Daud Mia Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: June 3, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 428
Penal Code, 1860 (IPC) â€" Section 489B, 489C

Hon'ble Judges: Shubhro Kamal Mukherjee, J; Shib Sadhan Sadhu, J

Bench: Division Bench

Advocate: Krishnendu Bhattacharya, Advocate for the Appellant; Manjit Singh, Public Prosecutor and Atif Ahmed Siddiqui, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

Subhro Kamal Mukherjee, J.
This is an appeal against judgment and order of sentence dated November 12, 2009. By the judgment and

order impugned the accused, namely, Daud Mia, was convicted for the offences punishable under Sections 489B and 489C of the Indian Penal

Code and he was directed to suffer rigorous imprisonment for life and to pay a fine of Rs. 2,000/- (Rupees two thousand) only. In default, he was

to suffer rigorous imprisonment for further six months. He was, also, sentenced to suffer rigorous imprisonment for seven years for the offence

punishable u/s 489C of the Indian Penal Code. However, it was directed that both the sentences would run concurrently.

2. One sub-inspector attached to Gopalganj Investigating Centre got a secret source information that one person was carrying fake Indian

currency notes on a bicycle. He diarised the matter and proceeded with an Assistant Sub-Inspector to verify and execute the information. He

noticed that the accused, riding on a bicycle, was proceeding towards Kaliachak. On seeing the police personnel, he was trying to escape. He was

chased and apprehended. From the possession of the accused 100 (hundred) pieces of fake Indian currency notes of denomination of Rs. 500/-

(Rupees five hundred) only and one Nokia mobile set with one SIM of Bangladesh Grameen Phone were recovered.

3. The seizure witnesses signed the seizure list. In order to avoid future criticism, the Sub-Inspector got the left thumb impression of the accused on

all the said fake notes.

4. The accused was charged under Sections 489B and 489C of the Indian Penal Code for carrying 100 pieces of fake Indian currency notes of

denomination of Rs. 500/- knowing or having reasons to believe that those were counterfeit and for using those as genuine or that it might be used

as genuine.

5. The seizure witnesses were prosecution witnesses no. 1, 2 and 5. Excepting the prosecution witness no. 1, all the aforesaid prosecution

witnesses were declared hostile. However, all the said witnesses unequivocally stated that they have singed as witnesses in the seizure list and they

have put their signatures in the seizure list.

6. Prosecution witness no. 1 however, categorically proved his signatures in the seizure list and in the label. He was not cross-examined.

7. One seizure witness is sufficient to prove the seizure.

8. From the trend of cross-examination, it appears that the defence was a defence of denial.

9. The learned trial Judge, in our view, rightly found that 100 pieces of fake Indian currency notes of denomination of Rs. 500/- were recovered

from the possession of the petitioner.

10. Mr. Krishnendu Bhattacharya, learned advocate appearing for the appellant, strenuously argues that it was not established beyond any

reasonable doubt that the accused intended to use those fake notes.

11. It has been proved that the accused was carrying counterfeit Indian currency notes knowing them to be counterfeit. Those notes were meant

for use as genuine. There is no evidence explaining the possession. Therefore, it was proved beyond doubt that the accused was carrying those

counterfeit Indian currency notes knowing them to be fake with the intention to use those notes as genuine.

12. We do not think that the learned trial Judge erred in law or in facts and circumstances of this case in holding the accused-appellant guilty of

offences punishable under Sections 489B and 489C of the Indian Penal Code.

13. The learned Additional Sessions Judge sentenced the accused-appellant to suffer rigorous imprisonment for life and to pay a fine of Rs.

2,000/- (Rupees two thousand) only for the offence punishable u/s 489B of the Indian Penal Code. In default, he was to suffer rigorous

imprisonment for further six months. He was, also, sentenced to suffer rigorous imprisonment for seven years for the offence punishable u/s 489C

of the Indian Penal Code. However, it was directed that both the sentences would run concurrently.

14. It was, further, directed that the period of detention, already, undergone by the accused would be set off as per provision of Section 428 of the

Code of Criminal Procedure, 1973.

15. We have considered the matter as to the imposition of punishment. Actually, the accused-appellant could not use those counterfeit currency

notes to his benefit and it seems to us that he was only a carrier. Moreover, the amount involved in this matter is not very high.

16. We, therefore, feel that justice will be sub-served if the sentence is modified to the extent that the accused shall suffer rigorous imprisonment

for ten years and to pay fine of Rs. 2,000/- (Rupees two thousand) only; in default, to suffer rigorous imprisonment for six months, for the offence

punishable u/s 489B of the Indian Penal Code.

17. We do not want to interfere with the sentence imposed on the accused-appellant to suffer rigorous imprisonment for seven years for the

offence punishable u/s 489C of the Indian Penal Code.

18. However, we clarify that both the sentences will run concurrently and the period of detention, already, undergone by the accused is to be set

off as per provision of Section 428 of the Code of Criminal Procedure.

19. The appeal is, thus, allowed in part. The sentence is modified.

20. Let the lower court''s records be sent down immediately.

21. The office is directed to supply photostat certified copy of this judgment to the parties, if applied for, on urgent basis.

Shib Sadhan Sadhu, J.

I agree.