

(2015) 10 GUJ CK 0053
In the Gujarat High Court
Case No : Criminal Appeal No. 1166 of 2010

State of Gujarat

APPELLANT

Vs

Ghanshyambhai and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 377

Penal Code, 1860 (IPC) — Section 114, 120-B, 489(A), 489(C)

Citation : (2015) 10 GUJ CK 0053

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : L.R. Pujari, APP, for the Appellant; Farhana Y. Mansuri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—This appeal under Section 377 of the Code of Criminal Procedure, 1973 is preferred for enhancement of sentence imposed by judgment and order dated 29.3.2010 passed by Additional Sessions Judge, Court No. 14, Ahmedabad, in Sessions Case No. 75 of 2007, whereby the respondents-original accused were convicted for the offence punishable under 489 (B) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and ordered to pay fine of Rs. 100/-, in default of making payment of fine, the accused persons shall undergo further simple imprisonment for ten days. For the offence punishable under Section 489 (C) of IPC, the accused were convicted and sentenced to suffer rigorous imprisonment for six months and ordered to pay fine of Rs. 100/-, in default of making payment of fine, the accused shall undergo further simple imprisonment of ten days.

2. The facts in brief giving rise to the filing of present appeal are as under:

"2.1 The complaint was given by the complainant on 14.5.2006. The complainant is a resident of Ahmedabad and is in the business of selling bags. As per the complaint, on 14.5.2006 at about 8.15 p.m., accused No. 1 came to purchase

bag from the complainant and gave a note of Rs. 1,000/- to purchase a bag. Since the complainant had a doubt that the note is fake, he showed it to another person, viz. Javedbhai. Since it was asked to the accused to give another note, he had given another note of Rs. 1,000/-. The number of both the notes were same. Therefore, as the complainant felt that these are fake currency notes, he along with Javedbhai, caught accused No. 1 and took him before Karanj Police Station. Upon search by police, third note was also found from the possession of accused No. 1. Therefore, the complaint was given against accused No. 1 and accused No. 1 was arrested. On next day, one Ashaben came to the police station and said that the accused has taken change from her by giving a fake note of Rs. 1,000/- and such note of Rs. 1,000/- was produced before police. Upon investigation, accused No. 1 revealed that he received these notes from accused No. 2, who is a resident of Virendragadh. Upon search of house of accused No. 2, one fake note of the denomination of Rs. 1,000/- was found. Therefore, accused No. 2 was also arrested. Upon taking remand of accused No. 2, he revealed further information regarding fake currency notes and one more fake note was also recovered. Accordingly, six fake notes of denomination of Rs. 1,000/- were recovered from the accused persons. As per the case of the prosecution, the accused were in conscious possession of counterfeit currency notes and tried to use it and circulate it and they were caught red handed. Therefore, after completion of investigation, the charge sheet for offences punishable under Sections 489(A), (B), (C), 120-B and 114 of IPC was filed in the Court of learned Magistrate against the accused persons. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The accused pleaded not guilty and claimed to be tried.

2.2 During the trial, the prosecution had examined following witnesses in support of its case.

2.3 The prosecution has also produced following documents in support of its case.

2.4 At the end of trial, the Court below recorded further statement of accused under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order of conviction and imposed the sentence as aforesaid, which has led to the filing of present appeal."

3. Learned APP, Mr. L.R. Pujari appearing for the appellant-State has taken us through the oral as well as documentary evidence and contended that the trial Court has committed an error in imposing lesser sentence upon the accused inspite of voluminous evidence against them and also contended that the trial Court ought not to have imposed such a lesser punishment. He submitted that the prosecution has examined 14 witnesses in support of its case and also produced 7 documentary evidences on the record of the case. However, without appreciating those documentary as well as oral evidence available on the record of the case in its proper perspective, learned Judge has erred in imposing lesser punishment. He also submitted that the learned trial Judge failed to appreciate that accused No. 1 during the course of investigation stated that he brought

currency notes from accused No. 2 and when the house of accused No. 2 was raided, fake currency note was found from him also and accused No. 2 also revealed information about use of fake currency notes, which was recovered from the petrol pump. This case of the prosecution is also supported by the persons working on the petrol pump as well as the complainant. He further submitted that the learned Judge has also erred in not properly appreciating the gravity of the offence committed by the accused while imposing the sentence and thereby committed grave error by imposing lesser punishment than the one prescribed under the law. He also submitted that the learned Judge ought to have imposed maximum sentence on the present accused as provided under the provisions of the Code. Hence, impugned judgment and order passed by learned Judge in imposing the lesser sentence deserves to be modified by this Hon'ble Court and the sentence imposed to the accused deserves to be enhanced to maximum sentence as provided under the aforesaid sections. He also submitted that the learned Judge failed to appreciate the seriousness of the offence committed by the accused while imposing the sentence. The learned Judge also failed to appreciate that there is no sufficient and reasonable cause for the learned Judge to impose lesser punishment. He also submitted that the learned Judge failed to appreciate that there is no any mitigating circumstance to impose lesser punishment and it is very clear from the facts and circumstances of the case and the material available on record of the case that there are aggravating circumstances in which Hon'ble Judge ought to have imposed the maximum sentence as provided under the law.

4. On the other hand, learned counsel for the respondents-accused has contended that learned trial Judge has after appreciating the evidence on record convicted the accused and imposed punishment, therefore, it may not be enhanced. It is submitted that the accused are already awarded punishment and looking to the age and other family circumstances of the accused, this enhancement appeal may not be allowed. It is also submitted that the trial Court has rightly appreciated the evidence on record and the sentence imposed upon the accused persons cannot be said to be less. Therefore, it is prayed that this appeal may be dismissed.

5. We have heard learned APP for the appellant and learned advocate for the respondent-accused. We have also perused the record and gone through the impugned judgment. We have gone through the evidence on record. Taking into consideration overall circumstances of the case, it is true that this is an economic crime which affects the country as a whole, however, considering the fact that the accused are already convicted for the offence and only six counterfeit notes were recovered from the accused persons, we are not inclined to enhance the sentence imposed by the impugned judgment. Considering the fact that the accused do not have any previous criminal record and they are not found to be involved in any other offence, the trial Court has rightly imposed the sentence upon the accused persons, which is not required to be enhanced. Therefore, this appeal deserves to be dismissed.

6. For the foregoing reasons, the appeal is dismissed and the impugned judgment and order dated 29.3.2010 passed by Additional Sessions Judge, Court No. 14, Ahmedabad, in Sessions Case No. 75 of 2007 is confirmed. Bail bond of the accused stands cancelled. If the accused have not served out the sentence, they shall surrender before the jail authorities within a period of ten weeks from today to serve out the remaining period of sentence. Record and proceedings, if lying here, be sent back to the Court below forthwith.