

(2014) 11 MAD CK 0482

Madras High Court (Madurai Bench)

Case No: Criminal Appeal (MD) Nos. 691 and 842 of 2003

Arumugam

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 28, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 120(b), 489(A), 489(C), 498(A)

Hon'ble Judges: R. Mala, J**Bench:** Single Bench

Judgement

R. Mala, J.

The Criminal Appeals are directed against the judgment of conviction and sentence dated 10.04.2003 made in S.C. No.609 of 2001 on the file of the first Additional District and Sessions Judge cum Fast Track Court No.II, Madurai, wherein A1, A5, A7 and A8 are convicted and sentenced as follows:

2. The case of prosecution briefly is as follows:

(i) P.W.28 Liyeakath Ali was working as Inspector of Police, CBCID (Counterfeit wing), Chennai. On 11.12.1987, when he was in the Camp Office at Madurai, on information, he caught one Sekaran and Thambirajan belongs to Thiruthangal, who were quarreling with Balan, the owner of tea shop situated at Melur Road and recorded the confession statement of Balan, which is marked as Ex.P16. Thereafter, at 17.15 p.m. he enquired accused Gunasekaran and recorded his confession statement in the presence of Balan and Ramamoorthy and the admissible portion of the confession statement is Ex.P17 and on that basis, accused Gunasekaran produced counterfeit American Dollars in 100 denominations (M.O.3 series), counterfeit two rupees Indian currency (M.O4 series), Original five rupees Indian

currency (M.O.5 series) from his left hand shirt pocket and the same was recovered by P.W.28 under Athatchi Ex.P18.

(ii) On the same day at 6.45 p.m., he received M.O.6 series, original two rupees Indian currency one in number, M.O.7 counterfeit two rupees Indian currency, M.O.8 series counterfeit American dollars in 100 denominations 50 in numbers in the presence of the same witnesses under Ex.P19, Athatchi from the accused Thambiraj. He brought the accused Gunasekaran and Thambiraj to Madurai D.C.B. Police station and on the basis of Ex.P. 16, statement recorded from Balan, he registered a case in crime No. 138/1987 and prepared First Information Report, Ex.P.20. Thereafter, he arrested the accused Ponnappan and in the presence of P.W.2 Kumbam and one Syed, he recovered M.O.9 series, counterfeit American Dollars 100 denominations, M.O.10, counterfeit two rupees Indian currency and M.O.11, original two rupees Indian currency one in number under Ex.P21 Athatchi. He also arrested A8 Karuppiah in the presence of the same witnesses and recovered M.O.12 series counterfeit American Dollars in 100 denominations 50 in nos, M.O.13, original five rupees Indian currency and M.O.14 counterfeit two rupees Indian currency four in nos., along with the front cover of Kumutham magazine, which was covered the same under Ex.P22 and sent the accused for judicial custody and sent the material objects to the Court under Form 95. He sent a note to the Reserve Bank of India, Chennai regarding the recoveries of counterfeit currency notes and counterfeit American Dollars in 100 denominations. He gave requisition Ex.P5 to send the counterfeit notes to the Currency Note Press, Nashik for analysis.

(iii) On 27.04.1988 at 10.40 a.m. He arrested A7 Marimuthu in the presence of P.W.3 Archunan and P.W.4 Maduraiveeran and recorded his confession statement, which is marked as Ex.P14 and on that basis, in the presence of P.W.5, Kali Manickavasagam, Village Administrative Officer and Village Menial Janpa, he searched the press of A1 Arumugam and recovered M.O.1 series counterfeit American Dollars in 100 denominations four in numbers, which was hidden in the backside of switch box.

(iv) At 5.30 p.m., he arrested A5 Ranavel thevar, who was identified by A1 Arumugam in the presence of witnesses and recovered M.O.2 counterfeit American Dollars in 100 denominations and M.O.15 Pocket diary from his house and recorded the statement of witnesses and sent the accused for judicial custody and sent the material objects to the Court. He also given requisition to send the material objects to Security Press of India, Nasik. He sent a letter to the Director, Stationery and Printing, Chennai to send an expert to find out as to whether the machinery available in the press of A1 is capable to print counterfeit American Dollars in 100 denominations.

(v) On 08.08.1988 at 09.00 a.m. He arrested the accused Gnanasekaran and A2 Manoharan and he searched their house in the presence of witnesses. On 12.09.1988, P.W.22, Vijayakumar, forensic expert and inspected the press of the 1st

accused. On 01.10.1988, he arrested A6 Chermakani and searched his house in the presence of P.W.10 Duraipandian, V.A.O and Village Menial Sattanathan. He came to know that expert reports from Nashik press regarding the counterfeit currencies. On 18.05.1989, he arrested A3 Jeyam @ Jeyarajan. He came to know that Accused Gnanasekaran has given 164 Cr.P.C. statement before the Judicial Magistrate, which was marked as Ex.P23. He gave requisition to the Sessions Judge, Madurai to treat him as witness. The order copy of the Sessions Judge is marked as Ex.P24. On 10.09.1989, he arrested the accused Vasu @ Vasudevan in the presence of Krishnasamy and Mani and recorded his confession statement Ex.P25. He arrested A4 Chidambaram and Anbazhagan.

(vi) P.W.15 Sankaran was working as Manager, Ink Company, Sivakasi. On behalf of Parvathy Press, ink was purchased in 1989. P.W.19 Murugan was working as Finance Officer in Tamil Nadu Industries Investment Corporation, Virudhunagar. TIIC lent loan for purchase of machineries to the partnership firm viz., C.K. Printograph at Sivakasi. Since the partners did not pay the loan amount, the firm was locked. P.W.20 Muthukrishnan, who was working as Head Clerk of the Judicial Magistrate Court, Madurai received Ex.P.28 requisition given by P.W.28 and he sent the counterfeit American Dollars in 100 denominations and counterfeit two rupees Indian currency to the Government Press, Nasik for analysis under Exs.P7 to 10 and received Ex.P8 report. As per the order of the Secretariat, P.W.25 Abdul Salam and P.W.22 Vijayakumar gone to C.K. Printograph, Sivakasi and found out whether the machinery are printing counterfeit American Dollars in 100 denominations and visited the press and sent the report Ex.P15 to the Secretariat saying that there was facilities in the machinery of C.K. Printograph Press to print counterfeit American Dollars in 100 denominations. Thereafter, P.W.28, completed his investigation and filed charge sheet against the Accused.

3. The learned trial Judge, after following the procedures, framed necessary charges against the accused. Since the accused pleaded not guilty, to prove the charges, P.Ws.1 to 28 were examined and Exs.P1 to P26 and M.Os.1 to 15 were marked. Accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances. Accused denied the same in toto and stated that a false case has been foisted against them. No defence witness was examined on the side of the accused.

4. On considering the oral and documentary evidence, the learned Sessions Judge found the appellants/A1, A5, A7 and A8 guilty for the offence under Sections 120(b) read with 489(A) of I.P.C. and found the appellants 1 and 4/A1 and A8 guilty for the offence under Section 489(C) of I.P.C. and acquitted A2 to A4, A6 and A9 from the charges levelled against them and convicted A1, A5, A7 and A8 to undergo 7 years rigorous imprisonment each and to pay a fine of Rs.1,000/-each in default to undergo 2 months simple imprisonment each for the offence under Sections 120(b) read with 489(a) of I.P.C. and convicted A1 and A8 to undergo 7 years rigorous

imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo 2 months simple imprisonment each for the offence under Sections 489(c) of I.P.C. Challenging the said judgment of conviction and sentence, A1, A5 and A7 have preferred C.A.(MD) NO.691 of 2003 and A8 has preferred C.A.(MD) No. 842 of 2003.

5. Challenging the said conviction and sentence passed by the trial Court, the learned counsel for the appellants 1 to 3/A1, A5 and A7 would submit that there is no evidence for proving the charges levelled against the appellants and neither there is direct evidence nor indirect evidence to prove the offence under Section 120(B) of I.P.C., since P.W.1, who was the approver was turned hostile and he has not supported the case of prosecution.

6. The second limb of argument is that the appellants were convicted for the offence under Section 489(A) of I.P.C. But, there is no evidence to show that the appellants had prepared counterfeit American dollars and counterfeit Indian currency notes. He would further submit that to prove the offence under Section 489(C) of I.P.C., P.W.5 Kali Manickavasagampillai, Village Administrative Officer was examined, but, he has not supported the case of prosecution and nothing has been seized from the other accused and the counterfeit American Dollars in 100 denominations had been seized from the switch box of C.K. Printograph @ Parvathy Press but, no test has been conducted as to whether the American Dollars are genuine one or counterfeit one and there is no evidence that A1 and A8 are in conscious possession of the same, since P.W. 2 Kumbam has not supported the case of prosecution and other attester Syed was not examined before the trial Court and those factum have not been considered by the trial Court, he prayed for setting aside the conviction and sentence passed by the trial Court against A1, A5 and A7/appellant 1 to 3.

7. Learned counsel for the 4th appellant/A8 is adopting the argument of the learned counsel for the appellants 1 to 3/A1, A5 and A7 and prayed for allowing of the appeals.

8. Resisting the same, the learned Government Advocate (criminal side) would submit that the evidence of P.W.25 has been proved that A1 is the owner of C.K. Printograph and evidence of P.W.4 was also supporting the case of prosecution and the trial Court has correctly held that A1, A5, A7 and A8 were convicted for the offence under Section 120(B) read with 489(A) of I.P.C. and Section 489(C) of I.P.C. and acquitted the other accused and hence, the judgment of conviction and sentence does not warrant any interference and hence, she prayed for the dismissal of the appeals.

9. Considering the rival submissions made by both sides and also on perusal of the types set of papers, the charges against the appellants are that the appellants and other accused along with one approver Gnanasekaran, who was examined as P.W.1, conspired to prepare counterfeit American Dollars and Indian Currency and printed the same and hence, they were charged for the offence under Sections 120(B) read

with 489(A) of I.P.C. The second charge against the appellants and other accused is that they printed counterfeit American Dollars in 100 denominations and Indian currency and they were charged for the offence under Section 498(a) of I.P.C. and the third charge against A1, A8 and A9 is that on 11.12.1987 at about 09.00 p.m. they found in possession of counterfeit American Dollars in 100 denominations 50 in nos. and counterfeit two rupees Indian currency four in nos. in the western side of Rajaji Park and knowing fully well, they tried to change the same as they are genuine and that has been seized and hence, they were charged for the offence under Section 489(C) of I.P.C.

10. To prove the charges, the prosecution has examined P.Ws.1 to 28 and Exs.P1 to P26 and M.Os.1 to 15 were marked. Even though the case has been tried against 9 persons, except A1, A5, A7 and A8 were acquitted from all the charges levelled against them. Therefore, this Court has to decide as to whether the conviction under Sections 120(B) read with 489(A) of I.P.C. against A1, A5, A7 and is sustainable? On the basis of the evidence of P.W. 1, who was the approver alone, the charge under Section 120(B) has been framed, but, he has not supported the case of prosecution. On examination, P.Ws.1, 3, 6, 7, 8, 9, 12, 13, 14, 16, 17 and 18 were turned hostile. Therefore, the evidence of other witnesses have to be considered to find out as to whether the ingredients of Section 120(B) of I.P.C. has been proved. It is well settled dictum that for proving the conspiracy, no direct evidence is available, it can be inferred from the other evidence, which are available and let in by the prosecution. On perusal of the remaining available evidence viz., P.Ws.2, 4, 5, 10, 11, 15 and 19, their evidence has not proved the ingredients of Section 120(B) of I.P.C. Hence, I am of the view that there is no evidence on the side of prosecution to prove that the appellants had conspired for preparing the counterfeit Indian Currency and American Dollars. Hence, I am of the view that the prosecution has not proved the guilt of A1, A5, A7 and A8 for the offence under Section 120(B) of I.P.C. beyond all reasonable doubt and hence, the benefit of doubt shall be given to the appellants/A1, A5, A7 and A8 and they shall be liable to be acquitted for the offence under Section 120(B) of I.P.C.

11. Here, P.W.5 Kali Manickavasagam, Village Administrative Officer has been examined to prove the seizure of M.O.1 at A5's house. Considering his evidence, in his cross examination, he has stated that since he was a government servant, to support the police people, he has given evidence. In his further cross examination, he has gone to the extent by saying that she could not say as to whether it was xerox copy or printed?. In such circumstances, I am of the view that the evidence of P.W.5 is not wholly reliable, which needs corroboration. But, to corroborate the same, no one has been examined. In his chief examination, he has gone to Sivakasi along with Village Menial Johnpa. But, he was not examined before the trial Court. Since the recovery of material objects seized from A5 has not been proved by the prosecution beyond all reasonable doubt, the possession of M.O.1 with A5 was not proved by the prosecution beyond all reasonable doubt.

12. At this juncture, it is appropriate to consider the argument of the learned counsel for the appellants that there is no evidence to show that the printing press is belong to A1 Arumugam. To prove the same, the prosecution examined P.W.19 Murugan, who was the Finance Officer of Tamil Nadu Industrial Investment Corporation and P.W.23, Sivaraman, who was working as Branch Manager of Tamil Nadu Industrial Investment Corporation. P.W.19 Murugan has stated in his evidence that C.K. Printograph is a partnership firm and they lent loan for the to purchase the printing machinery and one Krishnagurunathan and Ramakrishnan are the partners of that firm and the said Ramakrishnan was arrayed as A9 in this case and he was acquitted from all the charges levelled against him. In his chief examination, he has stated that on 23.03.1986, since the locked and sealed the press, A1 was operated the machinery without getting prior permission from them and during that period, he paid a sum of Rs.20,000/-. In his cross examination, he has fairly conceded that the said amount has been paid by way of Demand Draft and without that document, he was unable to depose that who had drawn the Demand Draft for a sum of Rs.20000/-and paid the same towards loan obtained by C.K. Printograph. His cross examination itself has falsified his chief examination. For example, in his cross examination, he has stated that from 23.03.1986 onwards, the press was not functioning, whereas, he has further stated that he did not know as to whether A1 was having any connection with C.K. Printograph. In such circumstances, on 27.04.1988, the press has not functioned and hence, there is no evidence to show that the C.K. Printograph is in possession of A1. P.W.23, Sivaraman, Branch Manager of TICC has deposed in his evidence that he sent the documents to CBCID, counterfeit wing and hence I am of the view that there is no evidence to show that C.K. Printograph was in possession of either A1 Arumugam and A5 Ranavel thevar. Furthermore, the seized materials have been sent to Currency Note Press, Nashik for analysis. P.W.20 Muthukrishnan, who was the Head Clerk of the Judicial Magistrate NO.II, Madurai and P.W.22 Vijayakumar, Assistant Director of Forensic Science Department were examined. P.W.22 Vijayakumar has stated in his evidence that he has visited the C.K. Printograph, where no clue has been found. But, he has stated that one Offset printing machine and cutting machine were available there. Therefore, in such circumstances, I am of the view that there is no evidence to show that the appellants and other accused had printed counterfeit Indian currency notes and American Dollar notes at C.K. Printograph and that factum was not considered by the trial Court properly.

13. It is appropriate to incorporate the ingredients of Section 489(A) of I.P.C, which read as follows:

(i) Accused counterfeited or performed any part of the process of counterfeiting.

(ii) Currency-note or Bank-note were counterfeited or attempted to be counterfeited.

Even accepting the evidence of P.W.5, M.O.1 series has been seized at C.K. Printograph, belong to A1 and M.O.2 series has been seized from A5, as per the

evidence of P.W.22 Vijayakumar, when he made inspection at C.K. Printograph, he has not seen any evidence. Therefore, there is no evidence to show that the accused had prepared counterfeit notes.

14. Furthermore, it is appropriate to consider the evidence of P.W.25, Abdul Salam, who was working as Deputy Manager of Stationery and Printing Department, Chennai. He has deposed in his examination that he has visited C.K. Printograph and made inspection to find out as to whether the machinery is capable for printing counterfeit Indian currency notes and American dollars. He gave a report Ex.P15 stating that there are facilities to print counterfeit Indian currency notes and American dollars. But, the presumption will not be the basis for conviction. Because, It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond all reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence.

15. It is the duty of the prosecution to prove the guilt of the accused beyond all reasonable doubt either with direct evidence or with circumstantial evidence. But, merely because P.W.25 has given a report Ex.P15, stating that the machines in C.K. Printograph is capable to print Indian currency notes and American dollars. But, P.W.22 Vijayakumar, who visited the place along with P.W.25 has deposed that when he visited the place, he had not seen any evidence to print Indian currency notes and American dollars.

16. Furthermore, as per the evidence of P.W.5, Village Administrative Officer, he has deposed that even though M.O.1 series have been seized in his presence, he was not able to say that M.O.1 series is counterfeit American dollars or xerox copies of the same. Therefore, it is appropriate to consider the argument of the learned counsel for the appellants that to verify as to whether M.O.1 series is counterfeit notes or genuine notes and the same have not been sent to American Embassy and no report has been received. In such circumstances, there is no prima facie evidence to show that M.O.1 series is counterfeit American dollars. So, considering the evidence of P.W.5, P.W.19 and P.W.22, I am of the view that the prosecution has failed to prove that A1, A5, A7 and A8 were guilty for the offence under Sections 120(B) read with 489(A) of I.P.C. beyond all reasonable doubt and the benefit of doubt shall be given to the appellants/A1, A5, A7 and A8 and they were liable to be acquitted from the charge under Section 489(A) of I.P.C..

17. Further, in respect of A1 and A8 are concerned, they were convicted for the offence under Section 489(C) of I.P.C. also. The charge is that they were found in possession of counterfeit Indian currency notes and American dollars. The ingredients of Section 489(C) are as follows:

(i) Note is currency-note or Bank-note.

(ii) It was forged or counterfeit.

(iii) Accused was in possession.

(iv) He intended to use it as genuine.

(v) At the time he processed he knew or had reason to believe it to be forged or counterfeit.

To prove the fact that A1 was in possession of counterfeit notes, M.O.1 series have been seized at C.K. Printograph in the presence of P.W.5, but, it was not seized from A1 and that has been seized only from the switch box at C.K. Printograph. As already stated, the evidence of P.W.5 is not reliable, since he was not able to give answer as to whether M.O.1 series is counterfeit or genuine or xerox copies. Even though, M.O.1 series is American dollars, there is no evidence to show that M.O.1 was forged or counterfeited. As already stated, M.O.1 series were not sent for verification to verify as to whether the same is genuine or forged or counterfeited. There is no evidence to show that A1 was in possession of the counterfeit American Dollars and Indian Currency and it was also not seized from him personally. In such circumstances, I am of the view that the ingredients of Section 489(C) of I.P.C. against A1 has not been proved by the prosecution beyond all reasonable doubt and hence, A1 shall liable to be acquitted from the charge under Section 489(C) of I.P.C.

18. In respect of A8 is concerned, no one has deposed that A8 was in possession of counterfeit notes. The witnesses, who were examined to prove the guilt of A8, were turned hostile and there is no evidence to show that A8 was in possession of M.O.2 series. As per the case of prosecution, on 11.12.1987 A8 was arrested and from him, M.Os.12 and 14 were seized under Exp.22 in the presence of P.W.2 Kumbam. But, he has not supported the case of prosecution, only his signature alone has been marked as Ex.P1 and P2 and the other attestor Syed was not examined before the trial Court. In such circumstances, I am of the view that the prosecution has miserably failed to prove that A8 Karuppiah has possessed counterfeit Indian currency notes or American dollar, knowing fully well that it was forged or counterfeited notes and he was in conscious possession and used the same as genuine. Considering all these aspects, I am of the view that the prosecution has not proved the guilt of A8 for the offence under Section 489(C) of I.P.C. beyond all reasonable doubt.

19. For the reasons stated above, I am of the view that the prosecution has not proved the guilt of A1, A5, A7 and A8 for the offence under Section 120(B) read with 498(A) of I.P.C. and the guilt of A1 and A8 for the offence under Section 489(C) of I.P.C. beyond all reasonable doubt and without considering the same convicted the appellants and the benefit of doubt shall be given to the appellant and hence, the judgment of conviction and sentence shall liable to be set aside and the

appellants/A1, A5, A7 and A8 shall liable to be acquitted from all the charges levelled against them.

20. In fine,

◆ The Criminal Appeals are allowed.

◆ Judgment of conviction and sentence passed in S.C. No. 609 of 2001 dated 10.04.2003 by the Additional District Sessions Judge, Fast Track Court No. 2, Madurai, is hereby set aside.

◆ The appellants/A1, A5, A7 and A8 are acquitted from the charges under Sections 120(B) and 489(A) of I.P.C. and the appellants/A1 and A8 are acquitted from the charge under Section 489(C) of I.P.C.

◆ The fine amount already paid by the appellants/A1, A5, A7 and A8, if any, is ordered to be refunded.

◆ The bail bonds, if any executed by the appellants, shall stand cancelled.