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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on: 7th September, 2017
Judgement pronounced on: 13th November, 2017

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CRL.A.825/2017

RAM PRASAD

.....Appellant

Through: Mr. Sanjeev Sarleen , Advocate.

versus

STATE OF NCT OF DELHI

....Respondent

Through: Mr. Akshai Malik, APP for the
State with ASI Sanjay Kumar.

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CRL.A.849/2017

VIKAS CHAUDHARY

.....Appellant

Through: Mr. Jatin Rajput, Advocate.
(DHCLSC)

versus

STATE OF NCT OF DELHI

....Respondent

Through: Mr. Mukesh Kumar, APP for the
State with ASI Sanjay Kumar.

Judgement reserved on: 27th September, 2017
Judgement pronounced on: 13th November, 2017

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CRL.A. 816/2017

KRIPA SHANKAR SHARMA

.....Appellant

Through: Mr. P. Kumar and Mr. Abhih
Kumar, Advocates.

versus

STATE OF NCT OF DELHI

....Respondent

Through: Ms. Anita Abraham, APP for the
State with ASI Sanjay Kumar from
PS-SOS, Crime, Rohini, Sector-18.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By this common judgement, I shall dispose of the above three appeals preferred against the common judgement dated 31.07.2017 and order on sentence dated 05.08.2017 passed by the Additional Sessions Judge in case FIR No. 117/2010 registered under Section 489C of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') at PS. Crime Branch, whereby all the three appellants were convicted under Section 489B/489C/120B/75/34 of IPC and sentenced to undergo Rigorous Imprisonment for a period of three years and fine of Rs.3000/- each and in default of payment of fine, simple imprisonment for a period of one month.
2. Briefly stated, facts relevant for the purpose of deciding the three appeals are that, a secret information was received by SI Sharad Kohli that one Ram Prasad was involved in circulating fake Indian currency notes in the area of Delhi and NCR. On receipt of the said information, a team constituting SI Sharad Kohli, ASI Harcharan Singh, ASI Ajmer, HC Kanwar Pal, Ct. Atul, Ct. Neeraj and Ct. Kaushal was formed that reached the spot where a deal was struck with Ram Prasad through a decoy customer/ASI Harcharan Singh. Ram Prasad agreed to give a total of Rs. 2.10 Lakhs fake Indian currency notes of the denominations of Rs.500/- and Rs.1000/-in lieu of Rs. 1.5 Lakhs original currency notes.
On 05.08.2010 at around 05:20 p.m., accused Ram Prasad was apprehended while he was circulating fake Indian currency notes of the denominations of Rs.500/- and Rs.1000/-and a total of Rs.2.10

Lakhs were recovered from his possession which were seized vide seizure memos. Thereafter the present case was registered vide FIR No.117/2010 and investigation was taken up by Inspector Rajesh Sharma.

During investigation, a rough site plan was prepared by the IO at the instance of SI Sharad Kohli and statements of the witnesses were recorded. Accused Ram Prasad was arrested and upon interrogation he disclosed that he procured fake currency notes from one Vikas Chaudhary of Mathura who alongwith Panditji of Noida further procured fake Indian Currency notes from Kolkata. Thereafter on 06.08.2010, Vikas Chaudhary was apprehended at the instance of accused Ram Prasad from old Cantt Sadar Bazaar, Mathura and a total of Rs.2.99 Lakhs of fake Indian currency notes were recovered from his possession. Accused Vikas Chaudhary was arrested and upon interrogation he further revealed that he alongwith one Kripa Shankar Sharma of Noida, UP used to procure fake Indian currency notes from Muklesh and Mossarraff Hossain of Malda, West Bengal. Further, Rs.1 Lakh original currency notes, which was paid by accused Ram Prasad to accused Vikas Chaudhary on 05.08.2010 in lieu of Rs.2.5 Lakhs fake Indian currency notes, were also recovered from the house of Vikas Chaudhary and the same were seized vide seizure memo.

On 07.08.2010, accused Kripa Shankar Sharma was apprehended at the instance of Vikas Chaudhary from the main road in front of Lajpat Rai Market, Delhi and a total of Rs.3 Lakhs of fake Indian currency notes were recovered from his possession. Accused Kripa

Shankar Sharma was arrested and upon interrogation he further revealed that he alongwith Vikas Chaudhary used to procure the fake Indian currency notes from Muklesh and Mossarraaf Hossain of Malda, West Bengal. He also disclosed that at times, advance money was given to Mossarraaf Hossain by depositing the amount in Axis Bank account in the name of Mohd. Amirul Sheikh.

Raids were conducted in Kolkata and Malda, West Bengal to apprehend Muklesh, Mossarraaf Hossain and Mohd. Amirul Sheikh. On 20.08.2010 accused Mohd. Amirul Sheikh was arrested from Kalia Chak Malda, West Bengal. During interrogation he revealed that he had used his Axis Bank Account No. 389010100029467 on the instruction of Mossarraaf Hossain for the purpose of transaction of money, which was used by Mossarraaf Hossain for purchase/supply of fake Indian Currency notes.

Efforts were also made to arrest Mossarraaf Hussain and Muklesh of Malda, which however failed.

The FIR No. 117/2010 was registered under Sections 489B/489C/120B/75/34 of IPC, however on 28.03.2011, a charge under Section 489C IPC was framed against accused/appellants Ram Prasad, Vikas Chaudhary and Kripa Shankar Sharma and a common charge under Section 120-B IPC was framed against all the accused persons to which they pleaded not guilty and claimed trial.

3. The prosecution, to substantiate the charges levelled against the appellant, examined 10 witnesses, in all. After meticulously examining the evidence led by the parties, the Trial Court

convicted the appellants under Section 489C IPC and sentenced them as mentioned hereinbefore. Co-accused Mohd. Amirul Sheikh was granted benefit of doubt and was acquitted of charges framed against him.

4. By the appeal at hand, the appellant Kripa Shankar Sharma impugns not only his conviction but also the order on sentence.

Arguments addressed on behalf of the appellant Kripa Shankar Sharma

5. Addressing arguments on the present appeal, learned Counsel for the appellant submitted that the impugned judgment suffers from several infirmities and the Trial Court had gravely erred in convicting and sentencing the appellant; that the entire story of the prosecution has been cooked up in the office of the Crime Branch and no senior officer or independent witness has been associated at any stage of investigation; that perusal of the testimonies of the prosecution witnesses reveals that the secret informer has been a part of the investigation team throughout, until the recovery of the fake currency notes and hence his identity was revealed to the accused persons; that the secret informer has not been cited as a witness; that non joinder of independent witness makes the alleged recovery totally unbelievable; that perusal of the testimonies of the prosecution witnesses reveals that there are material contradictions and severe infirmities going to the root of the matter; that the falsity of the prosecution story is also apparent from the fact that the FIR number was written on the top left side of the seizure memos which are in the same handwriting and in the same flow,

though the rukka was not even sent to the police station for registration of the case at the time the seizure memos were prepared; that the prosecution has failed to prove the alleged recovery from the accused persons as no CFSL Form was filled as alleged by the first and second IO, as nothing has come in evidence that the same was deposited alongwith case property in the Malkhana; that neither the Malkhana Moharer has been examined by the prosecution nor an affidavit has been filed to testify the safe custody of the recovered currency notes; that the official vehicle was not used by the raiding team during investigation even though the crime branch is the unit of Delhi police and is well equipped with all instruments including the vehicles; that the defence witnesses examined by the accused/appellant have clearly proved that the accused persons were lifted by the police and that their depositions carry equal weight to that of the prosecution witnesses; that Section 489C IPC entails a conscious possession and the burden lies on the prosecution to prove that at the time when the accused/appellant was in possession of the currency notes, he knew that they were forged.

6. To buttress his arguments, learned Counsel for the appellant has relied on the judgements in *Peeraswamy v State of NCT of Delhi* reported in *139 (2007) DLT 456*, *Dudh Nath Pandey v State of Uttar Pradesh* reported in *(1981) 2 SCC 166*, *State of Haryana v Ram Singh* reported in *(2002) 2 SCC 426*, *Banti v State of M.P* reported in *(2004) 1 SCC 414*, *Dr. S.L. Goswami v State* reported

in *1972 CAR 202* and *M. Mammutti v State of Karnataka* reported in *AIR 1979 SC 1705*.

Arguments addressed on behalf of the appellants Ram Prasad and Vikas Chaudhary

7. Learned Counsels for the appellants Ram Prasad and Vikas Chaudhary, on instructions, stated that the appellants have opted not to challenge the findings on conviction under Section 489C of IPC. They however prayed to take a lenient view and to modify the sentence as the appellants have already completed substantial portion of the substantive sentence awarded to them by the Trial Court.

Arguments raised on behalf of the State

8. Refuting the submissions of the learned counsel for the appellants, learned APP appearing for the State, submitted that the impugned judgement does not call for any interference. Counsel further submitted that the prosecution has been able to prove its case against the appellants, beyond any shadow of doubt, as all the witnesses have duly supported the case of the prosecution and there were no discrepancies in their statement; that in view of the recovery of huge fake currency notes from the possession of the appellants no leniency is called for and they deserve to be convicted for the offences for which they have been charged.
9. As per the nominal roll, the sentence undergone by the appellant Kripa Shankar as on **01.11.2017** is 1 month 28 days and that by appellant Vikas Chaudhary is 2 years 2 months 1 day. However the appellant Ram Prasad has been released from jail on 24.10.2017

after completion of his sentence. Hence the present appeal is rendered infructuous in respect of appellant Ram Prasad.

10. On the basis of evidence, it is now to be seen whether the prosecution had succeeded in proving the offence alleged against the appellants under Section 489C IPC or not. The evidence of the prosecution is to the effect that fake Indian currency notes were in possession of the three appellants and these were recovered by a team of police officials constituted by SI Sharad Kohli/**PW-4**, comprising of HC Kanwar Pal/**PW-2**, Ct. Kaushal/**PW-3**, ASI Harcharan Singh/**PW-6**, ASI Ajmer/**PW-9**, Ct. Atul, Ct. Neeraj and himself. Hence as regards the alleged recovery of fake currency notes, the case of the prosecution solely rests upon the testimony of police officials who had intercepted appellants and deposed about the recovery of fake currency notes from them.
11. **PW-3/Ct Kaushal** deposed as under:

"On 05.08.2010, I was posted at SIT, Crime Branch. On that day, I joined investigation of the present case with SI Sharat Kohli. Raiding party was formed to apprehend the suppliers of fake currency notes. Raiding party was comprising ASI Harcharan, ASI Ajmer, Ct. Atul. Ct. Neeraj, Ct. Suresh, myself, HC Kanwar and myself with informer. We all had left in two private vehicles at 01:15p.m. from the office of SIT and reached at T-point, Rohini, Near CNG Petrol Pump, Sector-11 at 01:30 p.m. SI Sharat Kohli was leading our raiding party. He had instructed ASI Harcharan to become decoy customer and informer was directed to remain with him. They were sent with the instructions to fix the deal with accused and they were deputed near CNG Petrol Pump, Sector-11,

Rohini and remaining members of the raiding party took their position there.

At 2 p.m., from the side of Rithala Metro Station, one person came from Rithala Metro Station and stopped near decoy customer ASI Harcharan and after conversing with them, he left from there on the same way from where he had come..... ASI Harcharan was given Rs.1,05,000 for the deal and he was instructed to reach at the fixed place for deal and to make signal by waiving hand on his head. Secret informer was also with him at that time.....

ASI Harcharan was instructed to fix deal for genuine Rs.1,05,000/- in exchange of Rs.2,10,000/- fake currency notes....At 5:15p.m.,accused Ram Prasad present in court, correctly identified, again came on same motorcycle No.DL11SA4731 Bajaj, black colour, and he had removed his helmet and started conversing with ASI Harcharan who was with informer at that time..... Accused Ram Prasad was apprehended at 05:20 PM and after that, informer had left the spot.....All the notes in all bundles were apparently fake. All the four bundles were kept in transparent polythene sheet and with the help of doctor tape, pullanda was prepared and it was sealed with seal of SK. Seal after use was handed over to ASI Harcharan Singh. SI Sharat Kohli prepared rukka. Rukka is already Ex.PW4/C and handed over to me for being taken to PS Crime Branch Nehru Place, for registration of FIR. I left the spot at 8:15 PM with the rukka and reached at PS Crime Branch at about 9.15 PM and handed over the rukka to the DO and got the FIR No.117/10 registered. I left the PS Crime Branch, Nehru Place with the copy of the FIR and reached at the office at SIT, crime Branch, sector-18, Rohini at about 12 midnight. I handed over copy of FIR and rukka to inspt. Rajesh Sharma for the further investigation of the case."

12. **PW-4/SI Sharad Kohli**, deposed on similar lines and further stated that:-

"On 06.08.2010, I had accompanied the raiding team to Mathura with accused Ram Prasad. Insp. Rajesh was leading the team and all aforesaid raiding party members except informer were also with us. At about 8.30 A.M., we had made arrival entry at PS Sadar at Mathura, U.P.....SO, SI Sanjay Kumar Jaiswal of PS Sadar was also informed as per disclosure statement of accused Ram Prasad that for that day, accused Ram Prasad had to take Rs.3 lacs fake currency notes from some Vikas Chaudhary between 9-10 A.M. at Cant area, Sadar, Mathura. He also joined the raiding party. When we were going in the cant area of PS Sadar, one person aged about 40 years (He is accused in this case and not present today for identification. I can identify said accused Vikas Chaudhary). At the instance of accused Ram Prasad, accused Vikas Chaudhary was apprehended. Insp. Rajesh had taken the search of Vikas Chaudhary from the left dub of his pant one heavy transparent polythene was found recovered.....Total fake currency recovered was Rs.2,99,000/-/.....Accused Vikas Chaudhary was arrested....

On the same day accused Ram Prasad and Vikas Chaudhary were taken on 10-12 days PC remand. Supplementary disclosure statement of accused Vikas Chaudhary was recorded and next day i.e. on 07-8-10 accused led the police party to a mandir near red Fort, Lajpat Rai Market. There on the road one Swift Dzire car No. HR-99FPT3741, colour white was parked. Accused, Kripa Shankar, present in court, correctly identified was standing near that car and was carrying polythene in his left hand. At 3.20 PM accused Kripa Shankar was apprehended at the instance of accused Vikas Chaudhary. Search of the polythene carried by accused Kripa Shankar was

conducted by the IO Inpt. Rajesh and that polythene was found containing total Rs.3 lacs fake currency notes of Rs.500/- each denomination..... "

13. **PW-6/ASI Harcharan Singh, PW-7/Inspector Rajesh Sharma** and **PW-9/ASI Ajmer Singh** also made analogous depositions, stating the entire chain of facts regarding the constitution of the raiding committee; recording of information in DD vide DD No.12 dated 05.08.2010; arrest of accused/appellant Ram Prasad; recovery of fake currency notes from his possession; subsequent arrest of the other two accused/appellants i.e. Vikas Chaudhary and Kripa Shankar Sharma and alleged recovery of fake currency notes from their possession.
14. Upon a careful scrutiny of the testimony of the prosecution witnesses, as regards the recovery of fake Indian currency notes from the possession of appellants, I do not see any reason to disbelieve the same as their testimonies well corroborate with each other and clearly point towards the involvement of the present appellants in the commission of the alleged crime. All the witnesses have materially supported the case of the prosecution.

Non-Joining of Independent Witness & Material Contradictions

15. First ground raised by the learned counsel for the appellant is that the prosecution has neither cited secret informer as a witness nor examined any public witness, despite the alleged site of recovery being a crowded place. Further the learned counsel for the appellant has also pressed upon material contradictions and

infirmities in the testimonies of the prosecution witnesses, to question the credibility of the case of the prosecution.

16. It is not disputed that the recovery has been effected on the basis of the secret information. Appellant Kripa Shankar was apprehended in the market, a public place. Appellant Vikas Chaudhary was also apprehended from a residential locality. So, the presence of the public witnesses cannot be disputed.
17. Regarding non-joining of any independent witness at the time of raid, **PW-4 SI/Sharad Kohli** during his Examination-in-Chief had categorically stated as under:-

"I asked 10-15 public persons after briefing them about the information and deal but no one agreed to join the proceedings and left the spot without disclosing their names and identification.

xxxx

Public persons were summoned to witness the personal search and disclosure statement but none joined.

xxxx

It is correct that Lajat Rai Market is a thickly populated. IO Inspector Rajesh asked to join the investigation 8-10 people but none of them agreed."

Similarly **PW-6/ASI Harcharan Singh**, who was a part of the investigation team and present at the time the three appellants were apprehended and fake currency notes were recovered from them, deposed on similar lines which is stated as under:-

"SI Sharad Kohli asked 10-15 public persons after briefing them about the information and deal but no one agreed to join the proceedings and left the spot without disclosing their names and identification.

xxxx

When I was made a decoy customer nobody had taken my search. There were 8-9 persons present at the spot of CNG pump, sector-11 and the IO asked to join them.

xxxx

IO had asked public persons to join investigation at CNG Pump station but they refused to join the same and left. 10-11 people joined investigation at Sector 11 T Point. Again said 10-11 people were asked to join the investigation but they left without disclosing their names and addresses. IO had not given any notice to those public persons.

xxxx

At T point IO asked 10-11 persons to join investigation but none agreed. I cannot tell their names as they left without disclosing their names."

Further, during his cross examination **PW-7/Inspector Rajesh Sharma** also stated that *"It is wrong to suggest that no public person were asked to join the investigation as no recovery was made from accused "*

18. Therefore, the investigating team had made all possible efforts to associate independent witness. It is well settled principle of law that mere non joining of the independent witnesses itself is no ground to discard the prosecution version. The appellants Kripa Shankar Sharma and Vikas Chaudhary have not made any specific allegations 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. In the case of *Appa Bai and another v. State of Gujarat*, reported in *AIR 1988 Supreme Court 696*, the Supreme Court has

observed that the prosecution story cannot be thrown out on the ground that an independent witness has not been examined. The Hon'ble Apex Court has 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.

19. Keeping in view the principles laid down by the Apex Court it cannot be disputed that the general public is very much reluctant to get dragged in police and criminal case because of long drawn trials and needless harassment. Mere fact of non-association of secret informer or other independent persons as a witness at the time of recording the disclosure statement of the appellants and effecting the recovery, itself is no ground to render the testimonies of the official witnesses unworthy of credence and to create any dent in the prosecution case. Hence, no adverse inference on account of non-joining of public witnesses in such raids can be drawn.
20. Further the ground raised by the learned counsel for the appellant that there are material contradictions in the statement of the prosecution witnesses also holds no ground as in such a detailed exercise it is not necessary for each witness to observe each and every fact. With the passage of time certain facts do skip while deposing as memory fades and nobody is expected to narrate the version in a parrot like version. Minor contradictions are bound to appear in the statements of truthful witnesses as the sense of observation differs from person to person.

21. In *Narayan Chetanram Chaudhary & Anr. vs. State of Maharashtra* reported in *AIR 2000 SC 3352* the Apex Court reiterated the law laid down in its previous judgements and observed as under:-

"There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eye-witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence...."

The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not failing within a set pattern is unproductive and a pedantic exercise."

22. Therefore, only such omissions which amount to contradictions in material particulars can be relied upon to discredit the testimony of the witnesses. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. The prosecution case becomes doubtful only when the version given by

the witness in the Court is different in material particulars from that disclosed in his earlier statements, and not otherwise.

CFSL Form

23. The next ground raised by the learned counsel for the appellant is that the prosecution has failed to prove the alleged recovery of fake Indian currency notes from the possession of the appellant as no CFSL form was filled up nor the same was deposited alongwith the case property in the Malkhana.
24. It is normal procedure that when the incriminating articles are seized and are required to be sent to the Central Forensic Science Laboratory, those articles are immediately sealed and deposited in the Malkhana at the police station before they are sent to the Laboratory. Contemporaneously with seizure and sealing of such articles, impression of seal used on the seal is embossed on the CFSL form in order to rule out any possibility of tampering of seals on sealed packets after seizure anywhere or in transit till receipt in laboratory.
25. In the absence of the CFSL form, the burden of proof to show that the sample was not tampered with lies heavily on the prosecution, which must establish beyond shadow of doubt that at no stage of the transfer of the sample from one hand to other, was there any possibility of the same having been tampered with. In the present case, **PW-4/SI Sharad Kohli** after sealing the contraband (recovered from appellant Ram Prasad) with the seal of SK, seized the same vide seizure memo **Ex.PW4/D** in the first instance and handed it over to **Inspector Rajesh/PW-7**. Contraband recovered

from appellants Vikas Chaudhary and Kripa Shankar were seized vide memo **Ex.PW6/E** and **Ex.PW6/J** respectively, by **Inspector Rajesh Sharma/PW7** and sealed with the seal of RS. **Inspector Rajesh Sharma/PW7** has deposed on similar lines during his Examination-In-Chief and further stated that the case property was thereafter deposited with the MHC(M) PS Nehru place by him. Both **PW-4** and **PW-7** have categorically stated that the seal after use was handed over to **ASI Harcharan Singh/PW-6** who has also deposed the same.

26. Further **PW-1/Ct. Suresh** deposed that *"on 09.09.2010 I was deputed to go to Nasik for depositing of case property with Nasik Press. I had taken three pullandas. One pullanda was having seal of SK and two pullandas were having seal of RS. These were taken vide RC No. 335/21/10. As long as pullandas remained with me, there was no tampering with the same by anyone and I deposited the sealed pullandas with Nasik Press and acknowledgement given by Nasik Press was brought to Delhi and handed over to MHC(M)."*

PW-8/Sh. K.A. Antony Asst. Works Manager, Currency Note Press, Nashik, Maharashtra deposed that he examined the material received in this case in sealed condition.

27. Having therefore analyzed the material on record, I am of the view that the omission to send the CFSL form along with sample for analysis to the laboratory is well justified from the testimony of the prosecution witnesses which corroborates each other and further does not make the identity of the recovered case property doubtful.

Evidence on record points to the fact that no tampering took place when the sample was being handled from person to person. Further nothing has been brought on record by the appellants to establish the contrary. Hence tampering with the sample is ruled out and accordingly the ground raised by the counsel for the appellant loses significance.

FIR No./Private Vehicle/Non-Examination of Malkhana Moharer

28. Learned counsel for the appellant has also urged on certain omissions on the part of the prosecution. It has been contended that the FIR number has been mentioned on the seizure memo in the same handwriting and in same flow, although at that time rukka was not even sent to the police station for registration of the case; that the official vehicle was not used by the raiding team; and that the prosecution has not examined the Moharer of the Malkhana in this case.
29. The lacunae on the part of the prosecution, as pointed out by the counsel for the appellant, is not such that may be fatal to the case of the prosecution. Hence in such circumstances, benefit of doubt cannot be given to the appellants.
30. In the case of *Sunil Kundu v State of Jharkhand* reported in (2013) 4 SCC 422 the Apex Court observed that:

"It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the depreciable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has

laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored."

In the present case, the prosecution has been able to complete the chain of circumstances which can only lead to the conclusion of guilt of the appellants.

Credibility of the Depositions made by Defence Witnesses

31. Learned Counsel for the appellant contended that equal weightage is to be given to the testimony of the defence witnesses as that of the witnesses of the prosecution but the learned Trial judge has discarded their testimonies without giving any valid reasons. The witnesses (**DW-4** and **DW-5**) so examined by the appellant/Kripa Shankar in the present case have deposed that the appellant was lifted from his residence and not in the manner as alleged by the prosecution.
32. Although on legal principle there cannot be any dispute in this regard, however in view of the facts and circumstances of the present case and other incriminating evidence placed on record, the argument raised by learned counsel for the appellant is worth outright rejection. The defence witnesses have failed to discredit or shatter the case of the prosecution. We also cannot loose sight of the fact that **DW-5** is the son of the accused/appellant Kripa

Shankar who is an interested witness whose prime interest would be to save his father.

33. From the material available on record, it is established beyond shadow of reasonable doubt that total Rs. 3 Lakhs of fake Indian currency notes of denomination of Rs. 500/- each were recovered from the personal search of appellant Kripa Shankar. A total of 598 fake Indian currency notes of the denomination of Rs. 500/- each were recovered from the appellant Vikas Chaudhary. Further Rs.1,10,1000/- fake currency notes were also recovered from the appellant Ram Prasad. All these currency notes were sent to Nashik Press, Maharashtra for examination. The report of the FSL is **Ex.PW-7/B**, which shows that all these currency notes were the counterfeit currency notes.
34. The defence raised by the appellants is similar and the evidence so adduced appears to be an afterthought. There is no material on record to establish that the Investigating Officer was having any animosity, ill will or motive for the false implication of the appellants. Huge number of fake currency notes have been recovered in this case. It is not believable that the Investigating Officer could have planted these articles from his own sources. Thus, the defence raised by the appellants does not inspire confidence.

Conscious Possession under Section 489C IPC

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

36. 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 reason to believe the same to be counterfeit and intending to use the same as genuine. It is established from the evidence on record that appellant Kripa Shankar was apprehended in the market having in his possession **50** fake Indian currency notes of the denomination of Rs 1000/- each and **500** fake Indian currency notes of the denomination of Rs 500/- each. Similarly huge number of fake currency notes were recovered from the other two appellants. In their statements under Section 313 Cr.P.C, the appellants have simply pleaded their false implication. They have neither taken the defence that they had no knowledge of the currency notes in their possession being fake nor have they explained as to how these currency notes came into their possession. In such cases as it is difficult to adduce direct evidence to establish the knowledge of the appellant, the Court can take into consideration the attending circumstances in order to arrive at the conclusion. The evidence of the prosecution is to the effect that at the time when appellant Vikas Chaudhary was apprehended, he was found in possession of a total of **Rs.2,99,000/-** fake Indian currency notes and on his disclosure statement, appellant Kripa Shankar was apprehended from a market which led to the recovery of another **Rs 3 Lakhs** fake Indian currency notes. If there had been any valid explanation with the appellants that they have come in possession of these currency notes, which are found to be fake innocently, they had all the liberty to disclose the same. All the

appellants merely pleaded their false implication. Mere possession, in the absence of explanation in that regard, would be sufficient to establish that the possession of these fake currency notes were consciously with the appellants.

37. For the foregoing reasons, this Court finds no merit in the submissions made by the appellant, to the findings on facts returned by the Trial Court in the impugned judgment. As per the facts and circumstances of the present case, there is a direct link of the appellants/accused with the commission of the crime. Such conclusion can well be established by the statement of the witnesses, the recoveries made and other evidence placed on record. Therefore, conviction based upon fair appreciation of entire evidence deserves no intervention. From the material placed on record, it stands established by the prosecution that the appellants are guilty of having committed the offence charged for. Overturning of a well considered and well analyzed judgment of the Trial Court, when the case against the appellants otherwise stood established beyond reasonable doubt, is not called for.
38. Therefore, on no count does the impugned judgment call for any interference. The Trial Court has fully appreciated the evidence placed on record by the parties. Findings of conviction cannot be said to be erroneous or perverse.
39. Since the punishment is in accord with the punishment prescribed for the offence under Section 489C IPC, this Court does not see any reason to interfere with the order on sentence passed by the Trial Court.

40. Under the circumstances, the appeal being bereft of merit is dismissed.
41. Records of the Court below be sent back forthwith along with the copy of the order.
42. Copy of this order be sent to the concerned Jail Superintendent for information.

SANGITA DHINGRA SEHGAL, J.

NOVEMBER 13, 2017

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