

(2009) 05 AP CK 0002

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 211 of 2004

Sukhavasi Sivaiah

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

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

Citation : (2009) 3 ALT(Cri) 81 : (2009) 2 APLJ 393 : (2009) CriLJ 4027 :
(2010) 1 Crimes 155 : (2010) 7 RCR(Criminal) 960

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : E.V. Bhagiratha Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B. Chandra Kumar, J.—This Revision Case has been filed against the judgment, dated 06-01-2004 in CrI.A. No. 288 of 2003 on the file of the VI Additional Sessions Judge (Fast Track Court), Guntur, whereby and whereunder the Judgment, dated 11-07-2003 in S.C. No. 656 of 2002 on the file of the Principal Assistant Sessions Judge, Guntur, convicting the petitioner for the offence u/s 489C of IPC and sentencing him to undergo rigorous imprisonment for a period of two years, has been confirmed.

2. The prosecution case can be stated briefly as follows: For the sake of convenience, the petitioner will be referred to as A-2 as referred by the trial Court. A-1 and A-2 are friends. On 25-06-2002 at about 7-00 PM, A-1 went to Sri Hanuman Meals and Tiffin Hotel, RTC Bus stand, Guntur, and gave one fake currency note of Rs. 100/- to PW-1 (M. Venkata Krishna), who was working as Cashier in the said hotel and asked him to give a meals parcel. PW-1 suspected the genuineness of the said currency note and with the assistance of PW-2 (M. Sreenivasarao) who was also working in the said hotel, took A-1 to the Law and

Order Police Station, Old Guntur, and presented a report under Ex.P-1 to PW-6 (M. Sundara Rao), the Sub-Inspector of Police, along with the accused and fake currency note. Basing on the same, PW-6 registered a case in Crime No. 127 of 2002 for the offences punishable under Sections 489(b) and (c) and issued Ex.P-11, FIR, which was submitted to the Court. He arrested A-1 at about 8-30 PM, proceeded to the scene of offence along with the mediators i.e., PW-4 (N. Sanni Babu) and PW-5 (S. Prasad) and interrogated A-1 in their presence and recorded his statement. A-1 produced three Rs. 100/- fake currency notes under M.Os.2 to 4, which were seized under a cover of panchanama. Then PW-6 examined PWs.1 and 2 and one E.Ramakrishna, recorded their statements and prepared rough sketch of the scene of offence. It is the further case of PW-6 that A-1 lead PWs.4 and 5, his staff and him to Gunturvari Thota, 7th line, where A-2 was residing in a rented house which belongs to PW-3. On seeing PW-6, A-2 tried to run away, but they surrounded A-2 and caught hold of him. PW-6 interrogated A-2 in the presence of PWs.4 and 5 and recorded his statement. A-2 produced four Rs. 100/- fake currency notes bearing Nos. ONP 374445, ONP 374465, ONP 374672 and ONP 374673, which were marked as M.Os.5 to 8. He seized the cash of Rs. 3,580/- from A-2 under M.O.9 and the case of the prosecution is that A-2 got this cash by exchanging fake currency notes. A-2 was arrested under Ex.P-14, cover of Mahazar. Subsequently, A-3 was arrested and one fake currency note was seized from him. All the fake currency notes were sent to the Assistant Director of FSL, Hyderabad for analysis and report. As PW-6 was transferred, his successor, filed the charge sheet after receiving Ex.P-17, report from FSL.

3. PW-2 was also working in the same hotel in which PW-1 was working. According to him, he came to know that their manager Ramakrishna caught A-1 and fake currency note of Rs. 100/-. PW-3 used to give rooms on rent in the ground floor as well as the first floor of the said hotel. PWs.4 and 5 are the mediators.

4. After completion of the investigation, the accused were examined u/s 313 of Cr.P.C. examination, but they denied the incriminating material appearing against them. The learned Principal Assistant Sessions Judge, Guntur believed the evidence of PW-6 and convicted A-2 along with A-1 and A-3 for the offence punishable u/s 489-C and sentenced as stated above. Being aggrieved by the same, A-2 preferred an Appeal and the Appeal was dismissed. Being aggrieved by the same, the present Revision Case has been filed.

5. The learned Counsel for A-2/petitioner submitted that PWs.1 to 5 turned hostile and there is no evidence except the evidence of PW-6 and the courts below ought to have not accepted the evidence of the solitary testimony of PW-6. It is also his submission that the prosecution has not proved the mens rea of the petitioner and therefore, no conviction can be passed against him. In support his contention, he relied on Umashanker v. State of Chhattisgarh 2001 (7) SUPREME 425 , wherein it was held that mens rea is essential and these provisions are not

meant to punish unwary possessors or users. He also relied on *Bharat Vs. State of M.P.*, wherein it was held that the evidence of the police officer is not reliable where there is no proper identification of the property recovered and where there is no independent witness for recovery.

6. The learned Counsel for A-2/petitioner also submitted that PW-6, being the police officer, will be interested in securing the conviction and therefore, it is not desirable to believe his solitary testimony and convict A-2 on such evidence and the courts below committed error in relying on the solitary testimony of PW-6 and therefore, the Judgments of the courts below are perverse and they are liable to be set aside.

7. The learned Public Prosecutor submitted that the evidence of PW-6 is natural and that he had no enmity with A-2 and that he had discharged his duties as a public servant. It is also submitted that merely because PW-6 is a police officer, his evidence cannot be discarded and the entire evidence has to be analysed and a reasonable conclusions have to be drawn and the Courts below have come to a just and proper conclusions, basing on the evidence and the legal position, and that there are no grounds to interfere with the Judgments of the Courts below and the Revision is liable to be set aside.

8. The only point that arises for consideration is whether the conviction could be sustained on the evidence of PW-6?

9. In this case, except PW-6, the other witnesses have turned hostile and did not support the case of the prosecution. Even if the witnesses have turned hostile, the evidence of such witnesses need not be completely thrown out. The evidence of such witnesses also can be taken into consideration. In this regard, it is pertinent to refer to a decision in *Bhagwan Singh Vs. The State of Haryana*, wherein the Supreme Court held that:

The mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him unreliable so as to exclude his evidence from consideration altogether.

10. In *Raja Ram Vs. State of Uttar Pradesh*, the Allahabad High Court held that the evidence of a hostile witness can be accepted in part, e.g. to fix the place of occurrence and to prove his presence at the scene of offence.

11. Thus, it appears that the portions of the evidence of the hostile witnesses, which support the case of the prosecution, may be relied on and can be accepted by the Court. So, the evidence of the hostile witnesses has to be considered in the light of the other evidence on record.

12. As seen from the evidence, it is clear that PW-1 was working as Cashier in the hotel and that the dormitory attached to the said hotel will be given on lease for the persons staying there. PW-1 admitted that Ex.P-1 is the complaint given by him though he stated that he drafted the complaint on the directions of the hotel Manager. Thus the evidence of PW-1 shows that Ex.P-1 complaint was

given as per the directions of the Manager of the hotel. He has not supported the case of the prosecution that A-1 came to his hotel and offered a fake currency note of Rs. 100/- and that he handed over the said fake currency note and A-1 along with Ex.P-1, report, to the police.

13. The evidence of PW-2 shows that he is working in the said hotel along with PW-1 and that one Ramakrishna is the Manager of the hotel. He came to know that the Manager Ramakrishna caught A-1 when he presented a fake currency note of Rs. 100/-. Except this, he has not supported the case of the prosecution.

14. PW-3 deposed that he used to give rooms on rent. He did not support the case of the prosecution.

15. PWs.4 and 5 are the mediators. They have also not supported the case of the prosecution. However, they have admitted their signatures on Exs.P-5 to P-7 Mahazars. PW-5 also admitted his signature in the panchanama i.e., Exs.P-8 to P-10, but denied the case of the prosecution.

16. The above evidence goes to show that PWs.4 and 5 have signed in the mahazars. Coming to the evidence of PW-6, he admitted that PW-1 came to the police station on 25-06-2002 at about 8-00 PM and produced A-1 along with a fake currency note and presented Ex.P-1, report. PW-6 registered a case and called PWs.4 and 5, mediators, proceeded to the scene of offence, interrogated A-1 and recovered three fake currency notes from him. He examined PWs.1 and 2 and as lead by A-1, he proceeded to the house of A-2 and on seeing them, A-2 tried to run away. Then they surrendered A-2 and caught hold of him. He interrogated A-2 in the presence of PWs.4 and 5 and A-2 presented three fake currency notes, which were marked under M.Os.2 to 4. He seized cash of Rs. 3,580/- from A-2 under M.O.9. Then he arrested A-2, prepared rough sketch of the scene of offence and sent the fake currency notes to FSL. In the cross-examination, PW-6 denied that he got prepared Exs.P-11 to P-16 in the police station itself. It is also denied that he planted the fake currency notes, M.Os.1 to 10, in order to foist a false case against the accused. It is also denied that he brought the accused from their respective houses earlier to the date of offence and foisted a false case against them.

17. PW-6 is the public servant and during the course of discharging his official duties, he registered the case against A-2 and conducted investigation. Admittedly there is no enmity between A-2 and PW-6. It is not suggested to PW-6 that he had any enmity with A-2 or that he had any motive to implicate A-2 in this case. Of course the police officers would be interested in securing conviction against the Accused, but that does not mean that the entire evidence of such witness has to be thrown out. According to PW-6, A-1 lead him to the house of A-2 and on seeing PW-6, A-2 tried to run away. Then he was apprehended and his statement was recorded. A-2 produced three currency notes and the same were seized under a cover of mahazar.

18. The stand of the accused is total denial. He did not offer any explanation.

When A-2 was asked whether he wanted to state anything, he did not explain under what circumstances, he came into possession of those fake currency notes. If at all A-2 was innocent, there was no necessity for him to try to run away on seeing the police party along with A-1. The two circumstances i.e., trying to run away on seeing the police party and not offering any explanation as to how he came into possession of the fake currency notes, give an impression that A-2 had knowledge that the currency notes in his possession were fake currency notes. The report of the FSL under Ex.P-17 also proved that M.Os.5 to 8 are fake currency notes. It is not the case of A-2 that M.Os.1 to 7 are not the fake currency notes.

19. In RE, Satyanarayana 1961 (1) CRI.L.J 617 it was held that when the Accused, who was in possession of fake currency notes, failed to offer explanation, the case of the prosecution has to be accepted.

20. Of course mere possession of fake currency notes is not an offence. In Umashanker's case, it was held that mens rea is very essential for conviction of economic offence u/s 489C of PIC. Mens rea is the mental state of the accused i.e., intention on the part of the Accused to commit the offence. Mens rea is not required to be proved in each and every offence. Mens rea can be inferred from the facts and circumstances of the case or from the overt act attributed to the accused.

In M. Mammutti Vs. State of Karnataka, it was held that mens rea can be presumed in the circumstances of the case.

21. In view of the discussion and legal position, I hold that the prosecution proved the mens rea against A-2.

22. In this case, PW-6 interrogated the A-2 in the presence of PWs.4 and 4 and prepared the mahazar and basing on the same, he seized the fake currency notes from A-2. The trial Court has referred some decisions in Modan v. State of Rajasthan AIR 1978 SC 1511, Anil v. State of Maharashtra AIR 1996 SC 1943 , Tahir Vs. State (Delhi), and Vinod Kumar Shukla Vs. State of M.P., and discussed the legal position in correct perspective.

23. In UMASHANKER's case, benefit of doubt was given to the accused since no specific question whether the currency notes were fake or counterfeit was put to the accused in his examination u/s 313 of Criminal Procedure Code and there was no material to show that the accused had mens rea.

24. It would have been different aspect if a person came into possession of fake currency notes accidentally and without his knowledge, but and that is not the case in this case. As far as the appreciation of evidence of a solitary witness is concerned, the legal position appears to be very certain. What is required to be seen is whether the evidence of a solitary witness is wholly reliable, consistent, trustworthy, and free from any suspicion, and in such a case, the evidence of a solitary witness can be accepted. In a case where the evidence of a solitary

witness appears to be wholly not reliable and partly reliable, then such evidence must be corroborated by other evidence i.e., medical evidence or strong circumstantial evidence or that all probabilities must show that the evidence of such witness is reliable. Similarly the evidence of a police officer should be considered on par with the evidence of any other witness. The evidence of a police officer or excise officer should be categorically analysed and conclusions must be drawn considering the human conduct, probabilities of the case and spontaneous nature, and therefore, even if the other witnesses turned hostile, it is not necessary to throw out the evidence of the investigating officer. When the evidence of a police officer is wholly reliable, consistent, trustworthy and free from any suspicion, the same can be considered on par with the evidence of any other witness.

25. In view of the above discussion and after going through the entire evidence and the Judgments of the Courts below, I am of convinced that the prosecution proved the guilt of A-2/petitioner beyond reasonable doubt. The courts below, after analyzing the entire evidence, rightly found A-2/petitioner guilty of the offence and convicted and sentenced him and there are no grounds to interfere with the same and the Revision Case is liable to be dismissed.

26. In the result, the Criminal Revision Case is dismissed confirming the Judgments of the courts below in all respects.