NEUTRAL CITATION

undefined

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 310 of 1998

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI Sd/-
and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR Sd/-

==

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

==

STATE OF GUJARAT
Versus
HIMATLAL BHAILAL RAJGOR & ORS.

==

Appearance:
MS SHRUTI PATHAK, APP for the Appellant(s) No. 1
ABATED for the Opponent(s)/Respondent(s) No. 2,3
DR. HARDIK K RAVAL(6366) for the Opponent(s)/Respondent(s) No. 2,5,6
MR CJ VIN(978) for the Opponent(s)/Respondent(s) No. 4
MR HARSHAD K PATEL(2844) for the Opponent(s)/Respondent(s) No. 1

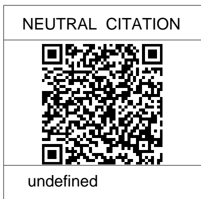
==

CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**
and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 21/05/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR)

1. By way of present acquittal appeal, the appellant-State, under Section 378 of the Criminal Procedure Code, 1973, has

Downloaded on : Thu May 23 19:54:42 IST 2024

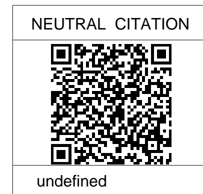


assailed the judgment and order of acquittal dated 09.01.1998, recorded by the learned Additional Sessions Judge, Kutch-Bhuj in Sessions Case No.80 of 1992 wherein the learned Judge has acquitting the accused for the offences punishable under Sections 489(A), (B), (C) and (D), 34, 171 read with Section 114 of the Indian Penal Code.

2. During the pendency of the appeal, accused Nos.2 and 3 expired. Hence, the appeal stands disposed of as abated qua the accused Nos.2 and 3.

3. It is the case of the prosecution that on June 8, 1992, at around 8:30 a.m., an intelligence report was received by PSI, Mr. R.G. Rathod of Kutch-Bhuj, that accused No. 1 had fake US Dollar and Indian Currency Notes. Therefore, a raid was conducted, and 135 counterfeit dollars were recovered from the residential premises of accused No. 2. On the same date, at 7:30 p.m., counterfeit dollars were recovered from the residential premises of accused No. 3. Similarly, counterfeit dollars were recovered from other accused persons, who used to sell the counterfeit dollars. One file was also recovered, and after investigation, a charge-sheet was filed. The learned Sessions Judge has confirmed the charges under Sections 489(A), (B), (C), and (D), 34 read with Section 114 of the Indian Penal Code. Accused Nos. 5 and 6, although not in the police department, impersonated police officers, threatened deceased accused No. 2, and were involved in the illegal transportation of the counterfeit dollars. Consequently, an offence was also registered against them.

Downloaded on : Thu May 23 19:54:42 IST 2024

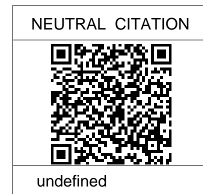


4. Being aggrieved by the same, the appellant State has preferred the aforesaid Criminal Appeal before this Court.

5. Heard learned advocates for the respective parties.

6. Learned APP appearing for the State has reiterated and urged the grounds mentioned in the memo of appeal. Learned APP has taken this Court through the paper book and evidence on record and argued that the judgment and order of the trial Court is against the provisions of law as the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself, it is established that the prosecution has proved all the ingredients of alleged charges against the present respondents. The learned APP also submits that during the raid, counterfeit dollars and a file were found at the residential premises of the accused persons. The prosecution clearly proved on record that the currency was forged, and the FSL report was also produced. The accused were fully aware that the currency notes were forged. Accused Nos. 5 and 6 had impersonated police officers, despite not being in the police department. They wore police uniforms and indulged in illegal activities. However, the learned trial court acquitted the accused persons. It is further submitted that the fact that only one witness turned hostile is not a sufficient ground to acquit the accused persons. The learned trial court ought to have appreciated that fake currency and even police uniforms were found at the residence of the accused persons. It is further contended that learned trial Judge has not appreciated the

Downloaded on : Thu May 23 19:54:42 IST 2024



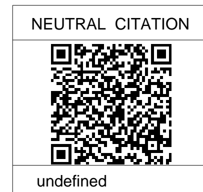
evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed as such.

7. On the other hand, learned advocate for the respondent has argued that the learned trial Court has elaborately dealt with the evidence on record and rightly recorded the finding and acquitted the accused from the charges levelled against them. He has further argued that there is no iota of evidence to connect the accused with the crime. Therefore, allegations levelled against the accused persons is baseless. The learned advocate for the respondents submits that the learned trial court has not committed any error in acquitting the accused, as the prosecution has failed to prove the case against the accused. The panch witnesses also turned hostile and did not support the prosecution's case. One witness admitted that his signature was taken on a prepared panchnama. No evidence of counterfeit currency notes or any material or equipment was recovered from the possession of the accused. Additionally, there is no evidence to prove that the accused impersonated police officers by wearing police uniforms. Hence, Section 171 of the IPC is not applicable. He further argued that the learned trial court has rightly recorded the findings, which call for no interference.

8. Except above, no other or further submissions, contentions and grounds have been made/raised by both the sides.

9. Scope and interference by the appellate Court in acquittal

Downloaded on : Thu May 23 19:54:42 IST 2024



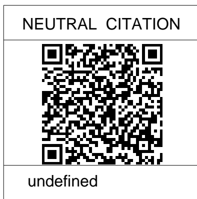
appeal is very limited. The Hon'ble Supreme Court has discussed the scope and interference in acquittal appeal in the case of **Sheo Swarup v. King Emperor, AIR 1934 PC 227** and held as under:-

> *"While dealing with an appeal against acquittal, the High Court should and will always give proper weight and consideration to such matters as-*
> *(1) the views of the trial Judge as to the credibility of the witnesses;*
> *(2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial;*
> *(3) the right of the accused to the benefit of any doubt; and*
> *the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."*

10. Further, considering the law laid down in the case of **Babu Sahebagouda Rudragoudar v. State of Karnataka, 2024 SCC OnLine SC 561**, every criminal trial starts with general presumption and one of the cardinal principle of criminal jurisprudence is that, there is a presumption of innocence in favour of the accused, unless proven guilty. Burden of proving the case of the prosecution always rests on the shoulder of the prosecution. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence, which gathers strength before the appellate Court and in this regard, this Court deems it proper to refer to the judgment of the Hon'ble Apex Court in the case of **Anwar Ali vs The State Of Himachal Pradesh,** reported in **(2020) SCC 166**.

11. Having heard learned counsel for the respective parties and

Downloaded on : Thu May 23 19:54:42 IST 2024

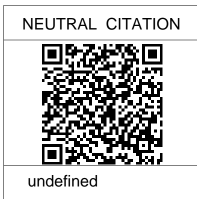


having gone through the impugned judgment as well as record and proceedings of learned trial Court, it appears that in order to prove the case, the prosecution has examined as many as 16 witnesses. PW-1 Ramesh Kansara at Exhibit-12, PW-2 Osman Khatri at Exhibit-14, PW-3 Arjan Maheshwari at Exhibit-17, PW-4 Kishan Maheswari at Exhibit-19, PW-5 Gulabgiri at Exhibit-20, PW-6 Navin Thakkar at Exhibit-22, PW-7 Noormahmad Sama at Exhibit-23, PW-8 Himatgar Gosai at Exhibit-25, PW-9 Arvind Kapadi at Exhibit-29, PW-10 Chanji Darji at Exhibit-31, PW-11 Mahipatsinh Jadeja at Exhibit-32, PW-12 Popatji Parmar at Exhibit-33, PW-13 Rajendra Joshi at Exhibit-37, PW-14 Jayesh Joshi at Exhibit 38, PW-15 jayntilal Nathani at Exhibit-39 and PW-16 Ratansinh Rathod at Exhibit-40. All the panch witnesses turned hostile. PW-16 Ratansinh Rathod, an LCB Sub-Inspector, is a key witness for the prosecution. Two other witnesses also turned hostile. PW-14 Jayesh Joshi, a rickshaw driver, turned hostile. The investigating officer and the complainant are the same person, who is PW-16.

12. In view of the above, it appears that the prosecution has mainly relied on the evidence of PW-16 Ratansinh Rathod, an LCB Sub-Inspector. Based on intelligence, he raided the residential premises of the accused persons, lodged the complaint himself, and conducted the investigation against the accused persons. The defense contends that the investigation conducted by the IO was designed to substantiate the evidence leveled against the accused persons and was not impartial.

13. In the case at hand, the accused persons are facing

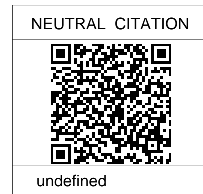
Downloaded on : Thu May 23 19:54:42 IST 2024



charges under Sections 489(A), (B), (C), and (D) of the IPC. Regarding these provisions, the words "knowing or having reason to believe the currency-notes or bank notes to be forged or counterfeit". Without the aforementioned *mens rea* selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489-B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489-C in the absence of the *mens rea*, noted above. This Court deems it proper to refer to the judgments passed by the Hon'ble Apex Court in the case of **Umashanker v. State of Chhattisgarh, reported in (2011) 9 SCC 642** and in the case of **Dipakbhai Jagdishchandra Patel v. State Of Gujarat And Another, reported in AIR 2019 SC 3363**. Thus, mens rea is a sine qua non for inviting a penalty under the said provision. Scanning the evidence produced on record, all panch witnesses turned hostile, and there is no evidence for the recovery of the currency notes from the conscious possession of the accused persons. Nonetheless, even if, for the sake of argument, it is accepted that the currency notes were recovered from the possession of the accused persons, it is not enough to prove the offense in the absence of any evidence of *mens rea*.

14. In the case on hand, when *mens rea* is conspicuously absent, the mere use of any forged or counterfeit currency notes or bank notes cannot attract the provisions of Section 489(B). The essential ingredient of the said offense is that the person

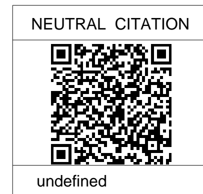
Downloaded on : Thu May 23 19:54:42 IST 2024



who receives the notes has reason to believe that the said notes are forged or counterfeit. The prosecution is required to prove beyond all reasonable doubt that the accused had knowledge or reason to believe that the currency notes they used or possessed were counterfeit or fake. The prosecution has failed to prove this fact. One more significant aspect is also required to be considered. The investigating officer admitted that he did not collect any material or independently verify whether the said dollars were genuine. For the purpose of comparison, he did not receive any independent opinion from the American Reserve Bank or any other authority to compare the said series of dollars or bank notes. Even upon perusing the record, it appears that initially, the said dollars were sent to the FSL for examination. The FSL returned them, raising queries due to the absence of any control sample or contemporary currency notes for comparison, making it unable to opine on the matter. Subsequently, the FSL again opined that the currency notes were forged, but there was no evidence of any comparison with temporary original currency notes or control samples. Even seizing of the said currency notes sample and control sample is also not proved on record not witness is examined for collection and sending the same sample to the FSL and there is no evidence in relation to the chain of custody or the sampling in order to preserve the integrity of the seized materials. There is no evidence except produced by prosecution on record to prove alleged possession of the so called 'counterfeit currencies'.

15. In view of the above, in the absence of any independent evidence regarding whether the said forged notes were sealed or

Downloaded on : Thu May 23 19:54:42 IST 2024

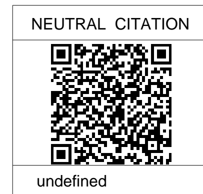


packed in the presence of independent witnesses, and there is no proof that they were sent to the FSL for examination. Even upon perusing the opinion of the FSL officer, it is stated that the FSL examined the said article using control sample notes from their own source, and no independent witness was examined to prove that the currency notes were forged.

16. In view of the above, the prosecution has failed not only to prove the *mens rea* on the part of the accused persons but also to establish that the currency notes were forged. Furthermore, the FSL failed to provide an opinion on the use of the file (Article No. 5). Consequently, the prosecution also failed to prove that the file (Article No. 5) was used in making the forged dollars or currency notes. Given these shortcomings, the prosecution has failed to make its case against the accused persons, and the learned trial court has not committed any error in acquitting them. We find no reason to interfere.

17. This Court deems it appropriate to refer to the judgment passed by the Hon'ble Apex Court in the case of **Sudip Kumar Sen v. State of West Bengal,** reported in **2016(3)SCC 26**, wherein the Court has held that the essence of liability under Section 34 IPC is conscious mind of persons participating in the criminal action to bring about a particular result. The question whether there was any common intention or not depends upon inference to be drawn from the proved facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they

Downloaded on : Thu May 23 19:54:42 IST 2024



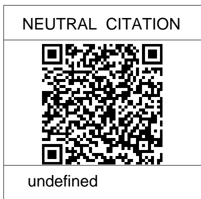
could be convicted. Herein, no such evidence is produced on record by the prosecution to prove the common intention even no any sufficient material available based on which inference could be drawn against the accuse persons.

18. So far as the allegations under Section 171 of the IPC are concerned, the prosecution failed to prove that respondent Nos. 5 and 6 wore or carried tokens of the uniform of a police officer or public servant. Merely finding Khaki dress at the residence of the accused persons is not sufficient grounds to believe that the said uniform was used by them to impersonate as police officers. No iota of evidence has been produced on the record that the accused falsely pretended to be police officers, nor is there any evidence that they attempted to impersonate as police. Therefore, the offence under Section 171 is not made out.

19. In above view of above, this Court is of the considered opinion that learned trial court was completely justified in acquitting the respondent of the charges leveled against them. This Court finds that the findings recorded by learned trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by learned court below and hence finds no reasons to interfere with the same.

20. In view of the above and in backdrop of the evidence adduced/produced by the prosecution, material contradictions

Downloaded on : Thu May 23 19:54:42 IST 2024



which goes to the root of the case of the prosecution are noticed by the learned trial Court and as the prosecution failed to prove the case against the accused beyond all reasonable doubts, learned trial Court has not committed any error in acquitting the accused.

21. Accordingly, present appeal fails and is hereby dismissed. The judgment and order of acquittal passed by learned Additional Sessions Judge, Kutch-Bhuj, stands confirmed. Bail bond, if any, given by respondents- accused stands discharged. Record and proceedings be sent back to the concerned trial Court forthwith.

Sd/-

(NIRZAR S. DESAI,J)

Sd/-

(HASMUKH D. SUTHAR,J)

ALI

Downloaded on : Thu May 23 19:54:42 IST 2024