

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1042 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

and

HONOURABLE MR.JUSTICE R.D.KOTHARI

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?
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HASMUKH UMIYASHANKAR JOSHI....Appellant(s)

Versus

STATE OF GUJARAT....Opponent(s)/Respondent(s)

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Appearance:

HCLS COMMITTEE, ADVOCATE for the Appellant(s) No. 1

MR PH BUCH, ADVOCATE for the Appellant(s) No. 1

MR HK PATEL APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

and

HONOURABLE MR.JUSTICE R.D.KOTHARI

Date : 31/03/2015

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE R.D.KOTHARI)

1. Learned advocate Mr. Buch appearing for the appellant states that in light of the fact that appeals being Criminal Appeal No. 1561 of 2008, Criminal Appeal No. 1437 of 2008 and Criminal Appeal No. 1071 of 2008 are decided arising from the same judgment and order in Sessions Case No. 81 of 2005, this appeal be taken up for final disposal, to which learned APP Mr. Patel has no objection.

ADMIT. Mr. Patel learned APP waives service of process of admission on behalf of the respondent – State.

1.1. The sole appellant challenges the order of conviction and sentence passed by the 2nd Fast Track Court, Junagadh in Sessions Case No. 81 of 2005, wherein the said Court was pleased to convict the appellant for the offences under Sections 489-A, 489-B, 489-C and 489-D read with Sections 120B and 114 of the Indian Penal Code. The substantial sentence imposed by the learned trial Court for these offences is life imprisonment and also sentence of fine.

2. At the outset, we may mention that four accused were tried in Sessions Case No. 81 of 2005. The present appellant was A4 in the said sessions case. Earlier A1, A2 and A3 had preferred Criminal Appeals challenging the judgment under appeal. Their

appeals are Criminal Appeal No. 1561 of 2008, Criminal Appeal No. 1437 of 2008 and Criminal Appeal No. 1071 of 2008. All these appeals were decided together by this Court by judgment and order dated 03.07.2013. Pending appeal, A3 had died. This Court by judgment dated 03.07.2013, was pleased to confirm the conviction for offences under Sections 489-A, 489-B, 489-C and 489-D read with Section 120B of the Indian Penal Code. However, the sentence was reduced to 10 years RI. After the judgment in the above appeals, the present appellant has preferred the present appeal with prayer for condonation of delay. The delay was condoned. The learned advocate for the appellant appearing as Legal Aid advocate has mainly placed reliance on the above referred judgment of this Court in the case of other accused.

3. Now, we may refer briefly the facts :

4. Shri V.D. Kharadi, who was Police Inspector, Crime Branch, Junagadh at the relevant time had received confidential information and on the basis of the said information the Police Inspector along with other police personnel after preparing preliminary *panchnama* in that regard came at Sabalpur Chokdi at Junagadh Dhoraji bypass. It was on 04.07.2005. It is the case of the prosecution that consistent with their information one Hero Honda Motor Bike bearing registration No. GJ-19-1991 came at about 1:15 p.m., at the said place. A1, A2 and A3 were

on the Motor Bike. The police had stopped the Motor Bike and had carried out the search. The currency notes alleged to be counterfeit of denomination of Rs.100/- and Rs.500/- were found from each these three accused. The police had recovered these notes after preparing *panchnama* wherein the details of each of the notes were mentioned i.e. series number, denomination etc. It is further the say of the prosecution that on being inquired about the source of these notes, A1 had said to have stated that they have received these notes from A4 who is carrying out the work of preparing counterfeit notes in the building of A2. Accordingly, the police with the help of A1 and A2, proceeded to the building of A2, where it is alleged that A4 was present. It is also the case of the prosecution that in the said building in the room where A4 was found, there was a cot and on the said cot there was HP Office Jet 5510 all-in-one machine referred as printer cum fax cum scanner cum copier machine. The police had also found blank white papers, scissor, pencil ruler etc. Further, it is alleged that the police had also found 22 currency notes of Rs.100/- denomination from the shirt of A4 and five notes of Rs.50/- denomination. All these materials, including currency notes were seized by the police.

5. All these accused were charged for the offences punishable under Sections 489-A, 489-B, 489-C and 489-D of the Indian Penal Code. The accused pleaded not guilty and the prosecution had led evidence as observed above. The learned trial Court has

accepted the case of the prosecution. Before the learned trial Court, the prosecution has examined the following witnesses :-

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| 1. Aamadbhai Isabhai | : | PW - 1 | Exhibit-14 |
| 2. Kasambhai Ibrahimhai | : | PW - 2 | Exhibit-16 |
| 3. Harunbhai Hajibhai | : | PW - 3 | Exhibit-17 |
| 4. Vishrambhai Dhanjibhai | : | PW - 4 | Exhibit-20 |
| 5. Prakash Jamnadas | : | PW - 5 | Exhibit-24 |
| 6. Chandrakant Bhagwanji | : | PW - 6 | Exhibit-25 |
| 7. Paragbhai Arunbhai | : | PW - 7 | Exhibit-26 |
| 8. Lalitkumar Shamjibhai | : | PW - 9 | Exhibit-28 |
| 9. Yogesh Kanjibhai | : | PW - 9 | Exhibit-29 |
| 10. Chandu Bavanjibhai | : | PW - 10 | Exhibit-30 |
| 11. Kishan Damjibhai | : | PW - 11 | Exhibit-31 |
| 12. Valjibhai Damjibhai | : | PW - 12 | Exhibit-41 |
| 13. Pramodbhai Kanjibhai Diyora | : | PW - 13 | Exhibit-44 |

5.1. The prosecution has placed reliance on the following documentary evidence :-

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| 1. Discovery Panchnama | : | Exhibit-18 |
| 2. Panchnama | : | Exhibit-21 |
| 3. Complaint | : | Exhibit-22 |
| 4. Yadi | : | Exhibit-23 |
| 5. Copy of a bill from Sky Computer | : | Exhibit-27 |
| 6. Copy of complaint and copy of station dairy | : | Exhibit-45/46 |
| 7. Receipt of sale of Hero Honda Bike | : | Exhibit-48 |
| 8. Copy of RTO Book of the vehicle | : | Exhibit-49 |

9. Forwarding letter to certify the : Exhibit-51
muddammal notes
10. Letter regarding muddammal notes : Exhibit-52
11. Forwarding letter of FSL : Exhibit-53 to 56
12. FSL Report : Exhibit-57
13. Copy of FIR : Exhibit-58/59

6. Before the learned trial Court, the panchas have turned hostile, so also PW-8, PW-9, PW-10 and PW-11 have turned hostile. Only PW-6 – owner of stationery shop and PW-7 – owner of computer and xerox shop has supported the case of the prosecution. Besides that, the police personnel – the complainant i.e. the Investigating Officer etc.. had supported the case of the prosecution. The learned trial Court has found that the evidence of the owner of the stationery shop (PW-6) and the evidence of the owner of computer and xerox shop (PW-7) along with evidence of the police personnel read with FSL report etc., does link the appellant with the offence for which they are charged. The fact of the gravity of offence had also weighed with the Court.

7. Heard the learned advocates for the respective parties.

8. Learned advocate Shri P.H. Buch for learned advocate Mr. P.V. Patadia who is appointed by the Legal Aid has drawn attention of the Court to the judgment of this Court dated 03.07.2013. Relying on the same, it was urged that the role of

the present appellant is neither in any way distinct nor different from the other appellants, nor the prosecution has successfully urged and established any distinct case – distinct from other accused in the case - against the present appellant. It was submitted that on the basis of same set of evidence, in the alternate, the sentence of the present appellant be reduced to sentence already undergone or 10 years RI as in case of other appellants.

9. On the other hand, learned APP Shri Patel has drawn attention of the Court to paragraph no. 23 of the judgment under appeal wherein, the Court has discussed the evidence of the complainant. The case of the prosecution against the present appellant was tried to be explained by the learned APP by referring to the evidence of the complainant. It was submitted that the learned trial Court has rightly found the present appellant guilty for the offence for which the appellant is charged and in the circumstances of the case, no interference is called for by this Court.

10. We may consider the case of the appellant.

10.1. The name of the present appellant was disclosed by A1. It is on that basis, says the prosecution, the police personnel proceeded to the house of A2 and the present appellant was said to be found there. So it is somewhat odd and curious *inasmuch*

as the present appellant is said to be resident of Rajkot while the house of A2 is at Junagadh. Besides that, the police had collected the electricity bill of the said house. The electricity bill is not in the name of A2, but it is in the name of one Jayaben Bhagwanji. In order to drive home the case that the accused were trafficking in the counterfeit notes, the prosecution has examined PW-8, PW-9, PW-10 and PW-11. It is the say of the prosecution that at the shop of PW-9 and in the presence of other prosecution witnesses, the present accused had a talk and made a proposal of distributing counterfeit notes. All these prosecution witnesses i.e. PW-8, PW-9, PW-10 and PW-11 have turned hostile and they do not support the case of the prosecution.

11. In the peculiar facts and circumstances of the case, we do not find it just and proper to re-appreciate and reconsider the case of the appellant. In case of other two accused, the judgment of this Court has become final and therein this Court has upheld the conviction for offences under Sections 489-A, 489-B, 489-C and 489-D of the Indian Penal Code. *Prima facie*, it appears that there is a arguable case so far as offences under Sections 489-A, 489-B and 489-D are concerned, however in view of the fact that the counterfeit currency notes were found from the person on making search, offence under Section 489(C) of the Indian Penal Code is attracted. At the time of hearing, the main concentration of the learned advocate appearing for the appellant was on

reduction of sentence on the ground of parity and for this purpose reliance was placed on the judgment delivered in the case of other two accused. It may also be noted that as per the jail remarks supplied by the learned APP Shri Patel, the present appellant has already undergone *9 years 4 months 20 days* as on 02.03.2015. That being so, and also in view of the judgment of this Court dated 03.07.2013 and to reiterate the fact the limited submissions advanced by the learned advocate for the appellant for reduction of sentence, we do not find it just and proper to re-appreciate the evidence and examine the conviction of the appellant. Accordingly, we confirm the conviction for offence under Sections 489-A, 489-B, 489-C and 489-D of the Indian Penal Code and ***reduce the sentence to 10 years RI***. The jail remarks shows that the appellant has not paid fine. We have not interfered with the sentence imposed by the learned trial Court in lieu of non-payment of fine. In case of non-payment of fine, the appellant had to undergo the said imprisonment. The appeal is allowed to this limited extent. The judgment and order of the learned trial Court imposing substantial sentence of life imprisonment is hereby quashed and set aside. The appellant for these offences would have to undergo 10 years RI plus sentence of nonpayment of fine as imposed by the learned trial Court. We add and clarify that for each of the offences sentence awarded is 10 years RI and sentence of imprisonment for all offences shall run concurrently.

(RAVI R. TRIPATHI, J.)

(R.D.KOTHARI, J.)

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