

(2014) 05 TP CK 0037

In the Tripura High Court

Case No : Crl. A (J) No. 20 of 2013

Sri Sambhu Debbarma VsThe State of Tripura

Date of Decision : 27-05-2014

Acts Referred:

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

Citation : (2014) 05 TP CK 0037

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : R. Purkayastha, Advocate for the Appellant; A. Ghosh, PP, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—Heard Ms. R. Purkayastha, learned counsel appearing for the appellant as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the state.

2. This appeal by the convict is directed against the judgment and order dated 05.04.2013 delivered in S.T. No. 40(ST/K)/2009 by the Addl. Sessions Judge, West Tripura, Khowai. By the said judgment and order, the appellant, Sambhu Debbarma has been convicted under Sections 489B and 489C of the Indian Penal Code (IPC). However, the Addl. Sessions Judge has noted that he would not impose any sentence for Section 489C of the IPC, inasmuch as, according to his opinion the offence depicted u/s 489C of the IPC is within the offence depicted u/s 489B of the IPC. As such, the appellant was sentenced to suffer RI for seven years and to pay fine of Rs. 20,000, in default to suffer SI for two years u/s 489B of the IPC.

3. On an oral complaint filed by one Indrajit Das, PW. 1, disclosing that the appellant appearing before his shop, wanted change of an Indian currency of denomination of Rs. 500, but suspecting the said currency to be counterfeit, he took the opinion from another shop-keeper. The said shop-keeper had also opined that the currency was counterfeit.

4. Based on the said oral ejahar (Exbt. 1), Teliamura P.S. Case No. 61/2008, under Sections 489B and 489C of the IPC was registered and taken up for investigation. On completion of the investigation, the chargesheet was filed against the appellant. On taking cognizance, the case was committed to the court of the Addl. Sessions Judge, West Tripura, Khowai, who framed the charge against the appellant under Sections 489B and 489C of the IPC, to which the appellant pleaded total innocence and claimed to face the trial.

5. To substantiate the charge, the prosecution has examined as many as 12 witnesses including the informant, so called seizure witnesses and the forensic experts. The prosecution has also introduced six documentary evidence including Exbts. 2, 3 and 4 (seizure lists), by which the alleged counterfeit currencies were seized.

6. Ms. R. Purkayastha, learned counsel appearing for the appellant, at the outset has submitted that the appellant's case hinges on the illegality of the seizure, based on which the appellant has been convicted by the trial court. For purpose of demonstrating the illegality and improbability of the seizure, Ms. Purkayastha, learned counsel has taken this court to the statement of PW. 1, Indrajit Das, who has stated that he had received one Indian currency of denomination of Rs. 500. Thereafter, suspecting that note to be counterfeit, he called the police and, accordingly, the police had seized the said counterfeit currency. But, in the seizure list, Exbt. 2, it is found that at the Teliamura Police Station, two Indian currency notes alleged to be counterfeit were seized. There is no explanation from where the additional note has been included during the seizure or how the seizure was caused at the police station. Similarly, PW. 3, Madhusudan Paul has stated that he had sold few utensils to a tribal youth, who paid in Indian currency of denomination of Rs. 500. Thereafter, the police came to his shop and seized one currency of denomination of Rs. 500 stating that to be counterfeit, but he has failed to identify the said counterfeit currency note. Again, from the seizure list, Exbt. 3, as Ms. Purkayastha, learned counsel demonstrates, it appears that two counterfeit currency notes were seized in the Teliamura bazaar, in contrast to what has been stated by PW. 3.

7. For the appellant, what has been further demonstrated before this court is that by the seizure list dated 03.10.2008, Exbt. 4, even the prosecution has endeavoured to show that fifteen counterfeit Indian currencies of denomination of Rs. 500 each were seized from the residence of the appellant, but the seizure witness, namely Barun Debbarma has categorically stated that the seizure had been caused in the Teliamura market. Even though he has signed on a piece of paper given by the police officer, but he cannot say from where those notes came as those notes were shown to him by the police officer. The other witness of the said seizure, namely Sushil Debbarma has categorically stated that he did not know from where those notes came. When the police officer seized the materials, he only saw those notes in the hand of the police officer. Even though he has been declared hostile to the prosecution case, he has categorically stated in the

course of cross-examination that he cannot say from whose possession the police officer had seized those Indian currency notes alleged to be counterfeit. He has further stated that the police officer had secured his signature in a white paper.

8. Mr. A. Ghosh, learned Public Prosecutor appearing for the state has fairly submitted that the seizure as a whole has become susceptible and relying on those seizure a person cannot be convicted for committing offence under Sections 489B and 489C of the IPC.

9. What further appears to this court is that while the appellant was examined u/s 313 of the Cr.P.C., no question was projected to him as regards possession of the counterfeit currencies or handing over the counterfeit currency to PW. 1 or PW. 3 or even keeping the counterfeit currencies in his residence. In absence of such questions, all the susceptible materials as referred hereinbefore cannot be used against the appellant for returning the finding of conviction. As such, without further elaborate discussion, the impugned judgment and order of conviction and sentence are interfered with and set aside. The appellant is acquitted from the charge on benefit of doubt.

As it is stated by Ms. R. Purkayastha, learned counsel that the appellant is on bail, his sureties are discharged from the obligation.

10. In the result, this appeal stands allowed.

Send down the LCRs forthwith.