

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.72 of 2017

Arising Out of PS.Case No. -383 Year- 2014 Thana -AGAMKUAN District- PATNA

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Lal Babu Thakur, Son of Late Balist Thakur, Resident of village - Bidupur, P.S.
Rajapakar, Distt. - Vaishali

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 239 of 2017

Arising Out of PS.Case No. -383 Year- 2014 Thana -AGAMKUAN District- PATNA

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Vikash Kumar son of Sri Om Prakash Yadav @ Om Prakash resident of Kali
Asthan, Danapur Cantt., P.S. Danapur, District - Patna.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 318 of 2017

Arising Out of PS.Case No. -383 Year- 2014 Thana -AGAMKUAN District- PATNA

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Kallu @ Rajan, S/o Sri Siyaram Das, Resident of Mohalla - Gulbi Ghat, P.S.
Sultanganj, District - Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 587 of 2017

Arising Out of PS.Case No. -383 Year- 2014 Thana -AGAMKUAN District- PATNA

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Sanjeet Kumar Sharma, Son of Amir Lal Sharma, resident of Village- Panchwatia
Devariya, P.S.- Awatar Nagar, District- Chapra.

.... Appellant/s

Versus



The State of Bihar.

.... Respondent/s
with

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Criminal Appeal (SJ) No. 48 of 2017

Arising Out of PS.Case No. -383 Year- 2014 Thana -AGAMKUAN District- PATNA

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Abhijay Pandey, Son of Sashi Kumar Pandey, Resident of Mohalla - Gola Road
Chankyapuri, Danapur, P.S. Danapur, District - Patna

.... Appellant/s
Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.72 of 2017)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Anil Kumar, Advocate

For the Respondent/s : Mr.

(In CR. APP (SJ) No.239 of 2017)

For the Appellant/s : Mr. Vindhya Keshari Singh, Sr. Advocate
Mr. Bela Singh, Advocate
Mr. Rajeev Ranjan, Advocate

For the Respondent/s : Mr.

(In CR. APP (SJ) No.318 of 2017)

For the Appellant/s : Mr. Abhay Kumar, Advocate

For the State : Mrs. Abha Sinha, APP

(In CR. APP (SJ) No.587 of 2017)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In CR. APP (SJ) No.48 of 2017)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate

For the State : Mr. Syed Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 29-01-2018

All the appeals have been heard together and are
being disposed of by this common judgment.

The appellants Lal Babu Thakur (Cr. Appeal



No. 72 of 2017), Vikash Kumar (Cr. Appeal No. 239 of 2017), Sanjeet Kumar Sharma (Cr. Appeal No. 587 of 2017), Abhijay Pandey (Cr. Appeal No. 48 of 2017) and Kallu @ Rajan (Cr. Appeal No. 318 of 2017) have been convicted under Sections 489C, 489E, 467, 468, 34 of the Indian Penal Code as well as Sections 25(1-B) a, 26, 35 of the Arms Act by judgment dated 09.12.2016/15.12.2016 passed by learned 6th Additional Sessions Judge, Patna City in Sessions Trial No. 425/425A of 2015, arising out of Agamkuan P.S. Case No. 383 of 2014 and by order dated 14.12.2016/16.12.2016, they have been sentenced to undergo rigorous imprisonment for five years under Section 489C/34 of the Indian Penal Code, to pay a fine of rupees four thousands and in default of payment of fine, to further suffer simple imprisonment for six months; fine of rupees one hundred under Section 489E of the Indian Penal Code and in default of payment of fine, to further suffer simple imprisonment for ten days; rigorous imprisonment for eight years under Section 467/34 of the Indian Penal Code, to pay a fine of rupees six thousands and in default of payment of fine, to further suffer simple imprisonment for eight months; rigorous imprisonment for five years under Sections 468/34 of the Indian Penal Code, to pay a fine of rupees four thousands and in default of payment of fine, to further suffer simple imprisonment for six months; rigorous imprisonment for two years under Sections 25(1-



B) a/35 of the Arms Act, to pay a fine of rupees two thousands and in default of payment of fine, to further suffer simple imprisonment for one month; rigorous imprisonment for four years under Sections 26/35 of the Arms Act, to pay a fine of rupees three thousands and in default of payment of fine, to further suffer simple imprisonment for one month and fifteen days. The sentences have been ordered to run concurrently.

The prosecution case is based on the self statement of Nagendra Pal (P.W. 3) who has alleged that on 28.09.2014, while on patrolling duty near Bhootnath Road, he received a secret information that in an under-construction park near T.V. Tower, some miscreants have congregated for committing some occurrence. This information was communicated to the Superior Officers and a raid was conducted. On seeing the police party, about 5-6 persons, who had assembled there, began fleeing away. However, they were apprehended by the police party who disclosed their names as Lal Babu Thakur (Cr. Appeal No. 72 of 2017), Vikash Kumar (Cr. Appeal No. 239 of 2017), Sanjeet Kumar Sharma (Cr. Appeal No. 587 of 2017), Abhijay Pandey (Cr. Appeal No. 48 of 2017), Kallu @ Rajan (Cr. Appeal No. 318 of 2017) and Dhiraj Kumar.

In front of two independent witnesses viz. Vijay Kumar and Kavi Kumar, who have not been examined at the trial, the



aforesaid persons were searched. From the possession of appellant Sanjeet Kumar Sharma (Cr. Appeal No. 587 of 2017), rupees forty thousands in cash, four bundles of fake currency notes containing two genuine notes on either side of the bundles and a mobile telephone was recovered. From the possession of appellant Vikash Kumar (Cr. Appeal No. 239 of 2017), a country made pistol, cartridges and two bundles of fake currency notes with genuine notes on each side and a mobile set were also recovered. From the possession of appellant Lal Babu Thakur (Cr. Appeal No. 72 of 2017), a country made pistol, cartridges and mobile telephone as well as six bundles of fake currency notes were recovered. From the possession of appellant Abhijay Pandey (Cr. Appeal No. 48 of 2017), only one mobile telephone was recovered, whereas from the possession of appellant Kallu @ Rajan (Cr. Appeal No. 318 of 2017), one country made pistol, cartridges and mobile set were recovered. Two motorcycles were also found parked at the place of occurrence. No plausible explanation was given by the appellants for assembling at that place and for being in possession of the aforesaid items.

During the course of search, the appellant Lal Babu Thakur admitted his guilt and stated before P.W. 3 that he is part of the gang which cheats people by promising the doubling of currency notes. The miscreants/appellants had congregated for



committing the same crime on the day of the occurrence. Appellant Kallu @ Rajan confessed before the informed (P.W. 3) that earlier also, an occurrence was committed, whereby one innocent person was divested of his money. The firearms and other materials recovered during the search were seized and a seizure list was prepared on which the two independent witnesses, referred to above, put their signatures. On the basis of the aforesaid self statement by the informant (P.W. 3), Agamkuan P.S. Case No. 383 of 2014 dated 28.09.2014 was instituted for the offences under Sections 399, 402, 420, 467, 468, 471, 489(a), 489(b), 489(c), 489(e) of the Indian Penal Code and Sections 25(1-B) a, 26 and 35 of the Arms Act.

The police, after investigation, submitted charge-sheet whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

The Trial Court, after examining ten witnesses on behalf of the prosecution and four on behalf of the defence, convicted and sentenced the appellants as aforesaid. However, by the aforesaid judgment, the appellants were acquitted of the charges under Sections 399, 402, 420, 471, 34 of the Indian Penal Code for paucity of any evidence in that regard.

In order to appreciate the contentions of the appellants, it would be necessary to refer to the relevant part of the



deposition of the witnesses offered on behalf of the prosecution.

During the course of trial, one of the accused Dhiraj Kumar Chaudhary died and therefore his case abated.

Nagendra Pal (P.W. 3), who is the informant of this case, has supported the prosecution version and has deposed before the Trial Court that on the date of the occurrence i.e. on 28.09.2014, he was posted as Sub-inspector of Police in Agamkuan Police station. While on patrolling duty along with three constables of the Homeguard, he learnt that some miscreants had assembled in an under construction park near TV Tower. This information was provided to him at about 7 O' clock in the morning. The information regarding the aforesaid congregation of the miscreants was given to the Superior Police Officers and the accused persons were caught by the police party. The appellants were searched in presence of two local witnesses. He has further stated that there was no gate in the park and the park was under construction. The miscreants, on seeing the police party, had tried to run away but were apprehended. The aforesaid prosecution witness has denied the suggestion that appellant Abhijay Pandey was arrested while going to Hajipur on motorcycle. On cross examination, he has specified that from the possession of appellant Lal Babu Thakur, nothing was recovered which could be used for printing fake notes. He has also admitted that he has no



training for identifying fake notes.

What is of relevance in his deposition is that he has stated that bundles of fake currency notes were arranged in such a way that on both sides of the bundles, there were hundred rupee notes and in between, plain sheet of paper in the shape of currency note, was kept.

From the deposition of the aforesaid prosecution witness, what comes to the fore is that, what were being called as bundles of fake currency notes were only plain sheets cut and arranged into the shape of the currency notes over which two genuine notes were kept on either side.

For all practical purposes therefore, those plain sheets of paper between two genuine currency notes could not have been passed off to anybody as fake currency notes.

Keshav Kishore Singh (P.W. 1) was part of the raiding team who has deposed that he was informed by Mobile Duty No. 13 to reach near TV Tower at Bhootnath road. When he went there, he found that constable Khurshid Alam (P.W. 4), constable Tipu Kumar Raja (P.W. 6), constable Anurag Kumar (P.W.2) constable Sunil Kumar (P.W. 5) and the informant (P.W. 3) were present. All of them raided the open space inside the under-construction park. From there, the appellants, who were trying to run



away, were arrested. All of them were searched and from their possession incriminating materials as stated by P.W. 3 were recovered. He has also stated that the bundles of fake notes were arranged in a manner where two genuine notes were kept on the either side of the bundles and inside the bundles were plain sheets of paper. He has admitted that the search was made in presence of two independent witnesses viz. Vijay Kumar and Kavi Kumar and the seizure list was prepared by P.W. 3. Vijay Kumar and Kavi Kumar, seizure list witnesses were present in the park from before. He has further made a vague statement that when he reached the place of occurrence, search was going on but he did not specify as to who was being searched and in what connection. He has, however reiterated the same items as having been recovered from the appellants, what has been stated in the F.I.R by the informant (P.W.3).

Similar statements have been made by P.Ws, 2, 4, 5 and 6. All the aforesaid persons have admitted that from the possession of the appellants, nothing was recovered which could be said to be used for printing fake notes. None of the aforesaid witnesses had any training for identifying the fake notes.

From the deposition of aforesaid witnesses, it become apparent that in the bundles of so called fake notes, plain sheets of paper were arranged and that those bundles were not sent for



any forensic examination.

Upasana Kumari (P.W. 7) is the Investigating Officer of the case who has deposed that the charge of investigation was handed over to her on 28.09.2014. She claimed to have recorded the confessional statement of appellant Lal Babu Thakur in presence of the S.H.O and has stated before the Trial Court that appellant Lal Babu Thakur had supported the version of the occurrence as was stated in the F.I.R by P.W. 3. Similarly, the confessional statement of appellant Kallu @ Rajan was also recorded by her. She had taken the permission of the Trial Court for examination of the arms and has proved Exhibit- 2, which is the application, seeking permission for getting the arms examined/inspected.

The firearm weapons which are said to have been recovered from some of the appellants were sent for examination to Sergeant Major and she had also received the report of the Sergeant Major. The sanction for prosecution of the appellants under the Arms Act was accorded by the District Magistrate and she, before the Trial Court, proved the letter of sanction. In cross examination, she has admitted of having received twelve bundles of fake currency notes and in all such bundles, there were two genuine notes on either end and in between, there were plain sheets of paper kept inside the currency notes. She has also admitted that the aforesaid fake currency



notes were not sent for any examination because from bare eyes only it appeared to be fake. The fake currency notes have been exhibited as Exhibit-1 to 1K. The aforesaid P.W. 7 has also proved the recovery of genuine currency notes from the possession of the appellants. The fake currency notes were kept in plastic wrappers and were exhibited as material Exhibit-3 to 3C. The notes were brought to the Court by tying it in plastic wrapper. The firearm weapons were marked as Exhibit-B and B/6 and were signed by the Sergeant Major, which was proved by her.

What is of relevance here is that the aforesaid prosecution witness has clearly stated that the bundles of fake currency notes which were seized, have neither been signed by the appellants or the seizure list witnesses and numbers of the notes have also not been entered in the seizure list. She has also categorically stated that no weapon was recovered from the possession of Sanjeet Kumar Sharma and but for a mobile telephone, nothing was recovered from the appellant Abhijay Pandey.

Appellant Vikash Kumar and appellant Lal Babu Thakur had examined themselves as defence witness Nos. 1 and 3 whereas one of the independent seizure list witness Kavi Kumar has been examined as defence witness No. 2. It would be relevant to briefly refer to their deposition.



Appellant Vikas Kumar (D.W.1) has deposed before the Trial Court that he was brought to Agamkuan Police Station on 27.09.2014 at about 10 O' clock in the night after blind-folding him. Appellant Abhijay Pandey, one of his friends, was also with him. Both of them were locked inside Agamkuan Police Station. Abhijay Pandey is stated to have been arrested at Hajipur Station at about 10-11 P.M. He, according to D.W. 1 was going to his maternal uncle's place at Chapra. After they were arrested, their mobile telephones and currency notes worth Rs. 20,000/- were taken by the police party. By blind folding them, they were taken to some known destination. From the vehicle in which they were made to board, there where 6 to 7 persons from before.

Similarly, Kavi Kumar (D.W. 2) has stated that he had sworn an affidavit that on 28.09.2014, while he was crossing through the under construction park near TV Tower at about 7:30 A.M in the morning, he was called by the police party and was made to sign on a blank piece of paper. In his presence, nobody was arrested nor any incriminating articles were recovered from anyone of them. Though D.W. 2 has identified his signature but he has not supported the prosecution version and has only stated that nobody was arrested and nothing was recovered in his presence.

The father of appellant Vikash Kumar has been



examined as D.W. 3. His name is Om Prakash and he has stated before the Trial Court that he has one son viz. Vikash Kumar who is eighteen years of age and his daughter is around twenty two years of age. His son is student of B.S.c 1st year and runs a mobile shop at his residence which is run under the name and style of Ma Laxmi Communication. On 26.09.2014, his son had come out of his house at Doriganj for going to Chapra at about 9 O' clock and was going along with Abhijay Pandey who was going to his maternal uncle's place but in the meantime, his son and Abhijay Pandey were abducted/arrested which could be learnt by him only later.

Appellant Lal Babu Thakur who has deposed as D.W. 4, has stated that he had withdrawn money from his bank account number 140010032213 at Dena Bank for the purposes of purchasing tyres but he has been falsely made accused in this case.

The Trial Court on finding no material to substantiate the charges under Sections 399, 402, 420 and 471/34 of the Indian Penal Code against the appellants, acquitted them of such charges.

From the conspectus of the entire materials on record, this Court is of the view that from the possession of the appellant Abhijay Pandey (Cr. Appeal No. 48 of 2017) but for a mobile telephone, nothing was recovered whereas from the possession



of appellant Sanjeet Kumar Sharma (Cr. Appeal No. 587 of 2017), no firearm weapon was recovered.

So far as recovery of fake currency notes are concerned, the same could not be established beyond all reasonable doubts. I say so for the reason that according to the admitted case of the prosecution, the bundles of fake currency notes were found containing plain sheets of paper on which two genuine notes were tied on either side of each bundle. Even those sheets of paper were not sent for any examination and none of the witnesses on behalf of the prosecution claim to be trained in identifying fake notes. The I.O. of this case viz. P.W. 7 has stated that from bare look of those notes, it appeared to be fake and therefore, there was no necessity of sending those bundles for any examination. It would, in the aforesaid context be necessary to know as to what constitutes the offences under Sections 489C and 489E of the Indian Penal Code.

For the sake of completeness, the aforesaid two provisions of the Indian Penal Code are being extracted for ready reference.:-

“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.

489E. Making or using documents resembling currency-notes or bank-notes.-(1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency note or bank note shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that person caused the document to be made."

On a bare analysis of the ingredients of the aforesaid two Sections of the Indian Penal Code, for prosecuting any person under the aforesaid Sections, it is of utmost necessity that he



be found in the possession of any forged or counterfeit currency note or bank-note, knowing or having reasons 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.

A plain sheet of paper cannot be used for cheating anybody or for passing it off as currency note. Since, admittedly nothing was recovered from the possession of the appellants which could be used for printing counterfeit notes and the appellants having been acquitted of the charges under Sections 420 and 471 of the Indian Penal Code, it can safely be presumed that no evidence could be collected against the appellants for having committing forgery for the purposes of cheating or for using as genuine any forged document or electronic record. Thus, for the application of Section 489C and 489E of the Indian Penal Code, currency notes are required to be fake and not plain sheets of paper, which can never be misunderstood as currency notes. The intention to use the same as genuine is lacking because of those bundles being of plain sheets of paper. Without such intention and without such so called fake notes being in the nature of currency notes, the offences under Sections 489C and 489E of the Indian Penal Code cannot be said to have been made out. For prosecuting someone for possession and making of fake currency notes, the so called currency notes must



resemble the genuine currency notes or bank-notes.

Apart from this, the evidence with respect to keeping those seized fake currency notes in any safe custody or *Malkhana* is also blurred/missing.

According to the P.W. 7 (I.O.), the fake currency notes were wrapped in a plastic bundle and were brought to Court. There was no mark on the aforesaid notes nor did it contain the signature of the appellants or of the seizure list witnesses.

In that view of the matter, there is no evidence that those bundles were only recovered from the possession of the appellants, which were exhibited before the Trial Court. Non-marking of the aforesaid bundles creates a doubt about the same having been recovered from the possession of the appellants.

Thus, finding that no firearm weapon or fake bundles of currency notes were recovered, the appellant Abhijay Pandey(Cr. Appeal No. 48 of 2017) is acquitted of all the charges.

Similarly, in the event of the offences under Sections 489C and 489E of the Indian Penal Code not having been made out as against other appellants, all of them are acquitted of the charges under the aforesaid Sections.

Since, no weapon has been recovered from the possession of appellant Sanjeet Kumar Sharma (Cr. Appeal No. 587



of 2017), he too is acquitted of the charges.

So far as other appellants are concerned, there is nothing on record to disprove the possession of firearm weapons which were recovered from them. As such, as against appellants, Lal Babu Thakur (Cr. Appeal No. 72 of 2017), Vikash Kumar (Cr. Appeal No. 239 of 2017) and Kallu @ Rajan (Cr. Appeal No. 318 of 2017), their convictions under Sections 25(1-B) a, 26 and 35 of the Arms Act are sustained. However, considering the circumstances of the case and young age of the aforesaid appellants, this Court is of the view that interest of justice would be met if their sentences under Sections 25(1-B) a, 26 and 35 of the Arms Act are reduced to the period which they have already undergone in custody.

For the aforesaid discussions, the appeals of the appellant Sanjeet Kumar Sharma (Cr. Appeal No. 587 of 2017) and appellant Abhijay Pandey (Cr. Appeal No. 48 of 2017) succeed and the aforesaid appellants are acquitted of all the charges.

The conviction of the other appellants viz. Lal Babu Thakur (Cr. Appeal No. 72 of 2017), Vikash Kumar (Cr. Appeal No. 239 of 2017) and Kallu @ Rajan (Cr. Appeal No. 318 of 2017) under all other Sections of the Indian Penal Code are set aside but their conviction under Sections 25(1-B) a, 26 and 35 of the Arms Act are sustained. However, their sentences are reduced to the period of



custody which they have already undergone.

All the appellants are in custody.

They are directed to be released forthwith, if not wanted in any other case.

A copy of the judgment be sent to the Superintendent of Jail for compliance, record and needful.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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