

(2017) 01 TP CK 0038
In the Tripura High Court
Case No : 26 of 2014

Sri Biplab Bhar, S/o. Late Birbal Bhar

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 374(2) - Power to examine the accused - Appeals from convictions
Indian Penal Code, 1860, Section 28, Section 489A, Section 489C, Section 489B, Section 489E - "Counterfeit - Counterfeiting currency — Notes or bank-notes - Possession of forged or counterfeit currency-note or bank- notes - Using as genuine, forged or counterfeit currency-notes or bank- notes - Making or using documents resembling currency-notes or bank- notes

Citation : (2017) 01 TP CK 0038

Hon'ble Judges : S.C. Das

Bench : Single Bench

Advocate : A Gon Choudhury, R.C. Debnath

Judgement

1. This Criminal Appeal under Section 374(2) of Cr.P.C is directed against the judgment and order of conviction and sentence dated 18.09.2014 passed by learned Sessions Judge, Kailashahar, North Tripura in Case No. S.T. 32(NT/K) of 2013.

2. The accused appellant Biplab Bhar was found guilty of the charges framed against him under Section 489C of IPC and, accordingly, he was sentenced to suffer RI for 5(five) years and to pay a fine of Rs.50,000/-, in default to suffer RI for 6(six) months. Having felt aggrieved the present appeal is preferred by the accused appellant Biplab Bhar.

3. Heard learned counsel, Mr. A Gon Choudhury for the accused appellant and learned Addl. P.P., Mr. R.C. Debnath for the State-respondent.

4. Prosecution case in short is that an information was received by the police of Kailashahar P/S that some fake currency notes may be transacted at Jitur Dighir Par, D.K. Road Kailashahar and on that information the informant, Constable Titash Deb Kanango (P.W-1) alongwith DIB constable Sujit Sinha(P.W-2) and another SPO Ahad Ali and one Head Constable Ashish Pal (P.W-5) laid a trap at D.K. Road (Jitur Dighir Par) Kailashahar and at about 11.45 A.M they found 3(three) persons wondering suspiciously and when they proceeded towards them those persons started fleeing away from the spot running and they chased behind them and caught one of them.

5. The person who was caught disclosed his name as Biplab Bhar and a packet was found with him in which 11(eleven) one thousand Taka of Bangladeshi currency notes and 11(eleven) Indian denomination of 500 rupees currency notes were found and they suspected that those currency notes might be fake currency notes and immediately they informed SDPO, Kailashahar and O/C of the Kailashahar P/S and the senior police officers rushed to the spot and arrested the accused and seized those currency notes which were found in possession of the accused Biplab Bhar and Kailashahar P/S Case No.301/2012 under Section 489B and 489C of IPC was registered and S.I. Buddha Debbarma was entrusted with the charge of investigation. S.I. Buddha Debbarma conducted the investigation and sent the seized currency notes to the State Forensic Science Laboratory for examination. Subsequently investigation was handed over to S.I. Goutam Paul (P.W-7) and he submitted charge sheet against the accused-appellant.

6. In course of trial, learned Sessions Judge on 07.01.2014 framed charges against the accused for commission of offence punishable under Section 489C of IPC to which he pleaded not guilty and claimed to be tried. Prosecution examined 9(nine) witnesses and exhibited the material documents including the seizure list and the report of TSFSI.

After closer of the prosecution evidence accused was examined under Section 313 of Cr.P.C and in his turn he declined to adduce any evidence. Defence case was that of bare denial of the prosecution case and nothing else.

7. Learned Sessions Judge found the accused guilty of the charges and sentenced him as aforesaid.

8. Felt aggrieved the present appeal is preferred by the accused appellant.

9. Learned counsel, Mr. A. Gon Choudhury has submitted that D.K. Road of Kailashahar is within urban area but except PW-3 no other local person was examined as a witness. All the other witnesses were police personnel and, so, their evidence cannot be readily relied on. PW-3, who is sole independent witness has not supported the case of the prosecution. The prosecution case is therefore doubtful and the accused is entitled to get the benefit of doubt.

10. Learned Addl. P.P., Mr. R.C. Debnath on the other hand has submitted that the evidence of PW-1, PW-2, PW-3 and PW-5 are enough to hold that the charges

framed against the accused are proved. There is nothing on record that the witnesses had any animosity with the accused to implicate him falsely. So under such circumstances, the evidence of those witnesses cannot be dis-believed. He has also submitted that the evidence of PW-9 has proved that the Five Hundred rupees currency notes which were seized from the possession of the accused were all fake currency notes and, so, the learned Session Judge rightly found the accused guilty of the offence.

11. I have meticulously gone through the evidence on record. PW-1, PW-3 and PW-5 made categorical statements that based on some secret information of transaction of fake currency notes, likely to be held by some persons at D.K. Road (Jitur Dighir Par) Kailashahar, they went there and at about 11.45 A.M. and found 3(three) persons moving suspiciously and on seeing them those 3(three) people were fleeing away and the witnesses chased behind them and caught one of them. The person who was caught was the accused Biplab Bhar and a packet was found with him which contained 11(eleven) Bangladeshi Taka of 1000 denomination and 11(eleven) numbers of Indian Rupees of 500 denomination which at a glance were found to be fake and, therefore, PW-1, PW-2 & PW- 5 and their accompanion SPO informed the superior officers of the police and they rushed to the spot and seized the currency notes and arrested the accused.

12. It is true that 3(three) seizure list witnesses are the police personnel who actually detained the accused and no local people were made witnesses. The accused was caught by those witnesses and, so, they were made seizure list witnesses. There is nothing in the cross-examination that at the time of apprehension of the accused some other local people were also present but they were not made witness.

13. Learned counsel, Mr. Gon Choudhury has vehemently argued that PW-3 is an independent witness and he was present on the spot but he was not made a seizure witness. In his deposition P.W-3 stated that on 24.11.2012 while he was returning home at about 11.30 A.M near Jitur Dighir Par he found a gathering and he stopped there and found some police personnel in civil dress interrogating one person. That person brought out a packet from his pocket and handed it over to the police personnel. The person who brought out the packet was identified in the dock i.e., the accused. So, the examination-in-chief of this witness clearly reveals that he was not present at the moment when the accused was caught by those police constables. He subsequently went there and, therefore, he was not made a witness to the seizure list. So this submission of learned counsel, Mr. Gon Choudhury cannot gather any grain in the given facts and circumstances of the case.

14. The evidence of PW-3 does not in any way support the case of the accused that the accused was not present there and that a packet was not handed over by him to the police constables. There is nothing in law that a police constable cannot be a witness of credit. The Supreme Court in the case of Nathusingh Vs. State of Madhya Pradesh, reported in AIR 1973 SC 2783: (1974) 3 SCC 584 in

the given facts and circumstances of that case has held that police officers can be relied where no hostility in the case has been shown.

15. In the case of of Ram Kumar Vs. State(NCT) of Delhi, reported in AIR 1999 SC 2259: (1999) 9 SCC 149, the Supreme Court has observed that merely because of nonexamination of any individual witness, evidence of police officers, who were found to be credible, cannot be discarded.

16. In the case at hand, the simple prosecution case is that based on some secret information that transaction of fake currency notes was likely to be held by some unscrupulous persons at D.K. Road (Jitur Dighir Par) Kailashahar, the police constables went there and they found 3(three) persons moving suspiciously and when they proceeded towards them they were trying to run away. The police constables chased behind them and caught the accused and recovered the alleged fake currency notes.

17. The accused did not take any plea that he was possessing those currency notes with the bonfide believe that those were genuine notes. He was fleeing away from the spot which suggests that he had guilty mind and he knew that those currency notes were fake notes and, therefore was trying to escape from the police.

18. The Sections 489A to 489E of IPC deals with the offence relating to currency notes and bank notes. The word "counterfeit" is defined in Section 28 of IPC which reads thus:- "Counterfeit".- A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised."

The object of legislature in creating these provisions as may be inferred was not only to protect the economy of the country but also to provide adequate protection to currency notes and bank notes. The currency notes are, in spite of growing accustomedness to the credit cards/debit cards or cash less system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

19. The Apex Court in the case of of K Hasmi Vs. State of Tamil Nadu, reported in AIR 2005 SC 128 has held that the object of the legislature in enacting this provision is to stop the circulation of forged notes by punishing all persons who knowing or having reasons to believe the same to be forged do any act which could lead to there circulation.

20. In the case of State of Kerala Vs. Mathi Verghese, reported in (1986) 4 SCC 746: AIR 1987 SC 33, the Apex Court while explaining the purpose of the above provision has held:- " That manifest purpose of the provision is to protect people from being deceived or cheated by ensuring that a person accepting a currency note is given a genuine currency which can be exchanged for goods or services and not a worthless piece of paper which will bring him nothing in return, it being

a counterfeit or a forged currency note."

21. The offence, no doubt, is one of exceptional nature and gravity and the offence must be dealt with ruthlessly if the charge is brought home according to law. A court of law should not be influenced with the gravity of the offence alone and pass a judgment based on inadequate or cripple evidence. The Court should consider the legal evidence and pass judgment according to law.

22. Section 489C of IPC reads as follows:- " 489C. 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 and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

23. A bare reading of the above provisions makes it abundantly clear that if a person is found to be in possession of forged or counterfeit currency notes or bank notes and if he is intending to use the same as genuine or that it is likely to be used as genuine, the offence shall be presumed to have been committed.

24. In the present case the accused person was not found in transacting the fake currency notes but was found in possession of the currency notes and when he found the police personal he was fleeing away which suggests that he had the knowledge that those currency notes in his possession were fake currency notes. No other inference can be drawn in the given facts and circumstances of the case because there is even no cross-examination to draw any other inference in respect of possession of the fake currency notes.

25. The evidence of PW-9 clearly established that the currency notes seized from the custody of the accused were fake currency notes. Under such circumstances, there is no other way but to draw an inference that the accused was in possession of the fake currency notes with a view to use those as genuine knowing that it was fake currency notes. The argument advanced by learned counsel, Mr. Gon Choudhury therefore cannot be accepted simply on the ground that independent/local witnesses were not examined by the prosecution.

26. The next argument advanced by learned counsel, Mr. Gon Choudhury was that the accused is sole bread earner of his family and that he may be given the benefit of Probation of Offenders Act. The Trial Court did not extend the the benefit of Probation of Offenders Act to the accused. The accused was dealing with the fake currency notes and, so, I think it is not a fit case to give the benefit of Probation of Offenders Act to the accused. However, as I find the fine of Rs.50,000/- is excessive and harsh and that may be reduced to Rs.5,000/-. The finding of conviction is upheld and the accused shall suffer sentence of RI of 5 years as inflicted by learned Sessions Judge but the fine money is reduced to Rs.5000/- and in default of payment of fine to suffer SI for 15 days. The appeal accordingly stands dismissed with the modification of sentence as stated above.

27. Send back the L.C records along with a copy of the judgment.