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

+ CRL.A. 163/2005

% *Judgment dated 02.12.2013*

MOHD.ISRAR Appellant
Through : Mr.Pankaj Verma, Amicus Curiae
versus

STATE NCT DELHI Respondent
Through : Mr.Feroz Khan Ghazi, Adv.

+ CRL.A. 170/2005

PANNU KHAN @ HYDER KAHN Appellant
Through : Ms.Priyanka Kapoor, Amicus Curiae
versus

STATE Respondent
Through : Mr.Feroz Khan Ghazi, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. None is present on behalf of the appellants despite the matters having been called. Notice issued to the appellants has been received back unserved with the report that the appellants are not found at the given address. Accordingly, Mr.Pankaj Verma, Advocate, who is present in Court, is appointed as an Amicus Curiae on behalf of the appellant, Mohd. Israr, in CRL.A. 163/2005 and Ms.Priyanka Kapoor, Advocate, who is present in Court, is appointed as an Amicus Curiae on behalf of appellant, Pannu Khan @ Hyder Khan in CRL.A. 170/2005.
2. Since both the appeals arise out of the common judgment, they are being heard together and are being disposed of by a common judgment.
3. Present appeals have been filed by the appellants under Section 374

Cr.P.C. against the judgment dated 11.12.2005 and order on sentence dated 13.1.2005 whereby the appellants have been sentenced to undergo Rigorous Imprisonment for a period of three years for the offence punishable under Section 489C IPC. It was also directed that benefit of Section 428 Cr.P.C. would be given to the appellants.

4. The relevant facts, as noticed by the learned trial court, are as under:

“The case of the prosecution is that on 10.8.99 ASI Suresh Sharma along with HC Raju Yadav and other staff was present near Vikrant Hotel within the jurisdiction of PS Mukherjee Nagar for detection of Crime. At about 6.45 pm shouts were heard coming from the side of Ashok Kumar “Lassi Walla”. The police officials went towards the shop of Ashok Kumar and saw that both the accused persons Mohd. Israr and Banna Khan were trying to escape by starting a two wheeler scooter. Both the accused persons were overpowered by ASI Suresh Sharma with the help of other staff.

2. *It is further the case of the prosecution that Ashok Kumar “Lassi Walla” produced a counterfeit currency note of Rs.50 before ASI and made a statement that at about 6.45 pm both the accused persons had come to his shop. Accused Mohd. Israr asked for two tokens. Thereafter accused Mohd. Israr gave one 50/- rupees currency note to him and when he inspected that currency note carefully he suspected it to be counterfeit. He raised alarm and both the accused tried to escape on a two wheeler but were apprehended. The counterfeit currency note was sealed in pullanda with the seal of ‘SS’ and seized.*

3. *It is further the case of the prosecution that from the right pocket of pant of accused Mohd. Israr one currency note of Rs.500/-, two currency notes of Rs.100/- and one currency note of*

Rs.50/- all counterfeit were recovered which were also sealed with the seal of 'SS' in an envelope and seized. Similarly from accused Banna Khan one purse was recovered containing one currency note of Rs.500/- and one currency note of Rs.50/- both counterfeit were recovered which were also sealed in an envelope with the seal of 'SS' and seized.

4. ASI Suresh Sharma after recording the statement of Ashok Kumar made an endorsement on the same and got registered a case under Sec. 420/489B/489C/34 IPC. Accordingly, both the accused persons were arrested and during investigation Site Plan was prepared. While in custody both the accused persons made disclosure statements about the supplier of counterfeit currency notes but the supplier could not be arrested.

5. During investigation the counterfeit currency notes were sent to the Treasurer, RBI for examination and Treasurer reported that all the currency notes were forged/ counterfeit. Thereafter, currency notes recovered from accused persons were sent to Bank Note Press, Devas (MP) for examination but the fake currency notes were not accepted by the Press. Thereafter, the fake currency notes were sent to Currency Note Press, Nasik and Currency Note Press, Nasik confirmed that the currency notes were counterfeit.

6. After completion of investigation the Final Report was prepared and filed in the Court of MM who after completing formalities committed the same to the Court of Sessions for trial.

7. During pendency of the trial accused Bannu Khan absconded and was declared PO.

10. The prosecution examined nine witnesses in support of the

case. The main witness/ complainant Ashok Kumar was examined as PW2.”

5. Learned *Amicus Curiae* appearing on behalf of the appellants submit the judgment and order on sentence passed by the learned trial court is based on surmises and conjectures. *Amicus curiae* further contend that that the appellants have been falsely implicated in this case. It is next submitted that the learned trial court has failed to appreciate that no fake currency notes were recovered from the appellants and the same were planted by the police, which is apparent from the fact that no independent witness was associated at the time of recovery. In fact the only independent witness in this case PW-2, Ashok Kumar, has turned hostile and, thus, there is no evidence to convict the appellants. Learned *Amicus Curiae* further submit that PW-2, Ashok Kumar, has clearly stated in his testimony that the appellants were not the persons, who had given him fake currency notes and as such some other persons may have been involved and therefore in the absence of verification the appellants could not have been convicted. It is also contended that PW-2 has also testified that money was not exchanged in his presence and he was not present at the shop and as such he could not identify them. It is further contended that the statement of PW-2 leaves no room for doubt that the appellants are innocent as nothing was recovered from the possession of the appellants and they have been falsely implicated in this case.
6. Learned counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. It is submitted that the evidence of a hostile witness can also be considered provided that portion of the statement is trustworthy and reliable. Counsel next submits that the appellants were apprehended at the spot at the shop of PW-2, Ashok

Kumar. Although PW-2 has turned hostile yet he has admitted his signatures on the statement, PW-2/A and seizure memos, Ex.PW-2/B and Ex.PW-2/C. Counsel next contends that there is no bar in relying on the testimony of police witnesses provided it is trustworthy and reliable.

7. I have heard learned counsel for the parties and considered their rival submissions. No doubt PW-2 turned hostile and did not support the case of the prosecution, however, he admitted his signatures on the statement, Exhibit PW-2/A, and seizure memos, Exhibit PW-2/B and Exhibit PW-2/C. PW-2 has also testified that he was present at his shop when two customers came and his servant told him that Rs.50/- currency note received by him appeared to be fake. Doubting its genuineness, his servant called the police. During cross-examination PW-2 has denied that the appellants had come to his shop or any fake currency notes were handed over by them.
8. ASI Suresh Sharma, PW-9, has testified that on 10.8.1999, he was posted as ASI in Special Team Crime Branch, Adarsh Nagar. He along with ASI Bakhtawar Singh, HC Raju Yadav and HC Narender were present near Vikrant Hotel, Kingsway Camp. At about 6.45 pm, they heard the shout of 'PAKRO-PAKRO' coming from the side of Ashok Lassiwalla. They saw that both the accused persons were trying to run away on a two wheeler scooter. PW-9 apprehended both of them with the help of the staff. At the same time Ashok Lassiwalla came there and produced a currency note of Rs.50/-.
9. PW-9 recorded the statement of Ashok Kumar, Ex.PW2/A. PW-9 has also testified with regard to search of the appellants and the recoveries which were effected have been duly proved by him. The fake currency notes were also sent to the Director, Chief Currency Officer, RBI, vide application, Exhibit PW-9/C and the fake currency notes were duly

identified by him. This witness has also identified the number of the scooter but he has admitted that he did not ask any shop owner to join the investigation.

10. Evidence of PW-9 finds support from the evidence of PW-5, HC Raju Yadav. Although PW-2, Ashok Kumar, has turned hostile, but his testimony has been rightly relied upon by the trial court having regard to his identifying his signatures on the seizure memos.
11. It is settled principle of law that the testimony of hostile witness can be relied upon (See *Dev Raj v. State, Cr.A.116/2006*). It is also no longer *res integra* that the testimony of police witnesses should be examined cautiously and carefully and in case they are found to be reliable and trustworthy, it can be relied upon (See: *Govindaraju alias Govinda v. State By Srirampuram Police Station*, reported at (2012) 4 SCC 722). Taking into consideration the evidence placed on record, there is no room for doubt that the prosecution has been able to prove its case beyond any shadow of doubt against the appellants for the offence punishable under Section 489C IPC, however, having regard to the amount involved and also the fact that there was no previous conviction against the appellants, the order on sentence is modified to the period already undergone by the appellants.
12. Appeals stand disposed of in above terms. Bail bonds be cancelled and surety be discharged.
13. The fee of the learned Amicus Curiae shall be paid as per the Rules.

G.S.SISTANI, J

DECEMBER 02, 2013

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