
(2015) 01 BOM CK 0194
In the Bombay High Court
Case No : Criminal Appeal No. 437 of 1993

State of Maharashtra

APPELLANT

Vs

Bhimrao Nagnath Sutakar and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 28, 34, 420, 489C, 489D

Citation : (2015) ALLMR(Cri) 2170

Hon'ble Judges : V.K. Tahilramani, J; I.K. Jain, J

Bench : Division Bench

Advocate : A.S. Pai, A.P.P., for the Appellant; Sarojini Upadhyay, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.K. Jain, J.

1. The Appellant/State has preferred this Appeal against the Judgment and Order dated 25/05/1993 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 236 of 1992. By the said Judgment and Order, the learned Additional Sessions Judge acquitted the Respondents/original accused Nos. 1 and 2 of the offences punishable under Sections 489D, 489E, 420 and 489C read with 34 of the Indian Penal Code. By an order dated 17/01/1994, the Appeal against Respondent No. 2 came to be dismissed. Thus, this Appeal is being heard only in respect of acquittal of Respondent No. 1.

2. Prosecution case briefly stated is as under.

On 03/06/1992, PI Malikarjun Umberje attached to Barshi Police Station left the police station at around 8.5 p.m. for night patrolling duty. PSI Rane, PHC Wankhede and other police constables accompanied PI Umberje that time. When they reached in front of Rahul Lodge situated at Barshi Kurduwadi road, they found two persons talking. On seeing police party, they got frightened. PI Umberje suspected them and took search of a bag in possession of Respondent

No. 1. On search, some currency notes along with forged notes were found. In a rexine bag, golden thread, two bottles of chemicals, one scissor, some blank papers of size of notes, 34 papers printed both sides and 14 papers printed on one side were also found. In all, PI Umberje found bundle of notes of Rs. 100/- denomination containing 99 notes and bundle of Rs. 50/- notes. He called panchas and prepared spot panchanama. The articles found in possession of Respondent No. 1 were seized.

3. PI Umberje then lodged complaint (Ex. 17). Investigation commenced. On completion of investigation, charge-sheet came to be filed before the learned Magistrate. In due course, the case was committed to the Court of Sessions.

4. Charge came to be framed against the accused. Respondent pleaded not guilty to the charge and claimed to be tried. His defence was of total denial and false implication. It was specifically stated by accused Bhimrao that Rs. 19,900/- which were recovered from him were seized by the complainant from his house. He received the said amount in pursuance to the sale of his video and TV. He submitted that he has not committed any offence as alleged by the prosecution.

5. After going through the evidence adduced, the learned Additional Sessions Judge acquitted the accused of the offences as stated hereinbefore. Hence this Appeal.

6. We have heard the learned APP for State. None appeared for the Respondent. After giving our anxious consideration to the facts and circumstances of the case, submissions advanced by the learned APP. evidence on record and the Judgment delivered by the learned Additional Sessions Judge, for the below-mentioned reasons, we are of the opinion that there is no merit in the Appeal.

7. PW 5 PI Umberje is the star witness for prosecution. He is complainant and intercepted the accused on suspicion. It appears from the evidence of PI Umberje that on search, he found 99 notes of Rs. 100/- denomination and a bundle of notes of Rs. 50/- denomination. It has come on record that 14 notes were printed one side of the paper and 25 papers were printed on both the sides. As the pieces of papers of the size of notes were found along with the two bottles of chemicals and packets containing powder, PI Umberje suspected that the accused were in possession of forged notes and counterfeit currency. Prosecution has not adduced expert evidence in the case. However, reliance is placed on C.A. report (Ex. 18). C.A. opined that phenol was detected in the articles sent for chemical analysis. There is no iota of evidence to show that phenol is required for preparing forged or counterfeit notes. On the contrary, evidence shows that phenol can be used even as a cleaning agent. Thus, C.A. report alone would not connect the Respondent to the commission of offences as alleged by the prosecution.

8. Further, it is necessary to consider definition of "counterfeit" under Section 28 of IPC. 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. On going through the evidence, it is apparent that printing of notes was on both the sides of papers and it cannot be said to resemble the genuine currency notes. There is no direct or circumstantial evidence to show that accused had any knowledge that such notes were forged and he possessed those notes with an intention to use as genuine. Thus, essential ingredients of offences as alleged against the Respondent are missing and prosecution failed to establish the charge.

9. The evidence of PW 1 to PW 4 also does not indicate that Respondent was possessing counterfeit notes. In the absence of clinching evidence, we find that the view taken by the learned Additional Sessions Judge is the reasonable and possible view. We are therefore not inclined to interfere in the Judgment and Order of acquittal.

10. In the result, Appeal against Respondent No. 1 stands dismissed. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Smt. Sarojini Upadhyay at Rs. 5,000/-.