In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.S-1060-SB of 2004 (O&M)

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Date of decision:16.9.2015

Anil Kumar

...Appellant

v.

State of Haryana

...Respondent

....

(2) Criminal Appeal No.S-1145 of 2004 (O&M)

.....

Naseem Ahmad and another

...Appellants

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sanjay Bansal, Senior Advocate with Mr. Parvesh K. Saini, Advocate for the appellant in Criminal Appeal No.S-1060-SB of 2004.

Mr. Subhash Godara, Advocate for Mr. S.S. Dinarpur, Advocate for appellants in Cr. Appeal No.S-1145-SB of 2004.

Mr. Anmol Malik, Assistant Advocate General, Haryana for the respondent-State.

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Inderjit Singh, J.

This judgment will dispose of above two criminal appeals as these arise out of the same judgment of conviction and the order of sentence dated 15.5.2004, whereby accused/appellant-Shamshad Ali has been convicted for the offences under Sections 489-B and 489-C IPC, whereas accused/appellants Anil Kumar and Naseem Ahmad have been held guilty for the offence under Section 489-C IPC. Accused/appellant Shamshad Ali has been sentenced to undergo rigorous imprisonment for ten years for the offence under Section 489-B IPC. Appellants-Shamshad, Anil Kumar and Naseem Ahmad have been sentenced to undergo rigorous imprisonment for five years each and to pay a fine of ₹2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for one year each for the offence under Section 489-C IPC. The sentence imposed upon Shamshad Ali for both the offences has been ordered to run concurrently.

The brief facts of the prosecution case as given in the statement Ex.PB are that the complainant is resident of Khizrabad and is running a Karyana shop near Bus stand Khizrabad. On the day of occurrence, he was selling articles in his shop. Suresh Kumar Walia came to his shop for purchasing goods. In the meantime, one young boy came to him for purchasing goods, who purchased the goods and handed over two currency notes of ₹100/- each. On checking the said notes, he doubted it being fake. They nabbed that person, who on asking, disclosed his name as Shamshad Ali. Then he and Suresh Kumar were in the process to Police Station, the Police met them and Shamshad Ali along with fake currency notes of ₹200/- of the denomination of ₹100/- each bearing same number were handed over to the Police, which were taken into Police possession by preparing memo

Ex.PE. Upon this information, FIR No.43 dated 17.5.2001 for the offences under Sections 489-B, 489-C and 420 IPC was registered.

During interrogation, Shamshad Ali told that he is a labourer on the brick kiln owned by Ajinder Pal and is working as Mason and Anil Kumar is a Clerk. He stated that about 4/5 days earlier Naseem and Anil Kumar took ₹800/- counterfeit notes of ₹100/- denomination each from the owner of the stone crusher and gave against half of the money to him for being circulated in the market. He had given ₹200/- to the owner of the grocery shop and ₹100/- had been recovered from him. That the remaining notes of ₹500/- had been kept concealed by him at his residence and no body knew about it. Ajinder Pal, Naseem and Anil Kumar were in possession of forged notes. Then the police party went to that brick kiln and apprehended Anil Kumar from whose possession one currency note was recovered and from Naseem one currency note was recovered. Both these notes were taken into possession by affixing seal `BR'. The accused were arrested. Notes recovered from the accused were sent to FSL where the same were tested by Gulshan Rai, Assistant Director, FSL and he found the notes to be counterfeit. After necessary investigation, the challan was presented in Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused-appellants framed charges for the offences under Sections 489-B and 489-C IPC, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 SI/SHO

Chhattar Pal Singh, who deposed that he prepared report under Section 173 Cr.P.C. PW-2 Gulshan Rai, Assistant Director, FSL, Madhuban, mainly deposed in this case that he examined five currency notes of denomination of ₹100/-, which were marked by him as Q.1 to Q.5 and report regarding counterfeit notes is Ex.PA. Counterfeit currency notes are Ex.P.1 to Ex.P.5. After examination, he was of the opinion that the security features, which are incorporated in the genuine currency notes of ₹100/- denomination are not observed in these five currency notes, which are marked as Q.1 to Q.5 . Hence, these currency notes are not genuine currency notes. A suggestion was given that genuineness of Ex.P.1 to Ex.P.5 cannot be ascertained by a mere looking with naked eye, which the witness denied. PW-3 HC Balbir Singh mainly deposed regarding recording of the formal FIR Ex.PC. He also tendered in evidence his affidavit Ex.PD. PW-4 Vipin Garg-complainant deposed as per prosecution version and stated that a customer came to his shop and he told his name as Shamshad Khan. He inquired for the rates of the goods and after purchasing Karyana articles worth ₹150/- and gave two notes of ₹100/- of denomination each. PW-5 Suresh Kumar was also there. After satisfying himself that both currency notes were of the same number Ex.P.1 and P.2 and are the same currency notes, which were given to him by said Shamshad Khan, he got recorded his statement Ex.PB to the Police. The currency notes were taken in the Police possession vide recovery memo Ex.PE which bears his signatures. He also cannot recognize the said Shamshad in the Court out of the accused present in the Court. He also stated that personal search of Shamshad was not conducted in his presence by the Police and one counterfeit note was recovered from him. The witness was declared hostile and was cross-examined by the Public Prosecutor in which he denied that personal search of Shamshad Khan accused was conducted in his presence and one counterfeit note was recovered from him. The witness volunteered that later on the Police told him that one another counterfeit note was recovered from said Shamshad. He admitted his signatures on memo Ex.PF. Volunteered that signatures on this memo were procured in the Police Station and, at that time, the Police people told him that one fake currency note has been recovered from Shamshad in personal search. PW-5 Suresh Kumar deposed that after purchasing the goods, accused-Shamshad gave two notes of ₹100/- each to the shopkeeper. Both the notes were doubted and on comparison it revealed that both the currency notes were having same number. He and PW Vipin concluded that notes were counterfeit and they both took the accused Shamshad to the Police. Accused Shamshad and both the counterfeit notes were handed over to the Police. Ex.P.1 and Ex.P.2 are the same currency notes, which were handed over to the Police. The recovery memo Ex.PE bears his signatures. PW-6 ASI Birkha Ram deposed regarding the investigation of this case. He also deposed that on 18.5.2001, they went to Stone Crusher of Village Kandaiwala and also went to Saharanpur. Thereafter, they came back to Police Station and Shamshad Ali was taken out of the lock-up and was interrogated by the Investigating Officer. Accused Shamshad made a disclosure statement that the notes recovered from him were given to him by accused Naseem and Anil. Thereafter, on the same day, the accused was produced before the Court. Then on the same day, when the Police party reached at the Stone Crusher, accused Anil and Naseem tried to run away. They were apprehended with the help of other Police officials. On personal search of accused Anil, one counterfeit currency note was recovered. And another currency note was recovered from Naseem which was taken into Police Position after preparing sealed parcel. PW-6 Birkha Ram is the witness to the recovery as he was with the Police party. On personal search of accused Shamshad one another counterfeit currency note was recovered. PW-7 ASI Des Raj deposed that Vipin Garg of Khizrabad with Suresh Kumar came to him and produced accused Shamshad Ali. PW-8 HC Mehar Singh mainly deposed regarding handing over the special report. PW-9 EHC Ramesh Chand is a formal witness, who tendered in evidence his affidavit Ex.PL. PW-10 ASI Shiv Charan partly investigated the case. He recorded the statements of Balbir Singh and Ramesh Chand.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution, but they denied the correctness of the evidence and pleaded themselves as innocent. They stated that no recovery was effected from them.

After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellants for the offences as mentioned above. Aggrieved against the judgment, the present appeals have been filed.

At the time of arguments, learned counsel for the appellants argued that firstly, PW-4 complainant had not identified accused Shamshad Ali, who gave him two counterfeit notes as per prosecution version. PW-4 has been declared hostile and when confronted with his statement by the Public Prosecutor, he denied regarding recovery of one currency note by the Police when they handed over the accused to the Police party. Learned counsel for the appellants further argued that PW-5 also no where says that one more currency note was recovered from the personal search of accused-Shamshad Ali. Learned counsel for the appellants further argued that Ex.PG is a confessional statement made before the Police, which is inadmissible in evidence. Learned counsel for the appellants further argued that when the recovery was effected from Anil Kumar and Naseem Ahmed, no independent persons were joined though they were available for the purpose of raid and were also available at the stone crusher nor independent witness was got joined by the Police party earlier as they were specifically going for the raid. Learned counsel for the appellants argued that in so many documents there is cuttings regarding the wording of the seal, which have been made to `DR' from `BR' and these are not initialed which creates a reasonable doubt in the prosecution version. Learned counsel for the appellants further argued that the currency notes which are in the file on the face of it cannot be held as fake currency notes and a layman cannot come to know that these are fake notes, only expert can tell that these are fake currency notes as these are having no security features which cannot be known by an ordinary person. Therefore, he argued that a reasonable doubt exists in the prosecution case and benefit of doubt should go to the accused and the appeals should be allowed and the accused-appellants should be acquitted.

On the other hand, learned Assistant Advocate General, Haryana, appearing for the respondent-State argued that the prosecution case has been duly proved by the PWs. The currency notes were found fake by the Police which have been duly proved by the expert witness. Therefore, he argued that there are no material contradictions or discrepancies in the statements of the witnesses and there being no merit in the appeals, these should be dismissed.

I have heard learned counsel for the appellants and learned Assistant Advocate General, Haryana appearing for the respondent-State and have gone through the record.

First of all, I have seen these currency notes which are available on the file. With a naked eye a layman cannot come to know that these are fake currency notes. Only expert can tell that these are fake currency notes. The accused are simpleton persons and they on seeing the currency notes cannot come to know that these are fake currency notes.

As regards their knowledge that these are fake currency notes and they have been intentionally keeping these currency notes and have used by knowing that these are fake currency notes, the only evidence is Ex.PG, which is a confessional statement made by accused-Shamshad Ali before the Police. Any confessional statement made by the accused before the Police is inadmissible evidence as per law. Therefore, this document

Ex.PG cannot be read into evidence. If this evidence goes, then there is nothing on the record to prove the *mens rea* of the accused even if it is taken that the currency notes recovered from the accused i.e. one note from Anil Kumar, one currency note from Naseem and three currency notes recovered from Shamshad Ali, even then there is no cogent evidence on record that they were knowing that these currency notes were counterfeit and fake.

Secondly, I find that PW-4 complainant in the examination-in-chief has not deposed that he identified the accused in the Court which creates a reasonable doubt in the prosecution version. He had not deposed that when the accused were produced before the Police, then search was made and another counterfeit currency note was recovered which was taken into Police possession. Even after the cross-examination by the Public Prosecutor nothing has come out. Rather, this PW-4 has stated that signatures on memo Ex.PF were procured by the Police in Police Station and the Police told him that one fake currency note has been recovered from Shamshad's personal search. Keeping in view the statement of PW-4, a reasonable doubt exists in the prosecution version. Further, I find that PW-4 has stated that Suresh PW-5 was there in connection with the repair of his tractor and he also came to his shop. PW-5 Suresh in cross-examination specifically stated that his village is 2 kms. away from Khizrabad, he did not get his tractor repaired on that day, which is a discrepancy in the statement of the witness and creates a doubt regarding the presence of accused Shamshad. PW-5 Suresh Kumar has also not stated in his statement whether currency notes from Shamshad were also recovered from the personal search in his presence which also creates a reasonable doubt in the prosecution version. Further from the documents on record, I find that Ex.PJ, the recovery memo, it is clear that the seal impression `DR' has been changed to `BR' later on by overwriting and there is no initial on those cuttings. Again Ex.PL is affidavit of EHC Ramesh Chand. Here also two seals have been mentioned one as `DR' and another as `BR' and there are also cuttings made on, but there is no initial on it. Similarly, there is overwriting on the date 14.6.2001, but there is no initial of the executant on that affidavit. Ex.PH is another recovery memo on which there is clear overwriting on the impression of the seal which is later on by overwriting has been made as `BR' from `DR' and there is again no initial on this overwriting. All these cuttings in the recovery memos as well as in the affidavit further create a reasonable doubt in the prosecution version and there is no explanation as to why these overwriting were made and when these were made and by whom?

As already discussed, the prosecution has to prove *mens rea*, but no cogent evidence has been produced on the record to show *mens rea* of the accused that they were knowing the fact that these currency notes were fake and were using the same. Even as per the prosecution version Shamshad Ali told the Police that these currency notes were given by the owner of the stone crusher, but there is nothing on the record regarding the owner of the stone crusher. Whether he was arrested or interrogated in this case? Otherwise also, as per statement of Shamshad Ali, he was given the currency notes of ₹800/-, but there is nothing where ₹500/- had gone.

Learned counsel for the appellants placed reliance on the judgment of the Hon'ble Supreme Court in Umashanker v. State of Chhattisgarh, 2001 (4) R.C.R. (Cr.) 444 (SC), in which the Hon'ble Supreme Court held that the recovery of counterfeit currency notes from accused not shown that the accused had knowledge or had reason to believe that currency notes were fake. It was held that *mens rea* is not proved and no offence is made out. It is also held that the provisions of Sections 489-B and 489-C are not meant to punish unwary possessors or users of counterfeit currency notes. The facts of this citation fully apply to the facts of these cases.

Further more, when the recovery was made by the Police from accused Anil Kumar and Naseem, the Police party had raided the stone crusher and they have the knowledge, at that time, that some counterfeit notes could be got recovered, but even then the Police party had neither joined any independent witness nor any attempt was made to join an independent witness from the stone crusher. So, recovery from Anil Kumar and Naseem is also doubtful. The benefit of a reasonable doubt is to be given to the accused.

Therefore, from the above discussion, I find that a reasonable doubt exists in the prosecution case and by giving benefit of doubt to the appellants, I find merit in the appeals filed by them. Therefore, the same are accepted. The appellants are acquitted of the charges as framed against them. The impugned judgment of conviction and the order of sentence are set aside.

As the sentence of the appellants has been suspended and they are on bail, their bail/surety bonds stand discharged.

September 16, 2015. **(Inderjit Singh)**
Judge

hsp