

(2013) 12 CAL CK 0063
Calcutta High Court
Case No: C.R.A. 645 of 2010

Santi Tarafdar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Dec. 3, 2013

Acts Referred:

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

Citation: (2014) 1 CALLT 160 : (2014) 1 Crimes 258

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Y.Z. Dastoor and Mr. Prabir Majumder, for the Appellant; Amarta Ghosh, for the Respondent

Final Decision: Allowed

Judgement

Kanchan Chakraborty, J.

This appeal is preferred against the Judgment and the order dated 30.08.2010 and 31.08.2010, respectively, by learned Additional Sessions Judge, F.T. Court No. I, Ranaghat, Nadia in Sessions Trial No. 8(7)2008 arising out of Sessions Case No. 56(6)2008 and thereby convicting the appellant u/s 489C of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for six years and to pay a fine of Rs. 5,000/-. The case of the prosecution before the Trial Court, succinctly, is that on 20.03.2008 on receiving a secret information from the duty officer of Gangnapur Police Station, the Officer-in-Charge of the police station had been to Aishmali Purba Para near Boys Club along with three constables and one N.V.F. at about 18.15 hour. At 18.35 hours, they found the appellant coming towards Aishmali Bazar. After identification by the source, the Officer-in-Charge of the police station, i.e. Biplab Gangopadhyay apprehended the appellant near Boys Club and in course of interrogation came to know the name of the appellant and his address. The appellant disclosed that he had fish business at Aishmali Bazar. Two local people, namely, Swapan Sadhukhan and Abhijit Sadhukhan were asked to remain present

when the appellant was searched. On searching, two numbers of one thousand rupee denomination Indian currency note and thirty seven numbers of one hundred rupee currency note, appeared to be fake, were recovered from the possession of the appellant. Those fake currency note were seized under seizure list on spot in presence of seizure witnesses. The seized currency note were packed, sealed and leveled on spot. Thereafter, S.I., Biplab Gangopadhyay gone to the police station and lodged one F.I.R. and endorsed the case for investigation in favour of S.I., Nil Madhav Nandi. The appellant who was arrested on spot was produced in the police station together with the seized currency notes in a sealed packet at the time of lodging the F.I.R. A case, accordingly, was started being Gangnapur Police Station Case No. 47/2008 dated 20.03.2008 u/s 489B and 489C of Indian Penal Code against the appellant. The case was investigated into by Nil Madhav Nandi, S.I. of Police (P.W. 7) who on completion of investigation filed charge-sheet against the appellant under Sections 489B and 489C of Indian Penal Code. The appellant was arrayed to face charge under Sections 489B and 489C of Indian Penal Code to which he pleaded not guilty and as a consequence, the trial commenced. In all, seven witnesses were examined on behalf of the prosecution. The seizure list, F.I.R., Memorandum of arrest, sketch map of place of occurrence, report of expert etc. were admitted into evidence on behalf of the prosecution and marked exhibit in course of trial. No evidence was adduced on behalf of the appellant as his defence in course of trial. However, he took a plea in course of his examination u/s 313 Cr.P.C. that he had been running fish business in Gangnapur market and he was implicated falsely by his rival business group with whom the police official had collusion.

2. The learned Trial Court, upon consideration of the evidence on record, oral and documentary, came to a conclusion that the prosecution established the case against the accused u/s 498C of Indian Penal Code. Accordingly, the learned Trial Court convicted him for committing offence u/s 498C of Indian Penal Code and passed the sentence which is impugned in this appeal.

3. Mr. Dastoor, learned Advocate for the appellant contended that prosecution failed miserably to establish the fact of possession of fake currency notes by the appellant, fact of recovery and seizure of such currency notes from the appellant by sufficient and satisfactory evidence. He contended that learned Court while appreciating the evidence on record made gross error by not considering the discrepancies in the statements of the witnesses as well as in the seizure list, memo. of arrest in respect of time and place of seizure as well as presence of witnesses at the time of seizure. He had taken this Court two different statements of the witnesses including I.O. as well as the lodger of the complaint and contended that if the defacto-complainant, i.e. P.W. 1 being the O.C. of the police station concerned himself conducted a search and seizure and, thereafter, packed the seized currency notes on the spot, sealed and leveled it and, thereafter, gone to the police station, then how the I.O. of the case could count the seized currency note after assuming charge of investigation from the O.C. of the police station. He has also contended that some of the

witnesses made it very clear that it was raining heavily at the time the appellant was apprehended and seizure was done. Mr. Dastoor contended that if the seizure was done on a Kachcha sub-lane, i.e. the place of incident, how could the P.W. 1 prepared the seizure list specially when none of the raiding party had any umbrella with them. He contended also that two non-interested local people were made witnesses to the seizure. Both of them stated that no seizure was done in their presence. They failed to identify the appellant also as the person from whom fake currency notes were recovered in their presence. Mr. Dastoor brought other discrepancies in the statement of witnesses on material facts relating to possession, recovery and seizure of fake notes from the appellant, place and time of seizure. He contended that in a case u/s 489C prosecution is saddled with the burden to establish to the hilt that the appellant/accused was possessing fake currency notes knowing it very well that the currency notes he was possessing were fake or that had reason to believe that the currency notes he was possessing were fake. Since prosecution failed to establish the fact of seizure itself, the plea taken by the appellant in course of his examination u/s 313 Cr.P.C. cannot be used as an aid in favour of the prosecution. Prosecution case not being establish to the hilt, the Judgment impugned is liable to be set aside.

4. Mr. Amarta Ghosh, learned Counsel appearing for the respondent-State of West Bengal contended that discrepancies in respect of place, time and certain factors relating to possession, recovery and seizure of fake currency notes altogether does not demolish the substratum of prosecution case that fake currency notes were recovered from the possession of the appellant. Some discrepancies must occur because it is not humanly possible for any person to give a photographic picture of an incident took place long back. He contended further that learned Trial Court rightly believed the evidence of witnesses who accompanied the P.W. 1. There is no infirmity and illegality in the Judgment and, as such, the Judgment is not required to be upset in this appeal.

5. I have carefully gone through the oral testimonies of the prosecution witnesses, the seizure list, the memo. of arrest. In a case u/s 489C of the Indian Penal Code, no doubt, the prosecution is saddled with the burden to establish that the appellant had been possessing the fake currency notes knowing the same as fake or have reason to believe that it was fake. In other words, in a case of like nature the prosecution must prove possession, recovery and seizure of the currency note/notes. If possession, recovery and seizure are not proved by satisfactory and sufficient evidence, recording of conviction of an accused would be against the established principle of law.

6. First contention of Mr. Dastoor was that the place of recovery and seizure was shifted in course of trial.

7. According to the F.I.R. the appellant was apprehended near Boys Club at Aishmali. The sketch map which has been marked exhibit - 6 shows that "A" is the place of

occurrence where the appellant was apprehended and seizure was made in presence of witnesses. The "D" is the Boys Club. From the sketch map it appears clearly that the place where the appellant was apprehended and seizure was made on the main road by the side of Boys Club. The P.W. - 1 is the O.C. of Gangnapur Police Station allegedly apprehended the appellant and recovered the fake currency notes. He has stated that the appellant was detained near the Boys Club where two witnesses were asked to come.

8. The P.W. - 2 is a police constable who accompanied the P.W. - 1 to the place of occurrence. He stated in his cross-examination that the appellant was identified by source and apprehended by P.W. - 1 at Aishmali Purba Para near Boys Club.

9. The P.W. - 3 another police constable who also accompanied P.W. - 1 and 2 to the place of occurrence has stated in his cross-examination that the place of occurrence was a narrow pathway where the appellant was apprehended and it was not a Bus road. He stated specifically that it was a Kachcha road, neither a brick built nor a metal road, and it was an open place.

10. This statement of this P.W. - 3 does not corroborate the statement of P.W. - 1 and 2 as well as the place of occurrence shown in the exhibit - 6.

11. P.W. - 4 a local man has stated that he had a shop at Aishmali Purba Para near Boys Club. About one year ago, at about 7.00 p.m., police vehicle came in front of his shop, apprehended one person and took him in the vehicle. This statement of P.W. - 4 although he was declared hostile shows that the appellant was apprehended in front of the shop of the P.W.-4. The existence of such a shop has not been shown in the exhibit - 6. Neither the P.W. - 1 and 2 nor the P.W. - 3 has stated that there was any shop by the side of the place where the appellant was apprehended.

12. P.W. - 5, another local person, was declared hostile. He stated in his cross-examination that there were many houses near the Boys Club and there was a Bus stop near the Boys Club. If so, the place where the appellant was apprehended was not correctly depicted in the exhibit - 6 and correctly said by the P.W. - 1, 2, 3 as well as 4.

13. P.W. - 6 is one N.V.F. who had been with the P.W. - 1, 2 and 3 at the relevant point of time and had been to the Aishmali Bazar. He stated that they remained scattered near Aishmali Boys Club and the appellant was found coming from the side of the Bazar. Two witnesses were called from the Club. He stated in his cross-examination that the Boys Club was situated near Aishmali Bazar by the side of the road through which Buses, Cycles etc. ply.

14. The P.W. - 7 has given a completely different location of the place of occurrence. According to the exhibit - 6 point "C" to point "F" was the pucca road where the appellant was apprehended. If so, the place of occurrence has been shifted from one place to another in course of trial. However, this factor is not of much

importance.

15. The most important factor in this case is recovery and seizure of the fake currency notes. According to the F.I.R., on 20.03.2008 at about 18.15 hours, the raiding party headed by P.W. - 1 reached Aishmali Purba Para near the Boys Club where the source was waiting. At about 8.35 hours, the appellant was found coming towards Aishmali Bazar. He was apprehended and, thereafter, two local people were asked to remain present during the search procedure that was (1) Swapan Sadhukhan and (2) Abhijit Sadhukhan. The appellant was searched thoroughly on the spot and from his possession, in all, 39 fake currency notes were recovered. Those were seized from the spot under a seizure list prepared on the spot by the P.W. - 1 who put the seized currency note in a packet, sealed it and labelled it in presence of witnesses and the appellant and obtained their signatures on the label. Everything was done on the spot which was either a Kachcha pathway or a metal road in front of the Boys Club. It was heavily raining according to the P.W. - 3 and there was no pedestrian available near the place of occurrence. The appellant was apprehended while it was raining and he had no umbrella with him. The fact that in the evening of that day it was raining was supported by the P.W. - 4 and P.W. - 6.

16. The first question comes in while the appellant was apprehended it was raining heavily and he had no umbrella. The fake notes were recovered from his shirt pocket. Nowhere it has been stated by the witnesses that the currency notes seized were wet. It is not also understood how a man moving through a road or lane without umbrella and kept the currency notes in his shirt pocket without being wet. Be that as it may, two witnesses were first called to witness the seizure. Both of them turned hostile and stated that nothing was seized in their presence at that particular time and at that particular place. Both of them stated that at 11.00 p.m. police official told them to sign on a paper stating that some fake notes were recovered. They signed the paper as requested by police because police official told them that a man was arrested in their presence. There is no reason to disbelieve the statements of the P.W. - 4 and 5 simply because they were declared hostile. They had no reason either to support the prosecution case or favour the appellant. They have not denied that they signed the seizure list but the time they signed it is quite significant. One of them has said he signed that it at about 11.00 p.m. and the another stated that he signed it at 11.30 p.m. One of them has stated that while getting his signature police referred to an incident of apprehending one man near the Boys Club in his presence.

17. According to the prosecution case as well as the P.W. - 1 the appellant was apprehended near Boys Club at Aishmali Purba Para. The seizure started at 06.45 hours and continued till 7.50 hours. The article seized were put in packet, sealed and leveled on spot after preparation of the seizure list. The seizure list was signed by the witnesses, i.e. P.W. - 4 and 5 on the spot and that they also put their signatures on the level of the packet. This fact have not been corroborated by the P.W. - 4 and

5.

18. Learned Trial Court ignored the evidence of P.W. - 4 and 5 and put much stress on the official witnesses on the ground that there is no rule of law to discard the evidence of official witnesses simply because they were discharging official duties and connected with the case. I find nothing wrong in his observation. But, when the official witnesses themselves made contradictory statements regarding place of seizure, time of seizure and manner of seizure, it creates a doubt. The seizure list, i.e. exhibit 1 shows that such a seizure was started at 8.45 hours and continued to 9.50 hours. According to the P.W. - 1 the appellant was detained by the P.W. - 1 near the Boys Club at about 18.35 hours, i.e. 10 minutes prior to his arrest. So, seizure was done within 10 minutes that is obviously within 18.45 hours because he was arrested after seizure. It is not understood why the exhibit - 1 shows the time of seizure continued till 19.50 hours. The arrest memo. which was marked exhibit - 5 shows that the appellant was arrested at 18.40 hours that is 5 minutes prior to starting of seizure. If we accept the memo. of arrest then we have to disbelieve the time of seizure mentioned in the seizure list. There is no doubt that the appellant was arrested after seizure. It is made clear by the P.W. - 1. The P.W. - 2 who accompanied the P.W. - 1 has not stated anything about the time of seizure. The P.W. - 3 also has not mentioned the time of seizure. P.W. - 6 has not also stated the time of seizure. There is contradiction in the statement of the P.W. - 1, time mentioned in the seizure list and time mentioned in the memo of arrest. The P.W. - 4 and 5, the independent witnesses stated that they signed the seizure list at 11.00/11.30 p.m. The learned Court ignored the discrepancies in the statements of the P.W. - 1 and the fact stated in the seizure list as well as in the arrest memo.

19. Again, according to the P.W. - 1, he wrapped the seized currency notes on spot, sealed the same and labelled it. After that he had taken the appellant together with the said packet to the police station and lodged the F.I.R. The P.W. - 7 is the Sub-Inspector of Police who was entrusted with the investigation into the case. In his cross-examination he stated that he counted the recovered notes. It is not understood that if the currency notes seized were put in a sealed and labelled cover at the place of occurrence by the P.W. - 1 himself in presence of witnesses, how the investigating officer who was entrusted with the investigation after lodging of the F.I.R. by the P.W. - 1, could count the notes recovered. The sealed and labelled packet of currency notes were produced in Court as it was and opened in the Court in presence of the witnesses. This statement of the P.W. - 7 in his cross-examination that he counted the recovered notes rises a strong suspicion of the fact that the seizure was done on spot and that seized notes were put in a sealed and labelled cover on spot in presence of witnesses.

20. According to the P.W. - 1 as well as the F.I.R., the accused was apprehended on the place mentioned as "B" in the sketch map (exhibit - 6). The seizure, packaging, sealing and labelling were done on the spot. The P.W. - 2 has stated in his

cross-examination that the seizure list was prepared sitting in the Club room adjacent to the place of occurrence and there was none in the Club at that time. The witnesses who came to witness the seizure opened the Club room. This statement of the P.W. - 2 in his cross-examination goes against the version of the P.W. - 1 as well as the seizure list. The P.W. - 3, on the contrary, stated that the seizure list was prepared on the Kachcha road which was an open place. P.W. - 4 and 5, the independent witnesses who were declared hostile, did not support the prosecution case of search and seizure. The P.W. - 6 stated that witnesses were called from the Club. According to the P.W. - 2, there was no one in the Club. If so it is not understood how the P.W. - 6 stated in his cross-examination that witnesses were in the Club and they were called from the said Club. The discrepancies above together obviously leading to one conclusion that the appellant might have been apprehended in the Kachcha road by the side of the Boys Club at Aishmali Bazar in the evening while it was heavily raining but the seizure list was prepared long thereafter even after the case was entrusted with the P.W. - 7 for investigation. It was packed, sealed and labelled even after assuming of charge of investigation by the P.W. - 7. This fact which is apparent on the face of the record gives a go bye to the prosecution case of recovery of seizure from the appellant from his book pocket during heavy rain near the Boys' School at 18.45 hours.

21. I find that the learned Trial Court did not appreciate the evidence thoroughly. I reiterate that in a case of like nature, prosecution is saddled with the burden to establish the possession, recovery, search and seizure to the hilt without any doubt. Once doubt creeps in the accused must get benefit of doubt in such a case. In the instant case, the appellant was a fish merchant and that has been accepted by the prosecution witnesses. He had fish business in the Aishmali Bazar. Naturally, he was a known man of the area and he had no reason to carry fake notes in the heavy raining and stormy evening where no one was present on the road. When the factum of possession, recovery, search and seizure are doubtful, the petitioner should have been given benefit of doubt. He has already suffered three years one month in custody in connection with this case. He was sentenced to suffer imprisonment for six years and to pay a fine of Rs. 5,000/-.

22. Considering the facts and circumstances of the case and evidence on record, I find that the Judgment appealed against is not sustainable and is liable to be set aside.

23. Accordingly, the appeal succeeds. The appellant is found not guilty to the charge and acquitted therefrom. He be set at liberty and discharged from the bail bond, if any. A copy of Judgment be given to the appellant. The L.C.R. be sent back to the Court below together with a copy of this Judgment.