

(2002) 07 KL CK 0078

High Court Of Kerala

Case No: CRA No. 654 of 1998

Kuttan Nadar Wilson

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** July 24, 2002**Acts Referred:**

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

**Citation:** (2003) 1 ALT(Cri) 543 : (2002) 2 KLJ 362**Hon'ble Judges:** M.R. Hariharan Nair, J**Bench:** Single Bench**Advocate:** S. Gopakumaran Nair, for the Appellant; T.K. Latiff, PP, for the Respondent

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**Judgement**

1. The appellant was the accused in S.C. No. 103/89 of the Sessions Court, Kollam, and he has been convicted for the offence under Sections 489-B and 489-C of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and three years respectively for the two offences.

2. The prosecution case was that at about 2 p.m. on 20-6-1983, the accused went over to the shop of P.W. 1 and after purchasing four Thoshiba Anand batteries worth Rs. 13.20 from the shop, tendered a 100 rupee note, the genuineness of which P.W. 1 suspected. The accused immediately tried to get back the currency note. In the meantime, P.W. 3 - Sub Inspector of Police, who was going along the road, noticed a commotion in front of the shop and he caught hold of the accused straightaway and after preparing a mahazar, took him to the Police Station and registered the case.

3. Shri S. Gopakumaran Nair, who appeared for the appellant, submitted that even accepting the version of P.W. 1, there is no sufficient evidence to find the accused guilty of the two offences.

4. On the arguments advanced in the case, the points that arise for decision are:

(1) Whether the accused has committed the offence u/s 489-B of the IPC?

(2) Whether the accused has committed the offence u/s 489-C of the IPC?

(3) Reliefs.

5. Point Nos. 1 and 2:- These are dealt with together for the sake of convenience. The relevant provisions are extracted hereunder:

"489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.-Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Possession of forged or counterfeit currency-notes or bank-notes.-- Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

As far as Section 489-C is concerned, what the prosecution has to prove is that the accused had in his possession a forged or counterfeit currency note with knowledge or reason to believe that the currency note is forged or counterfeit and intending to use the same as genuine or that it may be used as genuine. In the instant case that fact that the accused tried to pass off M.O. 1 currency note as genuine stands established through the evidence of P.Ws. 1 and 2; but then, such attempt to use the currency note as genuine will not make the offence complete. As can be seen from the definition aforementioned the prosecution has further to establish that the accused has done so with the knowledge or having reason to believe that M.O. 1 was a forged or counterfeit note. Likewise, for establishing the offence u/s 489-B of the IPC, it has to be established that the accused has received from any other person, or trafficked in, or used as genuine, M.O. 1 currency note, with the knowledge or belief that what he was handing over to P.W. 1 was a forged or counterfeit note. With regard to the aspect of belief or knowledge, it may not be possible to get direct evidence. Nevertheless, the prosecution is not relieved of its responsibility to adduce sufficient evidence in the matter even if it is through other circumstantial evidence. As far as the present case is concerned, there is considerable merit in the submission of the learned counsel for the appellant that absolutely no effort was made by P.W. 3 - Sub Inspector of Police to enquire into the source of M.O. 1. He did not even bother to make a search in the house of the accused. It is important in this connection to note that M.O. 1 was the only currency note in the possession of the accused at the relevant time and there is no evidence

at all to show that he had possession of any other similar currency note elsewhere or that he received it from any particular person with the knowledge that it was a fake currency.

6. The trial court has proceeded as though the accused tried to snatch away M.O. 1 from the hands of P.W. 1 as soon as P.W. 1 expressed suspicion with regard to the genuineness of the currency note. However, there is no unanimity on this aspect between P.Ws. 1 and 2. Even in Chief-examination, what P.W. 1 stated was that when he expressed doubt about the genuineness of the currency note which possibility was confirmed by P.W. 2 and some others in the shop, the accused got into the shop and got back the currency note from the hands of P.W. 1. On the other hand, what P.W. 2 stated was that following the refusal of P.W. 1 to receive the currency note towards the price of the batteries, the accused made a fuss over the issue and insisted on getting the balance and also snatched away the currency note from the hands of P.W. 1. In cross-examination, he stated, differing from the version of P.W. 1, that the accused did not get into the shop of P.W. 1 for the purpose of getting back the currency note. He also admitted that there was no scuffle between the accused and P.W. 1 for getting back the currency note. This is all the evidence that is adduced in the matter of attempt on the part of the accused to pass off M.O. 1. According to me, the evidence on record is insufficient to fix knowledge on the part of the accused with regard to the fake nature of the currency note. It is to be remembered here that the accused is a manual labourer who does not appear to be even literate. Whether he could identify by appearance as to whether M.O. 1 was genuine or not is itself a matter of conjecture. I am aware that in Ext. P3 report of the expert, it is mentioned that the thickness of M.O. 1 varied from genuine currency in so far as it was made of "double paper". Whether from this an ordinary layman could acquire knowledge that it is a fake is a matter of doubt. Of course, P.W. 1, on seeing it, felt doubt about its genuineness; but then, he is a shop keeper who comes across currency notes very often in the course of his commercial activity, whereas the accused is a labourer who seldom comes across such currency notes. It is to be remembered here that the occurrence took place way back in 1983 when the remuneration for a day's work was much less than Rs. 100/-. In these circumstances, I am of the view that the accused is at least entitled to get the benefit of doubt on the aspect whether he had knowledge that M.O. 1 was actually a fake currency note.

7. During hearing, the learned counsel for the appellant placed before me a decision in *Umashanker v. State of Chattisgarh* 2001 (3) KLT 681. That was a case where a currency note of Rs. 100/- was handed over by the accused therein to P.W. 4 towards the price of one kilogram of mango costing Rs. 5/-. P.W. 4 showed it to P.Ws. 2 and 7 who opined that it was a fake currency note. The police, later on, recovered as many as 13 more such fake currency notes from the accused, besides some papers, refills of different colours and scissors from the house of the accused. Notwithstanding such evidence, the Apex Court held as follows:

"8. A perusal of the provisions, extracted above shows that mens rea of offences under Sections 489-B and 489-C is "knowing or having reason to believe the currency notes or bank notes are forged or counterfeit". Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or bank notes, is not enough to constitute offence u/s 489-B of IPC. So also possessing or even intending to use any forged or counterfeit currency notes or bank-notes is not sufficient to make out a case u/s 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect. The learned trial Judge, on the basis of the evidence of P.W. 2, P.W. 4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4, was fake, "presumed" such a mens rea."

The Apex Court gave the benefit of doubt to the accused and acquitted him. The appellant in the present case is certainly entitled to a similar treatment, especially when the gravity of the prosecution, allegation as far as the present accused is concerned, is much less. Unlike in the reported case, there was no seizure of any other currency note or any other material which could have been used for the purpose of making fake currency notes in the present case. In these circumstances, the accused is certainly entitled to get the benefit of doubt as regards the offence alleged against him.

8. Point No. 3:- In view of my findings in the aforesaid points, the appellant is entitled to succeed. The impugned judgment is accordingly set aside and the accused is found not guilty and acquitted. The bail bond executed by him is cancelled and he is set at liberty.

The CrI. Appeal is disposed of as above.