(2018) 04 CHH CK 0218

In the Chhattisgarh High Court

Case No : ACQA No. 241 of 2010

State Of Chhattisgarh APPELLANT

Vs

Abdul Salim And Ors. RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:
Indian Penal Code, 1860 — Section 34, 489(B), 489(c)
Criminal Procedure Code, 1973 — Section 313

Citation : (2018) 04 CHH CK 0218

Hon'ble Judges : PRASHANT KUMAR MISHRA, J;RAM PRASANNA SHARMA, J

Bench : Division Bench

Advocate : P.K. Bhaduri, Malay Shrivastava

Final Decision : Allowed

Judgement

1. This acquittal appeal is directed against the judgment dated 25-03-2004 passed by the IIIrd Additional Sessions Judge, Bilaspur, in Session Trial No.

337 of 2003, wherein the trial Court has acquitted the respondents for offence punishable under Sections 489(B), 489 (C) read with Section 34 of the

Indian Penal Code,1860 for using forged or counterfeit currency notes and for possession of forged or fake currency-notes valued at Rs. 1,29,600/-.

2. As per prosecution case, three persons entered in an Agrawal Dhaba (Highway Restaurant) situated near village Hirri and purchased a bottle of

mineral-water and gave a note of Rs. 100/- which was forged or counterfeit currency note. The matter was reported to Police Station Hirri. Three

boys who were in TVS motorcycle bearing registration No. CG-12A/7688 were stopped and on enquiry fake currency notes 1295 in numbers of Rs.

100 denomination were seized and FIR was registered against them. After completion of investigation, charge sheet was filed against the respondents.

Respondents pleaded innocence and therefore, the trial was conducted. After examination of all the witnesses, statements of the respondents were

recorded under Section 313 of the Code. After hearing the parties, the trial Court acquitted the respondents as aforementioned.

3. Learned counsel for the State submits as under;-

(I) That the trial Court overlooked the statements of Govind Lal Agrawal (PW-9), Mohan Lal Agrawal (PW-10), Manoj Kumar Yadav (PW-2) and

Police Inspector Nareandra Pratap Mishra (PW-12) who have categorically stated that one forged currency note was given in Agrawal Dhaba and

remaining currency notes were seized in bulk from all three respondents.

(ii) That the accused can be benefited for reasonable doubt but in the present case no such doubt is created during the cross-examination of the

witnesses and the trial Court has failed to appreciate the evidence adduced in its correct perspective.

(iii) That the finding of the trial Court is based on conjecture and surmises and the same is not liable to sustain being opposed to law.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on proper marshaling of the

evidence adduced by the prosecution and same is not liable to be disturbed while invoking jurisdiction of the appeal.

5. To substantiate the charge prosecution has examined as many as 12 witnesses in their support.

6. We have heard learned counsel for both the parties and perused the record of the trial Court.

7. Govind Lal Agrawal (PW-9) and Mohan Lal Agrawal (PW-10) were present in the Dhaba, when the note of Rs. 100 denomination was given to

Mohan Lal Agrawal. They admitted in their cross-examination that number of persons visit their hotel for purchasing goods and give them currency

notes. Govind Lal Agrawal (PW-9) deposed that currency note was given to his son Mohan. Mohan Lal Agrawal (PW-10) deposed that notes were

mixed in the cash box as number of customers had given currency notes in the shop, therefore, it was not possible for him to say exactly who has

given forged currency note to them. Version of this witness is not objective, because when three persons came in a motorcycle to their shop, he has to

clarify as to who gave him the counterfeit currency note but that is not clear from the evidence of Mohan Lal Agrawal (PW-10), therefore, there is no

positive or cogent evidence on record. Test identification of accused is done by Govind Lal Agrawal (PW-9) but currency note was not given to him,

therefore, test identification loses its significance.

8. Seizure of currency notes, 1295 in numbers, was alleged to be made in presence of Shriram Sahu (PW-4) and Durga Prasad Sahu (PW-5), both are

the independent witnesses but they have not supported the version of the prosecution. As per version of Police Inspector Narendra Pratap Mishra

(PW-12) he arrested the respondents and brought them to Police Station in a Police Van and motorcycle of the respondents was brought by constable

Ajay Chourasiya (PW-3).

9. Narendra Pratap Mishra (PW-12) deposed that some currency notes were seized (Ex.P-1) from respondent Abdul Salim kept in white

cloth(Gamchha); some currency notes were seized vide (Ex.P-2) from respondent Imran kept in a red cloth(Gamchha) and some currency notes were

seized vide (Ex.P-3) from Deepak Shrivas which was kept in a plastic bag, but version of Narendra Pratap Mishra (PW-12) is rebutted by version of

constable Ram Pratap Yadav (PW-1). Ram Pratap Yadav (PW-1) deposed that some currency notes were seized from pockets of respondents while

some notes were seized from plastic bag which was kept in the dicky of motorcycle. Manoj Kumar Yadav (PW-2) deposed that amount was seized

from motorcycle and constable Ajay Chourasiya (PW-3) deposed that currency notes were kept on the table of Police Station and he has been

informed that the said notes were seized from motorcycle.

10. Narendra Pratap Mishra (PW-12) deposed that he has seen currency notes when respondents were brought to Police Station Chakarbhata in a

Police Van. But version of this witness is rebutted by version of Manoj Kumar Yadav (PW-2), he deposed that the currency notes were seized from

motorcycle which was brought to Police Station later. If version of Narendra Pratap Mishra (PW-12) is believed then no currency notes were found

in motorcycle but from version of Manoj Kumar Yadav (PW-2) currency notes were kept only in the motorcycle. If currency notes were kept in the

motorcycle then the question arises as to who has kept the currency notes in the motorcycle because it is not a case where only one person is

prosecuted. When three persons are prosecuted the prosecution has to establish mens-rea of each of the respondents but the prosecution is not able to

establish as to who has actually put the currency notes in the motorcycle. When number of persons are prosecuted, if overt act of all is not established

there is always possibility of conviction of innocent person.

11. From the evidence it is not proved beyond shadow of doubt that the currency notes were seized from the possession of each of the respondents

independently. Currency notes found in the motorcycle is not sufficient to fasten liability on all of them. The trial Court is right in extending the benefit

of doubt to the respondents and that doubt is reasonable doubt, therefore, the instant acquittal appeal fails and is hereby dismissed.