

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 790 of 2009

1. Gajjoo @ Punit Kumar S/o Guharam Sonwani, Aged about 27 years, R/o Farhada, Police Station Bhatapara (Gramin), District Raipur (C.G.)
2. Ram Kresh S/o Ramsai Joshi, Aged about 32 years, R/o Village Nayagaon, Police Station Bhatapara, Gramin, District Raipur (C.G.)
3. Hemant Kumar S/o Sukhdeo Prasad Jangde, Aged about 26 years, R/o Village Bitkuli, Police Station Baloda Bazar, District Raipur (C.G.)
4. Bindra Kumar S/o Shiv Prasad Ratnakar, Aged about 22 years, R/o Village Bhilauni, Police Station Pamgarh, District Janjgir-Champa (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, Through – Police Station Bhatapara Gramin, District Raipur (C.G.)

---- Respondent/State

For Appellants	:	Shri Anil Singh Rajput, Advocate
For Respondent/State	:	Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

02.11.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 29.10.2009 passed by the Additional Sessions Judge, Bhatapara, District Raipur (C.G.) in Sessions Case No. 14 of 2008, whereby the Appellants stand convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 489B of Indian Penal Code (for short 'IPC')	S.I. for one year and pay a fine of Rs.500/- each, in default of payment to further undergo S.I. for fifteen days each
Under Section 489C of IPC	S.I. for one year and pay a fine of Rs.500/- each, in default of payment to further undergo S.I. for fifteen days each
Both the sentences to run concurrently	

3. The case of the prosecution in brief is that on 20.07.2008 Investigating Officer S.N. Sidar, Inspector, Police Station Bhatapara (Gramin), received an information from informant that accused/appellant Gajjoo @ Punit Kumar was having a counterfeit note and was using it as genuine currency note. On this information, the Investigating Officer alongwith his staff i.e. Head Constable (1416), Constables (No. 996, 759 & 640) and witnesses namely Kriparam Dhruw (PW-1) & Jagannath Verma (PW-2) reached Village Farhada and took appellant Gajjoo in custody and inquired. During inquiry, appellant Gajjoo accepted that he was using a counterfeit note.
4. Memorandum statement (Ex.-P/1) of appellant Gajjoo was recorded on the same day i.e. 20.07.2008 at about 16:10 hours in presence of witnesses i.e. PW-1 Kriparam Dhruw & PW-2 Jagannath Verma consequent to which three notes of denomination of 500, 100 & 50 were seized at his instance at Village Farhada at about 16:20 hours vide seizure memo Ex.-P/4 through house-search-panchnama (Ex.-P/7) dated 20.07.2008 at 16:30 hours. Appellant Gajjoo also disclosed the name of accused/appellant Ram Kresh.
5. Memorandum statement (Ex.-P/2) of appellant Ram Kresh was recorded on 20.07.2008 at about 17:20 hours in presence of witnesses (PW-1 & PW-2) consequent to which five notes of denomination of 500 were seized at his instance at Village Navagaon at about 17:30 hours vide seizure memo Ex.-P/5 through house-search-panchnama (Ex.-P/8) dated 20.07.2008 at 17:45 hours. Appellant Ram Kresh disclosed the name of accused/appellant Hemant Kumar.
6. Memorandum statement (Ex.-P/3) of appellant Hemant Kumar was recorded on 21.07.2008 at about 08:20 hours in presence of witnesses (PW-1 & PW-2) consequent to which two notes of denomination of 500 & 100 were seized at his instance at Village Navagaon at about 08:30 hours vide seizure memo Ex.-P/6 through house-search-panchnama (Ex.-P/9) dated 20.07.2008 at 17:45 hours. Appellant Hemant Kumar disclosed the name of

accused/appellant Bindra Kumar.

7. After recording memorandums of the above accused/appellants and making seizure from them, the police party went to Village Bhiloni, P.S. Pamgarh, District Janjgir for searching of accused Bindra, but he was not found there and they returned to Police Station Bhatapara (Gramin) and recorded *Roznamchasahana* No. 513 dated 21.07.2008 at about 15:00 hours against the above three accused persons vide Ex.-P/19. *Dehatinalishi* (Ex.-P/20) was recorded on 21.07.2008 at about 11:30 hours and F.I.R. (Ex.-P/21) was registered at about 15:15 hours on the same day in Police Station Bhatapara (Gramin) under Sections 489B & 489C read with Section 34 of IPC against all four accused/appellants. During investigation, one note of denomination of 500 was seized on 22.07.2008 at 11:30 hours from the possession of one Raghvendra Kumar Singh in the presence of witness Chudamani Verma (PW-3) vide Ex.-P/14
8. Accused/appellants Gajjoo @ Punit Kumar, Ram Kresh & Hemant Kumar were arrested on 21.07.2008 vide arrest memos Ex.-P/10, Ex.-P/11 & Ex.-P/12.
9. Seized currency notes were sent to R.B.I., Issue Department, Nagpur (Maharashtra) for examination on 03.10.2008 vide Ex.-P/18A, from where a report Ex.-P/18 dated 08.10.2008 of PW-8 P.D. Sonkunwar, Deputy Treasurer, R.B.I. has been received. As per Ex.-P/18, PW-8 opined that all the currency notes were counterfeit and fake.
10. After recording case diary statements of the witnesses namely Kriparam Dhruw, Ashwani Kumar, Rajkumar, Shiv Kumar, Jagannath, Prem Singh, Raghvendra Kumar Singh, Chudamani Verma, Golu & Kartikram and completion of the investigation, charge-sheet was filed against all the the accused/appellants under Sections 489B & 489C read with Section 34 of IPC. However, while framing charge, the Additional Sessions Judge Bhatapara framed charges under Sections 489B read with Section 34 of IPC

& Section 489C read with Section 34 of IPC against all the appellants which were denied by them and they prayed for trial.

11. So as to hold the accused persons guilty, the prosecution examined 10 witnesses namely PW-1 Kriparam Dhruw, PW-2 Jagannath, PW-3 Chudamani Verma, PW-4 Ashwani Banjare, PW-5 Kartik, PW-6 Rajkumar, PW-7 Shiv Kumar, PW-8 P.D. Sonkunwar, PW-9 Kamal Kishore Verma and PW-10 S.N. Sidar in support of its case. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them and they pleaded innocence and false implication. No defence witness has been examined by the accused persons in support of their case.

12. After appreciation of the evidence available on record, the learned Additional Sessions Judge, Bhatapara by the impugned judgment, convicted and sentenced the appellants as mentioned in para- 2 of this judgment, hence this appeal.

13. Learned counsel for the appellants submits that PW-1 Kriparam Dhruw and PW-2 Jagannath, who are the witnesses of memorandums and seizures, became hostile and they did not support the prosecution case. He further submits that the conviction of the appellants is only based on the evidence of PW-10 S.N. Sidar, Investigation Officer, who committed gross negligence and misconduct in investigating the case and there are many contradictions and omissions in his evidence. The trial Court has mis-appreciated the entire evidence on record and the findings are bad in law and perverse, therefore, the judgment of conviction and sentence are liable to be set aside.

14. Opposing the submission of counsel for the appellants, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in the light of the provisions of the law and as such there is no illegality or infirmity in it warranting interference by this Court.

- 15.** Heard counsel for the respective parties and perused the material on record.
- 16.** It is not disputed by both the parties that Reserve Bank of India (R.B.I.) examined currency notes sent by the concerned Superintendent of Police vide Ex.-P/18A for examination and as per report submitted by R.B.I. vide Ex.-P/18, 11 numbers of notes as mentioned in that report were found counterfeit and fake. PW-8 P.D. Sonkunwar has duly proved Ex.-P/18. In the present case, independent witnesses i.e. Kriparam Dhruw (PW-1) and Jagannath (PW-2) both turned hostile and they did not support prosecution case at any stage of their examinations. PW-1 Kriparam Dhruw has only stated in para-2 of his deposition that when he had gone to Police Station Bhatapara (Gramin) to meet his relative Dindayal Dhruw, at that time T.I. - Sidar told him to sign on 3-4 documents, then he signed the said documents. PW-2 Jagannath has also stated in his deposition that T.I. - Sidar has taken his (PW-2) signature in 08-10 documents, but no any proceeding regarding memorandum statements or seizures was made in his presence.
- 17.** PW- Ashwani Banjare did not support the prosecution case. He has stated that no any statement was recorded by the police. PW-6 Rajkumar and PW-7 Shiv Kumar have turned hostile and they have not supported the prosecution case at any stage of their examinations.
- 18.** Prosecution case is only based on the evidence of PW-10 S.N. Sidar, Investigating Officer, and PW-5 Kartik. PW-5 Kartik has stated that one Shiv Kumar had given the note of Rs.500/- for purchasing liquor to him and he returned same to Shiv Kumar, then Shiv Kumar had again given five notes of 100 denomination. PW-5 admitted that Shiv Kumar had given the note of Rs.500/- to his (PW-5) wife, but no any allegation has made against the accused persons by PW-5. Therefore, the evidence of PW-5 Kartik also does not support the prosecution case and no any note was seized from the possession of PW-5.
- 19.** PW-8 P.D. Sonkunwar who is Deputy Treasurer in R.B.I. has duly proved

Ex.-P/18 and found that the notes were fake and counterfeit by giving reason at serial No. 1 to 8 in his report (Ex.-P/18).

20. PW-10 S.N. Sidar, Investigating Officer, has stated that as per memorandums of appellants- Gajjoo @ Punit Kumar (Ex.-P/1), Ram Kresh (Ex.-P/2) and Hemant Kumar (Ex.-P/3), he searched the house of Gajjoo at Village Farhada and recovered three notes of denomination of 500, 100/- & 50/- vide house-search-panchnama Ex.-P/7. Likewise, on search of house of Ram Kresh at Village Navagaon, he recovered five notes of denomination of 500 vide house-search-panchnama Ex.-P/8 and on search of house of Hemant Kumar at Village Bitkuli, he recovered two notes of denomination of 500 & 100 vide house-search-panchnama Ex.-P/9.

21. Memorandum of appellant Gajjoo @ Punit Kumar was recorded on 20.07.2008 at 16:10 hours, his house search was made at 16:30 hours and seizure was made at 16:20 hours on the same day. The memorandum of appellant Gajjoo (Ex.-P/1) was taken at Village Farhada at about 16:10 hours and his house was searched at 16:30 hours vide Ex.-P/7, but, prior to search of his house, seizure was prepared by PW-10 S.N. Sidar at 16:20 hours through Ex.-P/4. Appellant Gajjoo has stated in his memorandum statement (Ex.-P/1) that he kept fake currency notes in his house and house search was made by the police at 16:30 hours, but seizure was prepared 10 minutes prior to search of his house.

Likewise, memorandum of appellant Ram Kresh was recorded on 20.07.2008 at 17:20 hours, his house search was made at 17:45 hours and seizure was made at 17:30 hours on the same day. The memorandum of appellant Ram Kresh (Ex.-P/2) was taken at Village Navagaon at about 17:20 hours and his house was searched at 17:45 hours vide Ex.-P/8, but, prior to search of his house, seizure was prepared by PW-10 S.N. Sidar at 17:30 hours through Ex.-P/5. Appellant Ram Kresh has stated in his memorandum statement (Ex.-P/2) that he kept fake currency notes in his

house and house search was made by the police at 17:45 hours, but seizure was prepared 15 minutes prior to search of his house.

Looking to the time gap between the house search (Ex.-P/7 & Ex.-P/8) of appellants Gajjoo @ Punit Kumar & Ram Kresh and the seizure memos (Ex.-P/4 & Ex.-P/5) prepared prior to search of houses where the counterfeit notes were found at the instances of the both the appellants, creates doubt on the veracity of the prosecution case.

22. Further, seizure memos were prepared in three different places, first place as per Ex.-P/4 from the house of appellant Gajjoo at Village Farhada, second, as per Ex.-P/5 from the house of appellant Ram Kresh at Village Navagaon and third, as per Ex.-P/6 from the house of appellant Hemant Kumar at Village Navagaon. The house of appellant Hemant Kumar was searched on 20.07.2008 at 17:45 hours at Village Bitkuli and the witnesses (PW-1 & PW-2) of the search of house were present there vide Ex.-P/9, but seizure (Ex.-P/6) was prepared on 21.07.2008 at 08:30 hours. There is no explanation of house search (Ex.-P/7) of appellant Gajjoo at 16:30 hours on 20.07.2008 at Village Farhada and subsequently house search (Ex.-P/8) of appellant Ram Kresh was made on 20.07.2008 at 17:45 hours at Village Navagaon and at same time, a different Village namely Bitkuli where the house search (Ex.-P/9) was made on 20.07.2008 at 17:45 hours by PW-10 S.N. Sidar. PW-10 admitted in para-8 that the distance between Village Navagaon and Village Bitkuli is of 10 Km and PW-10 conducted house search (Ex.-P/8 & Ex.-P/9) of appellants Ram Kresh & Hemant Kumar at the same time but it is not possible to conduct above search at the same time. Therefore, PW-10 S.N. Sidar, Investigating Officer, committed a grave error in conducting the search and seizure proceedings which is fatal to the prosecution case.

23. The trial Court has also observed in its judgment in para-19 that the distance between Village Navagaon and Village Bitkuli is of 10 Km and the

Investigation Officer committed a mistake and also observed in para-20 that the Investigating Officer committed serious error and carelessness in conducting the investigation.

24. The house search of Gajjoo and Ram Kresh were prepared in the presence of witnesses on 20.07.2008 at 16:30 hours at Village Farhada & 17:45 hours at Village Navagaon vide Ex.-P/7 & Ex.-P/8, but the seizures of the same were prepared on the same day at 16:20 hours & 17:30 hours. Therefore, looking to the time gap between seizures and houses search, the entire prosecution case also becomes doubtful. As per *Roznamchasahna* Ex.-P/19, PW-10 S.N. Sidar alongwith staff proceeded to Village Bitkuli, P.S., Baloudabazar from Village Navagaon for searching of appellant Hemant Kumar, but Hemant was not present in Village Bitkuli, therefore, PW-10 and his staff stayed there in night and on 21.07.2008 at about 08:00 hours they proceeded to Village Bitkuli, recorded the memorandum (Ex.-P/3) of appellant Hemant Kumar and made seizure of counterfeit notes from Hemant. Looking to the fact that Ex.-P/9 (house search panchnama) was made on 20.07.2008 at about 17:45 hours and appellant Hemant was in custody of Investigating Officer (PW-10) from 20.07.2008, and his memorandum was recorded on 21.07.2008 at about 08:20 hours, it also creates a doubt on the investigation by PW-10. Further, in the Ex.-P/6 seizure memo in respect of Hemant Kumar, date of seizure was mentioned as 21.07.2008 by using whitener whereas house search was made before 21.07.2008 i.e. on 20.07.2008 as per Ex.-P/9.

25. So far as accused/appellant Bindra Kumar is concerned, there is no any evidence against him proving his involvement in the crime in question.

26. In this case, independent witnesses (PW-1 Kriparam Dhruw & PW-2 Jagannath Verma) of seizures and memorandums have not supported the prosecution case and they have been declared hostile by the prosecution, therefore, on the basis of evidence of S.N. Sidar, Investigating Officer (PW-

10), the appellants could not be convicted because the evidence of PW-10 does not inspire confidence of the Court. Therefore, the prosecution has failed to prove guilt of the appellants beyond all reasonable doubt and being so, the benefit of doubt has to be credited to the appellants, thereby entitling them for acquittal of the charges.

27. On the basis of aforesaid discussions, the conviction of the appellants under Sections 489B & 489C of IPC is liable to be set aside and they are entitled to be acquitted of the said charges.

28. In the result, the appeal is allowed. Conviction and sentence imposed on the appellants under Sections 489B & 489C of IPC are set aside and they are acquitted of the said charges. The appellants are reported to be on bail during trial and pendency of this appeal, therefore, their bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437 of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge