

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Session Case No.46/2009

U/s. 489 (B)/ 489 (C) I.P.C.

G.R. Case No. (GKJ) 77/2008

State of Assam

- Vs -

Md. Jonab Ali Sk.

Committing Magistrate : Bina Tripathi, Addl. Chief Judicial Magistrate,
Dhubri

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.

Sri S.M. Shahjahan, Advocate for defence.

Date of Evidence : 05-02-2010, 18-03-2010, 20-09-2010, 05-02-2011
& 21-06-2013

Date of Argument : 12-07-2013

Date of Judgment : 20-07-2013

J U D G M E N T

Capt. Karan Sagar belonging to 21 JAT Regiment, Army Camp, Agomani vide an ejahar states before the Golakganj Police Station that on 24-02-2008 based on information regarding the presence of ULFA linkmen in the village Purnichar under Golakganj Police Station, a search operation was conducted and an ULFA link man was apprehended. During search operation Rs.5,000/- fake currency notes were recovered from the apprehended person namely Jonab Ali.

2. The Golakganj Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid the charge-sheet under section 489 (B)/489 (C) of I.P.C. against the accused named above.

3. After commitment and on the appearance of the accused, the charges thereunder are framed against the accused. The charges so framed are read over, explained and interpreted to the accused to which he pleaded not guilty.

4. During trial the prosecution side after examining as many as 7 (seven) P.Ws. closed their side. Statement of the accused person is recorded. I heard arguments of the case from both the parties.

5. Now, the point for determination in this case will be as to whether the materials surfaced in the testimonies of the P.Ws would justify the conviction of the accused under section 489 (B)/489 (C) of I.P.C.

DECISIONS AND REASONS THEREON

6. The accused had faced the prosecution in the instant case Under Sec. 489 (B)/489 (C) of I.P.C. the essential ingredients of both the Sections prescribed by the law of the land are as follows:

Essential Ingredients of Sec. 489 (B) –

- (i) Selling, buying or receiving from any person;
Or otherwise trafficking in or using as genuine;
- (ii) Any forged or counterfeit currency note or bank note;
- (iii) Knowing (or having reason to believe) that such note was forged or counterfeit.

Essential Ingredients of Sec. 489 (C) –

- (i) Possession by accused of any forged or counterfeit currency note or bank note;
- (ii) Knowledge (or reason to believe) to the accused that it was forged or counterfeit; and
- (iii) Intention of the accused to use the same as genuine or that it may be used as genuine.

7. Now, it is to be ascertained as to whether the prosecution side has recorded success to bring the aforesaid ingredients of the offence alleged of in the testimonies of the P.Ws.

8. To address the aforesaid question obviously perusal of evidences is necessary.

9. P.W-1 Md. Abdul Gofur during trial states that on the date of incident and during morning he came to know that the army personnel apprehended the accused named above and he came to know from police that police arrested the accused due to the involvement of the accused in illegal business.

10. P.W-2 Musstt. Noorjahan Bibi confirmed during trial that the army personnel apprehended the accused but she cannot say as to why he was apprehended.

11. P.W-3 Mustt. Sonajan Bewa & P.W-4 Md. Abdul Sattar hve deposed in the same tune as that of earlier P.Ws.

12. P.W-5 Sri Girish Ch. Sarma during trial states that while he was in the Issue Department, R.B.I, Guwahati as Asstt. Manager on that day, he examined 4 (four) numbers of notes of denomination of Rs.1000/- and 10 pcs of 100 notes. Material Exts.1 to 4 are the Rs.1000 fake notes and Materials Exts- 1 to 10 are the 10 pcs of Rs.100 fake notes. Ext-1 is his report. Ext-1 (1) is the signature of the then Manager, Sri R.C. Sarma.

13. P.W-6 Md. Esob Ali is declared hostile by the prosecution and accordingly he was cross-examined by the prosecution.

14. P.W-7 S.I. Kanak Ch. Bharali states during trial that on 25-02-2008 he was attached to Golakganj Police Station in the capacity of Sub-Inspector of Police. On that day captain Karan Sagar of 21 JAT Regiment belonging to Agamoni Army Camp lodged an ejahar before the police station. Then O/c of the police station registered a case thereon and entrusted him with the investigation of the case. Ext-2 is the said ejahar wherein Ext-2 (1) is the signature of the then O/c, which is known to him from long association. On being entrusted with this case, he seized the notes involved in this case and also proceeded to place of occurrence and thereafter, recorded the statement of the witnesses. Ext-3 is the seizure-list wherein Ext-3 (1) is his signature. Also he prepared sketch map vide Ext-4. Thereafter, he sent the seized notes in question for examination. During investigation, he collected report of examination of seized notes and at the conclusion of the investigation laid charge-sheet under Ext-5 wherein Ext-5 (1) is his signature.

During cross-examination the aforesaid I.O. stated that during investigation he examined the informant Captain Karan Sagar, who told him that he was accompanied by the police personnel of Agamony O.P. but when he asked police personnel belongs to Agomany O.P. then told him that none of the police personnel from Agomany O.P. had accompanied army personnel. On being produced by the army personnel, he seized the notes in question vide Ext-3. During investigation he came to know that the army personnel took the search of the house of the accused without taking the respectable personality of the locality. The aforesaid I.O. during cross examination deposed that during investigation he did not come across with any materials showing that accused was involved in the activities of any banned outfit. During investigation nor did he come across with any material that the accused person was involved in the business of fake currency notes.

So these are all about the evidences on record.

15. As per the allegation leveled in the ejahar, accused was found to possess some fake currency notes and it was allegedly recovered from his possession. Accordingly, informant laid ejahar but prosecution side could not examine the informant. A numbers of witnesses belonging to Army personnel were cited as witnesses and on a numbers of occasions summons were issued to the army personnel but they did not turn up. In the result, no army personnel were examined in this case by the prosecution. Remaining non official P.Ws as revealed from their testimonies did not support the factum of recovery of the fake currency notes from the possession of the accused.

16. Under the aforesaid circumstances, it cannot be observed that the materials so far surfaced in the testimonies of the P.Ws are sufficient to bring home the ingredients of the offence alleged of beyond all reasonable doubt against the accused.

17. Therefore, it can be concluded that offences alleged of have not been established against the accused beyond all reasonable doubt due to the insufficiency of evidences and as such for the said reasons on benefit of doubt, the accused is acquitted and set at liberty forthwith. His bail bond stands discharged. Judgment is delivered in open Court.

Given under my hand and seal of the Court on this 20th day of July, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.