
(2010) 09 GUJ CK 0140
In the Gujarat High Court
Case No : Criminal Appeal No. 3142 of 2008

Tuntun Thakur and Another	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 120B, 489, 489(A)(B), 489(B)

Citation : (2010) 09 GUJ CK 0140

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : B.C. Dave, for 1-2, for the Appellant; H.H. Parikh, APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The appellant - original accused No. 5 & 6 have filed this Appeal u/s 374(2) of Cr.P.C. against the Judgment and order of conviction and sentence dated 12.6.2008 passed by the learned Additional Sessions Judge, Fast Track Court, Valsad, in Sessions Case No. 78 of 2007, whereby the learned Additional Sessions Judge has held the appellants - accused guilty for the offence u/s 489(B) of I.P. Code and sentenced them to undergo Rigorous Imprisonment for 7 years with fine of Rs. 5,000/- i/d to further undergo RI for 6 months and also held the appellants - accused guilty for the offence u/s 489(c) and sentenced them to undergo RI for 5 years with fine of Rs. 3,000/- i/d to further undergo RI for 3 months. The learned Judge has also ordered that all the sentence awarded to the accused shall run concurrently.

2. The brief facts of the case of prosecution are that on the date of incident the complainant - ASI, along with other police personnel were on Bank Watch Petrolling, at that time at Vapi GIDC near State bank of India Cross road three persons were coming in suspicious condition and were dealing in money and, therefore, they were stopped by the complainant and others and asked as to why they are standing near the Bank. They did not give proper and satisfactory reply.

As the appellants and others were having currency notes of denomination of thousand rupees and different currency notes they were taken to SOG office. Thereafter two panchas were called and in their presence and in presence of PSI and others fake and duplicate notes were recovered from the accused. It is alleged by the prosecution that the said fake and bogus currency notes were brought from neighbouring countries. The complaint was registered against the accused and other persons with Vapi GIDC Police Station which came to be registered as CR No. I-74 of 2007.

3. Necessary investigation was carried out by the Police and after completion of investigation the charge-sheet against the accused came to be submitted before the Court of learned Magistrate. As the offence under Sections 489 (A)(B)(c) read with Section 120-B I.P. Code are exclusively triable by the Court of Sessions, the learned Magistrate committed the said case to the Court of Sessions at Valsad. The learned Additional Sessions Judge framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

4. To prove the case against the accused the prosecution has examined 6 witnesses and also relied upon documentary evidence and at the end of trial, after recording the statement of the accused u/s 313 Cr.P.C., and after hearing the arguments on behalf of the prosecution and the defence, the learned Additional Sessions Judge held the appellants - accused guilty of the offences charged against them and awarded sentence as narrated herein above.

5. Being aggrieved by and dissatisfied with the aforesaid Judgment and order of conviction and sentence the appellant - accused has preferred this Appeal.

6. Heard learned advocate Mr. B.C. Dave, appearing on behalf of the appellants and learned APP Mr. H.H. Parikh on behalf of the respondent - State. I have gone through the Judgment and order passed by the trial Court. I have also considered the documents produced on the record of the case.

7. Learned Advocate, appearing on behalf of the appellants - accused, has contended that he is not arguing the matter on merit. However, he has contended that the accused is poor and layman and he cannot understand the local language and they are falsely involved in the case. He has contended that since last 3 years and four months the accused are in Jail and looking to the facts of the case some mercy is required to be shown and the sentence which the accused have already undergone may be treated as sentence and the accused may be set at liberty forthwith.

8. Learned APP has supported the Judgment and order passed by the Sessions Court and contended that looking to the seriousness of offence no interference is required to be called for by this Court.

9. I have gone through the Judgment and order passed by the learned Additional Sessions Judge and also gone through the documents produced before me. I

have also considered the submissions made by the learned Advocates for the parties.

10. Looking to the facts and circumstances of the case and looking to the fact that since last about 3-1/2 years the appellant - accused is in jail, if the sentence already undergone by the appellant - accused be treated as sentence the same would meet with the ends of justice.

11. Accordingly, this Appeal is partly allowed. The Judgment and order dated 12.06.2008 passed by the learned Additional Sessions Judge, Fast Track Court, Valsad, in Sessions Case No. 78 of 2007 is confirmed. However, the sentence awarded to the appellants - accused by the Sessions Court is modified to the extent that the sentence which the appellants - accused have already undergone may be treated as sentence and the appellants - accused be set at liberty forthwith if they are not required to be detained in any other case. Rest of the judgment and order passed by the Sessions Court is hereby confirmed.