

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 16.01.2019

CRA-S-1814-SB-2004 (O&M)

Karan Singh @ Kuku

... Appellant

versus

State of Haryana

... Respondent

CRA-S-1889-SB-2004 (O&M)

Jagat Singh

... Appellant

versus

State of Haryana

... Respondent

CRA-S-1941-SB-2004 (O&M)

Shekhar

... Appellant

versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. U.K.Agnihotri, Advocate
for the appellant in CRA-S-1814-SB-2004.

Mr. Pankaj Gupta, Amicus Curiae
for the appellant in CRA-S-1889-SB-2004.

Mr. Jitender Nara, Advocate
for the appellant in CRA-S-1941-SB-2004.

Mr. Ayuwan Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

This order of mine will dispose of three criminal appeals i.e.

CRA-S No.1814-SB of 2004, CRA-S-1889-SB of 2004 and CRA-S

No.1941-SB of 2004 as all of them have arisen out of common judgment

dated 03/05.08.2004. Brief facts of the case are taken from CRA-S-1814-SB-2004.

1. The instant appeal is directed against the judgment of conviction dated 03.08.2004 and order of sentence dated 05.08.2004 passed by learned Addl. Sessions Judge (Fast Track Court), Bhiwani wherein the accused-appellants have been convicted and sentenced as under:

<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Jagat Singh Shekhar Karan Singh	489-B IPC	Rigorous imprisonment (RI) for 10 years	₹ 2,000/-	Simple imprisonment (SI) for 06 months
Jagat Singh Shekhar Karan Singh	489-C IPC	RI for 07 years	₹ 800/-	SI for 04 months
Jagat Singh Shekhar Karan Singh	120-B IPC	RI for 03 years	₹ 200/-	SI for 02 months

All the sentences were ordered to run concurrently.

2. The case of the prosecution in nutshell was that on 10.02.2001 a secret information was received by PW-7 SI Partap Singh while he along with other police officials was on routine crime patrol qua appellants-accused Jagat Singh and Shekhar, indulging in the trade of counterfeit currency notes. Soon thereafter PW-7 SI Partap Singh after constituting a raiding party reached Mundhal Chowk where he found two persons i.e. appellants Jagat Singh and Shekhar standing near a barber shop under suspicious circumstances. The appellants were apprehended by the police party while they were trying to escape from the spot. The accused-appellant

Jagat Singh was found to be in possession of 26 fake currency notes of the denomination of ₹ 100/- each while the accused-appellant Shekhar was found to be in possession of 18 fake currency notes of the denomination of ₹ 100/-. After completion of all the formalities, a formal FIR Ex.PJ was registered against the appellants Jagat Singh and Shekhar. During investigation by the investigating agency, statements of PW-1 Kashmir Singh and PW-2 Raghbir Singh were also recorded under Sections 161 Cr.PC and both these witnesses handed over one currency note of the denomination of ₹ 100/- each to the investigating agency vide recovery memos Ex.PA and PE respectively. During the interrogation of these two appellants by the investigating agency, it came to light that the appellants Jagat Singh and Shekhar had procured counterfeit currency notes from the appellant-accused Karan Singh and Narender. Thereafter, the appellant Karan Singh and Narender were arrested as well.

3. After investigation, final report was filed and charges were framed under Sections 489(b), 489 (c) and 120-B IPC to which the appellants pleaded not guilty and claimed trial.

4. In order to prove the case of the prosecution, as many as 10 witnesses were examined by the prosecution and all the relevant documents were tendered. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.PC wherein they pleaded false implication on account of party faction. In their defence, the accused-appellants examined two witnesses namely Ranbir Singh as DW-1 and Krishan as DW-2.

5. The learned trial Court vide impugned judgment dated 03.08.2004 found accused-appellants guilty for the offence under Sections

489(b), 489(c) and 120-B IPC. All the accused were sentenced to undergo the rigorous imprisonment as already detailed above. Accused Narender was however, acquitted by the trial Court.

6. Learned counsel appearing for the appellants Jagat Singh and Shekhar submitted that it was a case of false implication of both the appellants inasmuch as no independent witness was joined at the time of the alleged recovery of counterfeit currency notes from the appellants and the recovery was only effected in the presence of official witnesses coupled with the fact that shopkeepers PW-1 Kashmir Singh and PW-2 Raghbir Singh to whom appellants Jagat Singh and Shekhar had allegedly handed over the fake currency notes, did not support the case of the prosecution. Hence, in the absence of these two material witnesses not supporting the case of the prosecution, mens rea on the part of the appellants to commit the offence under Sections 489(b), 489(c) and 120-B IPC was clearly amiss for which the benefit of doubt should go to the appellants. Learned counsel further argued that the recovery itself was doubtful as the recovered counterfeit currency notes had not even been signed by any of the official witnesses.

7. The last contention of learned counsel for the appellants Jagat Singh and Shekhar is that in the event of the impugned judgment being upheld, the sentence imposed by the trial Court be reduced to already undergone as they have faced the agony of trial for almost 17 years and do not have any criminal history.

8. Learned counsel appearing for the appellant Karan Singh @ Kuku submitted that the appellant has been dragged and falsely implicated in the case only on the basis of his name having cropped up during the

interrogation of the co-appellants i.e. Jagat Singh and Shekhar. Learned counsel vehemently argued that qua appellant Karan Singh @ Kuku there was no evidence brought on record by prosecution to show that he was indulging in the trafficking of counterfeit currency notes. Further, appellant Karan Singh was alleged to have made three disclosure statements Ex.PO dated 02.05.2001, Ex.PO/1 dated 03.05.2001 and Ex.PO/6 dated 05.05.2001 and it was only in pursuance to his last disclosure statement that the recovery of only three counterfeit currency notes of the denomination of ₹ 100/- were recovered from a thoroughfare, which had allegedly been buried in the ground adjoining the house of his sister.

9. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the appellants by contending that there is sufficient evidence/material on record to hold the accused-appellants guilty and fully liable for offence under Sections 489(b), 489(c) and 120-B IPC. Learned State counsel has drawn my attention to the report Ex.PR of Currency Notes Press, Nasik which establishes that the currency notes were fake and prays for dismissal of the instant appeal.

10. I have given my anxious consideration to the arguments addressed by the learned counsel for the parties as also to the evidence and material on record.

11. To begin with one circumstance, which cannot be lost sight of is, that the appellants Jagat Singh and Shekhar were apprehended by the police party on the basis of secret information and were found in conscious possession of fake currency notes, which were all bearing the same numbers. Admittedly, PW-1 Kashmir Singh and PW-2 Raghbir Singh did not support the case of the prosecution and were declared hostile by learned

Public Prosecutor but a perusal of their cross-examination reveals that they have admitted to having signed Ex.PA and EX- PE respectively, which are the recovery memos of the two fake currency notes, which had been given to them by appellants Jagat Singh and Shekhar and which during investigation were handed over to the investigating agency. There is nothing brought on record by the defence to show as to why and under what circumstances, these two hostile witnesses put their signatures on the recovery memos Ex.PA and PE respectively except for a vague allegation by PW-1 Kashmir Singh on being cross-examined by the prosecution that his signatures were obtained by the police on blank papers, which on the face of it does not appeal to reason as to why the police would obtain the same without any enmity having been alleged. Thus, it leaves no manner of doubt that these two witnesses PW-1 Kashmir Singh and PW-2 Raghbir Singh turned turtle for reasons but obvious and thus, their not supporting the prosecution case becomes inconsequential.

12. The next contention raised by learned counsel for the appellants about the non-joining of independent witnesses at the time of apprehension of the appellants and even at the time of the making of disclosure statements, in my considered opinion, would not help the case of the appellants. It must be borne in mind that joining of independent witness is only by way of caution and not a rule of law. The evidence of official witnesses alone can be well acted upon if the same inspires confidence. In my view, in the circumstances in hand, I do not find any infirmity on the part of the learned trial Court in placing reliance on the official witnesses against whom nothing adverse has been alleged by the defence much less any iota of evidence led as to why they would go to implicate the appellants

Jagat Singh and Shekhar falsely by planting fake currency notes on them. In fact, it has come in the cross examination of Investigating Officer PW-7 SI Partap Singh that he did try to join independent witness at the time of raid but the same proved to be futile inasmuch as the people from the general public were reluctant to join.

13. Further vide report Ex.PR of Mr. C.R.Karnik, Deputy Works Manager, Currency Notes Press, Nasik it is conclusively established that the currency notes so recovered from the conscious possession of appellants - Jagat Singh and Shekhar were fake.

14. I am unable to agree with the contention of the learned counsel for the appellants Jagat Singh and Shekhar that mens rea, an essential ingredient for commission of offence under Section 489(c), is missing in the case. It is not easy to adduce direct evidence qua mens rea and the same has to be established from the circumstances and conduct of the accused. In the case in hand, the mens rea of the accused is writ large from the huge recovery of counterfeit currency notes i.e. ₹ 4400/- from their conscious possession. Admittedly, mere possession or use of counterfeit currency notes would not be sufficient enough to infer guilt of the accused appellants but at the same time presumption of knowledge would have to be gathered from the collateral circumstances leading to the seizure of fake notes, which were bearing same numbers and that too in huge quantity for which the only reasonable presumption that can be drawn is that the accused-appellants Jagat Singh and Shekhar were in possession of the same with an intention of using them as genuine.

15. As far as the argument raised by the learned counsel for the appellants that the recovered notes were not signed by the investigating

agency of the alleged recovery is concerned, the same is devoid of any merit because it has come in evidence that the recovered notes were sealed as Ex.PK and PK/1 on which the seal of ASI Mahabir Singh was affixed as 'MS'. Moreover, according to the report of Deputy Works Manager, Currency Note Press, Nasik Ex.PR and PR/1, the counterfeit currency notes were received in an intact condition in a sealed parcel cover from Bhiwani Police Station and after examination, was sent back in a sealed cover.

16. As far as appellant Karan Singh @ Kuku is concerned, his name and role in the commission of crime cropped up during the interrogation of appellants Jagat Singh and Shekhar. The prosecution version with regard to the recovery of three fake currency notes of denomination of ₹ 100/- each in pursuance of his disclosure statement Ex.PO/6 dated 05.05.2001 i.e. his 3rd disclosure statement, does not seem to be convincing. As per prosecution version, appellant Karan Singh was interrogated as many as three times and had come out with three different disclosure statements. It was only in pursuance of his 3rd disclosure statement that he is said to have got recovered only three fake currency notes of ₹ 100/- wrapped in a polythene after digging them out of the earth from an open space located near his sister's house. It does not appeal to reason after taking into account the fact that it was after 2½ months of the interrogation of the co-accused Jagat Singh and Shekhar, this recovery was effected from the appellant Karan Singh.

In my considered opinion, the evidence brought on record by the prosecution against appellant Karan Singh is too weak to record a finding of conviction and thus, he deserves the benefit of doubt.

17. In the light of what has been discussed above, the appeal qua

appellant Karan Singh @ Kuku is allowed and the conviction and sentence by trial Court qua the appellant Karan Singh @ Kuku is set aside.

However, keeping in view the agony of trial faced by the appellants Jagat Singh and Shekhar for the last 17 years and the fact that they do not have any other criminal record while maintaining the conviction of the appellants Jagat Singh and Shekhar it would be appropriate that the sentence imposed upon them is reduced to the period of three years under Sections 489 (b) and 489(c) IPC. The sentence imposed under Section 120-B IPC shall remain intact. However, the amount of fine is enhanced to from ₹ 2,000/- to ₹ 10,000/- each and in default of payment of fine, the appellants Jagat Singh and Shekhar shall undergo simple imprisonment for 06 months.

18. With these modifications, the appeals are disposed of.

The accused appellants Jagat Singh and Shekhar are on bail. Their bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure their custody.

16.01.2019
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No