

(2014) 05 DEL CK 0002**Delhi High Court****Case No:** Criminal Appeal Nos. 864 and 910 of 2012

Jafar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: May 9, 2014**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 34, 489B, 489C

Citation: (2014) 3 JCC 1648**Hon'ble Judges:** S.P. Garg, J**Bench:** Single Bench**Advocate:** Siddharth Aggarwal, Gautam Khazanchi and Mohit Madan, Advocate for the Appellant; M.N. Dudeja, APP, Advocate for the Respondent**Final Decision:** Disposed Off

Judgement

S.P. Garg, J.

The appellants, Mohd. Jafar (A-1) and Mohd. Jamal (A-2) impugn their conviction under Sections 489B/489C/34 IPC by a judgment dated 04.06.2012 of Addl. Sessions Judge in Sessions Case No. 41/10/09 arising out of FIR No. 90/2009 PS Geeta Colony. By an order dated 07.06.2012, they were awarded RI for seven years with fine Rs. 20,000/- each u/s 489B/34 IPC and RI for three years with fine Rs. 10,000/- each u/s 489C/34 IPC. Both the sentences were directed to operate concurrently. Briefly stated, the prosecution case as reflected in the charge-sheet, was that on 28.04.2009 at about 05.30 P.M., a secret information was received that two persons were to deliver two fake currency notes in the denomination of Rs. 1,000/- each in exchange of a genuine currency note of Rs. 1,000/-. A raiding team was organised. HC Rajender (PW-6) was made a decoy customer and was given one currency note of Rs. 1,000/- bearing No. 4CD 591459. When he struck deal at around 06.10 P.M., both the appellants were apprehended. On search, 98 and 80 currency notes in the denomination of Rs. 1,000/- each were recovered from the possession of A-1 and A-2 respectively. During investigation, statements of the witnesses conversant with the

facts were recorded. After completion of investigation, a charge-sheet was submitted against the appellants; they were duly charged and brought to trial. Supplementary charge-sheet against Qamar Abbas was submitted. However, vide order dated 13.05.2010, he was discharged of the offence. The prosecution examined seven witnesses to substantiate the charges. In 313 statements, the appellants denied their complicity in the crime; pleaded false implication and examined five witnesses in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeals.

2. During the course of hearing, Counsel on instructions stated at Bar that the appellants have opted not to challenge the findings of the Trial Court on conviction and accept it voluntarily. They, however, prayed to modify the sentence order as the appellants have remained in custody for substantial period and are not the previous convict. Learned Addl. Public Prosecutor has no objection to it.

3. Since the appellants have given up challenge to the findings of the Trial Court on conviction u/s 489B/489C/34 IPC in view of the cogent and reliable testimony of the prosecution witnesses coupled with recovery of the fake currency notes, their conviction stands affirmed. The appellants were sentenced to undergo RI for seven years with total fine Rs. 30,000/- each. A-1's nominal roll dated 19.09.2013 reveals that he has already undergone one year, eleven months and four days incarceration besides remission for three months and twenty-five days as on 19.09.2013. It further records that he is not involved in any other criminal case and is not a previous convict. He is a first time offender. Sentence order records that he has four minor children to take care. A-2 is also in custody for the same period and is stated to be not involved in any other criminal case. A-2's sentence order records that he was aged about 34 years and has a family consisting of wife and aged widow mother. Considering all the facts and circumstances and the fact that the appellants have clean antecedents, sentence order is modified and the substantive sentence for RI for seven years is reduced to four years. Other terms and conditions of the sentence order are left undisturbed. The appeals stand disposed of in the above terms. Pending application (if any) also stands disposed of. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent jail for information.