

C A U S E T I T L E

Sessions Case No. 143 (K) of 2010

Informant : Hasan Ali Mazumdar
Fenchy Bazar T.O.P.
Panbazar P.S.

Accused : 1. Sri Sham @ Shyam Das
S/o Jogeswar Das
R/o Vill. Piparan
P.S. Harlaki
Madhuban (Bihar)

2. Sri Abinash Roy
S/o Nonondra Ch. Roy
R/o Choudhurihat
P.S. Dinhata
Koch Bihar (W.B.)
Madhuban (Bihar)

A D V O C A T E S

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

(2) For the Defence : Mr. Tilok Rajbongshi

IN THE COURT OF THE SESSIONS JUDGE, KAMRUP, GUWAHATI**Present:- Dr. (Mrs) I. Shah****Sessions Case No. 143 (K) of 2010**

State of Assam

-Vs-

1. Sham @ Shyam Das
2. Abinash Roy

Charge U/Ss 489(B)/489(C) of I.P.C.

Date of Evidence : 30-06-2010, 09-04-2011
and 20-07-2011

Date of Argument on : 26-08-2011

Date of Judgment on : 12-09-2011

J U D G M E N T

The prosecution case is as follows :

On 02-05-2006, in the evening, at Fenchy Bazar under Panbazar P.S. the accused Shyam Das purchased mango and apples @ Rs. 150/- from Prem Kr. Shah. The accused gave the fruit seller a note of one thousand rupees. The fruit seller Prem Kr. Shah refused to accept the note on the ground that the note appeared to be fake. He then informed the police over phone. The police arrived and the accused was handed over to the police. The note suspected to be counterfeit was seized from the accused Shyam Das. During interrogation the accused admitted that on 01-05-2006, the accused Abinash Roy gave him the note to circulate. Accordingly, the accused

Abinash Roy was also arrested. The FIR was lodged by S.I. Hasan Ali Mazumdar. O/C Panbazar P.S. registered a case U/Ss 489(B)/498(C) of I.P.C. On completion of investigation, Shyam Das and Abinash Roy were charge-sheeted under the aforesaid sections of law. The case was committed for trial. The accused persons pleaded not guilty to the charges framed against them U/Ss 489(B)/498(C) of I.P.C. and claimed to be tried.

The prosecution examined altogether six witnesses in support of this case. The accused persons in their statement recorded U/S 313 of Cr.P.C. denied all the allegation levelled against them. The accused Shyam Das admitted that he gave the note question to fruit seller. The note was given to him by Shyam Das and pleaded them they are innocent. No defence evidence has been adduced.

POINTS FOR DETERMINATION ARE :

1. *Whether the accused persons were found in possessions of counterfeit Indian currency note Rs. 1,000/- denomination intending to using as genuine ?*
2. *Whether the accused persons used the counterfeit Indian currency note of Rs. 1,000/- denomination knowing the fact that the currency note was 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.-1 Prem Kr. Shah who is the fruit seller wherefrom the accused Shyam Das purchased mango and appeals at the rate of Rs. 150/-. He deposed that on the date

and time of occurrence while he was in his shop one customer came to his shop and purchased mango and apples at the rate of Rs. 150/- and gave a note of Rs. 1,000/- denomination. P.W.-1 suspected that the note was fake currency note and he accordingly handed over the accused to police along with counterfeit note. Police seized the currency note and took him to the custody of police. He testified his signature in the seizure list. In cross-examination he admitted that there was other seizure witnesses at the time of seizure of the note. Again he stated that he put his signature on the seizure list at the police station.

P.W.-2 Ram Babu Sing stated that one person came to the fruit shop of Prem Kr. Shah (P.W.-1) and purchased fruits giving one forged currency note. The persons along with the forged currency note were handed over to police. He was not cross-examined by the defence.

P.W.-3 Hasan Ali Mazumdar was serving as Asstt. Sub-Inspector at Fenchy Bazar T.O.P. under Panbazar P.S. He deposed that on 02-05-2006 at about 7-30 P.M. he reached the place of occurrence on information received by him at 7-20 P.M. over telephone that Shyam Das has been apprehend along with the forged currency note. The information was lodged over phone by P.W.-1 by Prem kr. Shah. The accused Shyam Das along with Rs. 1,000/- denomination note was handed over to him. It was informed that Shyam Das purchased fruits from P.W.-1 and gave the forged currency note. He took both the witnesses as well as accused with forged currency note to T.O.P. He seized the suspected the forged currency note. Accused Shyam Das put his thumb impression on the seizure list which was endorsed by P.W.-1. He exhibited the seized forged currency note of Rs. 1,000/- denomination as M.Ext.-1. He further stated that the note was given to him by one Abinash. He then arrested both the accused and forwarded them to judicial custody. He further stated that Abinash Roy told him that he received the forged

currency note in a bundle and he gave the note to the Shyam Das for circulation. P.W.-1 also lodged the FIR and recorded the seizure witnesses. Thereafter he handed over the forged currency note along with the Supplementary C.D. to the O/C of the police station. In cross-examination he admitted that he did not make any prayer before the Magistrate for recording the confessional statement of the accused U/S 164 of Cr.P.C. He also admitted that he has not mentioned in the FIR that the accused confessed that he was circulating the forged note and the note was given by the accused Abinash. He did not mention that Abinash also confessed of his involvement in circulating the forged currency note.

P.W.-4 Sri Lakheswar Sarma, the Asstt. Manager of RBI, Guwahati Branch. He exhibited the report submitted by Gopal Ch. Deka after examination of the note in question. Ext.-3 the report submitted by Gopal Deka. He deposed that the seized note was not genuine Indian currency note. He was not examined.

P.W.-5 Deben Mohan, ASI of Police deposed that on receipt of the FIR lodged by the ASI Has Ali Mazumdar, O/C registered a case and endorsed him for preliminary investigation. P.W.-5 visited the place of occurrence, recorded the statement of the witnesses and arrested the accused. He send the seized currency note to RBI for examination. He exhibited the forwarding letter in respect of examination of currency note. He also exhibited the seized currency note. After completion of preliminary investigation handed over the case diary to the O/C of police station. He further stated that after examination of fake currency was returned back to him by the R.B.I. In cross-examination he stated that he did seize the currency note of Rs.1,000/- of denomination. It was seized by earlier I.O. so he could not say from whom the currency note was seized. He admitted that he did not pray to record the confessional statement of the accused U/S 164 of Cr.P.C.

P.W.-6 S.I. Kusum Ranjan Nath deposed that the task of completion of investigation was endorsed to him and he on perusal of case diary find that the investigation of the case was almost completed. He, accordingly, submitted the charge-sheet against the accused Shyam das and Abinash Roy U/Ss 498(B)/498(C) of I.P.C. He exhibited the charge-sheet. In cross-examination, he admitted that he was submitted the charge-sheet on the basis of materials in the case diary.

In the case the accuse Shyam Das in his statement recorded U/S 313 of Cr.P.C. admitted that he gave one currency note of Rs. 1,000/- denomination to the fruit vendor and the fruit vendor asked him to stay there as he went to bring change of the note and when he came back he told that the note is fake currency note. According to him, he was not aware that the note was fake currency note. He admitted that the note was handed over to police by the fruit vendor. He further admitted that Abinash Roy gave him the note but he denied that Abinash gave him the note for circulation and Abinash Roy received a bundle of forged currency notes. The accused Abinash Roy refused that he gave any note to Shyam Das for circulation. He stated that he is innocent. From the above discussion it appears that P.W.-1 and P.W.-2 have corroborated the prosecution story stating that one customer came to the fruit shop of P.W.-1. He purchased mango and apples and gave one counterfeit note of rupees one thousand denomination. Although, P.W.-1 and P.W.-2 could not identify the accused Abinash they stated that they detained that persons along with fake currency notes and handed over to the police. The seizure list bears the thumb impression for the accused Shyam Das P.W.3 has confirmed the identity of the accused Shyam Da. From the FIR lodged by P.W.-3 as well as from the seizure list it is established that it was the accused Shyam Das handed over by P.W.-1 to the police along with the counterfeit note.

Apart from the evidence adduced by the prosecution from the statement of the accused it appears that he has not disputed the fact that he went to the fruit shop of P.W.-1 and purchased fruits. He also admitted that he gave a currency note of rupees one thousand denomination. However he has not admitted that the note was counterfeit or fake one. He stated that when he handed over the note to P.W.-1, P.W.-1 the fruit vendor asked him to wait so that he can bring him the change when he came back he told that the note was fake one.

From the evidence of P.W.-4 and the report exhibited by him it appears that the seized note was counterfeit currency note. The opinion of the expert here in is not challenged. The learned P.P. has submitted that P.W.-1 and P.W.-2 although could not identify the accused. The identity of the accused has been stated by P.W.-3. The seized note was counterfeit which has been established by the opinion of expert. The prosecution has proved that the accused Shyam Das was in possession of fake currency note and he used the note as genuine. He confessed before police that the note was given by Abinash Roy. Hence the prosecution has proved the case beyond doubt that fake/counterfeit note was used by the accused Shyam Das.

The learned counsel for the accused has submitted that the accused persons were not sent to the court for record their confessional statements. The statement of accused before the police is not admissible in law. The accused Shyam Das implicating the co-accused Abinash Roy is not admissible at all. The independent witnesses examined here have not stated anything against accused Abinash Roy. The note was seized from Shyam Das. Nothing was recovered from the possession of Abinash Roy. Learned counsel has further stated that the Mens-erea of the accused has not been proved. The accused persons are entitled to get

acquittal. Learned counsel has cited a case of M. Mammutti Vs. State of Karnataka AIR 1979 SC 1705 wherein it was observed that "If the notes were of such nature that a mere look at them would convinced anybody that it was counterfeit such a presumption could reasonably be drawn. But the difficulty is that the prosecution has not put any specific question to the appellant in order to find out whether the accused knew that the notes were of such nature. No such evidence has been led by the prosecution to prove the nature of the notes also. In these circumstances, it is not possible to sustain conviction of the appellant".

The seizure list prepared by P.W.-2 contained serial nos. of the seized currency note of Rs. 1,000/- denomination. The report of the experts also contains serial nos. of the seized currency note. The prosecution has established in this case that the note seized from the possession of the accused was examined by the expert. P.W.-3 has categorically stated that the accused Shyam Das was handed over by P.W.-1 along with fake currency note. P.W.-1 and 2 have stated that they handed over the person who came with suspected counterfeit note to P.W.-3. The identification of currency note which was found to be not Indian genuine currency note and the identification of the accused Shyam Das has been established by evidence of P.W.-3 and evidence of P.W.-3 can be conjointly read with the evidence of P.W.-1 and P.W.-2 clearly establishes the involvement of the accused Shyam Das.

The accused Abinash Roy has been implicated on the basis of the accused Shyam Das before police. The confessional statement of the accused Shyam Das was not recorded U/S 164 of Cr.P.C. Therefore, the statement of the accused Shyam Das before the Investigating Officer is not

admissible in law. Similarly, the statement of accused Abinash Roy before the I.O. is also not admissible in law. None of the witnesses have stated about the involvement of the accused Abinash Roy. No incriminating article was recovered or seized from the possession of the accused Abinash Roy.

The accused Shyam Das has admitted in his statement recorded U/S 313 of Cr.P.C. that he gave the currency of Rs. 1,000/- denomination of the fruit vendor and he was handed over to the police along with the currency note. He also admitted that he stated before the I.O. that he received a note from Abinash Roy. Hence there is nothing reason to doubt the involvement of the accused Shyam Das mere look of the currency note recovered from the accused Shyam Das shows that it was fake currency note. P.W.-1 and P.W.-2 were convinced that the note was counterfeit therefore they informed the police. In view of the above I find that the prosecution has failed to prove this case against the accused Abinash Roy. So he is entitled to get benefit of doubt. Accordingly, he is acquitted and set him liberty forthwith.

The prosecution has established its case against the accused Shyam Das both U/Ss 489(B)/489(C) of I.P.C. Hence, he is convicted under the aforesaid sections of law. U/S 489(B) I.P.C. says that for the offence committed U/S 489(B) a person shall be imprisonment for life or with imprisonment that described for term which shall extent to 10 years and shall also to liable to fine. Only U/S 489(C) of I.P.C. prescribed imprisonment for 7 years or with fine or with both or imprisonment for a considerable term as mandatory as panel U/S 489(B) I.P.C. Considering the fact that only on piece of counterfeit note was recovered from the possession of the accused I hereby sentence him to undergo

imprisonment for one year and to pay a fine of Rs. 500/- U/S 489(B) of I.P.C. I.D. S.I. for one month. He is further sentence to undergo imprisonment for 6 months U/S 489(C) of I.P.C. The period of detention undergone by him during investigation and trial shall be set off. Furnish the copy of Judgment on free of costs to the accused. Send a copy of Judgment to the District magistrate.

Given under my hand and seal of this court on this 12th day of September, 2011.

Sessions Judge,
Kamrup, Guwahati

Dictated & Corrected by me

Sessions Judge,
Kamrup, Guwahati

A P P E N D I X

Witnesses for the prosecution:

P.W.-1 Prem Kumar Sah

P.W.-2 Ram Babu Singh

P.W.-3 Hasan Ali Mazumdar

P.W.-4 Lakheswar Sarma

P.W.-5 Daben Mohan

P.W.-6 Kumar Ranjan Nath

Exhibits for the prosecution:

Ext.-1 Seizure List

Ext.-2 Ejahar

Ext.-3 Expert Report

Ext.-4 Charge Sheet

Sessions Judge
Kamrup, Guwahati