

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 22nd May, 2015

+ CRL.A. 374/2012

FIROZ AHMED @ GANDHI & ORS.

..... Appellant

Through: Mr.Saurabh Kansal and Ms.Pallavi S.
Kansal, Advs. for appellant No.1 Mr.Anil
Hooda, Adv. for appellant No. 2

versus

STATE

..... Respondent

Through: Ms. Ritu Gauba, Additional Public
Prosecutor for the State along with Sub
Inspector Sukhbir Malik, Special Staff
(North), Delhi

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This appeal has been preferred by the appellants – Firoz Ahmed @ Gandhi, Surender Kumar and Mohd. Shamim Akhtar challenging the impugned judgment dated 21.02.2012 and order on sentence dated 28.02.2012 vide which the appellant – Shamim Akhtar was convicted under Section 489B & 489C IPC while the appellants – Firoz and Surender Kumar were convicted for offence under Section 489C IPC. The appellant/accused Mohd. Shamim Akhtar was sentenced to rigorous imprisonment for a period of five years and fine of Rs.10,000/- under Section 489B IPC; in default of payment of fine, simple imprisonment for a period of two months and further rigorous imprisonment for four years and fine of Rs.10,000/- under Section 489C IPC; in default of payment of fine; simple imprisonment for a period of two months, whereas Firoz Ahmed and Surrender Kumar were sentenced to rigorous imprisonment for four (4) years each and fine of Rs.10,000/- each under Section 489C IPC, in default of payment of fine, simple imprisonment for a period of two months each in Sessions Case No. 66/10 arising out of FIR No.183/2007 under Sections 489/489B & 489C/34 IPC registered at Police

Station Maurice Nagar, Delhi.

2. The facts germane to the prosecution case are that on 27.11.2007, at Operation Cell, North, a secret information was received by Sub Inspector Joginder Singh that a person dealing in fake currency notes would come near Jai Jawan Tea Stall, Delhi University and he would sell fake currency in exchange of genuine currency. A raiding party comprising of Sub Inspector Jogender Singh, HC Braham Dev, Constable Jitender and Constable Ravi Khari was constituted and they proceeded to the spot. One public person named Vinod Kumar agreed to join the proceedings. The informer and public witness were introduced to each other and Vinod Kumar was instructed to approach the accused as a decoy customer and he was handed over two genuine notes of Rs.100/- denomination each. Vinod Kumar stood near Jai Jawan Tea Stall with secret informer and when accused Mohd. Shamin came there at about 5.15 pm, Vinod approached him on the pointing out of secret informer. After having conversation with the accused, Vinod Kumar gave signal to the raiding party and accordingly accused Mohd. Shamim Akhtar was apprehended. The original currency notes of Rs.100/- denomination handed over to Vinod Kumar were recovered from the search of accused – Mohd. Shamim. The polythene carried by the accused was checked and found containing 463 fake currency notes of Rs.100 denomination each. The notes were also seized and an FIR was registered at Police Station Maurice Nagar. On interrogation, accused Shamin Akhtar made a disclosure statement that the same were received from Firoz Ahmad. The accused was taken on police remand and was taken to the shop of Firoz Ahmed on 28.11.2007, but he could not be found. On 29.11.2007 police party again visited the shop of Firoz Ahmed and apprehended him and 305 fake currency notes of Rs.100 denomination were recovered from him. Pursuant to the disclosure made by accused Firoz Ahmed, accused Surender Kumar was apprehended from his house and 88 fake currency notes of Rs.100/- denomination each were recovered and seized. All the accused persons were arrested and the case property was deposited in the *Malkhana* and thereafter sent to FSL for analysis. After completion of investigation, all the three accused/appellants were charge-sheeted. All the three accused/appellants were separately charged for having committed offence punishable under Section 489B and 489C of Indian Penal Code to which they pleaded not

guilty and claimed trial. The prosecution in all examined eight witnesses in order to prove the guilt of accused persons.

3. All the incriminating evidence was put to the accused persons while recording their statements under Section 313 Cr.PC wherein they pleaded innocence and alleged their false implication. No evidence was led by accused Mohd. Shamim Akhtar and Firoz whereas accused /appellant – Surender Kumar examined DW1 – Inder Mohan, his neighbour and his wife DW2 – Lata. Vide impugned judgment, learned Additional Sessions Judge held that the prosecution succeeded in establishing that the accused/appellant – Shamim Akhtar was found indulging in trafficking of counterfeit currency notes and accordingly 463 fake currency notes were recovered from his possession and he was convicted under Section 489B & 489C IPC. However, as regards accused/appellants – Firoz and Surender, there was no direct evidence about trafficking in counterfeit currency qua them and only evidence on this aspect was disclosure statement of co-accused, which was not admissible in evidence under Section 25 of Evidence Act. As such they were convicted for offence under Section 489C IPC.

4. Feeling aggrieved and dissatisfied, the present appeal has been preferred by the convicts/appellants.

5. Assailing the findings of learned Additional Sessions Judge, it was submitted by learned counsel for the appellants that the decoy customer – Vinod Kumar was not examined by the prosecution. Moreover, in the instant case, the secret informer did not remain an informer alone. As per prosecution case, he introduced accused to the decoy customer – Vinod Kumar and thereafter left the spot. That being so, he was another material witness who was withheld by prosecution. The prosecution case rests on the testimony of the police witnesses only which suffers from discrepancies, as such, prosecution failed to substantiate its case beyond reasonable doubt as such the accused/appellants were entitled to be acquitted. It is further submitted by counsel for the appellants that as per the prosecution version, the police officials had gone to the shop of Firoz Ahmed on 28.11.2007, and at that time he was not available at his shop and only his son met them. Thereafter, they again went to his shop on 29.11.2007 and then recovery of fake currency notes was effected. It is submitted that it is highly improbable

that despite coming to know about the visit of police officials at his shop on 28.11.2007, the accused/appellant would continue to keep the fake currency notes in his shop. As regards accused/appellant – Surrender, it was submitted that he is alleged to have been arrested from his house, however, no independent witness was requested to join the proceedings. As such, prosecution failed to establish the case beyond reasonable doubt, therefore, impugned judgment cannot be sustained and is liable to be set aside.

6. On the other hand, learned Additional Public Prosecutor for the State submits that non-examination of decoy customer is not fatal. There is no reason to disbelieve the testimony of police officials who have corroborated each other and have substantiated the case of prosecution. Accused/appellant – Shamim was caught red-handed and thereafter at his instance accused – Firoz was apprehended and recovery of fake currency notes were effected from him. Pursuant to the disclosure statement made by accused/appellant – Firoz, accused/appellant – Surrender was arrested who was also found in possession of fake currency notes. It was further submitted that the learned Additional Sessions Judge has already taken a very liberal view while sentencing the appellants, as such the appeal, being devoid of any merit, is liable to be dismissed.

7. The main thrust of arguments of learned counsel for the appellants is that the decoy customer – Vinod Kumar has not been examined and, therefore, the entire prosecution story has to be rejected. In the absence of independent witness, the conviction based on official witnesses cannot be sustained. Substantially similar plea was taken in *Sumit Tomar vs. The State of Punjab*, (2013) 1 SCC 395 which was a case under Narcotic Drugs and Psychotropic Substances Act, 1985 and one Kaur Singh was joined by the prosecution, but was not examined. It was held by the Hon'ble Supreme Court that the prosecution should have examined him but it was the stand of prosecution that in spite of necessary steps taken by issuing summons, he did not appear and for that reason prosecution case cannot be thrown out. If the statements of police officials are reliable and no animosity is established against them by the accused then the conviction based on their statements cannot be faulted with. *Sucha Singh vs. State of Punjab*, 2015 SCC Online P&H 15, again was a case under Narcotic Drugs and Psychotropic Substances Act, 1985, where the independent witness was given up as having been won-

over by the accused. Similar plea was taken that on the uncorroborated statements of official witnesses, conviction cannot be based. Repelling the contentions, it was observed by Punjab and Haryana High Court that rule of prudence demands that there should be some corroboration through independent source of the statements of the official witnesses, but if the independent witness though joined by the prosecution, had been given up as having been won over by the accused, that would not be fatal for the prosecution case and the conviction can well be based on the testimony of official witnesses if the same inspire confidence in the mind of the Court regarding guilt of accused. The testimony of official witnesses are at par with the testimony of the non-official witnesses.

8. Again ***Brijesh Kumar Gupta vs. Narcotics Control Bureau*** 2014 CrI. L.J. 4203, was a case under Narcotic Drug and Psychotropic Substances Act, where two public witnesses were joined in the proceedings but could not be produced since it was reported that no such person was residing at the given address. Similar plea was taken that non-examination of independent witness is fatal. Repelling the contentions, it was held that

“13...If the public witnesses chose not to disclose their correct address to the NCB officials, NCB cannot be faulted for not producing them in the Court. It is quite possible that though the aforesaid witnesses did agree to join the proceedings on being persuaded by NCB officials, they gave wrong address to NCB officials so that they do not have to visit the Court for the purpose of giving evidence during trial. The other possibility in this regard is that the witnesses had left the place where they were residing at the time of seizure of the drug, without conveying their fresh address to NCB.

... Presuming, however, that no public witness was joined before seizing drug from the appellant, that by itself cannot be a good ground to reject the testimony of NCB officials, who, on receipt of an information, which was duly reduced in writing and brought to the notice of the superior officer, went to the spot and apprehended the appellant, on his being identified by the informer and seized the narcotic drug from him. The appellant does not claim any previous enmity or ill-will between him and the NCB officials. Therefore, they had no reason to depose falsely against him and implicate him in a false case of recovery of narcotic drugs.”

9. In the case in hand, a perusal of Trial Court record reveals that repeated summons were sent to Vinod Kumar, but the same were received back unserved with the report that no such person was residing at the given address. That being so, the independent witness could not be examined by the prosecution. However, handing over memo Ex.PW2/A of two notes of Rs.100 denomination (Ex.P1) given to Vinod Kuamr, recovery of Rs.6 fake currency notes (collectively Ex.P2) vide seizure memo Ex.PW2/B and 463 fake currency notes of Rs.100 denomination each (collectively Ex.P3) from the possession of accused/appellant – Shamim vide memo Ex.PW2/D bear signatures of Vinod Kumar which establishes that he was present at the spot at the time when the recovery was effected from accused/appellant – Shamim. Merely because the witness could not be produced in the witness box due to his address being wrong, the prosecution case cannot be thrown out.

10. The submission that the secret informer ceased to be a secret informer inasmuch as, according to the case of prosecution, it was he who introduced Vinod Kumar to accused and, therefore, he participated in the proceedings and, therefore, he should have been examined by the prosecution, again deserves rejection.

11. In order to substantiate its case, prosecution examined PW2 – HC Brahm Dev, PW3 – Constable Jitender Kumar, PW6 – Sub Inspector Jogender and it has come in the testimony of all these witnesses that Sub Inspector Jogender received a secret information that a person dealing in fake currency notes would be coming near Jai Jawan Tea Stall, Delhi University as such information was reduced into writing vide DD No.15 (Ex.PW6/A). Thereafter, under instructions from the senior police officials, a raiding party comprising of Sub Inspector Jogender, Constable Jitender and HC Brahm Dev and Constable Manoj was organized. The police official reached at Patel Chest Institute at about 4.35 pm alongwith the secret informer. Five/six public persons were requested to join the raid but most of them declined. However, one Vinod Kumar agreed to join the raiding party. He was apprised of the secret information and two original currency notes of Rs.100 denomination each were given to him vide memo Ex.PW2/A and he was instructed to strike the deal. Public witness Vinod Kumar reached Jai Jawan Tea Stall, Delhi University at about 5.15 pm, the accused Shamim came there and on the pointing

out of secret informer Vinod had conversation with the accused and thereafter gave signal to police party who apprehended the accused. The original currency notes of Rs.100 (two in number) were recovered from the search of accused Shamim. Vinod also handed over six notes of Rs.100 denomination each which were seized vide memo Ex.PW2/C. The polythene bag carried by accused was checked and it was found containing 463 notes of Rs.100 denomination each and were found to be counterfeit. Same was seized vide memo Ex.PW2/D. The FIR Ex.PW1/A was registered. After taking police remand of the accused, he made a disclosure statement Ex. PW3/X and took police party to the shop of co-accused Firoz but he was not found there. On the next day in early morning the police party again went to the shop of Firoz Ahmed and from the table of shop of accused Firoz Ahmed, 305 fake currency notes of Rs.100 denomination each were recovered which were seized vide Ex.PW3/A. Accused Firoz Ahmed was also arrested and he made a disclosure statement Ex.PW3/X1 and took the police party to the house of accused/appellant – Surender who also made a disclosure statement Ex.PW3/X2 and got recovered 88 fake currency notes of Rs.100 denomination each. All the fake currency notes were deposited in the *malkhana* and were sent through Constable Ravi Khari (PW4) to FSL for examination. As per the report of FSL (Ex.PW6/E), the notes recovered from the possession of all the three accused were counterfeit.

12. Except for some minor variations in the testimony of the witnesses, no material discrepancy could be pointed out by learned counsel for the appellants/accused. The minor discrepancies are bound to occur in the testimony of the witnesses inasmuch as the incident took place on 29.11.2007 while the witnesses came to be examined in the year 2011 i.e. after a lapse of five years. Due to passage of time such minor discrepancies are bound to occur. However, the same does not go to the root of the matter so as to cast any doubt on their testimony. All the witnesses have stood the test of cross examination and the same remained consistent, cogent, reliable and trustworthy. It is settled principle of law that the testimony of police personnel have to be treated in the same manner as testimony of any other witnesses and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other person and it is not a proper judicial approach to distrust and suspect them

without good ground. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down as held in *Karamjit Singh Vs. State (Delhi Admn.)* 2003 5 SCC 291, *C. Ronald & Anr. Vs. Union Territory of Andaman & Nicobar Islands*, (2012) 1 SCC (Crl.) 596. In *Sunil Clifford Daniel vs. State of Punjab*, (2012) 11 SCC 205, Apex Court referred to *State Govt. of NCT of Delhi v. Sunil and Anr.*, (2001) 1 SCC 652, wherein Court held as under:-

“20. ... 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.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.....At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

13. Moreover, no animosity has been alleged by any of the accused against any of the police official for which reason they will falsely implicate them in this case. Moreover, the recovery from the possession of accused – Shamim and at the instance of Firoz and Surrender is established from the oral testimony of the witnesses which finds due corroboration from the contemporaneous documents prepared at the spot. Even no suggestion has been given to any of the prosecution witness that the fake currency notes were not recovered from them or that the same has been planted upon them by the police officials. All the incriminating evidence was put to the accused persons while recording

their statements under Section 313 Cr.PC. The case of all the accused/appellants was one of denial simplicitor and it was alleged that they are innocent and has been falsely implicated in this case. However, no explanation has been given as to why the police will get them implicated in this case falsely or will plant the case property on them. Accused Surrender examined two witnesses in support of his defence. Both deposed that on 28.11.2007, 4/5 police officials came to house of accused Surrender and took him with them. It is the case of prosecution also that pursuant to disclosure statement made by Firoz Ahmed they had gone to the house of accused Surrender and he got 88 fake currency notes of Rs.100 denomination each recovered from the *alimirah* of his room. DW1- Inder Mohan, who is the neighbour of accused – Surrender admits that no complaint was lodged by him that accused – Surrender was taken away by the police officials. DW2 – Lata, wife of the accused Surrender although placed on record postal receipt Ex.DW2/A for submitting that she made a complaint to DCP. However, no such complaint has been placed on record or proved. On the other hand, record reveals that this accused did not even challenge the testimony of PW6 Sub Inspector Jogender regarding recovery of 88 counterfeit currency notes from his house as this witness was not even cross examined by the accused despite opportunities given. Similarly, so far as the appellant/accused Firoz Ahmed is concerned, no cross examination of PW3 Constable Jitender on material points regarding recovery of counterfeit currency notes from his shop was conducted. Under the circumstances, despite the fact that prosecution could not secure presence of the independent witness – Vinod Kumar as he is not available at the given address, nevertheless, case of prosecution stands proved from the testimony of the police officials which find due corroboration from FSL report. As such the appellants/accused were rightly convicted by the learned Trial Court.

14. In view of aforesaid discussion, the impugned judgment and the order on sentence does not suffer from any infirmity which calls for any interference. That being so, the appeal is devoid of any merits and is accordingly dismissed. As per the nominal roll dated 18.05.2015, the appellant – Firoz Ahmed has already been released from jail on expiry of substantive period of sentence on 01.11.2014 and he paid fine at the Jail gate. The appellant – Shamim has already undergone sentence of three (3) years, nine (9) months and fourteen (14) days besides earning remission of nine (9) months, twenty (20)

days and his unexpired portion of sentence is four (4) months and twenty six (26) days. As regards the appellant – Surender, it is reported that the unexpired portion of his sentence is one (1) year, three (3) months and five (5) days. However, this appellant was released from jail on regular bail on 13.01.2014 pursuant to suspension of his sentence by this Court. The appellant Surender is present in Court, as such he be taken into custody to serve the remaining period of sentence.

The appeal stands disposed of accordingly.

Trail Court record be sent back immediately along with a copy of this judgment.

A copy of this judgment be also sent to Jail Superintendent for intimation to the appellants.

(SUNITA GUPTA)
JUDGE

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