

In the High Court of Punjab and Haryana, at Chandigarh

1. Criminal Appeal No. S-2585-SB of 2009

Veena

... Appellant

Versus

State of Haryana

... Respondent

AND

2. Criminal Appeal No. S-2587-SB of 2009

Manmohan

... Appellant

Versus

State of Haryana

... Respondent

Date of Decision: 7.5.2015

CORAM: Hon'ble Mr. Justice Darshan Singh.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Ms. Kiran Bala Jain, Advocate
for the appellant (In Criminal Appeal
No. S-2585-SB of 2009).

Mr. Raman B. Garg, Advocate
Amicus Curiae for the appellant
(In Criminal Appeal No. S-2587-SB of 2009).

Mr. Rajiv Doon, Assistant Advocate
General, Haryana for the respondent.

Darshan Singh, J.

1. This judgment will dispose of Criminal Appeal No. S-2585-SB of 2009 titled as “Veena v. State of Haryana” and Criminal Appeal No. S-2587-SB of 2009 titled as “Manmohan v. State of Haryana” as both the appeals have arisen out of the same judgment dated 28.8.2009, vide which both the appellants were held guilty and convicted for the offence punishable under Section 489C of the Indian Penal Code, 1860

(hereinafter referred to as "IPC") and the order on the quantum of sentence of even date, vide which they were sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 5,000/- each. In default of payment of fine, they were further sentenced to undergo simple imprisonment for a period of six months each. To dictate order, facts are being taken from Criminal Appeal No. S-2585-SB of 2009.

2. In nutshell, the brief facts of the prosecution case are that on 25.4.2008, Inspector Baljit Singh along with his companion police officials, on the basis of the secret information, apprehended appellant-Manmohan and his nephew Sumit alias Guddu, who were informed to be using the fake currency notes as genuine to the petty shopkeepers of that area. On the personal search of appellant Manmohan, eight fake currency notes of the denomination of ₹ 500/- each were recovered, which were taken into possession vide recovery memo Ex.PB after keeping it in the sealed parcel. From the personal search of his nephew Sumit alias Guddu, four fake currency notes of the denomination of ₹ 500/- were recovered. The Investigating Officer sent a ruqa Ex.PM to the Police Station on the basis of which FIR Ex.PL was registered.

3. Accused/appellant Manmohan was interrogated. He suffered the disclosure statement Ex.PC and disclosed that he has received the counterfeit currency notes to the tune of ₹ 10,000/- from co-accused Veena, his sister-in-law. He further disclosed that he could get recovered some more counterfeit currency notes from his residence. In

pursuance of his disclosure statement Ex.PC, appellant Manmohan got recovered one fake currency note of the denomination of ₹ 500/- from the almirah of his room, which was taken into possession vide memo Ex.PD after keeping the same in a sealed envelope. The Investigating officer prepared the site plans of the places of recovery.

4. Thereafter, appellant Veena was apprehended. From her personal search, one counterfeit currency note in the denomination of ₹ 1,000/- was recovered which was taken into possession vide memo Ex.PE. Accused Veena also suffered the disclosure statement Ex.PF and in pursuance thereof, she got recovered one counterfeit currency note of the denomination of ₹ 1,000/- and two currency notes of the denomination of ₹ 500/- each, which were also taken into possession vide memo Ex.PH. She also got recovered the genuine currency notes of ₹ 43,790/-, which she had collected by using the counterfeit currency notes as genuine in the open market. The said currency notes were also taken into possession vide memo Ex.PG. The counterfeit currency notes were sent to the Forensic Science Laboratory (hereinafter referred to as "FSL") for examination. The report of the FSL Ex.PA was received. On completion of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") was presented against both the appellants before the Court.

5. Separate investigation was carried out against accused Sumit alias Guddu, nephew of appellant Manmohan as he was juvenile.

6. The case was committed to the Court of Sessions for trial by

the learned Chief Judicial Magistrate, Yamuna Nagar at Jagadhri vide order dated 18.7.2008.

7. The appellants were charge sheeted for the offences punishable under Sections 489B & 489C IPC. But they pleaded not guilty and claimed trial.

8. In order to substantiate its case, the prosecution has examined as many as 11 witnesses.

9. When examined under Section 313 Cr.P.C., both the appellants pleaded their false implication. However, they did not lead any evidence in their defence.

10. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, both the appellants were held guilty and convicted for the offence punishable under Section 489C IPC and were ordered to undergo rigorous imprisonment, as mentioned in the earlier part of the judgment.

11. Aggrieved against the aforesaid judgment of conviction and order of sentence, two separate appeals have been preferred by both the appellants.

12. I have heard Ms. Kiran Bala Jain, Advocate, counsel for appellant-Veena, Mr. Raman B. Garg, Advocate (Amicus Curiae) for appellant-Manmohan, Mr. Rajiv Doon, Assistant Advocate General for the State of Haryana and have meticulously examined the record of the case.

13. Initiating the arguments, learned counsel for the appellants

contended that it is an admitted fact that recovery is alleged to have been effected on the basis of secret information at a public place but no independent witness has been associated. Thus, the statements of the official witnesses are not reliable.

14. They further contended that the FIR number has been written on all the documents in the same ink, which shows that the proceedings have been fabricated while sitting in the police station.

15. Ms. Kiran Bala Jain, Advocate, counsel for appellant-Veena contended that the appellant was apprehended only on the basis of the disclosure statement of her co-accused Manmohan. She was not caught red handed while using the fake currency notes. She further contended that the genuine currency notes of ₹ 43,790/- have been recovered from the house of the appellant but there is absolutely no evidence on record to show that the appellant has collected this amount by using the fake currency notes. She further contended that there was no secret information against appellant-Veena that she has been dealing or was having in her possession the counterfeit currency notes. She has only been implicated on the basis of disclosure statement of her co-accused Manmohan. She further contended that PW.4 Lady Constable Saroj and PW.5 Lady Constable Renu Devi were not aware that whether the currency notes recovered from appellant-Veena were genuine or fake. She further contended that PW.5 Lady Constable Renu Devi was the witness of recovery of all the currency notes. But she has pleaded ignorance about recovery of any other currency note from the

possession of appellant Veena except one fake currency note from her personal search. Even in the site plan, the reference of only one currency note has been given. There is no evidence that she has used the currency notes in the market.

16. Learned counsel for the appellants further contended that the ingredients of the offence punishable under Section 489C IPC are not made out as there is no evidence on record to establish that the appellants had knowledge of the said currency notes to be fake. Mere possession without any *mens rea* will not constitute the ingredients of offence. To support their contentions, they relied upon the judgment rendered in ***M. Mammutti v. State of Karnataka AIR 1979 Supreme Court 1705***. Thus, they pleaded that the appellants were wrongly convicted by the trial Court.

17. On the other hand, learned State counsel pleaded that the investigating Officer has made strenuous efforts to join the independent witness but they did not oblige. Thus, there is no reason to ignore the consistent testimonies of the official witnesses. He further contended that there was no reason for any false implication of the appellants. He further contended that the appellants very much knew that they were possessing the counterfeit currency notes in order to use the same. Thus, all the ingredients of the offence are clearly made out.

18. I have given my thoughtful consideration to the aforesaid contentions.

19. As per the prosecution version, nine fake currency notes of the

denomination of ₹ 500/- have been recovered from the possession of appellant Manmohan. Four fake currency notes have been recovered from the possession of appellant Veena, out of which two fake currency notes were of the denomination of ₹ 1,000/- and two were of ₹ 500/-.

20. It is not disputed that the recovery has been effected on the basis of the secret information. Appellant Manmohan was apprehended in the market which is a public place. Appellant Veena was also apprehended at her residence, situated in a residential locality. So, the presence of the public witnesses cannot be disputed. But the Investigating Officer has categorically mentioned even in the FIR as well as in his statement, which is also corroborated by the statements of other prosecution witnesses that he tried to join the independent witness but they refused to do so. Thus, it is not the case where no effort at all has been made by the Investigating Officer to associate the independent witness.

21. It is settled principle of law that mere non joining of the independent witnesses itself is no ground to discard the prosecution version. There is no allegation against the Investigating officer or the other prosecution witnesses that they had any motive for the false implication of the appellant or they were having any ill-will against them. The Hon'ble Supreme Court in case ***Appa Bai and another v. State of Gujarat, AIR 1988 Supreme Court 696*** has laid down that the prosecution story cannot be thrown out on the ground that an independent witness has not been examined. The Hon'ble Apex Court

further observed that the civilized people, are generally insensitive when a crime is committed even in their presence and they withdraw from the victims side. They keep themselves away from the Courts unless it is inevitable. Moreover, they think the crime like a civil dispute between two individuals and do not involve themselves in it. The same ratio of law has been laid down by this Court in case ***Harminder Singh v. State of Haryana, 2009 (2) RCR (Criminal) 113.***

22. As already mentioned, even at the time of recording of the disclosure statement and effecting recovery, no independent witness could be joined in the investigation. That itself is not a ground to reject the prosecution version. To support this view reference can be made to the case ***State Govt. of NCT of Delhi v. Sunil, 2001 (1) RCR (Criminal) 56***, wherein the Hon'ble the Apex Court has laid down as under:

“Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to

lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.”

23. Thus, in view of the aforesaid ratio of law laid down in the cases referred above, mere this fact that the Investigating Officer has not associated any independent witness at the time of recording the disclosure statement of the appellants and effecting the recovery, itself is no ground to create any dent in the prosecution case.

24. Firstly, I take up the case of the prosecution with respect to the recoveries effected from appellant Manmohan. PW.1 Head Constable Yashpal, PW.2 Head Constable Mehroof Ali, PW.3 EHC Bahadur Singh, PW.6 EASI Subhash Singh and PW.11 Inspector Baljit Singh have consistently deposed about the recovery of counterfeit currency notes from the possession of appellant Manmohan. As per their statements, eight currency notes have been recovered from the personal search of appellant Manmohan of the denomination of ₹ 500/-. He has suffered the disclosure statement Ex.PC in the presence of PW.1 Head Constable Yashpal and PW.2 Head Constable Mehroof Ali. He got recovered one fake currency note of ₹ 500/- denomination from the almirah of his residential house. In this manner, nine fake currency notes have been recovered from the possession of appellant

Manmohan.

25. From the statements of PW.4 Lady Constable Saroj, PW.5 Lady Constable Renu Devi and PW.11 Inspector Baljit Singh, it comes out that one fake currency note of ₹ 1,000/- denomination has been recovered from the personal search of appellant Veena which was taken into possession vide memo Ex.PE.

26. It is further alleged that appellant Veena has suffered the disclosure statement Ex.PF in the presence of PW.4 Lady Constable Saroj and PW.6 EASI Subhash Chand and in pursuance thereof she got recovered one counterfeit currency note of ₹ 1,000/- and two counterfeit currency notes of ₹ 500/- each lying under the pillow of her bed. But this recovery is not established beyond shadow of reasonable doubt. This fact is not disputed that both PW.4 Lady Constable Saroj and PW.5 Lady Constable Renu Devi were present at the spot at the time of disclosure statement as well as recovery. But PW.4 Lady Constable Saroj has been cited as a witness to the disclosure statement Ex.PF allegedly suffered by appellant Veena and she has been shown as a witness to the recovery of fake currency notes, whereas PW.5 Renu Devi has been cited as a witness to the recovery of three fake currency notes in pursuance of the disclosure statement but she was not cited as a witness to the disclosure statement Ex.PF. PW.4 Lady Constable Saroj has been shown to be a witness to genuine currency notes vide memo Ex.PG. Thus, the citing of the witnesses in this fashion, though they all were jointly present at spot and participated in

the proceedings, renders the proceedings artificial. As the entire story of the prosecution is based upon the official witnesses alone. So, it becomes the duty of the Court to closely scrutinize the prosecution evidence. PW.5 Renu Devi, who is the witness to the recovery of three fake currency notes from the possession of appellant Veena in pursuance of her disclosure statement, has deposed only about the recovery of one fake currency note of the denomination of ₹ 1,000/- from the personal search of appellant Veena. In her examination-in-chief itself, she stated that she did not remember whether any fake currency note from appellant Veena was recovered or not. She further stated in her cross-examination that she cannot tell whether some more currency notes were recovered from the possession of appellant Veena or not. So, this witness has deposed about the recovery of only one fake currency note of the denomination of ₹ 1,000/- from the possession of appellant Veena. Similarly, PW.4 Lady Constable Saroj, who was present at the spot, has deposed only about the recovery of one fake currency note of the denomination of ₹ 1,000/- from the possession of appellant Veena and the genuine currency notes of ₹ 43,790/-. In her cross-examination, she has categorically stated that no other fake currency note was recovered from the possession of appellant Veena except one currency note with the denomination of ₹ 1,000/-. Thus, in view of the statements of PW.4 Lady Constable Saroj and PW.5 Lady Constable Renu Devi, the testimonies of PW.6 EASI Subhash Chand and PW.11 Inspector Baljit Singh with respect to the recovery of

remaining three fake currency notes from the possession of Veena, in pursuance of her disclosure statement Ex.PF, cannot be relied upon. So, the prosecution has been able to prove the recovery of only one fake currency note of the denomination of ₹ 1,000/- from the possession of appellant Veena.

27. All these currency notes were sent to the FSL, Madhuban for examination. The report of the FSL is Ex.PA, which shows that all these currency notes were the counterfeit currency notes.

28. I do not find any substance in the contentions raised by learned counsel for the appellants that the ingredients of the offence punishable under Section 489C IPC are not established.

29. In order to bring the case within the ambit of Section 489C IPC, it has to be proved that the accused kept the counterfeit currency notes in their possession knowingly or having the reason to believe the same to be counterfeit and intending to use the same as genuine. It is pertinent to mention here that though the appellants were charge sheeted for the offences punishable under Sections 489B & 489C IPC by the trial Court but the conviction has only been recorded for the offence punishable under Section 489C IPC. So, this Court is to confine only to the ingredients of Section 489C IPC. It is established from the evidence on record that appellant Manmohan was apprehended in the market having in his possession eight fake currency notes of the denomination of ₹ 500/- each and one fake currency note of denomination of ₹ 500/- recovered in pursuance of his disclosure

statement. Similarly, one counterfeit currency note of the denomination of ₹ 1,000/- has been recovered from the possession of appellant Veena. So, the fake currency notes of ₹ 4,500/- have been recovered from the possession of appellant Manmohan and one counterfeit currency note of the denomination of ₹ 1,000/- has been recovered from the possession of appellant Veena. In their statements under Section 313 Cr.P.C, the appellants have simply pleaded their false implication. They have not taken the stand that they were not having the knowledge that the currency notes in their possession were fake. They have also not explained as to how these currency notes came to be in their possession. In such type of cases, in order to establish the knowledge of the accused, it is very difficult to produce the direct evidence. In order to arrive at the conclusion, the Court can take into consideration the attending circumstances. Appellant Manmohan was found present in the market having in his possession the fake currency notes and on his disclosure statement, appellant Veena has been apprehended which led to the recovery of the fake currency note of the denomination of ₹ 1,000/- from her possession. It indicates that they were fully aware that the said currency notes were counterfeit notes and they have kept the same in their possession intending to use it in the market. So, the ingredients of the offence punishable under Section 489C IPC are fully established.

30. The judgment rendered in ***M. Mammutti's case*** (*supra*) is quite distinguishable on the facts. In that case, the accused has

rendered the reasonable explanation that he has received the currency notes from a person in consideration of the sale of tamarind fruits. But in the instant case, as already mentioned, no explanation has been given by the appellants as to how these fake currency notes came into their possession. They have simply pleaded their false implication. Faced with this situation, learned counsel for the appellants have also pleaded for taking lenient view in the matter of sentence. As per the statement on the quantum of sentence, recorded by the trial Court, appellant Manmohan has four children. He is not a previous convict and there is no earning member in his family except him. Appellant Veena is a lady having three children. The trial Court has sentenced both the appellant to undergo rigorous imprisonment for a period of five years. In view of the number of currency notes recovered from them and also their antecedents, the sentence awarded by the trial Court appears to be on the higher side and they deserve reduction in their sentence.

31. Thus, keeping in view my aforesaid discussions, though appellant Veena was found to be in possession of only one fake currency note of the denomination of ₹ 1,000/- but I do not find any legal infirmity in the conviction of the appellants for the offence punishable under Section 489C IPC as recorded by the learned trial Court. Thus, both these appeals, filed against the judgment of conviction have no merit and the same are hereby dismissed. The conviction of both the appellants for the offence punishable under Section 489C is hereby affirmed. However, the order on the quantum of sentence is hereby

modified as under:-

Sr. No.	Name of the appellant	Offence	Sentence
1.	Veena	Section 489C IPC	To undergo rigorous imprisonment for a period of two years and six months. However, the sentence of fine and imprisonment in default thereof, awarded by the trial Court is maintained.
2.	Manmohan	Section 489C IPC	To undergo rigorous imprisonment for a period of three years and six months. However, the sentence of fine and imprisonment in default thereof, awarded by the trial Court is maintained.

As per the custody certificates filed by the learned State counsel, appellant Veena is already in jail, whereas appellant Manmohan is directed to surrender before the Court of Chief Judicial Magistrate, Yamuna Nagar at Jagadhri within 15 days from the date of this judgment to undergo the remaining portion of his sentence as modified by this Court, failing which the Chief Judicial Magistrate will take the coercive steps to procure the presence of appellant Manmohan and commit him to jail.

(Darshan Singh)
Judge

May 7, 2015
“DK”