

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal No. 2332-SB of 2003

Date of Decision : 07.09.2015

Baljit Singh @ Babbu and another

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Ms. Prabhjot Kaur, Advocate
Legal Aid Counsel, for appellants.

Ms. Shivali, AAG, Punjab.

1. **Whether Reporters of Local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred by appellants Baljit Singh @ Babbu and Sukhwinder Singh @ Chhinda against the judgment dated 25.11.2003, vide which they have been held guilty and convicted for the offence punishable under Section 489-C of Indian Penal Code, 1860 (for short I.P.C) and the order on the quantum of sentence of the even dated, vide which the appellants have been sentenced to undergo rigorous imprisonment for

a period of two years and to pay a fine of Rs. 500/- each in default thereof to further undergo imprisonment for a period of one month each.

2. The brief facts giving rise to this prosecution are that on 09.10.2000, PW-3 SI Gurjit Singh along with other police employees of police station Sadar Batala was present near the drain bridge 'Hansali' in the area of Batala in connection with checking. He received a secret information that the appellants were moving on their vehicle i.e. Hero Panther in the area of bus stand Sedd Umarpura (Batala). They were asking the people to make their money double i.e. to get Rs.200/- in lieu of Rs.100/-. They were personally known to the secret informer and in his presence also they had paid double the amount to some persons. SI Gurjit Singh believing said information to be true and believing that the accused were possessing the counterfeit currency notes send the ruqa Ex.PC to the Police Station. On the basis of which the formal FIR Ex.PC/1.

3. The investigation initiated. The police party headed by SI Gurjit Singh reached at the spot, where the accused were trafficking in counterfeit currency notes. SI Gurjit Singh apprehended them with the help of his fellow police officials. From the personal search of the accused-appellant Baljit Singh @ Babbu, one fake currency note of

denomination of Rs. 500/- and 19 fake currency notes of denomination of Rs.100/- each were recovered, which were kept in a sealed envelope which was taken into possession vide memo Ex.PA. Similarly, the search of accused-appellant Sukhwinder Singh led to the recovery of 9 fake currency notes of denomination of Rs.100/- each, which were also kept in a sealed envelope and were taken into possession vide memo Ex.PB. On return to the police station, the case property was deposited with the Moharir Head Constable (for short MHC) of the police station. As per the report of PW-6 Sh. Anil Sharma, the said currency notes were found fake. On completion of the formalities of the investigation, the report under Section 173 of Code of Criminal Procedure (for short Cr.P.C) was presented in the Court.

4. Both the appellants were charge sheeted for the offences punishable under Sections 489-A, 489-B and 489-C of IPC by the learned trial Court, to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, prosecution examined as many as six witnesses.

6. When examined under Section 313 Cr.PC, they pleaded that no fake currency notes were recovered from them and they have been falsely implicated.

7. In the defence evidence, accused examined

Balwinder Singh as DW-1, who was associated in the investigation by the Investigating Officer.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused-appellants were held guilty and convicted for the offence punishable under Section 489-C of IPC and were awarded the sentence as mentioned in the upper part of the judgment.

9. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Ms. Prabhjot Kaur, Advocate, learned Legal Aid Counsel for the appellants, Ms. Shivali, learned Assistant Advocate General, for the State of Punjab and have meticulously examined the record of the case.

11. Initiating the arguments, learned counsel for the appellants contended that as per the prosecution version, Balwinder Singh was associated as an independent witness. But, he has not been examined by the prosecution. Rather, he has appeared as a defence witness and has totally demolished the prosecution story.

12. She further contended that as per the prosecution story, the accused have given double the amount to some persons at bus stand of village Sedd Umarpura (Batala).

But, none of them have been associated in the investigation. She further contended that there is no material on record to establish that the accused were having knowledge that the currency notes are fake. So, ingredients of offence are not made out. Even, the recovery thereof from the appellants is not established. The entire case of the prosecution is based on the statements of two official witnesses. She contended that infact the appellants were illegally detained in the police station on 05.10.2000, which is evident from the telegram sent by the mother of appellant Baljit Singh @ Babbu Ex.D-1 and later on they have been falsely implicated in this case on 09.10.2000.

13. She further contended that it was incumbent upon the prosecution to establish the chain of link evidence. But, the link evidence is entirely missing in this case and it is established that the case property has been tampered with. As per the prosecution case, the currency notes were put in sealed envelopes. But, PW-1 Constable Lakhmir Singh, who has carried the currency notes to PW-6 Anil Sharma has categorically stated that the currency notes were open. The MHC with whom the case property was deposited has not been examined. Thus, she contended that it is not established that the same currency notes allegedly recovered from the accused have been sent to the Reserve

Bank of India (for short RBI) branch, Chandigarh for examination. She further contended that the report Ex.PW6/A is only with respect to 9 currency notes allegedly recovered from appellant Sukhwinder Singh @ Chhinda. There is no report with respect to the currency notes allegedly recovered from appellant Baljit Singh @ Babbu. Thus, she contended that the prosecution has failed to establish the charges.

14. On the other hand, learned State counsel pleaded that from the consistent statements of PW-3 SI Gurjit Singh and PW-2 Constable Balwinder Singh, it is established that 20 fake currency notes were recovered from the possession of appellant Baljit Singh @ Babbu and 9 fake currency notes have been recovered from the possession of appellant Sukhwinder Singh @ Chhinda. From the statement of PW-6 Anil Sharma, it is established that the said currency notes were fake. She contended that the appellants have kept in their possession the fake currency notes knowing the same to be the fake currency notes. Thus, she contended that there is no legal infirmity in the conviction of the appellants recorded by the learned trial Court.

15. I have duly considered the aforesaid contentions.

16. The entire case of the prosecution is based on the statements of PW-2 Constable Balwinder Singh and PW-3 SI

Gurjit Singh with respect to the recovery of fake currency notes from the possession of the appellants. The recovery is alleged to have been effected on the basis of a secret information. It is alleged that one Balwinder Singh son of Amar Singh resident of Shahpur was associated in the investigation of the case by the prosecution. Rather, he appeared in the defence evidence as DW-1 and deposed that no fake currency notes were recovered from the accused in his presence and the police obtained his signatures on blank papers when he visited the police station in connection with his personal work later on. Mere this fact that said Balwinder Singh has not been examined by the prosecution and has appeared in the defence evidence, is itself no ground to outrightly reject the prosecution case, but the Court is put to its guard and the prosecution evidence is to be scrutinized carefully, consciously and minutely.

17. As per the secret information reproduced in the ruqa Ex.PC, the accused were present at bus stand village Sedd Umarpura (Batala) and were asking the people to have double the amount in lieu of the currency note of Rs.100/-. There was no secret information with the Investigating Officer that the accused will come towards the place where they are alleged to have been apprehended by holding

'Nakabandi'. Rather, from the evidence adduced by the prosecution, it is not clear as to where the 'Nakabandi' was held and at which place the accused-appellants were apprehended. PW-2 Constable Balwinder Singh has stated that police party has held a 'Nakabandi' on the Hansali bridge in the area of City Batala and the accused came there on a moped, where they were arrested by the Si Gurjit Singh on suspicion. PW-3 SI Gurjit Singh has simply stated that after joining Balwinder Singh in the police party, they reached at the spot and had held a 'Nakabandi' there. He further deposed that accused were apprehended at the spot, when they arrived on a moped Hero Panther. SI Gurjit Singh, the Investigating Officer of the case has not specifically told as to where and at what spot the 'Nakabandi' was held and from which side the accused-appellants arrived. As per the site plan Ex.PE, the place of apprehension of the accused have been shown at point A i.e. the Kuchha path on the eastern side of the road from Batala to Jalandhar. There is no bridge at that point as stated by PW-2 Constable Balwinder Singh. Thus, in view of the aforesaid contradictions, the place of apprehension of the accused and recovery is not established.

18. It is the specific case of the prosecution that accused was alluring the people to have double the amount.

It is also categorically mentioned in the ruqa Ex.PC that accused have actually paid double the amount to some persons. But, those persons have not been associated in the investigation. No fake currency notes allegedly handed over to them by the accused have been recovered and they have not been cited as a witness. Thus, the material witnesses have been withheld by the prosecution.

19. The entire case of the prosecution rests on the proof that the currency notes allegedly recovered from the possession of the appellants were fake/counterfeit currency notes. In order to establish this fact, it was the boundened duty of the prosecution to establish that the case property remained intact. But, in the instant case, the entire link evidence is missing and the tampering with of the currency notes can not be ruled out. As per the prosecution case, the case property was deposited with the MHC Balwinderjit Singh. SI Gurjit Singh, the Investigating Officer of the case even could not tell the name of the MHC with whom he has deposited the case property. The name of the MHC has figured in the statement of PW-1 Constable Lakhmir Singh, who has carried the currency notes to PW-6 Anil Sharma for examination. But, said MHC Balwinderjit Singh has not been produced in the witness box to establish that the case property remained intact in the Malkhana of the police

station. Due to non-examination of the MHC, a serious omission has occurred in the chain of link evidence.

20. As per the statement of PW-3 SI Gurjit Singh, the currency notes recovered from the appellants were kept separately in two sealed parcels, which were sealed with the seal bearing impression 'GS'. In the recovery memos Ex.PA and Ex.PB also it has been categorically mentioned that said currency notes were kept in the envelopes, which were sealed with the seal bearing impression 'GS'. So, as per the aforesaid evidence, the currency notes recovered from the appellants were separately kept in two sealed envelopes. But, PW-1 Constable Lakhmir Singh stated that when all the currency notes were handed over to him, those were not in sealed parcel and were in open condition. This statement of PW-1 shows that the sealed envelopes containing the currency notes were opened prior to sending the same to R.B.I, branch Chandigarh for examination. There is no explanation from the side of the prosecution as to at what stage and by whom the sealed envelopes were opened. Even, in the report of PW-6 Anil Sharma Ex.PW6/A, it is nowhere mentioned that the currency notes when produced before him were in sealed envelopes. Thus, from the aforesaid evidence, the tampering with of the case property is clearly established. In those circumstances, the report of PW-6 Anil

Sharma Ex.PW6/A carries no evidentiary value. Hence, it can not be stated that the currency notes allegedly recovered from the appellants were fake.

21. Moreover, the prosecution has not placed on record any report with respect to 20 currency notes allegedly recovered from the possession of appellant Baljit Singh @ Babbu. PW-6 Anil Sharma has only proved the report Ex.PW6/A. The report Ex.PW6/A shows that he has examined only 9 currency notes of the denomination of Rs.100/- each allegedly recovered from the appellant Sukhwinder Singh @ Chhinda. There is absolutely no reference of 20 currency notes allegedly recovered from appellant Baljit Singh @ Babbu in the report Ex.PW6/A. So, there is no report on record to show that the currency notes recovered from the possession of appellant Baljit Singh @ Babbu were fake.

22. Thus, keeping in view my aforesaid discussion, the prosecution version as putforward does not seems to be plausible, the persons to whom the fake currency notes were allegedly supplied on the pretext of doubling their amount have not been identified, associated in investigation and produced in the witness box, the chain of link evidence is entirely missing, so, the report Ex.PW6/A carries no evidentiary value and there is absolutely no report of expert

with respect to the currency notes allegedly recovered from the possession of appellant Baljit Singh @ Babbu. Thus, the prosecution has not been able to establish its case beyond shadow of reasonable doubt.

23. Resultantly, the present appeal is hereby allowed. The conviction of the appellants as recorded by the learned trial Court and the sentence awarded to them are hereby set aside. The accused-appellants stands acquitted of the charges as a result of benefit of doubt.

September 07, 2015
s.khan

(DARSHAN SINGH)
JUDGE