

HEADING OF JUDGMENT IN SESSION CASE

IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Additional Session Judge, Bilasipara

Session Case No- 133 of 2011

u/s 489(B)/489(C) of IPC

STATE

Versus

Joynal Abedin

Accused person

(Committed by Shri N. S. Deori, then learned SDJM (M), Bilasipara in GR case No-8/2000 u/s 489(B)/489(C) IPC)

Advocate appeared:-

For the state: -Mr. T. Kr Bhattacharya, Addl. PP

For the accused:- , advocate.

Date of institution of the case :- 21-01-2000

Date of commitment :- 24-05-2011

Date of Framing charge :- 05-08-2011

Date of prosecution evidence :- 03-01-2012, 03-12-2014, 30-07-2015,
14-9-2015, 01-02-2016, 11-03-2016,
06-04-2016,

Statement of accused recorded on :- 08-09-2017

Date of Argument :- 08-09-2017

Judgment delivered :- 18-09-2017

JUDGMENT

Prosecution Case

1. This prosecution case set on motion based on the ejahar filed by one Raj Kumar Poddar of Sapatgram. It is the case of the prosecution that on 19-01-2000 at about 12.30 pm accused Joynal Abedin came to the grocery shop of Raj Kumar Poddar and tendered him ₹500 note and asked him for exchange. Raj Kumar Poddar suspected the note to be forge one informed police and police reached his grocery shop and taken the custody of Joynal Abedin and suspected ₹ 500 currency note.

Investigation

2. Officer-in-charge of Bagribari police station on receiving the ejahar from informant Raj Kumar Poddar registered a police case vide Bagribari police case No. 8/2000 under section 489(B)/489(C) IPC .In course of investigation I/O visited place of occurrence, recorded statement witnesses, drawn sketch map of place of occurrence, arrested accused persons, forwarded him before the Ld. Magistrate and after completion of investigation submitted charge sheet against the accused persons named herein above under Section 489B/489C I.P.C.

Committal

3. On receipt of the charge sheet, Learned SDJM (M) Bilasipara, took cognizance and after furnishing necessary copies to accused persons, committed the case before the Learned. Sessions Judge, Dhubri for trial and Learned Session Judge, Dhubri made over the case to the Court of Ld. Asstt Session Judge for trial and finally this case is transferred to this court for trial.

Charge

4. Then Ld. Asstt. Session Judge after hearing Ld. Counsel for both sides and perusal of material on record framed charges u/s 489(B)/489(C) I.P.C against the accused person Md. Joynal Abedin and when charges read over and explained to the accused he pleaded not guilty and claimed to be tried.

Trial

5. In order to prove the prosecution charges against the accused persons, prosecution adduce evidence of all together 7 number of witnesses and exhibited 3 no of documents. PW - 1 Sampat Mall Surana PW – 2 Abdul Kalam Azad, PW - 3 Md. Attaullah, PW - 4 Chandra Kr. Barua, PW - 5 Bellal Ali, PW – 6 Sajjan Kr. Poddar and PW - 7 Raj Kumar Poddar. Ext-1 Seizure List; Ext-2 Charge sheet; and Ext.-3 Ejahar. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. and his plea is total denial.

6.

POINTS FOR DETERMINATION:-

- i. Whether accused person on 19-01-2000 at about 12.30 pm under Sapatgram PS used forged or counterfeit currency note as genuine?
- ii. Whether accused person on 19-01-2000 at about 12.30 pm under Sapatgram PS had in his possession forged or counterfeit currency note?

ARGUMENT

7. Ld. defence counsel made submission that the prosecution case against the accused not all proved and evidence on record does not shown that suspected counterfeit note was recovered and seized by the police from the physical possession of accused Joynal Abedin and said note was not placed before the court by the prosecution to prove that any counterfeit note was found in possession of accused Joynal Abedin and he used the same and therefore prosecution charge against the accused not all established.

DISCUSSION, DECISION & REASON THEREOFF:-

8. Statement of PW-1 is that complainant Raj Kumar Poddar is known to him but he does not know the accused and on the date of incident he went to the complainant's shop to purchase grocery items and he put his signature on Ext. 1 seizure list. PW-1 declared hostile. In cross by the prosecution he denied that he made any statement before the police that he saw accused giving one Rs. 500 Indian currency to Sajjan Kumar Poddar. In cross by defence he stated he was not seen the seizure items and he put his signature on seizure list as asked by the police.

9. On scanning of the evidence of PW-1 it is seen that he did not at all supported the single line of the prosecution case that is brought against the accused by the prosecution. He denied his presence at the time of seizure of counterfeit note. He even denied that the said note was seized from the possession of accused. His evidence is that at the time of seizure of note he was not physically present and he put signature on the seizure list as asked by the police and prosecution also declared him hostile. His evidence is not helpful for the prosecution and same is not relevant to the prosecution case.

10. PW-2 Abdul Kalam Azad evidence is that he know accused but does not know the complainant and on the date of incident he went to the Sapatgram market and show gathering of many people and thereafter he came to know that one person is apprehended by the police with fake currency note and said person was accused Joynal Abedin.

11. Evidence of PW-2 does not bring home any material to the benefit of prosecution case against the accused. His evidence pointed he arrive at the place of occurrence after the incident and he did not seen anything. Evidence of PW2 further reveal that no seizure, no recovery was made in his presence from the accused Jaynal. Therefore, his evidence is also not relevant and helpful for the prosecution case.

12. Evidence of PW3 is that in the year 2010 he was serving as treasurer at RBI Guwahati and during that time he used to get forged currency note to examine and to determine the genuineness of the note and thereafter he gave

opinion as to the genuineness of note and if the note is appear to be false one they gave opinion by putting stamp over the note. His further evidence is that on the date of recording of his evidence he was not shown any currency note by the prosecution therefore, it is not possible to him to say anything whether he had given any opinion regarding genuinity of any note of this case. In cross by defence he stated it is not in his mind whether he made any statement before the police in respect of this case as he retired from service about 14 years ago. The scanning of evidence PW-3 who is the most vital witness for the prosecution case, shown that at the time of examination of PW-3, prosecution did not brought and place seized notes before him to have look by him. Resulting he could not give his opinion whether ₹ 500 note was genuine or counterfeit note.

13. On scrutiny of the record it is seen that I/O of the case has not submitted any report of the opinion of PW-3 before the court at the time of submission of the chargesheet and during trial prosecution did not produce the seized currency notes before PW-3 to have his opinion. Thus, shown that prosecution had not placed all the relevant and important facts before the court to unfurl the actual fact of the case. On perusal of the evidence of PW-3, it is reveal that in absence of any opinion of the RBI before him together with the perusal of the seized material PW-3 was unable to give his opinion regarding genuinity or counterfeit character of seized notes. Thus, shown that prosecution side has hidden vital material before the court by not producing seized items and IO of the case by not collecting the report from the RBI in respect of the seized ₹. 500 currency notes creates big hole in the prosecution case that cannot be fill-up by the evidence of PW-3 and I find evidence of PW-3 does not enlighten any material in favour of the prosecution and against the accused Joynal Abedin.

14. PW-4 is the IO of this case. His evidence is that his predecessor SI Manik Ali Ahmed almost completed the investigation part and he only submitted the charge sheet after going through the entire case. Ext-2 is the chargesheet Ext 2 is his signature. PW-4 though one of the IO of the case did not disclosed before the court whether seized currency note was sent for examination at RBI, Guwahati. either by himself or by his predecessor. His evidence is only confined to the submission of the charge sheet and his evidence does not unearth any

material for the prosecution case and therefore his evidence is not beneficiary for the prosecution case.

15. PW 5 Billal Ali stated he knows both complainant Raj Kumar Poddar and accused Joynal Abedin and one day accused Joynal Abedin brought one ₹. 500 currency note to the grocery shop of complainant and later on he heard that same was counterfeit note but he do not know what happed afterwards. In cross he stated at the time of incident he was not present at the place of occurrence.

16. Evidence of PW-5 reflected that he was not present at the place of occurrence at the time of incident and he does not know whether ₹ 500 currency note was genuine or counterfeit and his evidence is only a hearsay evidence which has no evidentiary value.

17. PW-6 Sajjan Kumar Poddar stated informant is his brother. He did not identified the accused. His further evidence is that accused came to the grocery shop of informant with a ₹ 500 currency note for change and they suspected the genuineness of the note and informed police and police arrived and taken the accused. In cross he stated at the time of the incident there are several customers and he does not remember which customer given what currency notes to them. And on suspicion they called police. Scanning of evidence of PW-6 shown that he has no complete knowledge whether the currency note was genuine or counterfeit note and that same was tendered by accused. His evidence is that on suspicion they called the police and police took away the accused. Evidence of PW-6 contradict his evidence in chief and his evidence does not bring it crystal clear that seized note was tendered by accused. Cross of PW-6 shown he is confused who had tendered the seized note and therefore I find that evidence of PW-6 also not helpful for the prosecution case.

18. PW-7 is the informant of this case his evidence is that he is the informant but he does not know accused. His evidence is that 12/13 years ago at about 04.30 pm he was present at his shop house and one man came to his shop with a ₹ 500 currency note and asked him for change and seeing the note he suspected that the note was fake so informed police and police came and took the custody of the said person. Ext 3 is said ejahar lodged by him. In cross he stated he did not write the ejahar himself and does not know the name of the

writer of the ejahar and as asked by the writer of ejahar, he put his signature on Ext 1. He does not know name of accused present before the court and he cannot re-collect whether he lodged the ejahar on the day of incident. His further cross is that ejahar was written in the police station. He stated that he lodged ejahar as directed by the police.

19. On meticulous scrutiny of the evidence of PW-7 the informant of this case it is reveal that he did not stated that seized currency note was seized from the physical possession from the accused Joynal Abedin and he tendered the same before him for change. His evidence shown that he does not know the accused person and what is the name of the accused is also not known to him. His evidence does not pointed that it is the accused Joynal Abedin who went to his shop, tendered any counterfeit note of valued ₹ 500/- note to him for change or asking for change . His evidence is that one person on the date of incident came to his shop and tendered him one ₹ 500 currency note and asking for change. Thus, shown that evidence of PW-7, the informant of this case wholly overturn the prosecution case against the prosecution. His cross shown that he lodged the ejahar as directed by the police. Evidence of PW-3 could not enlighten whether seized currency note was counterfeit or genuine note and same was not produced before him and before court for perusal.

20. In view of my aforesaid discussion and upon scanning and analysis of the evidence on record I find that prosecution has totally failed to bring on record that accused was found in possession of counterfeit note and that fake currency note seized from his physical possession and that accused used fake counterfeit note as genuine and therefore, I have come to my considerate finding that prosecution miserably failed to bring to home charges u/s 489(B)/489(C) I.P.C against the accused person Joynal Abedin and he is acquitted from the charge of section 489(B)/489(C) I.P.C and is set at liberty.

21. Seized goods notes be destroyed in accordance with law.

22. Bail bond of accused person will remain stands for next six (6) months u/s 437(A) Cr.P.C.

23. Send back the GR case record to the learned committal Court with a copy of the judgment.
24. Given under hand and seal of this Court on this 18th day of September 2017 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Typed by,

Swmkhwr Brahma, Stenographer Gr. III.

APENDIX

PROSECUTION WITNESS:-

PW - 1 Sampat Mall Surana,

PW - 2 Abdul Kalam Azad,

PW - 3 Md. Attaullah,

PW - 4 Chandra Kr. Barua,

PW - 5 Bellal Ali,

PW - 6 Sajjan Kr. Poddar and

PW - 7 Raj Kumar Poddar.

PROSECUTION EXHIBIT:-

Ext-1 Seizure List;

Ext-2 Charge sheet; and

Ext.-3 Ejahar.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITES :- NIL

COURT EXHIBITES :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara