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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.443 of 2006

Judgment Reserved on : 29.11.2019

Judgment Delivered on : 27.2.2020

Rajesh Agrawal, son of Late Fulchand Agrawal, aged about 25 years, resident of Village Nevra, Police Station Tilda-Nevra, District Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Nevra, District Raipur, Chhattisgarh

--- Respondent

For Appellant : Shri Manoj Paranjpe, Advocate
For Respondent : Shri Amit Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 17.5.2006 passed by the Sessions Judge, Raipur in Sessions Trial No.391 of 2000, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 489B of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.10,000/- with default stipulation
Under Section 489C of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.5,000/- with default stipulation

2. Prosecution case, in brief, is that Ashok Kumar Yadav (PW2) was owner of Sourabh Petrol Pump, Tilda. On 8.3.2000 at about 8:30

AM, the Appellant came to the petrol pump in a vehicle Tata Sumo bearing registration No.MH 02 L 8288 and got 15 litres diesel filled in the vehicle and gave 3 currency notes of Rs.100/- each. The pump operator after deducting Rs.240/- for the diesel refunded him Rs.60/-. Thereafter, the pump operator found that those 3 notes of Rs.100/- were forged currency notes. Then he gave a written intimation (Ex.P1) to the Police Station Nevra. Those 3 currency notes bearing numbers 9HW775472, 9HW775299 and 9HW775478 were seized from owner of the petrol pump Ashok Kumar Yadav (PW2) vide Ex.P3. It is the further case of the prosecution that on 11.3.2000, during search, Station House Officer of Police Station Nevra, namely, Satyendra Pandey (PW10), on the basis of information received from informant, stopped the aforesaid Tata Sumo vehicle 7 kms. ahead from Rajnandgaon. In the said vehicle, the Appellant was sitting. A search of his pant was made in which 25 forged currency notes of Rs.100/- each were found which were seized from the Appellant in presence of witnesses Yashwant Kumar Sharma (PW8) and Ishwar Kumar Sharma (PW9) vide Ex.P10. The said Tata Sumo vehicle was also seized vide Ex.P10 itself. Memorandum statement under Section 27 of the Evidence Act of the Appellant was recorded vide Ex.P8. It was disclosed by him that those forged currency notes were given to him by co-accused Ashok Umlani (absconded). Statement of Ashok Umlani under Section 27 of the Evidence Act was also recorded vide Ex.P9. According to the further case of the prosecution, 40 forged currency notes each of Rs.100/- were recovered from co-accused Ashok Umlani. It was disclosed by Ashok Umlani that he had got those 40 forged currency notes from absconded co-accused Raj Kapoor. On

11.3.2000 itself, Satyendra Pandey (PW10) recorded Dehati Nalishi (Ex.P6). On return to the police station, he recorded First Information Report (Ex.P7) on the basis of the Dehati Nalishi (Ex.P6). 25 forged currency notes of Rs.100/- each seized from the Appellant and 40 forged currency notes of Rs.100/- each recovered from absconded co-accused Ashok Umlani were sent for examination vide Ex.P12. Examination report of the expert is Ex.P14. According to the report (Ex.P14), all the currency notes of Rs.100/- each were found to be forged. Statements of witnesses were also recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed. Charges were framed under Sections 489B and 489C of the Indian Penal Code against the Appellant and under Sections 489C and 489A of the Indian Penal Code against co-accused Ashok Umlani. During pendency of the trial, vide order dated 31.3.2005, co-accused Ashok Umlani was declared to be absconded.

3. In support of its case, the prosecution examined as many as 10 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. In defence, the Appellant examined Mahesh Kumar Wadhwani (DW1).
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being any clinching evidence on record against the Appellant, the Trial Court has wrongly convicted him. The Trial

Court, while passing the impugned judgment, failed to appreciate the testimony of Ashok Kumar Yadav (PW2) and Santosh Nishad (PW4) in correct perspective, which resulted into erroneous judgment. Thus, the impugned judgment, being illegal and erroneous, is contrary to law. It was further submitted that according to Ashok Kumar Yadav (PW2) and Vijay Agrawal (PW1), the Tata Sumo vehicle in question was already caught on 8.3.2000. Therefore, the statement of Satyendra Pandey (PW10) that he caught the said Tata Sumo vehicle during patrolling search on 11.3.2000 is not reliable. Therefore, recovery of 25 forged currency notes of Rs.100/- each from the Appellant made on 11.3.2000 is suspicious. It was further submitted that according to the written intimation (Ex.P1), Ashok Kumar Yadav (PW2) had taken the said 3 forged currency notes of Rs.100/- each to the police station and those notes were recovered and seized from him. But, in his Court statement, Ashok Kumar Yadav (PW2) has deposed that on finding that the said 3 notes were forged, he had returned the same to the Appellant. In these circumstances, those 3 forged currency notes should have also been seized from the Appellant. Ashok Kumar Yadav (PW2) has not supported the seizure of the said 3 forged currency notes which were seized from himself. In these circumstances, any such 3 forged currency notes were in possession of the Appellant is suspicious. It was further submitted that according to the statement of Ashok Kumar Yadav (PW2), on finding the said 3 currency notes to be forged, he had returned the same to the Appellant and he had suggested him to return the same to the person from which he had received. In these circumstances, even if for the sake of argument, it is considered that those 3 currency notes were forged, which were

kept by the Appellant, it is not established that the Appellant tried to use them as genuine knowing and having reason to believe the same to be forged. Thus, the offence under Sections 489B and 489C of the Indian Penal Code is not proved.

6. Learned Counsel appearing for the State/Respondent opposed the arguments advanced on behalf of the Appellant and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Vijay Agrawal (PW1) has deposed that he and the Appellant had come to Raipur from Seoni on a Tata Sumo vehicle on 8.3.2000 because marriage of his brother had to take place at Raipur and he had given a sum of Rs.350/- to the Appellant to purchase and give sweets. According to this witness, after 1 hour, police officials had called him in the police station. At that time, their Tata Sumo vehicle was standing in the police station and the police had seized the said vehicle.
9. Ashok Kumar Yadav (PW2), owner of the petrol pump has deposed that the Appellant had come to his petrol pump in a Tata Sumo vehicle in the morning and after getting diesel filled in the vehicle he had given 3 currency notes of Rs.100/- each. On finding those notes to be suspicious, he had returned them to the Appellant. At that time, he had told the Appellant that those notes were suspicious and he had also asked from the Appellant about the person from whom he had brought the said notes. The Appellant had told him that he had received those notes in a marriage ceremony. He had suggested the Appellant to return

those notes to the person from whom he had received. This witness has further deposed that then the Appellant had taken back those 3 notes from him and had given him other 3 currency notes of Rs.100/- each, which he found to be genuine. According to this witness, since the Appellant moved towards the city rather to the side from where he had come, he gave information in police station telephonically. This witness has further deposed that 2-3 hours thereafter, police officials told him that the intimation given by him was correct and they called him in the police station. He went to the police station and submitted the written intimation (Ex.P1). This witness has further deposed that in the police station, the police officials showed him 3 currency notes of Rs.100/- each. He recognised that the said 3 notes were the same which were given to him by the Appellant at the petrol pump. After declaration of this witness to be hostile, he has admitted that the Appellant had given him 3 forged currency notes of Rs.100/- each and he had submitted those notes along with his written report (Ex.P1) in the police station. During cross-examination, in paragraph 9, this witness has admitted that when he made report (Ex.P1) in the police station, at that time, he saw that the Tata Sumo vehicle in which the Appellant had come was standing in the police station.

- 10.** Santosh Nishad (PW4) has supported the statement of Ashok Kumar Yadav (PW2) and has deposed that on the date of incident, the Appellant had come to the petrol pump in a Tata Sumo vehicle for getting diesel filled in. However, this witness has admitted that the Appellant had not given any currency notes to Ashok Kumar Yadav (PW2) in his presence.

- 11.** Sachchanand (PW5) and Santosh Nishad (PW4), before whom, according to the prosecution, 3 currency notes of Rs.100/- each were seized from the Appellant, have not supported the case of the prosecution.
- 12.** Constable Premraj (PW6) is the witness who had taken unnumbered Dehati Nalishi (Ex.P6) to Police Station Nevra. Assistant Sub-Inspector Ramkumar Vaishnav (PW7) recorded the FIR (Ex.P7) on the basis of the said Dehati Nalishi. Yashwant Kumar Sharma (PW8) and Ishwar Kumar Sharma (PW9) are the witness before whom, according to the prosecution, 25 forged currency notes of Rs.100/- each and the Tata Sumo vehicle were seized from the Appellant, but both these witnesses have not supported the case of the prosecution and turned hostile. They have only admitted their signatures on the seizure memo.
- 13.** Satyendra Pandey (PW10) is the Investigating Officer of the offence in question. He has deposed that on 8.3.2000, Ashok Kumar Yadav (PW2) had submitted the written report (Ex.P1) and 3 forged currency notes of Rs.100/- each. Those 3 notes were seized by him from Ashok Kumar Yadav vide Ex.P3. This witness has further deposed that on 11.3.2000, during search, Tata Sumo vehicle bearing registration No.MH 02 L 8288 was seen going towards Nagpur 7 kms. ahead from Rajnandgaon. This witness stopped the said Tata Sumo vehicle. He found that the Appellant was sitting in the said vehicle. He also found that the Appellant had kept 25 forged currency notes of Rs.100/- each. He seized the Tata Sumo vehicle and the said 25 forged currency notes vide Ex.P10. During cross-examination, this witness has deposed that after making seizure of the said 25 forged currency notes, he had

sealed them and deposited in the Malkhana. But, there is no mention of sealing of those currency notes in the seizure memo (Ex.P10) and there is also no document available on record regarding deposit of the said forged currency notes in the Malkhana.

14. On a minute examination of the evidence available on record, I find that as stated by Satyendra Pandey (PW10), the aforesaid 25 forged currency notes of Rs.100/- each were seized on 11.3.2000. But, both the seizure witnesses Yashwant Kumar Sharma (PW8) and Ishwar Kumar Sharma (PW9) have not supported the case of the prosecution. As stated by Vijay Agrawal (PW1) and Ashok Kumar Yadav (PW2), the Tata Sumo vehicle in question was standing in Police Station Nevra on 8.3.2000. Therefore, catching of the said vehicle on 11.3.2000 and recovery and seizure of 25 forged currency notes of Rs.100/- each from the Appellant on that date itself cannot be said to be reliable without support of the statements of independent witnesses Yashwant Kumar Sharma (PW8) and Ishwar Kumar Sharma (PW9). Looking to the above, without the support of the statements of Yashwant Kumar Sharma (PW8) and Ishwar Kumar Sharma (PW9), merely on the statement of Satyendra Pandey (PW10), recovery and seizure of the Tata Sumo vehicle and of 25 forged currency notes of Rs.100/- each from the Appellant on 11.3.2000 is not acceptable. Even if the entire statement of Ashok Kumar Yadav (PW2) is taken as it is, it is only established that the said 3 currency notes of Rs.100/- each which were given to him by the Appellant were found to be suspicious by him. But, from the statement of Ashok Kumar Yadav (PW2), it is also clear that the said 3 forged currency notes of Rs.100/- each were allegedly given to him by the Appellant at the

petrol pump on 8.3.2000. From the statement of Ashok Kumar Yadav (PW2), it is also clear that the said 3 notes were found to be suspicious by him. Therefore, he, telling that those notes were suspicious, had returned them to the Appellant and at that time on being asked, the Appellant had told this witness that he had received those 3 notes in a marriage ceremony. Ashok Kumar Yadav (PW2) had also suggested the Appellant to return those 3 notes to the person from whom he had received. Thus, from the above statement of Ashok Kumar Yadav (PW2), it is also established that at the time of giving those 3 currency notes to him, the Appellant had no knowledge or reason to believe that those notes were forged. Therefore, mere on the basis of the fact that the currency notes, which were given by the Appellant, were found to be forged, the offence punishable under Sections 489B and 489C of the Indian Penal Code against the Appellant is not established. Thus, the conviction imposed upon the Appellant is not sustainable.

- 15.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
- 16.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE