

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.861 OF 2012

Mr.Mohamed Shahnawaz Yasin Sayyad,
Aged 24 years, Muslim, R/o. Sir Sayyad
Compound, Shivan town, State : Bihar
(Presently lodged in Kolhapur Central
Prison) ... **Appellant**

V/s.
The State of Maharashtra,
(Through Pant Nagar Police Station) ... **Respondent**

**WITH
CRIMINAL APPEAL NO.862 OF 2012**

Mr.Mohammed Khusru Abdul Majjid Ansari,
Aged 42 years, Muslim, R/o. Kagji Mohalla
Chowk, Shivan town, State : Bihar
(Presently lodged in Kolhapur Central
Prison) ... **Appellant**

V/s.
The State of Maharashtra,
(Through Pant Nagar Police Station) ... **Respondent**

.....
Ms.Megha Bajoria, Appointed Advocate for the Appellant.

Mr.Prashant Jadhav, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 16th FEBRUARY 2018.

ORAL JUDGMENT :

1 By both these appeals, the appellants/accused are

challenging their conviction and resultant sentence for offences punishable under Sections 489-B and 489-C read with Section 34 of the Indian Penal Code recorded by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Sessions Case No.314 of 2010 on 24/11/2011. For the offence punishable under Section 489-B of the IPC, both appellants/accused were sentenced to suffer rigorous imprisonment for five years apart from payment of fine of Rs.1000/- and default sentence of one month. Similar sentence has been imposed on both of them for the offence punishable under Section 489-C read with Section 34 of the IPC.

2 Briefly stated facts leading to the prosecution of the appellants/accused can be summarized thus :

- (a) The appellants/accused were prosecuted for offences punishable under Sections 489-A, 489-B, 489-C of the IPC with an accusation that they counterfeited Indian currency notes of Rs.50/- denomination, received those currency notes from other persons knowing or having reason to believe the same to be forged and counterfeited and had consciously possessed such counterfeit currency notes in large number. Ultimately, both of them were acquitted of the offence punishable under Section 489-A read with Section 34 of the IPC, but were convicted for rest of the offences alleged against them.

(b) On 23/02/2010, P.W.No.1 Arun Phanasekar, Head Constable attached to the Crime Branch Unit No.1 had received information that two persons are coming near Hotel Samrat, Pant Nagar (E) with counterfeit currency notes. He disclosed that information to his senior officer. Then by calling panchas it was decided to conduct raid for effecting search and seizure of counterfeit currency notes. Accordingly, two panch witnesses including P.W.No.4 Subhan Ayub Khan were summoned. Police party left the Police Station and reached to the spot of the incident near Samrat Hotel, along with necessary material and panch witnesses. Police team came to be divided into three different groups and those groups waited for the suspect. At about 2.00 p.m. on 23/02/2010 itself, both appellants came near Hotel Samrat and the Informant disclosed to the police that those are the persons, who are carrying counterfeit currency notes. The police team rushed to nab those person, but they tried to flee from the spot. P.W.No.1 Arun Phanasekar, Head Constable nabbed appellant/accused No.1 Mr.Mohamed Shahnawaz Yasin Sayyad, wherein as P.W.No.2 Manish Shinde, Police Constable was successful in nabbing appellant/accused No.2 Mr.Mohammed Khusru Abdul Majjid Ansari. They both were carrying bags. On search of their bags, each of them was found to be carrying 2000 pieces of fake currency notes in Rs.50/- denomination. Those currency notes came to be

seized by preparing seizure panchanama Exhibit 16. Police team along with both the appellants/accused returned to Pant Nagar Police Station, where FIR (Exhibits 10 and 11) came to be lodged by P.W.No.1 Arun Phanasekar, Head Constable. The appellants/accused were arrested.

(c) During investigation, it was transpired that the appellants/accused brought the fake currency notes from Sivan town of Bihar city and those were got printed at that place with the help of persons named Bholu and Pappu. Along with the accused persons, P.W.No.5 Namdeo Ghule, API, P.W.No.3 Pawankumar Ozha, panch witness and other staff members went to Sivan town in Bihar State. With the help of local police, they approached P.W.No.7 Mr.Sonu Singh, who is owner of the Khwaja Garib Nawaz Complex in the room of which, the work of printing fake currency notes was being done. The said room was searched. Printer, adapter, four injection syringe, six H.P. print cartridges, bundle of green thread, three genuine currency notes of Rs.50/- denomination, as well as 10 fake currency notes of Rs.50/- denomination, 80 partly printed fake currency notes of Rs.50/- denomination etc. were found in the room. Those articles were seized by preparing panchanama Exhibiit 14.

(d) On completion of necessary investigation, the appellants/accused were charge-sheeted for the offences

punishable under Sections 489-A, 489-B and 489-C of the Indian Penal Code came to be framed and explained to them. They abjured their guilt and claimed trial.

(e) In order to prove the charges levelled against the appellants/accused, the prosecution has examined in all nine witnesses. First Informant Arun Phanasekar, Head Constable is examined as P.W.No.1. Manish Shinde, Police Constable, who was member of the raiding team is examined as P.W.No.2. Panch witness to the search and seizure of fake currency notes namely Subhan Khan is examined as P.W.No.4. Anil Dhole PSI, who was also member of the raiding team which effected seizer is examined as P.W.No.9. Namdeo Ghule, API and panch witness Pawankumar Ozha, who had been to Sivan town in Bihar State are examined as P.W.Nos.5 and 3 respectively. Mr.Sonu Omprakash Singh owner of the building Khwaja Garib Nawaz Complex where the room at which the fake currency notes were being apprehended is examined as P.W.No.7. Ramesh Yadav, PSI, who recorded the FIR is examined as P.W.No.6. P.W.No.8 Mr.Mahadev Avhad, Police Inspector had conducted some part of the investigation of the crime in question.

(f) After hearing the parties, the learned trial Court conclude that offences punishable under Sections 489-B and 489-C are

proved against the appellants/accused and accordingly, they came be to sentenced as indicated in opening paragraph of this Judgment.

3 I heard Ms.Megha Bajoria, the learned Advocate on the Panel of the Legal Aid, who had been appointed to represent the appellants/accused at the cost of the State. She vehemently argued that non-preparing the pre-trap panchanama makes the prosecution case suspicious. The accused persons were, in fact, called from a coffee shop at Bandra for helping the police and they were arrested. Even it is not proved that the appellants/accused were arrested on the spot of the incident. Samrat Hotel and the adjoining area is a populous place having local railway station in the vicinity. However, no independent witness is examined by the prosecution. Though the prosecution averred that the police team went to Sivan town and checked the room, rent agreement of that room was not produced. No document to show that the police team, in fact, travel to Sivan town is produced and proved. Persons, who were printing fake currency notes were not arrested and prosecuted. It is further argued that there is discrepancy in respect of the colours of the bags, places where police team forming three groups were standing, the distance between Samrat Hotel and the Ghatkopar railway station and makes the prosecution case suspicious. The learned Advocate further argued that P.W.No.7 Mr.Sonu Singh has deposed that the police team

was having with them two persons, who were hand-cuffed whereas subsequently, this witness has stated that the accused No.1 was with the police. In fact, only one accused was taken to Sivan town by police. The learned Advocate, therefore, submitted that the appellants/accused deserve acquittal.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction by arguing that the prosecution has proved its case beyond all reasonable doubts.

5 I have carefully considered the rival submissions and also perused the Record and Proceedings including depositions of prosecution witnesses and documentary evidence adduced on record.

6 As the appellants/accused are already acquitted of the offence punishable under Section 489-A of the IPC, now one will have to examine whether the prosecution has proved beyond reasonable doubts that the appellants/accused knowingly or having reason to believe that the currency notes possessed by them are forged or counterfeited, have received those currency notes from some other persons and that they possessed those counterfeit currency notes with requisite knowledge. Thus, knowledge or having reason to believe that the currency notes received and possessed are forged and counterfeit currency notes

is a *sine qua non* for establishing the offences punishable under Sections 489-B and 489-C of the IPC. Mere receiving, buying or possessing the counterfeit currency notes do not constitute such offences.

7 The evidence regarding possession of the appellants/accused persons over 2000 pieces of fake and counterfeit currency notes by each of them is coming on record from mouths of P.W.No.1 Arun Phanasekar, Head Constable, P.W.No.2 Manish Shinde, Police Constable, P.W.No.4 Subhan Khan, panch witness and P.W.No.9 Anil Dhole PSI. They took part in raid and effected seizure of counterfeit currency notes apart from apprehending the appellants/accused. Out of them P.W.No.1 Arun Phanasekar, Head Constable has lodged FIR against the appellants/accused. I have carefully perused depositions of all theses witnesses, which are in general agreement with each other. To state in detail, it is in evidence of P.W.No.1 Arun Phanasekar, Head Constable that at about 10.30 a.m. on 23/02/2010, he received information that two persons possessing fake and counterfeit currency notes are coming at Hotel Samrat located at Pant Nagar area. He then passed that information to his senior officer. This witness further deposed that then two panch witnesses were summoned and the police team left the police station along with panch witnesses and his staff. The police team divided into three groups which took position at three different

places such as near Samrat Hotel Gate, opposite side of that Hotel and near the rickshaw stand. As per the version of P.W.No.1 Arun Phanasekar, Head Constable, at about 2.00 p.m. two persons came there and then First Informant disclosed him that those two persons are the same persons, who are suspected to be carrying the fake currency notes. Police teams then resisted those two persons. They attempted to run. P.W.No.1 Arun Phanasekar, Head Constable caught appellant/accused No.1 Mr.Mohamed Shahnawaz Yasin Sayyad, whereas P.W.No.2 Manish Shinde, Police Constable caught appellant/accused No.2 Mr.Mohammed Khusru Abdul Majjid Ansari. Both of them were carrying bags. Those bags were searched. Those bags were containing a cardboard box. As per evidence of P.W.No.1 Arun Phanasekar, Head Constable, the appellant/accused No.1 Mr.Mohamed Shahnawaz Yasin Sayyad was found to be possessing 2000 pieces of currency notes each of Rs.50/- denomination and similarly, appellant/accused No.2 Mr.Mohammed Khusru Abdul Majjid Ansari was also found possessing 2000 pieces of currency notes each of Rs.50/- denomination. This witness has deposed about packing, sealing and labeling of those fake currency notes. Evidence of P.W.No.2 Manish Shinde, Police Constable, who had participated in the raid is congruous to the evidence of P.W.No.7 Mr.Sonu Singh. This witness has also deposed about apprehending the appellants/accused at Hotel Samrat, search of the bags carried by both appellants/accused and finding of their

possession over 2000 fake currency notes of Rs.50/- by each of them. Similarly, is the version of P.W.No.9 Anil Dhole PSI another member of the raiding team. All these three witnesses are categorical in their versions about arrival of the appellants/accused at the spot at 2.00 p.m. and their possession over counterfeit currency notes of Rs.50/- denomination. All of them have identified the appellants/accused while in the dock so also the seized fake currency notes.

8 Apart from deposing in respect of the actual raid, search as well as seizure of fake currency notes from the appellants/accused, P.W.No.4 Subhan Khan, panch witness has narrated about preparation of seizure panchanama Exhibit 16 in his presence.

9 Despite searching cross-examination of all these four witnesses, nothing could be brought on record by the defence in order to cast shadow of doubt on their version in respect of apprehending the appellants/accused while possessing 2000 counterfeit currency notes of Rs.50/- denomination by each of them. Minor discrepancy in their evidence regarding the colour of the bags of the appellants/accused, distance between Samrat Hotel and Ghatkopar Railway Station, places where the groups of police team took their position does not touch core of the prosecution case in order to create doubt in it. Cross-examination

of all these four witnesses was also directed to bring on record that the place where the appellants/accused are apprehended is a populous place having traffics and people and so many people must have witnessed the incident. It is brought on record that there were stores as well as shops and many people were present in that area. With this, it is attempted to show that the prosecution case is unworthy of credit because independent witnesses are not examined by the prosecution. Law on this aspect is very clear. If evidence made available by the prosecution is suffering from infirmities, then non-examination of the independent witnesses though available creates doubt in the prosecution case. Further, when the available evidence is sufficient and cogent, then non-examination of every available witness is of no consequence. That apart, it is a matter of common knowledge that people at large number are generally insensitive to the crime taking place even in their presence. In this view of the matter, the prosecution case cannot be thrown out of consideration merely because other people might have witnessed the incident, but are not examined by the prosecution. Moreover, there is nothing on record to infer that the police machinery planted such fake currency notes for implicating the appellants/accused. The testimony of the panch witnesses could not be shattered despite searching cross-examination by the defence. On the contrary, it is brought on record from the evidence of this panch witness that the police gave personal search to the appellants/accused so also to

the panch witness. Thus, minute scrutiny of evidence of members of raiding team coupled with evidence of panch witnesses P.W.No.4 Subhan Khan, panch witness shows that all these witnesses are witnesses of truth and their evidence is trustworthy and acceptable.

10 With this evidence, as discussed in foregoing paragraphs, the prosecution has established that the appellants/accused were found in possession of large number of currency notes of Rs.50/- denomination and to be precise, in 4000 in number as seen from the seizure panchanama Exhibit 16. Now, let us examine whether it is proved that those currency notes were fake and counterfeit and whether those were possessed by the appellants/accused with requisite *mens rea*. For this purpose, evidence of P.W.No.5 Namdeo Ghule, API as well as that of P.W.No.3 Pawankumar Ozha, panch witness and P.W.No.7 Mr.Sonu Singh is relevant. It is seen from evidence of P.W.No.5 Namdeo Ghule, API that investigation transpired that printing of fake currency notes was going on at Sivan town Bihar State and the appellant/accused has procured those currency notes which were seized from him from Sivan town. Evidence of this witness shows that apart from panch witness P.W.No.3 Pawankumar Ozha, panch witness, accused persons were also with him. This witness has stated that after informing Sivan Police Station along with police team of said Police Station, panch witness, he himself

and the accused went to Khwaja Garib Nawaz Complex owned by P.W.No.7 Mr.Sonu Singh. The appellants/accused showed room located on first floor of that Complex to be the room where the work of counterfeiting the currency notes used to take place. The said room as per version of P.W.No.5 Namdeo Ghule, API was found locked and, therefore, it was got opened with a duplicate key by P.W.No.7 Mr.Sonu Singh. On search of that room, printing machine, adapter, injection syringe, printing cartridges, white papers, 10 fake currency notes of Rs.50/- denomination, 80 partly printed fake currency notes of Rs.50/- denomination, three genuine currency notes of Rs.50/- denomination pasted to the white paper etc. were found and those came to be seized by effecting seizure panchanama Exhibit 14.

11 Similar is the evidence of P.W.No.3 Pawankumar Ozha, panch witness, who deposed that by using duplicate key, the door of that room was opened by P.W.No.7 Mr.Sonu Singh. P.W.No.3 Pawankumar Ozha, panch witness has also deposed about finding of the material used for printing counterfeit currency notes from that room.

12 P.W.No.7 Mr.Sonu Singh, owner of the said room has deposed that he had given that room on rental basis to one Aman Ali Bholu. This witness has deposed that the police team approached him on 05/03/2010 and asked him about key of that

room. He informed that the key is with Bholu. The door was then opened by police as per version of this witness. This witness has also deposed about seizure of articles such as machine, partly printed currency notes, ink bottles, injection syringe etc. from the said room.

13 Evidence of all these three witnesses is criticized by the defence by arguing that P.W.No.7 Mr.Sonu Singh has deposed that the room was opened by police by obtaining duplicate key, whereas P.W.No.5 Namdeo Ghule, API and P.W.No.4 Subhan Khan, panch witness have deposed that it was P.W.No.7 Mr.Sonu Singh, who had opened the room by the duplicate key. The point for consideration which goes to the root of the case is whether fake currency notes and material used for printing fake currency notes was found in the room or not and not as to who opened that room. With passage of time, memory fades and, therefore, no overbearing importance can be given to such a inconsequential aspect as to who had opened the room. Similarly, the learned Advocate appearing for the appellants/accused argued that initially, P.W.No.7 Mr.Sonu Singh had deposed that two persons with hand-cuffs were with police, but subsequently, had stated that only one accused was with police. Careful perusal of evidence of P.W.No.7 Mr.Sonu Singh does not reflect this fact. On the contrary, though this witness has stated that two hand-cuffed persons were accompanied the police team. This witness in

paragraph 5 of his deposition has stated about the fact that he knew appellants/accused No.1 Mr.Mohamed Shahnawaz Yasin Sayyad, who was accompanying the police team as this accused used to visit the said room. This evidence cannot be construed to mean that only one of the accused was present with the police.

14 Evidence of P.W.No.3 Pawankumar Ozha, panch witness is criticized by arguing that this witness is habitual panch witness. Even if testimony of this witness, who is journalist by profession, is ignored from consideration, then also there appears trustworthy versions of P.W.No.5 Namdeo Ghule, API and P.W.No.7 Mr.Sonu Singh on record. Non-production of travel documents and railway tickets is of no consequence as criminal trials does not require proof of mathematical precision. Standard of person of ordinary prudence and his satisfaction is required for considering the fact as proved.

15 The net result of foregoing discussion regarding evidence of P.W.No.5 Namdeo Ghule, API, P.W.No.7 Mr.Sonu Singh and P.W.No.3 Pawankumar Ozha, panch witness makes it clear that the appellants/accused were at least knowing the place where the currency notes were being printed and seizure of the printer, incompletely printed fake currency notes and other articles from that place came to be seized vide seizure panchnama Exhibit 14.

16 The currency notes which were seized from the

appellants/accused person as well as from Sivan town in Bihar State were sent for examination to the Currency Note Press of Government of India at Nashik. The report of the said Currency Note Press is at Exhibit 28. The report of the expert shows that the currency notes seized from the appellants/accused are counterfeit currency notes.

17 The appellants/accused were found in possession of 2000 fake currency notes of Rs.50/- denomination individually. P.W.No.7 Mr.Sonu Singh has categorically deposed about visits of appellant/accused No.1 Mr.Mohamed Shahnawaz Yasin Sayyad,to the room where the material for printing fake currency notes was found by P.W.No.5 Namdeo Ghule, API. Investigation from the appellants/accused ultimately resulted in tracing out the place where the work of printing fake currency notes was going on. Fake currency notes as well as incompletely printed fake currency notes were found at that place as seen from the panchanama Exhibit 14. This material, in my considered opinion, is sufficient to reflect proof of *mens rea* required for the offence punishable under Section 489-B and 489-C of the IPC.

18 In the result, the prosecution has successfully proved that the appellants/accused received knowingly or having reason to believe as forged or counterfeit currency notes and possessed them with requisite knowledge. Therefore, their conviction for the

offences punishable under Section 489-B and 489-C cannot be faulted with. The resultant sentence imposed on him is also proper. In the result, the appeals fail and, therefore, the Order :

ORDER

- (i) The appeals are dismissed.

(A.M.BADAR J.)