

GAHC010004092011



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.A./39/2011

DIMBESWAR BOBO
S/O SRI NALORAM BORO, R/O VILL. JALUKBARI, P.S. BOKO, DIST.
KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Appellant : Mr. P. Kataki.

Advocate for the Respondent : Mr. B.B. Gogoi, Additional Public Prosecutor.

Date of judgment: 27.02.2024

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER (CAV)

- 1.** Heard Mr. P. Kataki, learned counsel for the appellant. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor appearing for the State of Assam.

- 2.** This appeal under Section 374(2) of the Code of Criminal Procedure,

1973 has been filed by the appellant, Sri Dimbeswar Boro impugning the judgment and order dated 05.01.2011, passed by learned Sessions Judge, Kamrup, Guwahati in Sessions Case No. 133(K) of 2009, whereby, the appellant was convicted under Section 489B of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months.

3. The facts relevant for consideration of the instant appeal, in brief, are as follows:-

- i.** That on 24.02.2005, one Md. Sukur Ali had lodged an FIR (First Information Report) before the Officer-In-Charge of Boko Police Station, *inter-alia*, alleging that on that day, the appellant Dimbeswar Boro was apprehended and was confined in the office room of Balijan Bazar Committee while he was purchasing goods in the market by giving some counterfeit currency notes of Rs. 100/-.
- ii.** On receipt of the said FIR, the Officer-In-Charge of Boko Police Station registered Boko P.S. Case No. 39/2005 under Section 489B of the Indian Penal Code and initiated the investigation.
- iii.** During the course of the investigation, the Investigating Officer recorded the statement of the appellant and some more currency notes were recovered from the house of the appellant. Altogether 47 numbers of fake currency notes were recovered from the house

of the appellant. The said currency notes were sent to the Forensic Science Laboratory, Guwahati for examination and after completion of the investigation, the Investigating Officer laid the charge-sheet under Section 489B of the Indian Penal Code against the present appellant. Since the offence under Section 489B of the Indian Penal Code is exclusively triable by the court of sessions, the committal court, i.e. the court of learned Additional Chief Judicial Magistrate, Kamrup committed the case to the court of learned Sessions Judge, Kamrup, Guwahati for trial and accordingly, Sessions Case No. 133(K) of 2009 was registered.

- iv.** The appellant, who was on bail during the trial, appeared before the trial court to face trial. The trial court after considering the materials on record framed formal charge under Section 489B of the Indian Penal Code against the appellant. When the said charge was read over and explained to the appellant, he pleaded not guilty and claimed to be tried. The prosecution side adduced the evidence of total 8(eight) numbers of prosecution witnesses. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 during which he pleaded his innocence and has also stated that he was not aware that the currency notes which he was possessing were fake. He has also stated in the answer to the question No. 13 that he sold 20 bags of betel nut at the rate of Rs. 1250/- per bag to the buyers and those currency notes were given to him by the buyers along with the money paid by them for the price of betel nut, which were later on found to be

fake. However, he did not know the same to be fake. The appellant did not adduce any evidence in his defence. However, by the judgment which has been impugned in this appeal, the trial court convicted and sentenced the appellant in the manner as already described hereinbefore.

4. Before considering the submissions made by learned counsel for both the sides, let me go through the evidence which is available on record.

5. PW-1, Md. Sukur Ali, who is the first informant of this case has deposed that in the year 2005, when he was the Secretary of Balijan Bazar Committee, on the day of the occurrence of incident, he was present in the office of the Balijan Bazar Committee and at that time he heard commotion in the market and when he went out he saw that the appellant had been caught by some of the shop-keepers on the allegation that he was possessing some fake currency notes. Accordingly, police was informed and the PW-1 lodged the FIR which is exhibited as Exhibit-1. It is also stated by the PW-1 that police arrived at the spot and seized the fake currency notes from the appellant and prepared the seizure list, which is exhibited as Exhibit-2, wherein, the PW-1 has put his signature and said signatures are also exhibited as Exhibit-2(1).

5.1 During cross-examination, he denied the suggestion that the appellant got the currency notes by selling betel nut in the market. Some other suggestive questions were put to the PW-1 which were answered in negative by PW-1.

6. PW-2, Md. Momin Ali, has deposed that in the year 2005, he was the President of Balijan Bazar Committee and on the day of occurrence, he saw

the appellant being caught by shop-keepers on the allegation that he was possessing fake currency notes. PW-2 has also deposed that thereafter, the police was informed who arrived at the spot and seized some fake currency notes from the appellant and prepared the seizure-list. The said seizure-list is exhibited as Exhibit-2, wherein the signature of PW-2 is exhibited as Exhibit-2(2).

6.1 During his cross-examination, PW-2 has deposed that he does not remember any identification mark of the seized notes. He also denied the suggestions that the notes found in possession of the appellant were given to him by buyers of the betel nut which the appellant had sold in the market.

7. PW-3, Md. Alfaz Ali has deposed that on the day of occurrence, he was selling shoes in Balijan Bazar and on that day, the appellant came to his shop to purchase some articles by giving a 100 rupee note and as the note appeared to be a fake note, he returned the same to the appellant, which ensued an altercation between them. Thereafter, the members of the Bazar Committee arrived at the spot and took away the appellant to the office of the Bazar Committee and later on, the appellant was handed over to the police.

7.1 During cross-examination the PW-3 has answered in negative to certain suggestive questions put to him by the defence counsel.

8. PW-4, Niranjan Debnath, has deposed that on the day of the incident, he was selling sweets at Balijan Bazar and the appellant came to his shop and purchased 500 grams of sweets by giving 100 rupees note to him and later on, he came to know that the note given by the appellant to him was a fake

currency note and therefore, he handed over the said note to the Bazar Committee.

8.1 During cross-examination, the PW-4 has stated that the note given by the appellant to him on the day of incident was the first 100 rupee note he received from anyone during transaction in his shop on that day.

9. PW-5, Md. Hakim Ali has deposed that on 24.02.2005, he came to Balijan Bazar to purchase some articles and at around 10:30 AM, he saw a huge gathering in front of the Bazar Committee. When he rushed there to enquire about the incident, he found that the appellant has been apprehended with some fake currency notes. PW-5 has further deposed that after sometime, the police came to that place and seized the currency notes and prepared the seizure-list which is exhibited as Exhibit-2 and the signature of PW-5 is exhibited as Exhibit-2(3).

9.1 During cross-examination, PW-5 has deposed that he is not a member of the Bazar Committee and he did not saw the accused selling betel nut in the market. He has also stated that he is ignorant about the fact that the notes found in possession of the appellant were fake and he only came to know about the fact from the people, who gathered there.

10. PW-6, Amal Chandra Kalita, who is the Senior Scientific Officer, Forensic Science Laboratory Assam, has deposed that on 26.05.2005, while he was working as Senior Scientific Officer in the Questioned Document Division, Forensic Science Laboratory, he received 47 pieces of banknotes of denomination of Rs. 100 each from the Director in connection with Boko P.S.

Case No. 39/2005 for examination of the said notes and after examination of the said banknotes, the PW-6 has opined that as regards the banknotes marked as Q1 to Q10, Q10/1, Q11 to Q41, Q41/1 and Q42 to Q45 following was found: -

- (i) the papers are ordinary and optically active;
- (ii) water marks (both latent and visible) are absent;
- (iii) security thread is drawn and without inscription on it;
- (iv) intaglio printing technology is absent;
- (v) micro prints are absent.

10.1 PW-6 had exhibited the report as Exhibit-3 and also exhibited his signature as Exhibit-3(1) and signature of the Director in the forwarding report, which is exhibited as Exhibit-4(1).

10.2 During cross-examination, PW-6 has denied the suggestion that the notes examined by him were of such type that any common person would be able to differentiate the said notes from the real currency notes.

11. PW-7, Sri Bireshwar Chutia, SI of Police has deposed that on 15.06.2007, he was working as the In-charge of Mandia Police Out-post under Boko Police Station and on that day, he received the case diary of Boko P.S. Case No. 39/2005 for completion of the investigation. Thereafter, he collected the FSL

report and after completion of the investigation, submitted the charge-sheet against the present appellant under Section 489B of the Indian Penal Code. The charge-sheet has been exhibited as Exhibit-5 and the signature of PW-7 is exhibited as Exhibit-5(1).

11.1 During cross-examination, he has denied the suggestion that the charge-sheet has not been submitted in accordance with law.

12. PW-8, Aditya Kumar Das, Inspector, CID has deposed that on 24.02.2005, he was working as the In-charge of Mandia Police Out-post under Boko Police Station and on that day at about 4:30 PM, the Officer-In-Charge of Boko Police Station informed him over wireless that some people have apprehended and confined one person at Balijan Bazar. On receiving the said information, he made a General Diary entry and proceeded to Balijan Bazar along with the other police staff. On reaching the Balijan Bazar the Secretary and the President of the Bazar Committee handed over the present appellant along with seven numbers of fake currency notes of Rs. 100 denomination which he seized by preparing a seizure-list, which is exhibited as Exhibit-2, wherein, Exhibit-2(4) is his signature.

13. PW-8 has also deposed that during investigation, he examined the complainant and recorded his statement as well as statement of other witnesses. He also recorded the statement of the accused, which is exhibited as Exhibit-6, and thereafter the accused led the Investigating Officer to his house in the presence of witnesses and produced 40(forty) numbers of fake currency notes of Rs. 100 denomination which were seized by the PW-8 by preparing seizure-list, which is exhibited as Exhibit-7, wherein, Exhibit-7(1) is

his signature. The PW-8 has also exhibited the forged currency notes as material Exhibit-2. Thereafter, he sent the suspected currency notes to forensic laboratory for examination.

13.1 During cross-examination, PW-8 has deposed that the fake currency notes were seized in the presence of Sukur Ali, Momin Ali and Hakim Ali. He has answered in negative to a suggestive question put to him that he has not conducted the investigation properly.

13.2 The examination of the appellant under Section 313 of the Code of Criminal Procedure, 1973 has already been discussed hereinbefore in Paragraph No. 3(iv).

14. Mr. P. Kataki, learned counsel for the appellant has submitted that the trial court has erred in arriving at the conclusion of guilt of the present appellant under Section 489B of the Indian Penal Code as no evidence has been laid to show that the appellant knew or had any reason to believe that the seized notes were forged or counterfeit.

15. It is submitted by the learned counsel for the appellant that the appellant during examination under Section 313 of the Code of Criminal Procedure, 1973 has categorically stated that he sold 20 bags of betel nut at the rate of Rs. 1250/- per bag and the buyer, while making the payment gave him the fake notes also along with other notes and therefore, he was not aware of the fact that he was possessing fake currency.

16. Learned counsel for the appellant has submitted that the trial court

rejected the contention of the appellant only because of the fact that according to the trial court, the appellant failed to give any satisfactory explanation for possessing the forged notes. However, learned counsel for the appellant has submitted that for convicting the appellant under Section 489B of the Indian Penal Code the prosecution ought to have led evidence to show that the appellant was possessing the forged notes knowingly or having reasons to believe the said currency notes to be forged or counterfeit and without proving the aforementioned *mens rea*, mere possession of the said counterfeit notes is not enough to constitute an offence under Section 489B of the Indian Penal Code.

17. Learned counsel for the appellant has also submitted that no material has been brought on record by the prosecution side to show that the appellant had the requisite *mens rea* and hence, it is submitted that the impugned judgment is liable to be set aside and the appellant to be set at liberty. In support of his submissions, learned counsel for the appellant has cited a ruling of the Supreme Court of India in the case of "***Uma Shankar Vs. State of Chhattisgarh***", reported in "**(2001) 9 SCC 642.**"

18. On the other hand, learned Additional Public Prosecutor has submitted that the impugned judgment does not warrants any interference by this court as all the witnesses for the prosecution side have stated categorically that fake currency notes were found in possession of the appellant and the same were also used for purchasing sweets and shoes by the present appellant.

19. Learned Additional Public Prosecutor has also submitted that the burden of proving that the appellant was not knowing the seized notes to be fake is

on the appellant. However, he has failed to adduce any evidence in his defence and therefore, the impugned judgment is not liable to be interfered with.

20. I have considered the submissions made by learned counsel for both the parties and have gone through the materials available on record, including the case record of Sessions Case No. 133(K) of 2009 containing the evidence of the prosecution witnesses.

21. The fact that the seized currency was recovered from the possession of the present appellant has not been disputed even by the appellant. However, it appears that the contention of the appellant raised by him during his examination under Section 313 of the Code of Criminal Procedure, 1973 has not been addressed properly by the trial court.

22. Section 489B of the Indian Penal Code reads as follows:-

"Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

23. The observations made by the Apex Court in the case of "***Uma Shankar Vs. State of Chattisgarh***" (*supra*) which is relevant to the instant case and is quoted herein below: -

"7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is "knowing or having reason to believe the currency notes or banknotes are 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 banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect.".

- 24.** In the instant case, if we peruse the testimony of PW-3, with whom the appellant entered into an altercation on purchasing some articles from him and giving 100 rupees note to him on the question of the genuineness of the said

note. It appears that it was only after the said altercation that he was apprehended by the members of Bazar Committee. If he had intended to use the fake note clandestinely, he would not have engaged into an altercation with the PW-3. His engagement in an altercation is an indication that he believes that the notes given by him to the PW-3 are genuine. Further, if we consider the testimony of PW-6, Senior Scientific Officer, Question Documents Division, Forensic Science Laboratory, who has stated during his cross-examination that the fake currency notes examined by him were not of such type that any common person would be able to differentiate between the said note and real currency notes, it would not be wrong to presume that the appellant did not know that the notes possessed by him were fake. The provision of Section 489A is not intended to punish an unwary possessor or user and in the instant case, considering the conduct of the appellant, where he entered into an altercation with PW-3 regarding the question of genuineness of the notes seized from him, as well as considering the fact that the seized notes were not of a kind that could be easily distinguished from real note, it appears that the contention of the appellant which he made during his examination under Section 313 of the Code of Criminal Procedure, 1973 that he did not know that the notes possessed by him to be fake notes, this court is of the considered opinion that the prosecution has failed to bring on record any materials to show that the appellant knew or having reasons to believe the currency notes seized from him are forged or counterfeit.

25. Under abovementioned circumstances, this court is of the considered opinion that the prosecution side has failed to prove the essential ingredient regarding the *mens rea* of the present appellant necessary to constitute an

offence under Section 489B of the Indian Penal Code. This court, therefore, is of the considered opinion that the order of conviction and sentence imposed on the appellant by the impugned judgment is liable to be set aside.

26. The impugned judgment is accordingly set aside.

27. The appellant is set at liberty forthwith.

28. Let, the trial court record be sent back along with a copy of this judgment.

JUDGE

Comparing Assistant