

C A U S E T I T L E

Sessions Case No. 254 (K) of 2009

Informant : Mr. Sundar Lal Mittal
Manager, Issue Dept,
R.B.I. Guwahati Branch

Accused : Md. Durjan Khan
S/o Late Abdul Khan
R/o village Kakarpar
P.S. sarthebari
District-Barpeta (Assam)

A D V O C A T E S

(1) For the Prosecution : Sri H. K. Deka
Public Prosecutor

(2) For the Defence : Mr. Najib Bakhsh

IN THE COURT OF THE SESSIONS JUDGE, KAMRUP, GUWAHATI**Present:- Dr. (Mrs) I. Shah****Sessions Case No. 254 (K) of 2009**

State of Assam

-Vs-

Md. Durjan Khan

Charge U/S 498 (B) of I.P.C.

Date of Evidence on : 07-12-2009, 19-01-2010,
07-04-2010, 17-05-2010,
01-07-2010

Date of Argument on : 20-08-2011

Date of Judgment on : 03-09-2011

J U D G M E N T

The prosecution case in brief is that on 11-12-2002, Durjan Khan of Kakarpar village under Sarthebari P.S. of Barpeta District came to the Reserve Bank of India, Guwahati and deposited 30 pieces 100 rupees denomination notes in the ash counter of Nipendra Narayan Das who was working as Teller in the R.B.I. Guwahati. He suspecting the notes to be forged one/ fake currency notes, took the accused and the notes to the treasurer Harmohan Kalita. Police was informed who arrived and seized the notes from possession of the accused. F.I.R. was lodged by Surendra Lal Mitran the then Manager (since deceased), O/C Panbazar registered the case being Panbazar P.S. Case No. 38 of 2002 U/S 489(B) of I.P.C. During the investigation the seized notes were examined by the Senior Scientific Officer Forensic Officer who opined that the seized notes are counterfeit notes. On

completion of investigation the accused Durjan Khan was charge-sheeted U/S 489(B) of I.P.C. The case was committed for trial. The accused pleaded not guilty to the charge framed against him U/S 489(B) of I.P.C. and claimed to be tried.

Altogether, the 8 witnesses were examined by the prosecution. In the statement recorded U/S 313 of Cr.P.C. the accused stated that he was not aware that the currency notes were forged or counterfeit. He admitted that the notes were recovered from his possession. He has adduced one witness i.e. his wife in support of his defence.

POINTS FOR DETERMINATION ARE :

- 1. Whether the accused was in possession of counterfeit currency notes used by him as genuine ?*
- 2. Whether the accused used the currency notes knowing or having reason to believe that currency notes are forged or counterfeit ?*

I have heard the argument placed by the learned counsels for both sides and considered the entire evidence on record.

DECISION AND REASONS THEREFOR :

P.W.-3, Ranjit Ali is the brother-in-law of the accused. He resides at Hatigaion Dispur under Kamrup District. The accused came to him at 12-00 noon and stated that he had with him 30 nos. of 100 rupees denomination i.e. the alleged notes. P.W.-3 saw those torn notes and advised him that he can deposit the notes to Reserve Bank of India and in exchange he will get new notes. He accompanied with the accused to Reserve Bank of India and when the notes were deposited in the cash counter, the bank employee told them that the notes are counterfeit and forged one. The bank

employees called the police and the accused was handed over to the police. Police seized the notes in his presence and P.W.-3 admitted his signature in the seizure list. P.W.-7 Amir Ali, on that acquainted of P.W.-3 as well as the accused was called to R.B.I. by the P.W.-3. P.W.-3 informed him that his brother-in-law Durjan Khan will exchange some currency notes in the Reserve bank of India. When P.W.-7 arrived there he found there the P.W.-3 and the accused were apprehended by the police. In cross-examination he stated that he can not say wherefrom the currency notes were brought by the accused. He was told by P.W.-3 that the currency notes were torned and damaged one. He did not see the seized currency notes. P.W.-3 was not cross-examined.

P.W.-2, Nripendra Narayan Das was working as Teller in the Reserve Bank of India at the relevant time. He deposed the on 11-12-2002, the accused deposited 30 pieces of 100 rupees denomination notes in his counter for exchange. As the notes appeared to P.W.-2 to be fake currency notes he took the accused along with the notes to his treasure Harmohan Kalita. Later on, police was informed and police seized the notes from the possession of the accused. The seizure lists were prepared in presence of the P.W.-2 and he testified his signature on the seizure list. In cross-examination he stated that in his opinion currency notes submitted by the accused by the person in his counter had minor variation in comparison to real currency notes. He admitted that for a common man it would have perhaps not be possible to deduct that those notes were fake currency notes.

P.W.-1, Sri Girish Ch. Sharma Asstt. Manager, Reserve bank of India has exhibited the FIR Ext.-1 lodged by then Manager Late Sundar Lal Misra. Since Sundar Lal Mishra is dead and P.W.-1 is equated with his hand writing and signature, the FIR was exhibited by P.W.-1. He admitted in

his cross-examination that he could not say about the facts narrated in the FIR.

P.W.-4, Girish Ch. Sarma is another Asstt. Manager of RBI Guwahati has exhibited the seizure list and the signature of Harmohan Kalita who was retired from the service as Treasurer of R.B.I. He was not cross-examined.

P.W.-5, Amal Ch. Kalita is the Senior Scientific Officer, Questioned Document Division, Forensic Laboratory, Kahilipara. The seized currency notes were sent to him for examination. He deposed that on 16-06-2004, he received 30 nos. of bank notes of 100 rupees denomination for examination in connection with this case. The banks notes were received by him under sealed cover. In examination the question bank notes he found some discrepancies on the materials particulars of the bank notes. He examined the banks notes under magnifying glance stereo microscope docucenter 3000 in U.V. and I.R. region including strong source of transmitted and opined that

1. The paper on which the counterfeit notes are printed are ordinary and gives fluorescence under U.V.
2. Relatives location of water window mark is different.
3. Intaglio printing technology absent.
4. Crude printing method without sharpness in the result.

He held that that the cited absence of security features are sufficient to come to the conclusion that the aforesaid bank notes are counterfeit notes. He exhibited his report as Ext.-3. In cross-examination he stated that the counterfeit or forged notes can be ascertained by a person seeing with bare eyes only for conformation and for authenticity of the counterfeit banks notes, scientific examination is required. He denied that it is not possible for a layman to detect the forged for counterfeit bank notes.

P.W.-6, Abdus Sattar Choudhury has deposed that he was working as S.I. of police at Panbazar P.S. He was entrusted to complete the investigation by the O/C Panbazar P.S. in connection with Panbazar P.S. Case No. 38 of 2001 U/S 498(B) of I.P.C. During the investigation he collected the F.S.L. report and after completion of investigation he submitted the charge-sheet against the accused. He exhibited the charge-sheet as Ext.-5 wherein, Ext.-5(1) is his signature. He was not cross-examined.

P.W.-8, Kandarpa Baishya has deposed in his evidence that on 11-02-2002 he was working as S.I. of Police at Panbazar P.S. On that Sunder Lal Mittal the informant lodged an ejahar before Panbazar P.S. stating that one Durjan Khan has used forged currency notes. On receipt of the formal ejahar O/C Panbazar P.S. registered a case and entrusted him to investigate the case. During investigation, he along with his staff went to the R.B.I. Guwahati Branch, examined the complainant and the witnesses and recorded their statements, seized the 30 nos. of forged currency notes of 100 rupees denomination in presence of the witnesses. He took the fake currency notes along with the accused to the police station. He arrested the accused and forwarded him to the court of law. After receipt of his transfer order, he handed over the case diary along with the seized fake currency notes to the O/C of the police station. On his (P.W.-8) cross-examination he told that on interrogation the accused told him that the said fake currency notes were given to him by a fish vendor but he does not know the name of the fish vendor.

The learned counsel for the accused has cited the case laws. In the cited case of Madan Lal Sarma -Vs- State 1990 C.L.J 215 Kolkata High Court it was observed that

U/S 489(B) of I.P.C. the burden is on the prosecution to prove that at the time when the accused was passing the note he knew that it was a forged one. The mere possession by him does not shift the burden to the accused to prove his innocence and to prove his innocent possession of the forged notes. Similarly Sec. 489(C) of I.P.C. it is to be proved that the accused intended to forged or counterfeit currency notes as genuine or it might be used as genuine it is for the prosecution to prove the circumstances which would irresistibly lead to the conclusion that the accused had the intention to introduce surreptitiously the note on the public. Thus knowledge or reason to believe that the note was forged has to be proved to fix the liability U/Ss 498(B) and 4398(C) of I.P.C. Unless it is proved that the accused had the knowledge or reason to believe that the said questioned note was a forged one, the question of his palming it off as genuine could not arise.

In this case the accused kept notes in his custody inside the room for a long period. He travelled to exchanged the notes in the R.B.I. So, it can not be inferred that he has the knowledge the notes he had kept were counterfeit currency notes.

D.W.-1 Rumena Khatoon wife of accused stated that they sold fishes and the purchaser gave her Rs. 3020/- which she kept in her quilt. When she became sick, she brought out the said amount and found the notes were damaged. Her husband (accused) took the notes to local bank and he was told that it may be exchanged in Reserve Bank of India. Then accused along with her brother Ranjit Ali went to Reserve Bank and when they deposited the notes they were apprehended.

The evidence of D.W.-1 is corroborated by P.W.-3. Had the accused knowledge that the notes were fake currency notes, he might not had travelled to Reserve Bank of India along with witnesses. From the conduct of accused it can not be inferred that he had knowledge or he believed that the notes were counterfeit.

In view of the above I find that the prosecution has failed to prove that the accused had in his possession the counterfeit notes which he knew that it were fake or counterfeit notes. Accordingly the accused is entitled to get benefit of doubt and he is acquitted and set at liberty.

Given under my hand and seal of this court on this 3rd day of September, 2011.

Sessions Judge,
Kamrup, Guwahati

Dictated & Corrected by me

Sessions Judge,
Kamrup, Guwahati

APPENDIX**Witnesses for the prosecution:**

P.W.-1 Sri Girish Ch. Sarma

P.W.-2 Sri Nripendra Narayan Das

P.W.-3 Ranjit Ali

P.W.-4 Girish Ch. Sarma

P.W.-5 Amal Ch. Kalita

P.W.-6 Abdus Sattar Choudhury

P.W.-7 Amir Ali

P.W.-8 Kandarpa Baishya

Witnesses for the Defence:

D.W.-1 Rumena Khatoon

Exhibits for the prosecution:

Ext.-1 F.I.R.

Ext.-2 Seizure list

Ext.-3 Expert report

Ext.-4 Forwarding Report

Ext.-5 Charge Sheet

Ext.-6 F.I.R.

Sessions Judge
Kamrup, Guwahati