

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Before: Hon'ble Justice Sugato Majumdar

CRA 118 of 2015

With

IA No. CRAN/1/2015 (Old No. CRAN/977/2015)

Asraul Hoque

Vs.

The State of West Bengal

For the Appellant	:	Mr. Aslam Khan, Mr. Musharraf Alam.
For the State	:	Mr. S. G. Mukherjee, Ms. Faria Hossain, Mr. Anand Keshari.
Hearing concluded on	:	08/09/2022
Judgment on	:	20/09/2022

Sugato Majumdar, J.:-

The instant appeal is preferred against Judgment of conviction and Order of sentence both dated 19/09/2014 passed by the Additional District and Sessions Judge, 5th Court Malda, in Sessions Trial No. 9 of 2013 whereby the Appellant was convicted under section 489(C) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for five years along with fine of Rs. 5,000/- in default rigorous imprisonment for another one year.

Secret information was received on 13/01/2013 at 12:05 hours by Assistant Sub-Inspector Uttam Kumar Das of Manikchawk Police Station, Malda that one unknown person was carrying fake Indian currency notes and was proceeding from Malda to Dharampur. He along with other police persons went to Dharampur bus stand on the basis of information so received, at 12:35 hours. At around 13:15 hours the Appellant got down from vehicle at Dharampur bus stand. The person of

the Appellant was searched following usual formalities and 102 pieces of fake Indian currency notes of denomination of Rs. 500/- was seized from his possession. He was arrested on the spot. Written complaint was lodged by the said ASI Uttam Kumar Das before the Officer-in-Charge Manikchawk Police Station, District – Malda. The written complaint was received on 13/01/2013 at 17:45 hours in terms of GD Entry No. 595 and Manikchawk Police Station Case No. 12 of 2013 dated 13/01/2013 under section 489(B)/489(C) of the Indian Penal Code was registered. Sub-Inspector Subimal Kumar Dey was entrusted with investigation. In course of investigation, he visited the place of occurrence and prepared rough sketch map with index, examined witnesses, collected seized articles on preparing seizure list. Seized notes were sent for examination and he received the result of examination. On completion of investigation, he filed charge sheet under section 489(B)/489(C) of the Indian Penal Code.

Since the case was exclusively triable by a Sessions Court, the matter was committed to the Sessions Judge and then to the Trial Court.

Cognizance was taken and charges were framed under section 489(B)/489(C) of the Indian Penal Code. Charges were read over and explained to the Appellant to which he pleaded not guilty and claimed to be tried, resulting in the trial.

In course of trial, prosecution examined ten witnesses and produced various documents marked as Ext. 1 to 6. Seized fake Indian currency notes were marked as MAT Ext. (I), collectively.

The Appellant was examined under section 313 of the Code of Criminal Procedure. The defense of the Appellant was that he was falsely implicated and he is innocent.

The Trial Court convicted the Appellant in terms of the impugned judgment and sentenced him as aforesaid.

On being dissatisfied, the appellant preferred the instant appeal. At the time of admission of the appeal it was overlooked that there was delay of 129 days in preferring the appeal. Petition for condonation of delay is pending since then. Let the delay be condoned.

Mr. Khan, the learned Counsel for the Appellant submitted that the prosecution case is rife with contradictions and inconsistencies belying reliability of evidence. He argued that there are discrepancies in evidence of witnesses as to time of the incident. Some of the witnesses stated that the incident took place at 12:30 hours, some of the witnesses stated that the incident took place at 01:15 hours and some other also stated that the incident took place at about 03:30 P.M. Such contrary evidence should not be relied upon by the Trial Court to convict the Appellant.

The next point argued by Mr. Khan is that the whole prosecution case is based on police witnesses because the independent seizure witnesses turned hostile and they stated in evidence that at the instruction of police they signed the seizure list. It is in the submission of Mr. Khan that police witnesses are not independent witnesses as their evidence were tainted with oblique motive. The Trial Court, according to him, should not rely upon the police witnesses without looking for corroboration. Since the independent witnesses turned hostile, no other corroborative evidence is there. Therefore, according to Mr. Khan the Trial Court committed serious error in convicting the Appellant. Mr. Khan relied upon the observations of the Supreme Court of India in **Sanjeet Kumar Singh vs. State of Chhattisgarh (2022 SCC Online 1117)** to further elaborate his agreement that if a Court is to disregard the lack of corroboration of testimony of police witness by independent witness, then the story of the prosecution should be very convincing and the testimony of the police witnesses should be trustworthy. In the instant case testimony of the police witnesses suffer from contradictions and inconsistencies affecting the material basis of the case. Contradictions in evidence on time of occurrence are of vital importance. Those contradictions render the

prosecution case unreliable. According to Mr. Khan, the Trial Court committed serious error in passing the impugned judgment and the same should be set aside.

Per contra, Mr. Anand Kesari appearing for the State submitted that though the independent witnesses or the seizure witnesses turned hostile still they identified the Appellant on dock; they did not deny their signature on the seizure list. Therefore, the evidence of the seizure witnesses although hostile can be accepted and relied upon in part without discarding the evidence as whole.

Second point argued by Mr. Kesari is that there is no discrepancy in evidence as to the time of incident. All the witnesses persistently reiterated the time of the incident.

The third point argued by Mr. Kesari is that evidence of police witnesses cannot be discarded simply because they are police personnel. There is no such law. Nothing is there in record to show that the police witnesses nurtured any hostile *animus* against the Appellant so as to implicate him falsely. Therefore, according to him, reliable evidence of police witnesses was rightly accepted by the Trial Court. According to him, interference into the impugned judgment and Order of sentence is uncalled for.

I have heard rival submissions.

The de-facto complainant stated in the written complaint that they reached Dharampur bus stand at 12:35 hours and the Appellant was intercepted there at 13:15 hours. Seizure was conducted for 14:05 hours to 15:35 hours on the spot and the whole procedure of seizure, labelling of the seized notes and arrest was completed in between 13:45 hours to 17:35 hours on 13/01/2013. PW 1 in cross-examination stated that the team of police persons reached Dharampur bus stand at about 12:25 to 12:30 P.M. and had to remain there for forty five minutes. PW 2, PW 3 also stated that they reached Dharampur bus stand at 12:35 hours. In fact, their evidences corroborated the written complaint. PW 4 stated in evidence that the police persons reached the Dharampur bus stand at 01:15 P.M. This is mere

discrepancy without being a major contradiction. All witnesses may not have the same sharpness of memory to recapitulate the incident with exactitude. All the witnesses may not have the same mental capacity to reminisce every minute particular. This human frailty may result in discrepancies of minor nature without there being any serious contradiction of evidence. These discrepancies do not undermine the whole corpus of evidence.

Three seizure witnesses turned hostile in this case, namely, Ujjal Mondal (PW 7), Md. Latfur Rahaman (PW 8) and Raju Saha (PW 9), the PW 7 stated that ASI Uttam Kumar Das with a de-facto complainant and PW 2 asked him to give signature in the seizure list. PW 8 Md. Latfur Rahaman stated in evidence that at about one and half years ago at Dharampur bus stand on the highway the incident occurred. He was declared hostile by the prosecution. But he identified the accused person on dock. PW 9 Raju Saha stated in evidence that accused person was apprehended at Dharampur bus stand. He identified the person as Appellant on dock. In cross-examination he denied the suggestion that he identified the accused as shown by police. Evidence of PWs 8 and 9 lends credence and corroboration to the prosecution case identifying the Appellant and connecting him to the alleged incident, in the same place of occurrence, namely, Dharampur bus stand. Therefore, it cannot be said that the whole prosecution case is solely based on police witnesses. Even though turned hostile, the seizure witnesses corroborated the prosecution case.

It is now well settled that conviction can be solely based on the evidences of police witnesses. There is no reason why police witnesses, if otherwise trustworthy and reliable, should be corroborated by independent witnesses and every such evidence shall be looked with suspicion. Presumption of example (e) of section 114 of the Indian Evidence Act may also apply to police witnesses. It has been observed by the Supreme Court of India in **State, Govt. of NCT of Delhi v. Sunil, (2001) 1 SCC 652 :**

“21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

The principle has been reiterated in catena of decisions subsequently. In **Karamjit Singh vs. State (Delhi Admn.), (2003) 5 SCC 291**, the Supreme Court of India held

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“The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down.”

In **Sanjeet Kumar Singh vs. State of Chhattisgarh 2022 SCC Online 1117**, the same principle of law was reiterated by the Supreme Court of India with riders as follow :

“**18.** But if the Court has — **(i)** to completely disregard the lack of corroboration of the testimony of police witnesses by independent witnesses; and **(ii)** to turn a Nelson's eye to the independent witnesses turning hostile, then the story of the prosecution should be very convincing and the testimony of the official witnesses notably trustworthy. If independent witnesses come up with a story which creates a gaping hole in the prosecution theory, about the very search and seizure, then the case of the prosecution should collapse like a pack of cards. It is no doubt true that corroboration by independent witnesses is not always necessary. But once the prosecution comes up with a story that the search and seizure was conducted in the presence of independent witnesses and they also choose to examine them before Court, then the Court has to see whether the version of the independent witnesses who turned hostile is unbelievable and whether there is a possibility that they have become turncoats.”

Coming to the case in hand, the police witnesses deposed in corroboration with each other. Their evidences are trustworthy and reliable. Minor

discrepancies are not of material significance. No serious flaw is there in their evidences making such evidence unreliable. There is no contradiction in their evidences although some minor discrepancies without materially affecting the prosecution case are there. No suggestion was given in cross-examination that the police persons nurtured hostile animus towards the Appellant which resulted in his false implication in the present case. The Appellant did not say anything on hostile animus of the police persons towards him, in course of his examination under section 313 of the Code. Although turned hostile, the independent seizure witnesses lent credence to the prosecution case, as discussed above. Ext.6 being the examination report of the currency notes in question opined that all the currency notes, being MAT Ext.1 are counterfeit notes.

The Trial Court appreciated evidences in proper perspective and applied the principle of law correctly. Therefore, interference with the impugned judgment of conviction is uncalled for and unwarranted. The Trial Court ordered sentence of five years whereas the maximum sentence is seven years for reasons recorded. Therefore, interference into the Order of sentence is also unnecessary.

In fine, the instant appeal stands dismissed and the impugned Judgment of conviction and Order of sentence remains upheld.

The instant appeal is accordingly disposed of along with the pending application.

Lower court record be returned.

(Sugato Majumdar, J.)