seized vide seizure memo Exhibit PW-2/E. It is evident that all necessary steps were taken by the Police officials regarding the genuine currency note used by them and nothing can be pointed out to show that there was any irregularity on their part.

10. From the perusal of the material on record and submissions made by the learned counsel for the appellant, I find no irregularity committed by the police officials who conducted the entire operation and investigation and it is evident that the appellant was rightly convicted by the learned Trial Court after careful consideration of entire facts and circumstances and evidence that was produced before it. The pleas raised by the counsel for the appellant are without any merit and untenable. Keeping in view the nature of offence committed by the appellant, the sentence imposed on him is just and meets the ends of justice. It balances the mitigating factors pointed out by the counsel for the appellant, with the requirement of providing deterrence to the people of the society. I find no reason to disturb the sentence of imprisonment imposed on the appellant. In view of the above discussion, I find no perversity or illegality in the judgment of conviction and order on sentence passed by the learned Trial Court. The appeal being devoid of any merit is hereby dismissed.