

(2004) 05 GAU CK 0017

Gauhati High Court

Case No: Criminal Appeal No. 30 of 2003

Krishna Kanta Das

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: May 26, 2004

Acts Referred:

- Evidence Act, 1872 - Section 45
- Penal Code, 1860 (IPC) - Section 489B

Citation: (2005) 1 GLR 64

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Advocate: J.M. Choudhury, A. Choudhury and M.K. Nath, for the Appellant; F.H. Laskar, for the Respondent

Final Decision: Allowed

Judgement

I.A. Ansari, J.

This is an appeal against the judgment and order dated 27-12-2002, passed by the learned ad hoc Additional Sessions Judge No. 1, Kamrup, convicting the accused-appellant u/s 489B IPC and sentencing him to suffer simple imprisonment for seven years and to pay a fine of Rs. 5,000/- and, in default of payment of fine, to undergo simple imprisonment for a further period of six months.

2. The case against the accused-appellant, as projected at the trial, was, in brief, as follows :

On 12-03-1997, accused-appellant, Sri Krishna Kanta Das, an employee of M/s Assam Tribune Private Limited, came to the United Bank of India, Fancy Bazar Branch, for obtaining a Bank Draft and in the process of tendering the currency notes for the purpose of obtaining the draft, he tendered as many as six fake currency notes of Rs. 500/-denomination each. The cashier, at the bank, in the process of counting the said currency notes, found six of the notes as fake and brought the same,

immediately, to the notice of the Branch Manager, Saradindu Bhattacharjee. On a telephonic inquiry made by the Branch Manager, M/s Assam Tribune Private Limited informed the Branch Manager that they had not sent any currency note of Rs. 500/- denomination. When the process was on to determine as to whether the notes tendered by the accused-appellant were fake or not, the accused-appellant appeared there and, upon coming to know that six of the currency notes tendered by him to the bank were being considered as fake, he snatched away the said notes, put the same into his mouth, but when he was chewing the said notes, he was overpowered by the bank employees with the help of their security guard and the said fake notes were recovered from the possession of the accused-appellant. On the First Information Report being lodged by the said Branch Manager, police registered a case against the accused-appellant and a search of the person of the accused-appellant by police also led to the recovery of two more fake notes, one of Rs. 10/- denomination and the other one was of Rs. 100/-denomination, whereupon the police seized the said fake notes, got the same examined by one Prabhat Goswami, Treasurer of Reserve Bank of India, who opined that the said seized currency notes were fake ones. On completion of the investigation, chargesheet was laid against the accused-appellant u/s 489B IPC.

3. During trial, the accused-appellant pleaded not guilty to the charge framed against him u/s 489B IPC. In support of their case, prosecution examined five witnesses. The learned trial Court also examined, as a Court witness, Nihar Ranjan Mazumdar, who was cash clerk of United Bank of India, at the relevant time, at its said Branch and to whom the currency notes were allegedly tendered by the accused-appellant for the purpose of obtaining the bank draft. The accused-appellant was, then, examined u/s 313 Cr.P.C. and in his examination aforementioned, the accused-appellant denied that he had committed the offence alleged to have been committed by him, the case of the defence being that the accused-appellant never handed over any fake note as alleged by the prosecution witnesses and no fake currency note was ever found in his possession. No evidence was, however, adduced by the defence. On the conclusion of the trial, the learned trial Court found the accused guilty of the charge framed against him and convicted him accordingly and passed sentence against him as hereinabove mentioned.

4. I have heard Mr. J. M. Choudhury, learned senior counsel assisted by Mr. D. M. Choudhury, and Mr. A. Bora, learned counsel for the accused-appellant, and Mr. F.H. Laskar, learned Public Prosecutor, Assam for the respondents.

5. From the evidence of PW 1 (Saradindu Bhattacharjee) who was, at the relevant time, Manager of United Bank of India, at Fancy Bazar, it transpires that on 12-03-1997, while he was working as Manager at UBI, Fancy Bazar, at about 12/12.30 PM, the head cashier, reported in Birendra Kr. Dey, informed him that one Krishna Das, employee of Assam Tribune Private Limited (i.e., the accused-appellant), had deposited six numbers of fake notes of Rs. 500/-

denomination at the counter of the bank, whereupon PW 1, immediately, went to the concerned counter and also informed the owner of Assam Tribune Private Limited over phone about their discovery, but the owner of the said press, informed him (PW 1), over phone, that they had not sent any note of Rs. 500/- denomination. It is the evidence of PW1 that after some moments, accused Krishna Das snatched away the fake notes of Rs. 500/- denomination from the head cashier and put the same into his mouth, but the bank security guards, somehow, took out the said notes out of his mouth and he (PW1), then, informed the police about the matter, police came there, the police searched the person of the accused at the bank premises and recovered one fake note of Rs. 10/- denomination and another fake note of Rs. 100/-denomination from the possession of the accused and seized these two notes along with the said six fake notes of Rs. 500/- denomination. It is also in the evidence of PW 1 that he lodged one FIR and in the FIR (Ext. 1), he quoted the numbers of said fake currency notes. Closely supporting the evidence so given by PW 1, PW 2, PW 3 and PW 5 have given their evidence.

6. Upon carefully scrutinising the cross-examination of PWs 1, 2, 3 and 5, I find that from their cross-examination, nothing has been elicited by the defence to show that the evidence of these witnesses that the accused-appellant had come to the bank for the purpose of obtaining bank draft and deposited, for this purpose alongwith other currency notes, six currency notes each of Rs. 500/- denomination, which were, in the opinion of these prosecution witnesses, fake is false or untrue. In short, the evidence given by these witnesses could not be shaken by the defence.

7. The question, however, remains as to whether the currency notes, which were alleged to be fake, were really fake or not. In this regard, prosecution has examined PW 4, the treasurer of the Reserve Bank of India, at Guwahati, as an expert.

8. It has been pointed out by Mr. Choudhury, learned senior counsel for the appellant, that PW 4 was not, according to the evidence on record, satisfactorily proved to be an expert, who could examine and give opinion on matters of the determination of genuineness or otherwise of currency notes. This apart, points out Mr. Choudhury, PW 4 assigned absolutely no reason for the opinion, which he gave to the effect that the said six five hundred rupees denomination currency notes as well as the currency notes of Rs. 10 and Rs. 100 denomination allegedly found in possession of the accused were forged ones. The opinion expressed by PW 4 without assigning any reason therefor, contends Mr. Choudhury, no evidence at all and based on such evidence, the learned trial Court could not have held that the said currency notes were fake. Support for his submission is sought to be derived Mr. Choudhury from the case of [Mahmood Vs. State of U.P.](#),

9. While considering the above submissions made on behalf of the accused-appellant, it is worth noticing that from the examination-in-chief of PW 4, the prosecution did not elicit anything to show that PW 4 was an expert and capable of giving correct opinion with regard to the genuineness or otherwise of currency

notes. It is, however, imperative to note that in his cross-examination by the defence, PW 4 deposed, in no uncertain words, that he had been trained to examine the fake currency notes. This assertion of PW 4 remained completely unchallenged by the defence. When PW 4 claimed that he had been trained to examine fake currency notes and such assertion remained undisputed, there was, in my firm view, no impediment, on the part of the learned trial Court, to treat PW 4 as an expert on the subject of determination of genuineness or otherwise of the currency notes.

10. What is, however, of greatest significant to note, in the present appeal, is that in our criminal jurisprudence, the burden to prove the charge against the accused beyond all reasonable doubt rests entirely on the prosecution. The falsity of the defence case cannot be used a substitute for proof of the ingredients of the offence with which the accused is charged. In the case at hand, even if, for a moment, it is assumed that the allegedly seized currency notes belong to, and were in possession of, the accused-appellant, the fact still remains that it was the bounden duty of the prosecution to prove beyond all reasonable doubt that these notes were fake.

11. Now, even if PW 4 is treated as an expert on the subject aforementioned, the fact remains that an expert's opinion is valueless unless the opinion is supported by reasons and data. An expert's opinion is not binding on Courts, it is only relevant u/s 45 of the Evidence Act. For such opinion to be accepted by the court, the expert must assign reasons, for, it is the reason given by the expert, which is important and not his mere opinion. For the opinion, which PW 4 has expressed to the effect that the said seized notes were fake, he assigned no reason and, amazingly enough, no reason for the opinion, so given, was elicited either by the prosecution or even by the learned trial Court. In the absence of reasons assigned by PW 4 for the conclusion that he had reached and the opinion that he had expressed, it could not have been held by the learned trial Court that the evidence of PW 4 shows, far less prove, that the said currency notes were fake ones. Though the acts of the accused-appellant in trying to. chew and eat the said notes, are strong circumstances against the accused-appellant and the same give rise to suspicion that the currency notes, which he had attempted to eat, were fake ones, the fact remains that suspicion, howsoever strong, cannot take the place of proof, for, every individual, placed in a given situation, may react differently.

12. In the case at hand, in the face of what have been pointed out above, there was no convincing and conclusive evidence, far less proof, that the said currency notes were fake ones. At any rate, in the face of the facts, as emerged from the evidence on record and the law relevant thereto, the learned trial Court ought to have accorded, at least, benefit of doubt to the accused-appellant.

13. In the result and for the reasons discussed above, this appeal . succeeds. The impugned judgment and order are hereby set aside and . quashed. The accused-appellant is held not guilty of the charge framed against him u/s 489B IPC and acquitted accordingly under the benefit of doubt.

14. Let the accused-appellant be set at liberty forthwith unless he is required to be detained in connection with any other case.

15. Send back the LCRs.