

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-297-SB of 2004

Date of Decision : February 05, 2016

Chanan Singh @ Channa and another

.....Appellants

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Amar Singh Sandhu and Mr. L.S. Sidhu, Advocates
for the appellants.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The instant appeal was filed by Chanan Singh @ Channa and Om Parkash @ Omi for challenging the judgment and order dated 19.1.2004 passed by learned Additional Sessions Judge, Fast Track Court, Ferozepur.

Vide impugned judgment and order, the trial Court held the two appellants guilty under Section 489-C IPC and after convicting them for the said offence, sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year.

The case of the prosecution is that on 15.3.1999, SI Gamdoor Singh, ASI Dev Raj, ASI Bhajan Singh, HC Naresh Kumar,

A.C. Bhupinder Singh and A.C. Gurnam Singh were returning to the Police Station City, Ferozepur in an official vehicle from villages Bareke and Madhre after investigation of case FIR No.6 of 1999 under Section 379 IPC. After crossing the railway line in the revenue limits of village Madhre, they saw the two accused going ahead of them on a scooter, make Bajaj Chetak of grey colour but without number plate. It was being driven by Chanan Singh, whereas Om Parkash was sitting on the pillion seat and carrying a bag in his lap. Both the accused were already known to the police party. On suspicion, the police party followed the scooter and after going ahead and parallel to the scooter, signalled the accused to stop but they fled away after abandoning the scooter and the bag containing counterfeit currency. Chanan Singh ran towards fields on the left side and was followed by HC Naresh Kumar, whereas Om Parkash ran towards warehouse falling on his right side and he was followed by A.C. Gurnam Singh. SI Gamdoor Singh recovered 24 packets containing counterfeit currency in the denomination of Rs.500/- and Rs.100/-, totalling Rs.12 lacs. The bag containing fake counterfeit currency was then sealed by SI Gamdoor Singh with his seal bearing inscription 'GS'. The counterfeit currency as well as the scooter were taken into possession. Ruqa was sent through Constable Bhupinder Singh to the Police Station for registering a case against the accused. Formal FIR came to be registered by SI Harnek Singh. Visual site plan of the place of occurrence was prepared by SI Gamdoor Singh, who also recorded the statements of witnesses. Both the accused were subsequently arrested. Chanan Singh

accused, on interrogation made disclosure statement of having concealed counterfeit currency notes worth Rs. two lacs in his fields. Om Parkash also suffered disclosure statement of having concealed counterfeit currency notes worth Rs.two lacs near Safaida trees by the side of canal under heap of manure. Pursuant to the same, both Chanan Singh and Om Parkash got recovered counterfeit currency notes from the pre-disclosed places. The entire counterfeit currency was sent to the Reserve Bank of India, Chandigarh for its examination. After completion of the investigation, final report under Sections 489-B and 489-C IPC was submitted against the two accused before the Ilqa Magistrate. The case was, thereafter, committed to the Court of Sessions where the two accused were charged for committing an offence under Section 489-C IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 SI Harnek Singh, PW2 HC Iqbal Singh, PW3 ASI Bhajan Singh, PW4 ASI Niranjana Singh, PW5 Himat Singh, Clerk, DTO Office, Ferozepur, PW6 MHC Shiv Dayal, PW7 SI Gamdoor Singh, PW8 SI/SHO Dev Raj and PW9 Adit Aggarwal, Manager, Reserve Bank of India, Chandigarh.

When examined under Section 313 Cr.P.C., both the accused denied the circumstances appearing in evidence against them. They pleaded innocence and false implication in the case. Chanan Singh accused stated that he was arrested on 13.3.1999 at 8.00 p.m. alongwith his nephew Baldev Singh by SI Gamdoor Singh

and Incharge, CIA Staff from Anil Baghi Hospital, Ferozepur City, where he was lying admitted. He was tortured and his brother Jarnail Singh sent telegram to the Sessions Judge, Ferozepur on 14.3.1999 and, thereafter, on 16.3.1999 to the same effect. Om Parkash accused stated that he was brought from his house on 14.3.1999 and tortured. Both of them were falsely shown to have been arrested on 20.3.1999 after they were able to walk and unclaimed currency notes were planted upon them. Om Parkash accused also stated that he was arrested by the police from his house in the presence of his family members and respectables of the village by SI Gamdoor Singh and Incharge, CIA Staff.

In their defence, the two accused examined DW1 Ashwani Setia, Clerk, DW2 Didar Singh, DW3 Kuldeep Singh Rahi, DW4 Sukhdev Mittar, DW5 Constable Kuldeep Singh, DW6 Sadiq, DW7 Sukhwinder Singh, DW8 Chakar Singh, DW9 Jarnail Singh, DW10 Baldev Singh, DW11 Mangal, DW12 Mohinder Singh and DW13 Niamat Chand, Forest Block officer.

After hearing learned counsel for the parties and examining the record, the trial Court convicted and sentenced the accused, as mentioned above.

Before proceeding any further in this appeal, it may be noticed that on 2.12.2015 when the appeal was taken up for final hearing, learned counsel for the appellants informed the Court that one of the appellants, namely, Om Parkash had since died. Learned

State counsel, however, requested for time for obtaining verification of the said fact. On the adjourned date, i.e. 27.1.2016, learned State counsel produced the status report wherein it was mentioned that Om Parkash appellant had expired on 5.10.2012 at Tagore Hospital, Jalandhar. Death certificate of the Local Registrar, Births and Deaths, Municipal Corporation, Jalandhar stood appended with the status report.

On account of death of the convict, the appeal filed by him against his conviction and sentence of imprisonment abates. However, when the convict is also sentenced to pay fine, besides undergoing sentence of imprisonment for committing the offence, such an appeal does not abate and is required to be heard on merits.

This Court has heard learned counsel for the appellants as well as the learned State counsel and perused the evidence with their able assistance.

According to the prosecution, both the appellants were previously known to SI Gamdoor Singh, ASI Bhajan Singh and ASI Des Raj and as such they were duly identified by them while they were fleeing from the spot. However, in his cross-examination, PW7 SI Gamdoor Singh could not state that any FIR stood registered against the appellants during his posting at Police Station City or Police Station Sadar, Ferozepur. He did not rule out possibility of there being no application received or FIR registered. He also could not remember how many brothers the two appellants had. PW3 ASI

Bhajan Singh, who, according to the prosecution, was present when the appellants had run away after leaving the scooter and bag containing counterfeit currency but during his examination-in-chief, he did not utter a single word. He only deposed that on 29.6.1999, MHC Iqbal Singh had handed over five packet of counterfeit currency notes to him for the purpose of obtaining report from Reserve Bank of India, Chandigarh. He further deposed that the report and the currency notes were deposited by him with MHC Iqbal Singh on 30.6.1999. PW8 SI/SHO Dev Raj testified that on 15.3.1999, he had joined the police party headed by SI Gamdoor Singh. While they were returning to the Police Station and after crossing the railway station, the police party sighted two persons going ahead of the police gypsy on a scooter. He identified the appellants, who were present in the Court. Scooter was being driven by Gurcharan Singh @ Channa while the other accused was sitting on the pillion. He further deposed that the appellants were known to him as well as to ASI Bhajan Singh and SI Gamdoor Singh. During his cross-examination, he stated that in Police Station City, Ferzoepur, no case stood registered against the appellants earlier. He also could not say if any case was registered against them in Police Station Sadar, Ferezepur. Though he stood posted as Head Constable at Police Station Sadar, Ferozepur in the year 1985 yet during such posting he never received any complaint or came across any criminal case against both the appellants.

In view of the above evidence, it is difficult to hold that the

appellants were previously known to the policy party.

According to the prosecution, both the appellants were travelling on a scooter which stood registered in the name of one Baldev Singh. However, said Baldev Singh was not associated in the investigation. Further, the counterfeit currency in question was carried by PW3 ASI Bhajan Singh to the Reserve Bank of India, Chandigarh. Though vide report Ex.P4, the Deputy General Manager of the Reserve Bank of India opined that they appeared to be forged yet the prosecution was asked to obtain expert opinion from the General Manager, Bank Note Press, Dewas (MP) and, accordingly, those notes were returned to PW3 ASI Bhajan Singh. As there was no specific opinion of the Reserve Bank of India that the counterfeit currency notes were forged, report Ex.P4 can, at the most, be held to be a preliminary report. As such the Investigating Agency failed to establish that the currency notes allegedly recovered from the appellants were counterfeit.

It is also the case of the prosecution that subsequent to their arrest, both the appellants had suffered disclosure statements leading to recovery of Rs.two lacs at the instance of each of them. The disclosure statements and the recovery memos were duly attested by ASI Niranjan Singh, ASI Bhajan Singh and private witness Sadiq. Out of them, only ASI Niranjan Singh deposed about the said fact at the trial of the case. PW3 ASI Bhajan Singh did not utter a single word in that regard. Even the independent witness, namely, Sadiq was not examined by the prosecution in support of its

case. He was given up as having been won over. At the same time, he was produced by the appellants in their defence as DW6, who testified that though he met SI Gamdoor Singh at CIA Staff, Ferozepur and disclosed to him the incident of theft of bales from a truck of the union who made him to sign 4/5 blank papers, but he did not accompany SI Gamdoor Singh to any place of recovery nor the appellants were arrested in his presence nor any fake currency notes were recovered from them.

The initial recovery of counterfeit currency totalling Rs.12 lacs was said to have been effected from the land, which was on lease with one Didar Singh. Said Didar Singh was not associated with the investigation of the case. On the other hand, he appeared before the trial Court as DW2 and testified that both the appellants were not arrested by the police from his fields. He further deposed that the police had recovered a bag. Further, one Payara Singh @ Pappu used to cross the Indo-Pak border as the police was after him. Payara Singh was arrested on the next day of recovery of the bag from the fields.

According to the defence, Chanan Singh appellant was lying admitted in Anil Baghi Hospital, Ferozepur from where he was picked up by SI Gamdoor Singh and Incharge CIA Staff at 8.00 p.m. and badly tortured. His brother Jarnail Singh sent telegrams to the Sessions Judge, Ferozepur on 14.3.1999 and 16.3.1999. Similarly, Om Parkash appellant was brought by the police from his house on 14.3.1999 and he was also tortured. Subsequently, the arrest of both

the appellants was falsely shown on 20.3.1999 and unclaimed currency planted upon them. DW3 Kuldeep Singh Rahi, PA to the Director, Anil Baghi Hospital, Ferozepur testified that as per the summoned record, Chanan Singh appellant visited the hospital as an outdoor patient on 13.3.1999. He was attended upon by Dr. Harbinder Singh who advised CT scan of head. Similarly, DW1 Ashwani Setia, Clerk in the office of District and Sessions Judge, Ferozepur deposed that as per the record brought by him one telegram was received in the office of 15.3.1999 sent by Jarnail Singh. Similarly, another telegram was received from Jarnail Singh on 17.3.1999. DW4 Sukhdev Mittar, Senior Telegraph Master, Telegraph Office, Ferozepur proved certified true copies of telegrams dated 14.3.1999 and 16.3.1999 as Exs.D1, D2 and D6. DW9 Jarnail Singh, brother of Chanan Singh appellant testified before the trial Court that on 13.3.1999, he alongwith his nephew Baldev Singh accompanied Chanan Singh to Baghi Hospital on 13.3.1999 as he was having continuous pain in his head. They consulted Dr. Harbinder Singh at Baghi Hospital who advised conducting of CT scan of head. The CT scan was conducted from outside. At about 8.00 p.m. when they were standing outside the office of Dr. Harbinder Singh for showing him the report of CT Scan, SI Gamdoor Singh of Police Station City Ferozepur and Inspector Prem Singh, Incharge CIA Staff, Ferozepur came there and took Chanan Singh and Baldev Singh to the Police Station for interrogation of some case. He further deposed that he sent telegram to the Sessions Judge, Ferozepur in this respect. The police thereafter, took Om

Parkash from his house in the afternoon on 14.3.1999. On 15.3.1999, the police let off Baldev Singh and on 16.3.1999, when the police did not release Chanan Singh, he again gave information regarding his illegal detention to the High Court, Sessions Judge, Ferozepur and other officers by way of telegrams. After about a week, both the appellants were involved in a false case. PW10 Baldev Singh, cousin of Chanan Singh, appellant further corroborated the testimony of DW9 Jarnail Singh, his uncle.

From the aforementioned evidence, which is available on the file, it stands duly established that both the appellants were arrested much before the date i.e. 20.3.1999 when they were shown to have been arrested by the SI Gamdoor Singh. Telegrams had already been received much before 20.3.1999 regarding the illegal detention of Chanan Singh appellant. Although both the appellants pleaded that after being detained by the police they were badly tortured but in order to make the telltale signs of torture on them disappear, both the assailants were shown to have been arrested only on 20.3.1999. Further, the bag in question which contained counterfeit currency belonged to one Payara Singh and it was for that reason that SI Gamdoor Singh had been looking for said Payara Singh. However, a day after the recovery of the bag, Payara Singh committed suicide.

Even if it is accepted that the counterfeit currency notes were recovered from the appellants yet in view of the judgment of the Hon'ble Supreme Court in Umashanker Vs. State of Chhattisgarh,

2001(4) RCR (Criminal) 444, the prosecution is under duty to show that the appellants had *mens rea* of offence under Section 489-C IPC that they knew or had reason to believe the currency notes to be forged or counterfeit. Without aforementioned *mens rea*, possession or even intending to use any forged or counterfeit currency notes does not make out a case under Section 489-C. However, the prosecution has not brought on record any material to show that the appellants had the requisite *mens rea*.

In view of the above, it cannot be said that the prosecution has been able to prove the charge against the appellants for committing the offence under Section 489-C IPC.

The appeal is, therefore, accepted and the impugned judgment of conviction and sentence alongwith fine and its default clause passed by the trial Court is set aside.

February 05, 2016

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**(T.P.S. MANN)
JUDGE**