

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.295 of 2015

Arising Out of PS.Case No. -84 Year- 2013 Thana -SIKARPUR District-
WESTCHAMPARAN(BETTIAH)

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Prabhu Sahani, son of Shei Nath Sahani, resident of Village Jhakhara Baswariya,
Police Station- Jagdishpur, District- West Champaran.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar No.7-Advocate
Mr. Anant Kumar Mishra-Advocate
For the Respondent/s : Mr. Syed Ashfaque Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 16-05-2017

Sole appellant Prabhu Sahani has been found guilty for an offence punishable under Section 489(B) and 489(C) of the I.P.C. and has been directed to undergo rigorous imprisonment for seven years as well as to pay fine of Rs.10,000/- and in default thereof, to undergo imprisonment for six months, additionally under Section 489(B) of I.P.C., rigorous imprisonment for seven years under Section 489(C) of I.P.C. with a further direction to run the sentences concurrently vide judgment of conviction dated 02.04.2015 and order of sentence dated 08.04.2015 passed by the Additional Sessions Judge-4th, West Champaran at Bettiah in Sessions Trial No.689 of 2013.



2. PW-5 Himanshu Kumar Singh recorded his self-statement on 15.03.2015 at about 2.30 p.m. at Shikarpur P.S. Campus alleging inter alia that on the same day at about 1.00 p.m., he received confidential information that three persons having fake Indian currency have arrived near bus stand lying by the side of railway crossing and were in a way to Delhi. On this information, he along with SAP Constable, Vijay Kumar (PW-7), Uttam Singh (PW-3), Md. Nizamuddin (PW-4) proceeded. When they reached at Narkatiaganj Bus Stand, three persons, seeing police ran away, who were chased and out of them, one was apprehended while remaining two managed to escape. Apprehended accused disclosed his identity as Prabhu Sahani, son of Sheo Nath Sahani of village-Jhakhara Baswariya, P.S. Jagdishpur, District-West Champaran and further, disclosed the name of his associate as Shokha Baba @ Giri and Lalan Sah. In presence of two independent witnesses namely, Manoj Kumar Kushwaha (PW-1) and Monu Kumar Pandey (PW-2), Prabhu Sahani was searched and during course thereof, 95 Indian currency notes of one thousand denomination, one voter ID Card belonging to Prabhu Sahani were seized from his possession. Furthermore, the serial number of currency notes have also been disclosed. On query, the aforesaid Prabha Sahani had disclosed that these currency notes are fake and the persons who succeeded in their escape have given aforesaid currency



notes instructing to carry it to Delhi and in lieu thereof, he was to get Rs.1,000/- as remuneration. It has also been disclosed by Prabhu Sahani that aforesaid two persons were also possessing two lacs of counterfeit Indian currency.

3. On the basis of the aforesaid self-statement, Shikarpur P.S. Case No.84 of 2013 was registered under Section 489(A), 489(B) and 489(C) of the I.P.C. whereupon investigation was taken up and after completing the same, chargesheet was submitted under the aforesaid Sections whereunder cognizance was also taken, ultimately, paving way for trial which ultimately concluded in a manner, the subject matter of instant appeal acquitting the appellant for an offence punishable under Section 489(A) I.P.C.

4. Defence case as is evident from mode of cross-examination as well as statement under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. However, neither any DW nor any chit of paper has been adduced in his defence.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, out of whom, PW-1 Manoj Kumar Kushwaha, PW-2 Monu Kumar Pandey, PW-3 Uttam Singh, PW-4 Md. Nizamuddin, PW-5 Himanshu Kumar Singh, PW-6 Jitendra Kumar and PW-7 Vijay Kumar. Side by side, also exhibited the documents, Exhibit-1 series of signature of respective witnesses over



seizure list, signature of accused/ convict over seizure list, Exhibit-2 seizure list, Exhibit-3 fard-bayan, Exhibit-4 application filed by the I.O. before the Magistrate for sending the recovered currency notes to F.S.L. and Exhibit-5 is the F.S.L. Report.

6. Learned counsel for the appellant while assailing the judgment of conviction and sentence has submitted that so far finding recorded by the learned lower Court relating to Section 489(B) of the I.P.C. is concerned, that is not at all maintainable in the background of the fact that there happens to be complete absence of evidence at the end of the prosecution that appellant was anyway indulged in such activity whereunder, any kind of assistance has been taken up with the aid of counterfeit of currency notes. Furthermore, it has also been submitted that from perusal of the judgment impugned, it is evident that learned lower Court had taken cognizance of inculpatory extra-judicial confessional statement of the appellant, which could not be in the background of Section 25 of the Evidence Act whereunder, custodial interrogation leading to confession is not at all admissible in the eye of law. That being so, finding recorded by the learned lower Court regarding Section 489(B) of the I.P.C. is not at all found substantiated either on the factual aspect or on legal aspect.

7. So far, finding recorded relating to Section 489(C) of the I.P.C. is concerned, it has been submitted that learned lower



Court should have relied upon the evidence of the respective witnesses in its entirety and further, would have perceived the inconsistency amongst them. Furthermore, it has also been submitted that presence of two seizure list witnesses, PW-1 as well as PW-2 are found duly associated with the informant (PW-5) since before and so, they happen to be stamped witness whereupon, their evidences are fit to be rejected. Excluding the same, now, coming to remaining witnesses, it has been submitted that apart from inconsistency prevailing in their evidences, there happens to be clear cut violation of mandate of law even if accepting prosecution case as PW-5, informant had deposed that after recovery of the counterfeit notes from the possession of appellant, the same was sealed and it was handed over to the I.O. (PW-6) in sealed condition which the I.O., PW-6, had controverted. That means to say, the so called counterfeit currency notes allegedly recovered from the possession of the appellant was not at all sealed and that being so, it was vulnerable whereupon interest of the appellant is found duly prejudiced.

8. Furthermore, it has also been submitted that from the evidence of PW-5, it is evident that from the members of the mob only PW-1 and PW-2 were called upon to become witness, search and seizure which rules out its genuineness in the background of the fact that they have admitted their association with the informant and that



being so, the manner of seizure and seizure is found suspicious one. Consequent thereupon, appellant is found entitled for acquittal. It has also been pleaded that recovery is said to have made at public place, but no independent witness has been examined. Who ever been examined, excluding PW-1 and PW-2 are police personnel, an interested witness whose evidence, in the facts and circumstances of the case, would not be accepted. So, virtually it happens to be case of no evidence.

9. Apart from this, it has also been submitted that appellant remained under custody for more than three years having no criminal antecedent and so, considering the period of judicial custody, lenient view may be taken even if finding the appellant guilty under Section 489(C) of the I.P.C.

10. On the other hand, learned Additional Public Prosecutor strenuously refuted the submission made on behalf of appellant and submitted that there happens to be no reason to falsely implicate the appellant unless and until, he was found in possession of counterfeit currency notes. In likewise manner, be that as it may, that PW-1 and PW-2, seizure list witnesses were anyhow linked with the informant, Pw-5, in absence of any cogent reason to falsely implicate the appellant, could not be identified hostile to the interest of the appellant. Furthermore, the other witnesses corroborated the



prosecution story and on that very score, there happens to be no inconsistency nor exaggeration in their evidence, hence, mere being police personnel, their evidence would not be brushed aside.

11. It has also been submitted that even considering the evidence of PW-5 and 6 inconsistent over sealing of the seized articles that will not cause any sort of prejudice to the appellant in the background of the fact that the provisions so prescribed under Cr.P.C. relating to search and seizure is found duly complied with. The genuineness of prosecution version is itself apparent from the conduct of the prosecution as during course of production of accused, the seized currency notes were also produced before the Court with a prayer to follow its examination from F.S.L. That being so, in absence of motive to falsely implicate and further, considering the conduct of the prosecution rules out any sort of deficiency on that very score and further, the F.S.L. Report speaks the nature of the currency to be counterfeit. Consequent thereupon, the judgment impugned did not attract interference.

12. For better appreciation of the case of the prosecution in consonance with the finding recorded by the learned lower Court, it looks desirable to quote ***Section 489(B) as well as Section 489(C) of the I.P.C.:-***

“489B. Using as genuine, forged or counterfeit currency-



notes or bank-notes.—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with 2[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. *Possession of forged or counterfeit currency-notes or bank-notes.—Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

13. From bare perusal of the Section 489(B) of the I.P.C., it is evident that unless and until fake currency notes are used as a genuine which, the accused is knowing since before, prosecution under Section 489(B) I.P.C. would not survive. No such evidence is on the record, save and except inculpatory extra-judicial confessional statement of the appellant allegedly made while under police custody, which is not at all admissible in the eye of law. Furthermore, there happens to be deficiency at the end of the prosecution on that very



score and so, the finding of the learned lower Court identifying the appellant to be guilty relating to Section 489(B) of the I.P.C. is not at all found substantiated with the materials available on the record.

14. Now, coming to Section 489(C) of the I.P.C., it is evident that mere possession of counterfeit currency note which the accused knew since before is sufficient to constitute an offence. To trace out the aforesaid ingredients visible in the evidence of the prosecution witness, let the same be discussed and in this way, first of all, evidence of PW-5, informant is to be seen.

15. PW-5 had deposed that on the alleged date and time of occurrence, he after receiving confidential information regarding presence of three persons having in possession of counterfeit currency notes proceeded, immediately along with Constable Vijay Kumar, Uttam Singh and Md. Nizamuddin. When they reached at Narkatiaganj Bus Stand, three persons seeing the police ran away, who were chased and out of them, one was apprehended while remaining managed to escape. On query, the apprehended person disclosed his identity as Prabhu Sahani. In presence of witness Manoj Kumar Kushwaha and Monu Kumar Pandey, he was searched out and from his pocket, 95 in number each containing denomination of Rs.1,000/-, (totally 95000) kept in black polythene were seized. On query, he disclosed that it happens to be a



counterfeit currency notes. He also disclosed identity to his associate who managed to escape and further, disclosed that they were also possessing counterfeit notes. He had further disclosed that he was to carry the amount to Delhi and for that, he was to get Rs.1,000/- as remuneration. Then thereafter, seizure list was prepared in presence of the witnesses over which accused had also put his signature. Accordingly, he exhibited the seizure list, self-statement. During cross-examination at Para-2, he had admitted that he had seized the amount after having been disclosed by the accused to be counterfeit. Then had disclosed that each official have got their independent seal. In Para-6, he had admitted that Manoj Kumar Kushwaha used to ply the Thana vehicle. In Para-8, he had stated that accused were chased, but he is unable to say who chased whom. He also failed to disclose, who had apprehended appellant Prabhu Sahani. In Para-10, he had stated that the person who caught hold the accused had not disclosed anything rather the apprehended accused disclosed himself. In Para-11, he had stated that he handed over seized articles to the I.O. in sealed condition. In Para-12, he had deposed that seizure list was prepared by him. In Para-14, there happens to be denial of the appellant regarding his apprehension along with counterfeit currency notes.

16. PW-1 is one of the seizure list witnesses, who had



deposed that on the alleged date and time of occurrence, 95 notes each containing one thousand denomination were recovered from Prabhu Sahani along with his voter ID Card. The aforesaid currency notes were counterfeit, so seizure list was prepared having details of serial number over which he had put his signature. The aforesaid seizure list was prepared by the Officer-in-Charge of Shikarpur P.S. in his presence. He had identified the accused in dock. During cross-examination, he had deposed that he was coming from Bettiah through Bus. He got down from Bus. So many persons were present at the Bus Stand. He had seen Himanshu Kumar Singh, who had apprehended the accused. He had further admitted that he happens to be driver. In Para-5, he had stated that the notes were in the pocket of Prabhu Sahani. He was not identifying Prabhu Sahani since before. He remained there for an hour. The amount was recovered from left pocket. He had not compared the currency notes. He is not an expert to identify the counterfeit notes. Accused had spoken himself that it happens to be counterfeit currency notes. In Para-6, he had stated that Prabhu was approached by Darogaji. Since thereafter, he had not met with Prabhu Sahani. In Para-7, he had stated that the seized article is not before him. He is not aware where currency notes are. In Para-8, he had stated that he put his signature on the seizure list.

17. PW-2 is another seizure list witness, who had stated



that on the alleged date and time of occurrence, he was at Bus Stand. At that very time, Prabhu was arrested and from his possession counterfeit currency notes were seized by Himanshu Kumar, O/c of the Shikarpur P.S. The aforesaid recovery was made in his presence. Seizure list was prepared in his presence over which he put his signature. A copy of the seizure list was handed over to Prabhu Sahani. He had also put his signature over the same. He also identified Prabhu in dock. During cross-examination at Para-3, he had stated that he had got no knowledge with regard to proper identification of counterfeit notes. Because of the fact that Darogaji had disclosed that it happens to be a counterfeit notes on account thereof, stated like so. In Para-4, he had stated that he put his signature over the blank paper.

18. PW-3 is Uttam Singh, one of the members of the raiding party, who had stated that on the alleged date and time of occurrence, he had gone to Narkatiaganj Bus Stand along with O/c Shikarpur P.S. namely Himanshu Kumar Singh. Vijay Kumar and Md. Nizamuddin were also along with them. When they reached at the Bus Stand, three persons began to flee, who were chased and out of them, one was apprehended. He was taken near Jeep, which was parked at the Bus Stand. On query, the apprehended accused disclosed his identity as Prabhu Sahani. On search, Rs.95,000/- cash each of Rs.1,000/- denomination, was seized from his possession along with



Voter ID Card, for that seizure list was prepared in presence of Manoj Kumar Kushwaha as well as Monu Kumar Pandey. On query, Prabhu confessed that he was to carry the counterfeit notes to Delhi. He had further disclosed identity of his associate, who succeeded in their escape. During cross-examination at Para-3, he had stated that when they reached at the Bus Stand, three persons began to flee. Two persons rushed towards Southern direction while one towards S.S.B. Camp. Two persons were chased, out of whom, one was apprehended. The person, who escaped towards S.S.B. Camp, was not apprehended by him. He was apprehended by another, but he is unable to disclose his identity. He was taken to Jeep. In Para-5, he had stated that when he reached, he found the currency notes in the hands of Bara Babu. He had disclosed that it happens to be 95 in numbers and are counterfeit. The notes were kept in black polythene, from there they returned back to P.S. In Para-6, he had stated that on that day the vehicle was driven by Homeguard. He had further admitted that occasionally Monu Kumar Pandey used to drive the vehicle.

19. PW-4 is Md. Nizamuddin, the another constable. During examination-in-chief, he had reiterated the evidence as deposed by PW-3 Uttam Singh. During cross-examination at Para-3, he had stated that he is unable to say in which direction all the three escaped. He had further stated that all of them gone behind them, but



in which direction, he is unable to say. In Para-5, he had stated that the documents were not prepared in his presence. In Para-6, he had stated that note was in black polythene which the Darogaji kept along with him. Darogaji had disclosed that all the notes are counterfeit.

20. PW-7 is Vijay Kumar, the another member of the raiding party. He also during course of his evidence reiterated same version than that of PW-3, PW-4 along with manner of the recovery of counterfeit currency notes from the possession of the appellant, preparation of seizure list. During cross-examination at Para-4, he had admitted that he had not searched the accused. In Para-5, he had further disclosed that Manoj Kumar, one of the seizure list witness, happens to be private driver of the Darogaji. In Para-6, he had admitted that darogaji disclosed that notes are counterfeit. In Para-7, he had said that he has got no information with regard to seized counterfeit notes.

21. PW-6 is the I.O. He had deposed that after entrustment of the investigation of Shikarpur P.S. Case No.84 of 2013, which was registered on the basis of self-statement of O/c Himanshu Kumar Singh, he proceeded to investigate the case. He took further statement of the informant. He visited the place of occurrence, which happens to be Bus Stand near railway crossing, the road Narkatiaganj to Bettiah. Then had identified the same by way of



boundary. He took statements of all the witnesses. He forwarded the accused to judicial custody. He also made requisition to the learned Magistrate for granting permission to get all the counterfeit notes examined by F.S.L., which was allowed and accordingly, transmitted the same, after supervision, he submitted chargesheet without awaiting for F.S.L. Report. During cross-examination at Para-3, he deposed that the seized fake currency notes, which was handed over to him, was not sealed. He had further admitted that at the time of submission of chargesheet, there was no document before him to identify the relevant notes to be counterfeits. In Para-5, he has been cross-examined over applicability of Section 489(A), 489(B) and 489(C) of the I.P.C. In Para-8, he had admitted that he was knowing the witness since before, but he denied to have personal knowledge regarding any of the witness engaged in driving vehicle of the Darogaji. In Para-10, he had further stated that he had not found criminal antecedent of the accused.

22. It is evident from the evidence of PW-6 as well as from the order sheet that all the 95 notes were produced before the Magistrate on 16.03.2013 for F.S.L. examination and the same was allowed and in pursuance thereof, notes were sent followed with F.S.L. examination report which has been made an exhibit in terms of Section 292 of the Cr.P.C. Although, at that very moment, there was



occasion for the appellant to make protest and further, to have prayed for production of the examiner with regard to test the method of testing as well as to verify the genuineness of the report. Because of the fact that no steps was taken at the end of the appellant, on account thereof, Exhibit-4, F.S.L. Report is to be accepted and further its reliability, genuineness goes out of controversy whereupon, all the 95 notes of one thousand denomination being categorized as counterfeit is accepted.

23. Now, the only question remains whether appellant was in possession thereof. Coming to that score, first of all, evidence of seizure list witnesses is to be taken note of. True it is that PW-2 during course of cross-examination had stated that at the time when he signed over a paper, it was blank, but the defence was hesitant in asking for with regard to his testimony over recovery of counterfeit notes from possession of appellant. In the aforesaid event, just making a slipshod, will not give any kind of benefit when it is found duly substantiated by another seizure list witness, PW-1 corroborated by other witnesses who happens to be member of raiding party. It is not of universal rule that the evidence of police personnel would not be reliable, unless and until, some sort of material is placed to show act of vengeance.

24. Search and seizure is to be carried out in terms of



Section 100 of the Cr.P.C. and whenever a person is searched, it should be in terms of Section 100(4), (5) of the Cr.P.C. Section 100(4) speaks with regard to presence of two independent persons of the locality and in case, they are hesitant to become witness, then to another person. In terms of Sub-section 5 of Section 100 Cr.P.C., it is evident that whenever search followed with preparation of seizure list, the same be prepared in presence of seizure list witnesses. In likewise manner, as has been laid down under Sub-section 7 of Section 100 of the Cr.P.C. a copy thereof, is to be handed over to the persons, who is being searched. From the seizure list, Exhibit-2, it is evident that a copy thereof, had already been served upon the appellant and even during course of cross-examination of PW-1, 2 as well as PW-5, they were not cross-examined on that very score, nor the process of search and seizure has been challenged at the end of the appellant. Therefore, the recovery from the possession of the appellant relating to 95 counterfeit currency notes each denomination of Rs.1,000/- is found duly substantiated. Accordingly, the judgment of conviction relating to that effect is affirmed.

25. Appellant, as is evident from the evidence of PW-6, the I.O., has got no criminal antecedent and as per order of remand dated 16.03.2013, he was estimated to be 30 years, which is found corroborated with the age shown in the judgment and further,



considering the submission made on behalf of appellant, the sentence imposed by the learned lower Court attracts reduction. Accordingly, the sentence inflicted by the learned lower Court as rigorous imprisonment for seven years is reduced to rigorous imprisonment for five years with a fine appertaining to Rs.10,000/- and in default thereof, to suffer additional period of simple imprisonment of six months with a further direction that the period already undergone would be set off in terms of Section 428 of the Cr.P.C., the appeal is partly allowed. Appellant is on bail, hence his bail bond is cancelled with a direction to surrender before the learned lower Court to serve out the remaining parts of sentence within fortnight, failing which the learned lower Court will proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	N.A.F.R.
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