

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.113 of 2009**

Arising Out of PS.Case No. -240 Year-1995 Thana –Buxar Town District- BUXAR

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Ram Dular Gupta son of late Nagina Gupta, R/O Village-Tadighat, PS-Suhbal,  
Distt-Gajipur, Uttar Pradesh. Appellant

Versus

State of Bihar ..... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Baban Roy, Amicus Curiae

For the Respondent/s : Mr. Parmeshwar Mehta, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 29-10-2018**

None appears on behalf of appellant, on account thereof, Sri Baban Roy, Advocate has been requested to assist the Court as an Amicus Curiae.

2. Appellant, Ram Dular Gupta has been found guilty for an offence punishable under Section 489(B) IPC and sentenced to undergo RI for five years vide judgment of conviction and order of sentence dated 22<sup>nd</sup> of October 2008 passed by Additional District Judge-Fast Track Court-IIIrd, Buxar in Sessions Trial No. 174/1995/11/2008.

3. Md. Nisar Ahmad (PW 4) filed a written report on 14.09.1995 disclosing therein that on the same day at about 7.15 PM, while he was sitting at the shop of Madan Prasad Gupta's Sonpapri Shop ( a kind of sweet), at that very moment, one unknown person came and asked for half Kilograms of Sonpapri and for that, he handed over note of Rs. 500/-. He had further disclosed that the person was in a hurry on the pretext that he has to catch a train. As soon as he received the currency note of Rs. 500/-, from its bare



perusal, he became suspicious and inquired for, whether the currency note is a fake one, whereupon, that person began to flee but, was apprehended. Then thereafter, he compared the currency note with other currency note of Rs. 500/- and found vast difference in between. Arun Kumar Gupta, Mantu Ansari, Vijay Kumar Rai, Manoj Kumar Gupta along with others assembled who have questioned whereupon, the apprehended person disclosed his identity as Ram Dular Gupta son of late Nagina Gupta, R/O Village-Tadighat, PS-Suhbal, Distt-Gajipur, Uttar Pradesh and further, confessed his guilt.

4. Police arrived, on account thereof, he handed over the accused along with counterfeit currency note of the denomination of Rs. 500/- bearing Serial No. 3BF 975734 along with written report. On the basis of the aforesaid written report, Buxar Town PS Case No. 240/1995 was registered whereupon, investigation commenced. The seized currency note was sent to the RBI for its examination wherefrom the same has been reported to be counterfeit, consequent thereupon, charge-sheet was submitted followed with trial, meeting with ultimate result, subject matter of the instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. However, neither oral nor any documentary evidence has been adduced on behalf of defence.

6. In order to substantiate its case, prosecution has examined altogether 6 PWs who are PW-1, Vijay Kumar Rai, PW-2,



Mantu Ansari, PW-3, Arun Kumar Gupta, PW-4, Md. Nisar Ahmad, PW-5, Manoj Kumar Gupta, PW-6, Krishna Kumar Sinha, as well as had also exhibited Ext-1 series, signature of seizure list witnesses, Ext-2, Written report, Ext-3, Report submitted by PW-6 after examining currency note bearing Serial No. 3BF 975734.

7. From perusal of the evidence of PWs, it is evident that during course of trial, they have deflected from their earlier stand choosing not to support the prosecution case. Non examination of the Investigating Officer is another vital lacuna, more particularly, when the prosecution has failed to exhibit the production-cum-seizure list as well as the so alleged counterfeit currency note bearing Serial No. 3BF 975734. Although, PW-6, Krishna Kumar Sinha, an employee of the RBI, had been examined in order to exhibit the report identifying the currency note bearing Serial No. 3BF 975734 to be counterfeit.

8. PW-1 and PW-3 are the witnesses over production-cum-seizure list, apart from being the material witnesses. During their testimony, they have simply exhibited their signatures without corroborating the prosecution case with regard to production of the counterfeit currency note by Md. Nisar Ahmad, PW-4. They have also declined to identify the accused in dock whereupon, they were declared hostile. The same status happens to be that of PW-2, Mantu Ansari, PW-5, Manoj Kumar Gupta.

9. PW-4, Md. Nisar Ahmad is the informant who during his examination-in-chief had stated that on the alleged date and time



of occurrence, he was sitting by the side of sweetmeat shop of Madan Prasad Gupta. One person came, gave currency note of denomination of Rs. 500/-, asked for half Kilogram of Sonpapri as well as demanded the rest amount by saying that he is in a hurry as he has to catch the train. Madan Prasad Gupta, after receiving the currency note in his hand, became suspicious whereupon, inquired whether it happens to be a counterfeit. Just after hearing the query, the accused began to flee but was apprehended and on query, he disclosed his identity as Ram Dular Gupta son of late Nagina Gupta, R/O Village-Tadighat, PS-Suhbal, Distt-Gajipur, Uttar Pradesh and further confessed his guilt.

10. While, he was being carried to police station, during midst thereof, met with police whom, he presented his written report along with the accused, currency note. However, from para-3 of his examination-in-chief, he could not identify the accused in the dock. During cross-examination, he had admitted that he happens to be an Advocate. He had not signed over production-cum-seizure list. His presence is not at all on any document save and except the written report.

11. After analyzing the evidence available on the record, it is apparent that at an initial stage, informant had claimed himself to have received counterfeit currency note but, during course of evidence, he brought Madan Gupta in picture, the owner of the shop who has not been examined. So, it was Madan Gupta who



received counterfeit currency note but, from the production-cum-seizure list (not exhibited), it is apparent that it was the informant who had produced without having his presence over the same. Apart from this, production-cum-seizure list witness, PWs-1 and 3 who were also over the material point along with PWs-2 and 5 failed to identify the accused in dock and in likewise manner, declined to support the case of the prosecution.

12. In the aforesaid background, mere presence of seizure list witnesses PW-1 and PW-3 over production-cum-seizure list did not engraft nor justify any adverse finding as they did not suggest recovery from the possession of appellant. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed.

13. Since appellant is on bail, he is discharged from the liability of bail bonds.

14. The first and last pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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