

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRA 354 of 2019

Tipu Sultan

-Vs-

The State of West Bengal

For the Appellant: Mr. Sekhar Kumar Basu, Sr. Adv.,
Mr. Saryati Dutta, Adv.,
Mr. Ranadeb Sengupta, Adv.

For the State: Ms. Faria Hossain, Adv.,
Mr. Anand Keshari, Adv.

Hearing concluded on: 19 April, 2022.

Judgment on: 3 November, 2022.

BIBEK CHAUDHURI, J. : –

1. This is an appeal against the judgment and order of conviction and sentence dated 11th April, 2019 and 12th April, 2019 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Jangipur, Murshidabad in Sessions Trial No.01(09)/2018 arising out of Sessions Case No.58 of 2018 convicting the appellant for committing offence under Sections 489B and 489C of the Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for seven years and for five years respectively for the offence under Sections 489B and 489C IPC with

further sentence of payment of fine with default clause on both the courts.

2. In Sessions Trial No.01(09)/2018, charge under Sections 489B and 489C IPC was framed against the accused/appellant on the allegation that while working out a source information, S.I Bibekananda Mondal of Farakka P.S apprehended the accused from a place near NTPC Junction at Farakka. The said Police Officer conducted search of the person of the accused and recovered 36 numbers of Fake Indian Currency Notes of Rs.2000/- denomination. The said Fake Indian Currency Notes (FICN) were seized by S.I Vivekananda Mondal in presence of other police personnel and independent witnesses at the spot and the accused was arrested.

3. The informant lodged a formal complaint in the police station, on the basis of which Farakka P.S Case No.12 of 2018 under Sections 489B and 489C of the IPC was registered on 9th January, 2018 against the accused. Investigation of the case was taken by S.I Badal Mondal of Farakka P.S. On completion of investigation, police submitted charge sheet against the accused on the basis of the evidence collected by the Investigating Officer. The prosecution examined 8 witnesses to prove the charge against the accused.

4. It is pertinent to mention here that beside PW3 Ujjal Ghosh and PW4 Nagendra Kumar Ojha, all remaining witnesses are police personnel. PW2 Vivekananda Mondal is the Sub-Inspector of Police who conducted raid on 9th January, 2018 at about 11.30 am at NTPC Junction area with

PW1 Purna Chandra Das, PW5 Sk. Azad and PW6 Sahabuddin Sk, apprehended the accused and recovered and seized 36 numbers of FICN of Rs.2000/- denomination each. PW7 S.I Badal Mondal was the Investigating Officer of the case. During investigation he got the seized FICNs examined by the Assistant General Manager of the Bharatiya Reserve Bank Note Mudran (P) Ltd, Salbani and obtained expert opinion in respect of the seized FICNs.

5. The accused person was examined under Section 313 of the Cr.P.C. He denied his involvement in the alleged offence. However, no witness was examined in support of defence of the accused.

6. The learned Trial Judge held the accused guilty for committing offence under Sections 489B and 489C of the IPC holding, inter alia, as hereunder:-

- a) Prosecution has been able to prove that the accused was apprehended by the police party on 9th January, 2018 at about 11.30 am from NTPC Junction within Farakka P.S while possessing huge quantity of FICNs.
- b) Evidence of PW2 who apprehended the accused was duly corroborated by PW1, PW5 and PW6. All of them are Police Personnel. Evidence of Police Personnel does not have any reason to be thrown away only because the independent witnesses to search seizure did not support the prosecution case.

- c) Recovery of huge quantity of FICN from the possession of the accused is an ample proof in support of the charge under Sections 489B of the IPC that the accused had been in possession of counterfeit currency notes to use the same as genuine.

7. Learned Senior Counsel on behalf of the appellant submits that the prosecution failed to prove the very genesis or foundational fact of the case while the prosecution did not bring the relevant general diary entry allegedly depicting the information on the basis of which police proceeded for raid on the given time at a particular place called, Farakka NTPC Junction. Prosecution case starts on the basis of a suo moto complaint submitted by PW2 to the Officer-in-Charge of Farakka P.S after the accused was allegedly apprehended while possessing FICNs. But the prosecution failed to produce the initial documents on the basis of which PW2 and other police personnel conducted raid and arrested the accused. Failure on the part of the prosecution to establish the genesis of the prosecution case makes the basis of the same highly doubtful.

8. It is further submitted by the learned Senior Counsel on behalf of the appellant that PW3 Ujjal Mondal and PW4 Nagendra Kumar Ojha were examined as the independent witnesses to seizure of FICNs from the possession of the accused. However, during trial the abovenamed two witnesses did not support the prosecution case. On the contrary, both of them stated in their evidence that they were not present at the place where the accused were apprehended. They did not witness seizure of

FICNs from the possession of the accused and their signatures were obtained on the seizure list in the police station. It is important to note that the abovenamed PW3 and PW4 were not declared hostile by the prosecution. It is urged by the learned Senior Counsel on behalf of the appellant that it was the case of the prosecution that after apprehension of the accused, PW2 called PW3 and PW4 to be the independent witnesses to search and seizure. But PW3 and PW4 did not support the prosecution case. The prosecution never declared PW3 and PW4 hostile. Instead, it supported the defence. The accused hence can rely on the prosecution case. In support of his argument, Learned Advocate relies on a decision of the Hon'ble Supreme Court in the case of **Mukhtiar Ahmed Ansari vs State (NCT of Delhi)** reported in **2005 SCC (Cri) 1037**. On the same point, he also relies upon the decision of the Hon'ble Supreme Court in **Raja Ram vs State of Rajasthan** reported in **2005 SCC (Cri) 1050**.

9. It is further submitted by the Learned Senior Counsel for the appellant that the learned trial judge failed to appreciate that there were serious contradictions even in the evidence of P.W.2 and other police personnel in respect of apprehension of the accused and consequent search and seizure. The learned trial judge completely overlooked such contradictions. He also submits that the learned trial judge failed to consider the basic canon of criminal administration of justice and denied to appreciate that an accused cannot be held guilty under the charge of a penal offence on the basis of evidence that is so inherently contradictory and hence unreliable.

10. The learned Public Prosecutor-in-Charge, while supporting the impugned judgment submits that the learned trial judge was fully justified in convicting the appellant on the basis of the evidence adduced by the police personnel who conducted raid, apprehended the accused, recovered huge numbers of FICNs and seized the same. It is submitted by him that there is no reason for disbelieving the seizing officer and other police personnel who witnessed the search and seizure only because of their official status. Furthermore, there was no animosity between the accused and the police officer who apprehended him and recovered FICNs from the possession of the accused. It was not even suggested by the defence during cross examination of PW2. Therefore, there is no basis for raising doubt over the prosecution case. In support of his contention learned public prosecutor-in-charge refers to a decision of the Hon'ble Supreme Court in **Surinder Kumar vs State of Punjab** reported in **(2020) 2 SCC 563** wherein it was observed by the Supreme Court that the mere fact that the prosecution case is based on the evidence of official witness does not mean that it should be disbelieved only for official status of the witness.

11. In **Mohd. Aslam vs State of Maharashtra** reported in **2001 (9) SCC 362**, the apex court had the occasion to decide the effect of recovery of the lethal weapon by the police officer when two panch witnesses cited to support the recovery turned hostile. Paragraph 7 of the said report is relevant and reproduced below:

7. Regarding A-1 Mohmed Aslam (@ Sheru Mohd. Hasan) the only evidence for possession of the forbidden lethal weapon is the testimony of PW 34 (Nagesh Shivdas Lohar, Assistant Commissioner of Police, CID Intelligence, Mumbai). Learned counsel contended that two panch witnesses who were cited to support the recovery turned hostile and therefore the evidence of PW 34 became unsupported. We cannot agree with the said contention. If panch witnesses turned hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated. Nor do we agree with the contention that his testimony is unsupported or uncorroborated. The very fact that PW 34 produced in the court lethal weapons recovered is a very formidable circumstance to support his evidence. Learned counsel made an attempt to show that the recovery in fact was not effected from the said flat in which A-1 Mohmed Aslam (@ Sheru Mohd. Hasan) was residing. It is admitted that A-1's wife and children were residing in that flat. If no such recovery was made from such flat why was nobody examined on the defence side at least to suggest that no police officer effected any recovery from there? As the trial court has chosen to believe the testimony of PW 34 and on a further scrutiny we too have no reason to reject the same, we are emboldened to accept the testimony of that witness.

12. It is on record that the accused was apprehended by PW2 SI Vivekananda Mondal on 9th January, 2018 at NTPC Junction within Farakka P.S. and PW2 recovered 36 nos. of FICNs, each having denomination of Rs. 2000/- from the possession of the accused in presence of other police personnel and two independent witnesses. It is also matter of record that the said two independent witnesses did not

support the prosecution case so far as it relates to their presence at the place of occurrence. They, however identified their signatures on the seizure memo saying that they put their signature on the seizure memo in the police station.

13. Needless to say that a seizure memo is required to be proved by the person who has prepared it. In the instant case, PW2 has proved the seizure memo. The statements of attesting witnesses are only corroborating evidence. The Hon'ble Supreme Court in plethora of decisions held that corroboration of recovery by attesting witness is not mandatory. Even if the independent witnesses to seizure turns hostile, this does not automatically render the seizing officer's evidence untrustworthy. If the evidence of the witness to seizure is considered as mandatory, then in all cases where the accused is in a position to tamper the attesting witness produced on behalf of the prosecution, will go scot free and shall be acquitted in spite of his committing heinous offence, most dangerous to the society. The innocence and conviction of an accused cannot rest on the honesty and dishonesty of the witness. Corroborating of seizure by the attesting witnesses is not mandatory. What is important for the prosecution to prove is that FICNs were recovered from the possession of the accused. PW2 has stated in his evidence on oath that he in presence of the police personnel and two independent witnesses recovered 36 nos. of FICNs from the possession of the accused. The evidence of PW2 was duly corroborated by other police witnesses. In **Aher Raja Khima vs State of Saurashtra** reported in **AIR**

1956 SC 217, the following observation of the Hon'ble Supreme Court on the issue of appreciation of evidence of a police officer is relevant for the decision of this Appeal and accordingly quoted below:

“The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefore.

Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.”

14. On careful perusal of the evidence so relied upon by the prosecution in order to establish the charges under Sections 489B and 489C of the IPC, it appears that prosecution intended to prove that the accused was in possession of FICNs and in order to prove the charge, it relied upon the letter of complaint, the seizure list and the expert opinion coupled with the oral evidence of PW1, PW2, PW5, PW6 and PW7. PW7 was the expert who examined the seized FICNs and opined that those are low quality counterfeit currency notes. Although the learned senior counsel on behalf of the appellant tried hard to cast a doubt on the prosecution case referring to the evidence of PW3 and 4 who were cited as independent witnesses to the search and seizure. I am not in a position to accept the argument advanced on behalf of the appellant on the ground that the evidence of PW3 and PW4 would not vitiate the evidence of persons who affected the recovery. Thus, the mere fact that the prosecution witnesses are police officers is not enough to discard their evidence in the absence of

evidence of their hostility to the accused and no doubt could be created regarding the seizure being affected from the appellant. To that extent, I am of the opinion that the prosecution has been able to prove the charge under Section 489C of the IPC.

15. However, there is absolutely no evidence that the appellant even tried to use the seized FICN as genuine. There is also no evidence to show that the appellant was engaged in trafficking counterfeit currency notes. In other words, charge under section 489B of the IPC was not proved by the prosecution. No evidence was collected or tendered to show that the appellant was involved in selling, buying or receiving FICNs from any other person.

16. For the reasons stated above, this Court holds that the prosecution was able to establish charge under Section 489C of the IPC against the appellant and the trial Court rightly convicted the appellant for committing offence under Section 489C of the IPC.

17. However, charge under Section 489B of the IPC fails and the conviction and sentence so imposed is set aside.

18. Judgment and order of conviction and sentence passed by the learned trial judge for the offence under Section 489C of the IPC is confirmed.

19. Therefore, the appellant is acquitted of the charges under Section 489B of the Indian Penal Code and his conviction and sentence for the said offence is set aside.

20. The order of conviction and sentence passed by the trial court under Section 489C of the Indian Penal Code is hereby confirmed.
21. The Criminal Appeal being CRA 354 of 2019 is partly allowed.
22. Connected pending applications, if any, are consequently disposed.
23. Interim order, if any, is vacated.
24. Department is directed to communicate this order to the learned Trial Court and send the LCR forthwith to the court below.
25. The appellant is directed to surrender before the trial court to serve sentence within two weeks from this date, failing which the trial court shall issue warrant of arrest against the accused.
26. The parties are at liberty to act on the server copy of the judgment.
27. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bibek Chaudhuri, J.)