

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.20 of 2015

Against the judgment of conviction, dated 20.06.2014, and order of sentenced dated 30.06.2014, passed by Mr. Anand Singh, Additional Sessions Judge, IV, East Champaran at Motihari, in Sessions Trial No. 351 of 2010/264 of 2012 arising out of Raxaul P.S. Case No. 142 of 2009

1. Azad Alam son of Maqbool Mian, Resident of Village- Lipani Parwanipur, P.S.- Kalaya District- Bara, Nepal Appellant

Versus

1. The State of Bihar Respondent

Appearance :

For the Appellant : M/S Sunil Kumar No. III & Rajesh Kumar, Advts.

For the Respondent : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

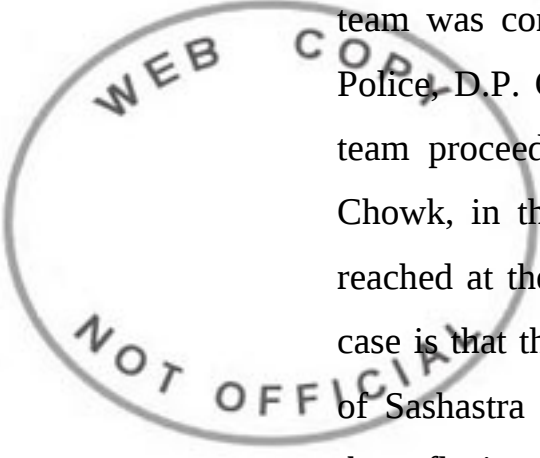
ORAL JUDGMENT

Date: 27-11-2015

Heard the learned counsel for the petitioner and the State.

2. The appellant has been convicted under Section 489B/34 of the Penal Code and sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.10,000/- and in default of which to undergo simple imprisonment for six months. The appellant has, further, been convicted under Section 489C of the Penal Code and sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.5,000/- and in default of which to undergo simple imprisonment for three months. However, it has been ordered that both the sentences shall run currently.

3. The prosecution case, as alleged in the first information report by the informant Lokesh Singh, the Assistant Commandant, Sashastra Seema Bal, Headquarter, Patna, lodging therein that on 08.09.2009 in the morning at about 06.20 A.M. the searching party have arrested two persons on Yamaha motorcycle, model RX100, no. 5 PA 4571 with 398 counterfeit currency notes of Rs.100/- denomination. The, further, case is that the informant has received a secret information that two persons were coming on read colour Yamaha motorcycle bearing model RX100, no. 5 PA 4571 and they are to come with huge amount of

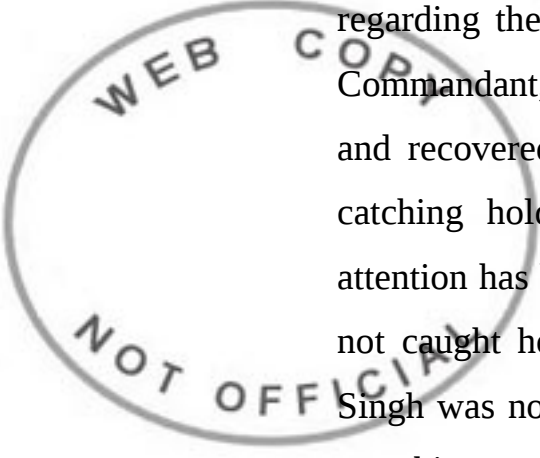


counterfeit currency notes in India and they are going to transfer the forged/counterfeit currency notes at Bata Chowk. On this information a team was constituted to raid under the leadership of Sub Inspector of Police, D.P. Chandra, to raid at Bata Chowk, Raxaul, Motihari and the team proceeded. When the Sashastra Seema Bal team reached Bata Chowk, in the meantime, two persons on alleged Yamaha motorcycle reached at the old Bus Stand and remained waiting there. The, further, case is that the said two persons on motorcycle on doubted the presence of Sashastra Seema Bal, tried to flee away on motorcycle, but, seeing them fleeing away the force of Sashastra Seema Bal tried to stop them and, then, the Sashastra Seema Bal party has to chase to catch hold of them and after catching hold of two persons, a raid was conducted and on search of their persons as well as motorcycle and 398 notes of Rs.100/- denomination, amounting to forged/counterfeit currency notes of Rs.39800/- were recovered from the red coloured Yamaha motorcycle and both the persons were taken into custody. It is, further, alleged that during inquiry both the persons disclosed their names as Shyam Kumar Sah and Azad Alam. The, further, case of the prosecution that on enquiry Shyam Kumar Sah disclosed that the counterfeit currency notes were obtained from Zubaid Alam from Ghantaghar near Beerganj and was to deliver to one Shatrughan Sah Sonar of Sonapatti, at Bata Chowk, Raxaul. The, further, case is that the said Shyam Kumar Sah also confessed that for keeping the same counterfeit currency notes and taking it he is personally responsible. However, he also disclosed that the other person Azad Alam is his associates and used to help him in trafficking the counterfeit currency notes and Azad Alam also confessed confirming the statement of Shyam Kumar Sah and so the counterfeit currency notes, 398 in number of Rs.100/- denomination and the said Yamaha motorcycle from which the recovery was made were seized along with Rs.640/- Nepali notes and were handed over to the Officer-in-Charge of

Raxaul Police Station, Motihari, for proper action.

4. On the written report of the informant the first information report drawn and investigation proceeded by the investigating officer, P.W. 7, after instituting Raxaul P.S. Case No. 142 of 2009. He recorded the confessional statement of Azad Alam and Shyam Kumar Sah, inspected the place of occurrence, which is Bata Chowk at Raxaul on National Highway 23A, recorded the statement of the informant and other witnesses, obtained the seizure list and entered into the case diary and further after obtaining the supervision note of the Deputy Superintendent of Police, sent the counterfeit currency notes, seized, to the Forensic Science Laboratory, Patna, for examination and after investigation submitted the charge sheet on which the cognizance taken, case committed to the Court of sessions and after the commitment, charges were framed and trial proceeded.

5. During the trial eight witnesses were examined on behalf of the prosecution. P.W. 1 is Dilip Singh, Head Constable in Sashastra Seema Bal and has supported the prosecution case that the Commandant received the information and, then, constituted a raiding party under the Sub Inspector of Police, D.P. Chandra and others and, thereafter, they reached Bata Chowk and there found two persons standing near motorcycle and on enquiry they disclosed that motorcycle belonged to them and, thereafter, tried to flee away and were caught hold and from the dicky of the said motorcycle, counterfeit currency notes were recovered and, thereafter, the seizure list prepared. P.W. 2, Veer Bahadur Singh, and P.W. 3, Jitendra Pratap Singh, are also Constables of Sashastra Seema Bal before whom search was made. P.W. 4, Vinod Kumar Yadav, is also a Constable of 13 Bn. of Company. He has also supported the prosecution case regarding the information, received by the informant, Lokesh Kumar Singh, on which he constituted a team and the team raided and recovery was made from the motorcycle. P.W. 5, Dakeshwar



Prasad Chandra, is the Sub Inspector of Police, Sashastra Seema Bal Camp, Pipra Kothi, and he has also supported the prosecution case regarding the information, received by Lokesh Kumar Singh, Assistant Commandant, and, thereafter, constitution of a raiding team which raided and recovered the counterfeit currency notes from the motorcycle and catching hold of the two persons. However, in cross-examination attention has been drawn to paragraph 4 of the statement that P.W. 5 has not caught hold of any of accused and has stated that Lokesh Kumar Singh was not member of the raiding party and he had not come before searching or conducting search of the accused, hence, has supported the prosecution case regarding the raid having been conducted under his authority and recovery was made. P.W. 6 is the informant, Lokesh Kumar Singh, Assistant Commandant, Sashastra Seema Bal, Headquarter, Patna, and has stated that on receiving the secret information about trafficking of counterfeit currency notes and on the basis of the said information he constituted a team under Sub Inspector of Police, D.P. Chandra, P.W. 5, to conduct the raid at Bata Chowk, Raxaul. In his cross-examination he specifically stated that the accused were not caught hold before him nor any recovery was made from their possessions. However, from his examination-in-chief, itself, it is apparent that on receiving information, constituted a team and did not participate and the accused persons were handed over to the Police Station. However, P.Ws. 5 and 6 both stated that no seized article is presented in Court, hence, the seized article, the counterfeit currency notes, has not been produced before any Court. Though P.W. 8 has proved the said counterfeit currency notes in 384 pieces, which has been marked as Exhibits 1 to 1/383, has deposed that he has brought the seized counterfeit currency notes, seized, from the malkhana in connection with Raxaul P.S. Case No. 142 of 2009. The said counterfeit currency notes were kept in envelop at Police Station mentioned the police station case

number (Raxaul P.S. Case No. 142 of 2009). He has, further, stated that the notes which have brought have been received from the malkhana of the Police Station, however, stated that there is no mention of any note or seal. However, prosecution has proved the Forensic Science Laboratory report which mentions the receipt of Memo No. 61, dated 11.02.2010, a parcel by Special Messenger received in Forensic Science Laboratory in connection with Raxaul P.S. Case No. 142 of 2009 for offence under Sections 489A, 489B and 489C of the Penal Code. It mentions that corresponding with the seal impression forwarded, it contained seven sealed paper envelopes, each containing two numbers of notes of Rs.100/- denomination, marked as Exhibits A, B, C, D, E, F and G respectively, which has been marked as Exhibits A1 to A2, B1 to B2, C1 to C2, D1 to D2, E1 to E2, F1 to F2 and G1 to G2 and on physical examination conducted the marked notes are found not genuine Indian currency notes, but, counterfeit currency notes.

6. Taking into consideration, the entire evidence the trial Court convicted the appellant and sentenced as mentioned above.

7. The learned counsel for the appellant challenged the order of conviction and sentence recorded by the trial Court. It has been contended that nothing has been recovered from the possession of sole appellant, Azad Alam, and the prosecution case is that two persons were apprehended on the motorcycle and from the motorcycle, the fake currency notes were recovered and the two persons who apprehended disclosed their names as Shyam Kumar Sah and Azad Alam. It has, further, been contended that in the first information report, itself, it is mentioned that Shyam Kumar Sah has disclosed that he is totally responsible for the currency notes and he is personally responsible for the same. It has, further, been contended that the motorcycle does not belong to him and it can not be held that he was in conscious possession of the counterfeit notes. It has, further, been contended that the informant has

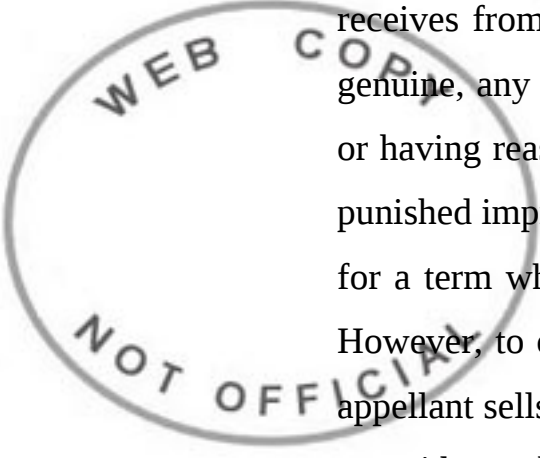
stated that nothing was recovered before him and P.W. 5 stated that he had not caught hold of the appellant.

8. However, the learned counsel for the State submits that Lokesh Kumar Singh, P.W. 6, was the informant, but, he was not member of the raiding party. He only constituted the team for raid on receiving information and, further, P.W. 5, under whose guidance the raid was conducted has not caught hold of the appellant that does not make his evidence unacceptable as he was the member of the raiding party and if there is other members who caught hold of the appellant, the appellant can not evade the liability.

9. However, having regard to the respective submissions, the question for consideration whether the prosecution has been able to prove the charges beyond reasonable doubt.

10. However, taking into consideration the prosecution case and the evidences of the witnesses, the prosecution case is that on secret information a team was constituted and was sent for raid and, thereafter, two persons apprehended with motorcycle and when they smelt that Sashastra Seema Bal was there they tried to flee. Thereafter, on chase they have been caught hold by the Sashastra Seema Bal and the raiding party. However, it has come in evidence that the raid was conducted, the article seized, seizure list prepared and the investigating officer has deposed that during investigation he sent the sized counterfeit currency notes to Forensic Science Laboratory for examination, a report has been received that the notes, received for examination, were counterfeit currency notes. The said report has been marked as Exhibit 7. The counterfeit currency notes has been produced in Court and marked as Exhibits 1 to 1/384.

11. Hence, taking into consideration the evidence the only evidence is the recovery of 398 pieces of counterfeit currency notes of hundred rupees denomination from the possession of the appellant along



with co-accused, Shyam Kumar Sah, who was on motorcycle. However, Section 489B of the Penal Code provides that whoever sells to or buys or receives from, any other person, or otherwise traffics in shall or uses as genuine, any forged or counterfeit currency notes or bank note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and so also be liable to fine. However, to constitute the Section 489B there must be evidence that the appellant sells, buys or receives from any other person. However, there is no evidence that the appellant sold, buy, received or otherwise trafficking or use as genuine the counterfeit currency notes. However, there is no evidence that appellant sell, buy or traffic in or use the counterfeit currency notes as genuine, however, the only evidence is the possession of counterfeit notes from the motorcycle and there is no evidence of sell, buy and trafficking using the counterfeit notes as genuine. The evidence that the accused persons disclosed or confessed that he has taken the counterfeit notes for delivery, received from Subaid Alam of Ghantaghar to deliver the same to Shatrughan Sah Sonhar of Sonapatti is only a confession by the co-accused before the police officer. However, any confession made by a co-accused to a police officer is not admissible in evidence as per Sections 25 and 26 of the Evidence Act and except that there is no evidence for using the currency notes and only evidence is the possession of the same, hence, the offence under Section 489B of the Penal Code is not sustainable in law, it is hereby **set aside**.

12. So far the offence under Section 489C of the Penal Code is concerned, there is evidence of possession of forged or counterfeit currency notes from the possession of the appellant. However, Section 489C of the Penal Code provides that whoever has in his possession any forged or counterfeit currency notes or bank note, knowing or having reason to believe the same to be forged or counterfeit and intending to use

the same as genuine or that it may be used as genuine shall be punished with imprisonment of either description. However, to convict a person under Section 489C of the Penal Code only possession of counterfeit notes is no offence unless it is proved that he had the knowledge or having reason to believe the same to be forged counterfeit notes. However, the evidence that on seeing the Sashastra Seema Bal raiding party the accused persons started fleeing away and then they were chased and caught and this indicates that the accused persons had knowledge about the same to be forged or counterfeit notes. This fact also must have been coupled with the intention to use the same as genuine.

13. Hence, on these facts it may be presumed that there was reason to believe that the same was forged and they were intending to use the same. In view of the facts that accused persons started fleeing away on seeing the Sashastra Seema Bal, hence, the conviction recorded under Section 489C of the Penal Code is **maintained**.

14. However, having regard to the fact that the appellant is in jail since 09.09.2007 and has remained in jail for more than about six years, hence, the ends of justice shall be made by convicting him for period already undergone.

15. With this modification, the appeal is allowed in part.

16. Since, the appellant is in jail, he is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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