Present:
Mr. Justice Borhanuddin
and
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.1046 of 1996

Md. Seru Mia
... Appellant
-Versus-
The State
... Respondent
with

Criminal Appeal No.25 of 1997

Md. Farid Ahmmad
... Appellant
-Versus-
The State
... Respondent

Mr. Md. Bashir Uddin Zindigir, Advocate
…for appellant in Crl.Appeal No.1046 of 1996

Mr. Taiful Kabir, Advocate
…for appellant in Crl.Appeal No.25 of 1997

Mr. Md. Asheque Momin, A.A.G.
...for respondent in both the appeals

Judgment on 4.5.2011

Md. Ruhul Quddus, J:

These Criminal Appeals are directed against judgment and order dated 24.6.1996 passed by the Sessions Judge, Munshiganj in Session Case No.1 of 1994 convicting the appellants under section 489B of the Penal Code and sentencing each of them thereunder to suffer rigorous imprisonment for ten years with a fine of Taka 2000/- for each in default to suffer rigorous imprisonment for another two months, and further convicting the appellant in

Criminal Apeal No. 25 of 1997 under section 489C of the Penal Code and sentencing him to suffer rigorous imprisonment for seven years. Both the sentences were made to run concurrently. Since both the appeals have arisen out of same judgment and order and have been heard together, these are being disposed of by one judgment.

Facts leading to these appeals, in brief, are that the informant Arun Chandra Saha (P.W.1) lodged an *ejahar* with Gajaria police station on 30.8.1993 alleging *inter alia* that he was a small shop keeper used to sell *lungi* from bazar to bazar. He went to Hoshendibazar Hat at about 14.00 hours on 30.8.1993 and started selling *lungi*. At about 6 o'clock two persons came in front of his shop and one of them asked for a *lungi* at cost of Taka 100/-. He presented one *lungi* worth Taka 130/-. In coruse of bargaining, the price was fixed at Taka 115/- and the appellant in Criminal Appeal No.1046 of 1996 Md. Seru Mia gave him a note of Taka 500/-. On receipt of the same, the informant doubted its genuinity and showed it to his neighboring shop keeper Sawpon, who also thought the note to be a fake one. They asked him (Seru Mia) about the source of the note, when he pointed his finger to the appellant in Criminal Appeal No.25 of 1997, Md. Farid Ahmmed and told that he (Farid Ahmmed) had given him the note. The informant and other people held both of them, produced them to police station and lodged an *ejahar* on the above allegation, which gave raise to Gajaria Police Station Case No.13 dated 30.8.1993 under section 489B/489C of the Penal Code. In course of investigation, the police took them in remand for consecutive six days, but any statements whatsoever could not be recorded. However, the police, after investigation submitted charge sheet on 17.11.1993 against both the appellants under the same penal sections.

The case after being ready for trial, was sent to the Sessions Judge, Munshiganj and was registered as Session Case No.1 of 1994. The learned Sessions Judge framed charge against the appellants under sections 489B/489C of the Penal Code by his order dated 12.2.1995, to which they pleaded not guilty and claimed for trial.

The prosecution, in order to prove its case, examined as many as nine witnesses including the Informant, Investigating Officer and an Expert of Bangladesh Bank. After conclusion of trial, the learned Sessions Judge passed the impugned judgment and order of conviction and sentence on 24.6.1996 as stated above. The convict appellants have filed these two appeals separately challenging the said judgment and order, and subsequently obtained bail from this Court.

Mr. Md. Bashir Uddin Zindigir, learned Advocate appearing for the appellant in Criminal Appeal No.1046 of 1996 submits at the very outset that to prove an offence under section 489B of the Penal Code, existence and use of a counterfeit note with knowledge or having reason to believe the same to be forged or counterfeit, is necessary. In the present case the appellant has been convicted and sentenced in absence of these essential ingredients on mere assumption of the learned trial Judge and therefore, the judgment and order of conviction of sentence is illegal and can not be sustained.

The learned Advocate further submits that mere possession or use of a forged or counterfeit note does not ipso facto prove the charge under section 489B against the appellant unless it is proved that he had used it with knowledge or belief that it was forged or counterfeit. In support of his submission the learned Advocate refers to the cases of M. Mammutti Vs. State

of Karnataka reported in AIR 1979 (SC) 1705 and Almas Miah Vs. State reported in 55 DLR 403.

Mr. Taiful Kabir, learned Advocate for the appellant in Criminal Appeal No.25 of 1997 submits that there is no evidence that the alleged counterfeit note was taken from the appellant. He neither possessed nor used the alleged counterfeit note. Therefore, he cannot be held guilty on the basis of hear say witnesses. As a second line of argument, the learned Advocate submits that no motive, intention or knowledge having been disclosed by the prosecution as against the appellant, he can not be convicted and sentenced in the present case.

On the other hand, Mr. Md. Asheque Momin, learned Assistant Attorney General appearing for the State has taken us through the evidence of P.W.1, 6 and 9 with the report of Bangladesh Bank (exhibit-2) and submits that a man of ordinary prudence, on receipt of such a note should understand and notice that it is a counterfeit. Since the appellants went to use the counterfeit notes, it would be reasonably presumed that they had full knowledge about the source and counterfeit character of the note. The learned Sessions Judge rightly considered this aspect of the case and passed the judgment and order of conviction and sentence, and committed no illegality.

We have gone through the evidence on records, form of charge, statements under section 342 of the Code of Criminal Procedure and the impugned judgment and order. It appears that none of the prosecution witnesses deposed that these appellants had knowledge of counterfeit character of the note used in the transaction. No question to that effect was put while the charge was framed against them or while the appellant in Criminal Appeal No.1046 of 1996 was examined under section 342 of the Code of Criminal Procedure.

In the Case of AIR 1979 (SC) 1705 their lordship of the Supreme Court of India under similar facts and circumstances held:

" There is no evidence of any witness to show that the counterfeit notes were of such a nature or description that a mere look at them would convince any person of average intelligence that it was a counterfeit note. Nor was any such question put to the accused under S. 342 Cr. P. C. The High Court has affirmed the judgment of the learned Sessions Judge on the ground that in his statement under S. 342 made before the committing Court the accused has made a statement different from that made in the Sessions Court and therefore the appellant had reason to believe that notes in his possession were counterfeit notes. Here the High Court is not correct because even in the statement before the Committing Court in Ex. P-13 which appears at p. 154 of the paper book, the appellant has stuck to the same statement which he made before the Sessions Court that he had sold three quintals of tamarind fruits and from the purchaser he received a sum of Rs. 390 in two rupee notes. We are not able to find any inconsistency between the answer given by the accused in his statement under S. 342 before the Sessions Judge and that before the Committing Court specially on the point that the appellant had the knowledge or reason to believe that the notes were counterfeit. Mr. Nettar submitted that once the appellant is found in possession of counterfeit notes, he must be presumed to know that the notes are counterfeit. If the notes were of such a nature that a mere look at them would convince 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 a nature. No such evidence has been led by the prosecution to prove the nature of the notes also. In these circumstances, it is

impossible for us to sustain the conviction of the appellant. For these reasons, therefore, the appeal is allowed."

In the case of 55 DLR, a Division Bench of this Court under similar facts and circumstances held:

"10. No doubt the appellant had the note with him. But mere possession or use of a forged or counterfeit note does not ipso facto prove the charge under the section against one unless he had used it with the knowledge or belief that it was forged or counterfeit. A conviction under the section can only be held valid when the prosecution proves in addition to possession that the accused used the note knowing or having reason to believe the same to be forged or counterfeit."

It appears from the deposition of P.W.6, who is an expert of Bangladesh Bank and deposed in support of the report of Bangladesh Bank admitted in cross-examination that " †bvUwU Avmj UvKvi g‡Zv †`Lv‡jI Dnv Avmj bv". From the quoted portion of his evidence, it can be reasonably presumed that for a person of average intelligence it was not possible to distinguish the note. There is no evidence to show that the appellants used the counterfeit note with knowledge or belief that it was a forged or counterfeit note. No question to that effect was put towards them at the time of framing charge or while one of them was examined under section 342 of the Code of Criminal Procedure. Under the circumstances, it cannot be said that the prosecution was able to prove its case against the appellants.

The learned Sessions Judge while passed the impugned judgment did not consider this aspect of the case and proceeded on assumption that since the appellant Md. Seru Miah was a beggar, he was not supposed to use the note unless there was a contract between the two appellants. It also indicates that they

were having knowledge of the forged or counterfeit note. But it is the established principle of criminal law that to award punishment upon a person, law must be construed strictly and the charge brought against the accused must be proved beyond all reasonable shadow of doubt. These are absent in the present case.

In view of the above, we fired substance in the submissions of the learned Advocate for the appellants. The decision cited also match with the present case. Therefore, the impugned judgment and order of conviction and sentence should not sustain.

In the result, both the appeals are allowed. The impugned judgment and order dated 24.6.1996 passed by the Sessions Judge, Munshiganj in Session Case No.1 of 1994 is hereby set aside. The appellants are released from their bail bond.

Send down the lower Court records.

Borhanuddin, J:

I agree.