

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Cr1.A.No. 17/2005

% Date of Decision: 4th March, 2010

LALOO @ LALOO GHAI Appellant
! Through: Mr. Yogendra Singh, Adv.

versus

\$ STATE Respondent
^ Through: Mr. Jaideep Malik, APP

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: V.K. JAIN, J. (Oral)

1. This is an appeal against the judgment dated 9th November 2004 and Order on Sentence dated 19th November 2004 whereby the appellant was convicted under Section 120B, 489D and 489C of IPC and was sentenced to undergo R.I. for four years and to pay fine of Rs.1,000/- or to undergo R.I. for two months in default under Section 120B of IPC, R.I.

for four years and to pay fine of Rs.1,000/- or to undergo R.I. for two months in default under Section 489C of IPC and was further sentenced to undergo R.I. for 6 years and to pay fine of Rs.1,000/- or to undergo R.I. for two months in default under Section 489D of IPC.

2. On 19th December 2001, an information was received by Police Control Room that one person carrying counterfeit currency notes in the denomination of Rs.100/-, had been apprehended near Sector 12 of R.K. Puram. The information was recorded vide DD No. 26A. On receipt of copy of DD, Investigating Officer of this case went to the spot where he recorded the statement of Constable Chander Pal. The complainant Const. Chander Pal alleged that on that day, he was going to Paschim Vihar in a bus plying at Route No. 442. When the bus reached Bikaji Cama Place, one person, whose name later on came to be known as Sanju Singh Gaud, handed over a 100 Rupee note to the Conductor to purchase the ticket. When the Conductor, on checking the note, told him that it did not appear to be genuine, that person became nervous and tried to get down from the bus. He was apprehended with the help of a commuter Anil Kumar and on

his search, 24 currency notes, which appear to be counterfeit currency, were recovered from his possession. On interrogation of Sanju Singh Gaud, he named two persons including the appellant Laloo residing in his neighbourhood. He took the police to the place of the appellant Laloo and on the search of Laloo, 9 counterfeit currency notes in the denomination of Rs.100/- were recovered from his possession.

3. The prosecution examined as many as eight witnesses in support of its case. The appellant Laloo examined himself as a witness.

4. PW-5 SI Arun Kumar has stated that he interrogated the accused Sanju Singh Gaud after his arrest on 19th February 2001. He led the police party first to the place of Subhash, co-accused of the appellant. When Subhash was interrogated, he took them to the Jhuggi of the appellant Laloo. On his search 10 currency notes in the denomination of Rs.100/- were recovered from the pocket of his shirt and were seized vide memo Ex.PW 5/6. He further stated that on interrogation, the appellant disclosed that the currency notes were being prepared by his co-accused Brij Pal on a Xerox machine. The appellant Laloo then took them to the place of Brij Pal, where

one Xerox machine was found lying in his house underneath a cot. He has identified the photocopy machine as Ex.P-56. 11 currency notes in the denomination of Rs.100/- were found from the printer side of the machine along with white paper, which appear to be identical to the paper used for currency notes. These currency notes as well as Xerox machine were seized by him. He has identified Ex.P-35 to P-43 as the currency notes which were recovered from the possession of the appellant Laloo.

5. PW-6 is a Director of Prime Pat Communications Pvt. Ltd., Naraina Industrial Area, New Delhi. He has stated that one Scanner and Copier were sold by him vide receipts Ex.PW6/1 and 6/2. He identified Ex.P-56 as the machine, which was sold by him, vide these receipts.

6. PW-3 Sh. Harsh Vardhan is the Senior Scientific Assistant of FSL, who examined counterfeit currency notes seized in this case and opined that the same were counterfeit currency. His report in this regard is Ex.PW 3/1. He also opined that these currency notes appear to be coloured photocopy of genuine currency notes. He also identified Ex.P-1 to P-54 as the currency notes which were examined by him.

7. In his statement under Section 313 of Cr.P.C., the appellant denied the recovery of currency notes from his possession. He also denied having taken the police to the place of Brij Pal and stated that he has been falsely implicated in this case.

8. When the appellant came in the witness box as DW-1, he stated that he was an autorickshaw driver and on 20th February 2001, some police officials came to the stand where he used to park his autorickshaw and asked other autorickshaw drivers to send him to Police Station R.K. Puram and meet Arun Kumar. When he went to the Police Station and met Arun Kumar, three persons present in the Police Station were shown to him and he was asked as to whether he knew them. He however replied in the negative. Thereafter, he was falsely involved in this case.

9. Testimony of PW-5 SI Arun Kumar, which I see no reason to disbelieve shows that the appellant was found in possession of currency notes Ex. P-35 to P-43. The testimony of PW-3 Sh. Harsh Vardhan coupled with this report Ex.PW 3/1 shows that these notes were counterfeit currency. There is no evidence to rebut the testimony given by PW-3 and in fact this is not the

case of the appellant that the currency notes alleged to have been recovered from his possession were genuine currency.

10. In order to succeed in a charge under Section 489-C of IPC, the prosecution is required to prove the following:

- (i) that the currency note or bank note in question was forged or counterfeit;
- (ii) that the accused was in possession of it;
- (iii) that he at the time of his possession knew, or had reason to believe, that it was forged or counterfeit;
- (iv) that he intended to use it as genuine or that it might be used as genuine.

11. This is not the case of the appellant that though the currency notes Ex. P-35 to P-43 were found in his possession, he did not know and did not have any reason to believe the same to be counterfeit currency. This is also not his case that the currency notes were given to him by someone and he had accepted the same without suspecting them to be counterfeit currency. His case is that these currency notes were not at all recovered from his possession.

12. If a person found in possession of counterfeit currency, instead of giving any explanation for such counterfeit currency

possession, chooses to altogether deny the possession and such a defence is found to be false, the inevitable inference is that he had reasons to believe that the currency notes recovered from him were counterfeit currency and that precisely was the reason why he is denying the recovery from him. The knowledge and intention are state of mind which cannot be proved by direct evidence and have to be inferred from the attending circumstances. Possession of counterfeit currency, coupled with denial of possession and no attempt to explain as to how the appellant came into possession of such currency is sufficient to infer the requisite knowledge and intention on the part of the appellant. No doubt, the fundamental principles of criminal jurisprudence is that it is for the prosecution to prove all the ingredients of the offence alleged to have been committed by the accused, but, when the prosecution has proved all that it could have and the circumstances proved by it point unerringly towards the guilt of the accused, in that case if there exists a fact which is only in the knowledge of the accused and that fact is compatible with his innocence, it is for the accused to bring such a fact in the notice of the court. In '**Gajjan Singh vs. State of**

Madhya Pradesh', AIR 1965 SC 1921, the accused, who was travelling in a separate truck, was present when his truck in possession of the driver was checked and forged permit produced by his driver was seized. The conviction of the accused under Section 471 read with Section 474 of Indian Penal Code was upheld. I, therefore, hold that the prosecution has already been able to prove that the appellant knew or had reasons to believe that the currency notes found in his possession were counterfeit currency.

13. In order to succeed in charge under Section 489D of IPC, the prosecution must prove the following:

- (i) That the thing in question was machinery, instrument or material necessary for or used in forging or counterfeiting a currency-note or bank-note.
- (ii) That the accused made, or performed, some part of the process of making the machinery, instrument, or material, in question; that he bought, sold, or disposed of it or that it in his possession.
- (iii) That the object of the accused was that such machinery, instrument, or material might be used

for the purpose of forging or counterfeit currency-note or bank-notes; or that he knew, or had reason to believe, that the same was intended to be used for such purpose.

14. In the present case, there is absolutely no evidence that the appellant Laloo had made or performed any part of the process of making any machinery, instrument or material for the purpose of being used or knowing or having reason to believe that it is intended to be used for forging or counterfeiting any currency note or bank note. The testimony of PW-3 Sh. Harsh Vardhan does not show as to who had purchased the photocopier, found in the house of Brij Pal, co-accused of the appellant Laloo. The photocopier found in the house of Brij Pal cannot be said to be in possession of appellant Laloo. There is no evidence of the appellant Laloo having photocopied the counterfeit currency notes or having helped Brij Pal or any other person in preparing coloured photocopy of currency notes. There is no evidence of the photocopier found in the house of Brij Pal having been purchased by the appellant. There is no evidence of paper lying in the house of Brij Pal having been purchased by the

appellant. Therefore, there is absolutely no evidence against the appellant Laloo to prove the substantive offence punishable under Section 489D of IPC.

15. As regards charge under Section 120B of IPC, the order of the trial court does not show whether the appellant has been convicted under Section 120B of IPC read with Section 489D of IPC or under Section 120B read with Section 489C of IPC or under Section 120B read with Section 489C and 489D of IPC. The only evidence against the appellant Laloo, besides recovery of counterfeit currency from him, is that he led the police to the place of Brij Pal where a coloured photocopier was found and some counterfeit currency notes were recovered from the printer part of the photocopier along with some paper which appeared to be like the paper used for printing currency notes. The evidence produced by the prosecution at best proves that the appellant knew that Brij Pal was making counterfeit currency in his house in Vasant Vihar. If the appellant had been procuring the counterfeit currency from Brij Pal as is evident from his taking the police to the place of Brij Pal, where coloured photocopier along with counterfeit currency and some paper was found, that by itself is not sufficient to

prove his involvement in the making of counterfeit currency using a coloured photocopier for this purpose. In fact according to PW-5, when he interrogated the appellant, he told him that currency notes were being prepared by Brij Pal with the help of a Xerox machine. Therefore, the offence under Section 120B of IPC read with Section 489D thereof is also not made out against the appellant.

16. In order to make out an offence under Section 489B of IPC the prosecution must prove the following:

- (i) that the currency-note or bank-note in question was forged or counterfeit.
- (ii) that the accused sold to, or bought or received from, some person, or trafficked in, or used as genuine, such currency-note or bank-note.
- (iii) that when he did so he knew or had reason to believe that it was forged or counterfeit.

17. The act of the accused in disclosing the name of Brij Pal to the police and leading the police party to the house of Brij Pal where coloured photocopier along with counterfeit currency and paper were found, when seen in the light of recovery of some counterfeit currency notes from his possession, leaves no

reasonable doubt that the appellant had bought or received counterfeit currency from Brij Pal knowing or having reason to believe the same to be forged or counterfeit and, therefore, the offence under Section 489B of IPC is clearly made out against him. Since the offence under Section 489D and 489B carry identical punishments, it is permissible for the Court to convict him under Section 489B of IPC without his specifically having been charged for this offence, when all the necessary ingredients constituting offence punishable under Section 489B of IPC has been duly conveyed to him in the charges that were framed against him.

18. For the reasons given in the preceding paragraphs, the appellant is convicted under Section 489B and 489C of IPC.

19. It transpired during the course of arguments that the appellant has already spent about four and a half years in judicial custody including the remission earned by him during the period he was in jail. Taking into consideration all the facts and circumstances of the case, the appellant is sentenced to undergo R.I. for the period already spent by him in custody under Section 489-B and 489-C of IPC. He is also sentenced to pay fine of Rs.1,000/- each or to undergo S.I. for two

months each in default under Section 489C and 489B of IPC. The appellant is granted two weeks' time to deposit the amount of fine with the trial court. In the event of his failure to pay the fine, he shall surrender before the trial court within two weeks from today to undergo the sentence awarded to him in default of payment of fine and compliance.

Crl.A. 17/2005 stands disposed of.

One copy of this order be sent to trial court for information.

(V.K.JAIN)
JUDGE

MARCH 04, 2010

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