

(2014) 11 CAL CK 0080

Calcutta High Court

Case No: C.R.A. Nos. 213, 416 of 2013 and C.R.A.N. No. 1314 of 2013

Tajamul Haque

APPELLANT

Vs

The State of West
Bengal

RESPONDENT

Date of Decision: Nov. 18, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 120B, 489B, 489C

Hon'ble Judges: Asim Kumar Mondal, J

Bench: Single Bench

Advocate: Sandipan Ganguly and Rohan Ojha, Advocate for the Appellant; Anand Keshari and Anjan Dutta, Advocate for the Respondent

Judgement

Asim Kumar Mondal, J.

The present appeal has been filed by the convict Tajamul Haque @ Tajammal Hoque against the judgment dated March 16th, 2013 in order dated March 18th, 2013 passed by learned Additional Sessions Judge, Fast Track Court No. 2, City Sessions Court, Bichar Bhawan, Calcutta convicting the appellant under Section 489C of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for four years with fine of Rs. 4,000/- only in default to suffer further imprisonment for term of five months in connection with Sessions Case No. 652 dated October 10th, 2010.

2. The case of the prosecution is that on October 10th, 2010, a source information was received at about 17.30 hrs. to the effect that two persons from outside Calcutta would come with huge amount of fake Indian currency notes and for the purpose of trafficking the same they would come near Lenin Sarani.

3. P.W. 1 Debabrata Das attached to Special Task Force of Kolkata Police as S.I. On receiving the information at his instance and with the concurrence of his superiors a

team comprising the members of STF such as Inspector Anuj Kumar Homroy, Inspector B.S. Kaberwal, S.I. Debabrata Das and three constables was formed. The team had been to the area and went for ambush duty. During such operation the team members came across an altercation which broke out at Gaba"s/Java Mobile store located at 171/A & B, Lenin Sarani, Kolkata. They instantly entered the shop intercepted, disclosed their identities and detained two persons who are accused No. 1 and 2 involved in such altercation with the shop keepers. On being asked the Manager of the shop named Apurba Das, P.W. 2 divulged that for payment of price quoted in the bills for two mobile handsets the accused No. 1 tendered 26 pieces of counterfeit 500 rupee currency notes and accused No. 2 tendered 35 numbers of such currency notes and in view of his demand for delivery of genuine notes the altercation took place. After that the police personnel resorted to a thorough search adhering to the relevant formalities and recovered 136 pieces of counterfeit 500 rupees currency notes from the possession of accused Sanjiv and 161 pieces of counterfeit 500 rupees notes from Mojammal. Those notes were duly seized in presence of witnesses under two seizure lists. The police personnel arrested the traffickers of those notes. The police personnel produced the accused persons at Bowbazar Police Station as well as the seized materials. S.I. Debabrata Das lodged first information report of the incident. A Case was registered vide Bowbazar Police Station case No. 652 dated October 10, 2010 under Section 120B, 489B and 489C of Indian Penal Code. Case was entrusted to S.I. Bipul Chandra Mujumder for investigation.

4. The next case of the prosecution is that in pursuance of the instruction of the superior officer S.I. Sailesh Toppo (P.W. 6) attached to STF of Lalbazar had been to the BSF out-post Chorientapur of Malda on October 14, 2010 and came back after arresting Tezammal Hoque (accused No. 3) who was detained there in connection with Bowbazar P.S. Case No. 652 dated October 10th, 2010. Sankar Dutta, S.I. of Police then posted in the STF of Lalbazar (P.W. 7) accompanied Tezammal Hoque on October 29, 2010 under the order of his superior to his house at village Pirpara in the district Malda where seizure was carried out under the seizure list in respect of 20 pieces of counterfeit currency notes of 500 denomination which were brought out by the accused from his house. The Investigating Officer on completion of investigation submitted the charge-sheet against all the three accused persons for the offence under Section 120B, 489B and 489C of the Indian Penal Code. Prosecution examined as many as 10 witnesses and exhibited as many as 59 documents. Learned Trial Court in conclusion of the trial sentenced all the three accused persons with rigorous imprisonment for 4 years and to fine of Rs. 4,000/- in default to suffer further imprisonment for a term of four months for an offence under Section 489C of Indian Penal code.

5. The present appeal has been preferred by the convict Tajamul Haque @ Tajammal Hoque on the grounds that the order of conviction and sentence suffers from serious infirmities and Learned Trial Judge proceeded on the basis of conjectures

and surmises and, therefore, the order of conviction and sentences is liable to be set aside. It is the further ground that the appellant convicted that the learned Trial Judge amicably passed the judgment and order without applying the judicial mind. The learned Trial Court erred in considering the deposition of P.W. 8 Kamal Hossen and P.W. 9 Durul Huda who happened to be seizure witness as per the prosecution and as such the judgment and order passed by the Learned Trial Court is liable to be set aside. Learned Trial Judge applied his imagination to rationalize the evidence adduced by the prosecution.

6. In view of the grounds as made out in the appeal by the convict/appellant in support of his prayer for setting aside the order and judgment the only point for consideration in the present appeal should be whether the judgment and order of sentence passed by the Learned Trial Court is liable to be set aside.

7. Mr. Sandipan Ganguly with Mr. Rahan Ojha appears for the appellants. Mr. Ganguly submits that orders this appeal is concerned relevant witnesses are P.W. 6 (Police Officer who arrested in the appellant), P.W. 7 (Police Officer who took the appellant for purported recovery of 20 pieces of counterfeit currency note at Malda), P.W. 8 and 9 (Witness to purported a seizure of 20 piece of counterfeit Indian currency notes from a house side to be the house of appellant) And P.W. 10 (Investigating Officer). Mr. Ganguly draws my attention as to the deposition of P.W. 7 where the witness stated that as per the request made in connection with Bowbazar Police Station Case No. 652 of 2010 (Case initiated against Mojammal Haque @ Mojammel Haque and Sanjiv Kumar) the present appellant was detained by the BSF personnel at Malda. Mr. Ganguly submits that the prosecution has not adduced any evidence to show as to the reasons for which that wanted custody of the appellant. There is no confessional statements either of the accused persons (accused person 1 and 2) wherein they have implicated the present appellant. In absence of such linking evidence between the acts of accused No. 1 and 2 and any complicity on the part of the present appellant, the charge either under section 120B of the Indian Penal code or trial of the appellant along with Mojammal Haque @ Mojammel Haque and Sanjiv Kumar came is clear contrary to law. Prosecution has failed to prove any nexus between the three accused persons for which police requested the BSF to detain the appellant. It is on the record that P.W. 7 to 10 disclosed that appellant was interrogated and he made a statement before P.W. 10 prior to October 29, 2010. P.W. 7 admitted that the statement of appellant was recorded by P.W. 10 and on the basis of the said statement that appellant was taken to his house of village of Pirpara at Malda. The prosecution has failed to prove such recording of statement of appellant.

8. Mr. Ganguly agitated that the recovery of 20 pieces of fake Indian currency notes must be a recovery made under Section 27 of the Evidence Act. In such case non-production of confessional statement of the appellant by the prosecution clearly demolishes the stand of the prosecution and gives rise to adverse

presumption.

9. The two independent witnesses namely Kamal Hossen and Nurul Huda were present and at the time of recovery of fake currency notes from the possession of the appellant. P.W. 8 did not support the prosecution case and stated that he was made to sign on a blank paper by Baro Babu of Gapalganj out-post. P.W. 8 was not declared hostile P.W. 9 also did not support the case of the prosecution as regarding the seizure. He was declared hostile. The prosecution preferred not to adduce any witness despite P.W. 8 and 9. Admittedly the police of Gopalganj Police Station were present at spot at the time of recovery. With holding of such police constable as witnesses create a grave suspicion about the genuineness of purported seizure.

10. Mr. Ganguly also pointed out the evidence of P.W. 10 who is the investigating officer and did not support the evidence of P.W. 7 to the effect that the appellant was taken from his custody by P.W. 7 and taken to Malda as per decision of the superior authority. He is completely silent either about the arrest of the appellant or subsequent circumstances relating to the recovery of fake Indian currency notes from the custody of appellant. Learned Advocate Mr. Ganguly submits that the appellant has categorically denied the question put to made under Section 313 of the Code of Criminal Procedure whether it reflects that the place of residents of the appellant is given as village Ghoshtala, Kaliachalk, district Malda a different place from village Pirpara. In view of the submission of Learned Advocate Mr. Ganguly the recovery and seizure of counterfeit currency notes from the possession of the appellant creates a great doubt. In this regard he also raised the question as to the genuineness and proper examination of the alleged counterfeit notes by the expert as in the report of the expert admittedly one number of alleged counterfeit currency notes have been mentioned.

11. Mr. Anand Keshari and Mr. Anjan Dutta appears for the State. In support of the impugned judgment and order of conviction passed against the present appellant it is the submission of Mr. Keshari that the oral evidence of P.W. 1 to P.W. 10 should be considered the light of exhibited documents and materials. The Documents as well as the oral evidences surely proves the crime punishable under Section 120B, 489B and 489C of the Indian Penal Code. Mr. Keshari also submits that the charges levelled against the appellant has been proved by the cogent and convincing evidences. Mr. Keshari further submits that there may be minor discrepancies in the deposition of the witnesses which should be ignored in view of the settled proposition of law. It is submitted that Learned Trial Court has properly dealt with the questions raised by the Learned Counsel for the appellant in the present appeal and have answered all the points affirmatively. Mr. Keshari placed the views and observations recorded in the judgment under point No. 2. In the said point No. 2 Learned Trial Court has dealt with discrepancies of the place of residence of the appellant in view of the statement made by the appellant in his examination under Section 313 of the Criminal Procedure Code.

12. On careful perusal of the judgment at the relevant portion under Point No. 2 it appears to me that Learned Trial Court has observed that on being asked under Section 313 of the Criminal Procedure Code the accused has stated that he is a resident Chorientapur near Ghoshtala. Admittedly Chorientapur falls within the local limit of Kaliachak Police Station in the district of Malda. P.W. 7 has claimed that Pirpara near Kaliachak is his place of residence. Admittedly Pirpara Chorientapur are situated under the same Police Station. Learned Trial Court opined that such discrepancies with regard to place of residence being minor may be ignored. It is the submission of the appellant under Section 313 of the Criminal Procedure Code that he was arrested at BSF out-post at Chorientapur. That is also appeared in the testimony of P.W. 7 that on 29th October, 2007 in compliance with the direction of superior Officer he accompanied by other Officers and also accused Tajamul Haque @ Tajammal Hoque had been to the house of said accused at Pirpara in the District of Malda and seized under the memo of seizure 20 pieces of fake currency notes. All the evidence of P.W. 10 it appears that the notes contained in a pocket was sent to Bhartiya Mudran Pvt. Ltd. at Salbani, the district of Paschim Midnaipur for examination by expert. P.W. 4 examined those notes at Salbani in the capacity as expert. The notes were identified by the expert in Court. Learned Trial Court has opined that omission to mention in the report of the number of the notes does not effect the fate of the case against the present appellant as because Section 489C is equally applicable in case of possession of a single counterfeit currency notes.

13. On proper consideration of the materials produced by the prosecution and taken on record by the learned Trial court, I do not find any gross irregularity or illegality in the findings of the learned trial Judge to come to the conclusion that there are seizure of fake currency notes from the possession of the applicant. The seized fake currency notes have been examined by the expert as P.W. 4. The only point raised by the learned Counsel on behalf of the appellant that all the currency notes were not examined by the expert, so, the report of the expert cannot be considered as proper and should not be taken into record as evidence. It is true that P.W. 4 in his report did not specifically stated that he examined all the currency notes but during the evidence he could identify all the fake currency notes seized from the possession of appellant. Nothing has transpired in the cross-examination of P.W. 2 that there is doubt casted in the mind of the Court as to the proper seizure and examination of alleged fake currency notes. Simply, some denial has been given to the witness which P.W. 4 has categorically denied.

14. Learned Trial Court has properly dealt with the question raised by the appellant as to the nexus of seizure from appellant at Malda in connection with seizure of fake currency notes from the possession of other two convicts. Nothing to disbelieve the report of the P.W. 4 that the counterfeit currency notes seized from the convicts are not genuine. No explanation has been given by any of the convicts as to the legal possession of the counterfeit currency notes at the time of seizure.

15. I find there is nothing to interfere into the findings and observations held by the learned Trial Court while dealing with the evidences, documents produced and examined by the prosecution. In the result appeal appears of no merit.

16. Thus appeal stands dismissed.

17. Urgent Photostat Certified Copy of this order if applied for be given to the parties on priority basis.