

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

[i] CRIMINAL APPEAL NO.1027 OF 2009

Mohd Iqbal Awliar Rehman ShaikhAppellant
Versus
The State of Maharashtra Respondent

.....

WITH

[ii] CRIMINAL APPEAL NO.1063 OF 2009

Pyari Begum Jamal MullaAppellant
Versus
The State of Maharashtra Respondent

.....

WITH

[iii] CRIMINAL APPEAL NO.1116 OF 2009

1. Sahebali Akas Ali shaikh,
2. Gulam Rabbani Akas Ali Shaikh,
3. Mohd. Jamal Husain Ali Ahmed Shaikh, &
4. Ibrahim Joynal MaulikAppellants
Versus
The State of Maharashtra Respondent

.....

WITH

[iv] CRIMINAL APPEAL NO.891 OF 2012

Annu Sahebali ShaikhAppellant
Versus
The State of Maharashtra Respondent

Ms. Gauri Velankar, Advocate (appointed) for the Appellants in Criminal Appeal Nos.1027/2009, 1063/2009 and 1116/2009.

Ms. Sahana Manjesh, Advocate (appointed) for the Appellant in Criminal Appeal No.891/2012.

Smt. Veera Shinde, APP for the Respondent-State.

CORAM :SARANG V. KOTWAL, J.

DATE : 18th AUGUST, 2022

ORAL JUDGMENT :

1. All these appeals are decided by this common order because they arise out of the same impugned judgment and order dated 23.9.2009 passed by the Additional Sessions Judge, Greater Mumbai in Sessions Case No.947/2007. For convenience, the appellants are referred to either by their names or by their status as accused before the trial Court.

2. There were 12 accused as follows :

1. Annu Sahebali Shaikh,
2. Sahebali Akas Ali Shaikh,
3. Gulam Rabbani Akas Ali Shaikh,
4. Mohd. Iqbal Awliar Rehman Shaikh,
5. Mohd. Jamal Hussein Ali Ahmed Shaikh,
6. Mohd. Rahul Islam Mohd. Nizamuddin,
7. Nahar Begam Rahul Ismal,

8. Mohd. Ibadul Farji Rijaul,
9. Pyari Begum Jamal Mulla,
10. Ibrahim Joynal Maulik,
11. Jitubhai Ganeshbhai Patel, and
12. Ashish J. Parekh.

3. Criminal Appeal No.1027/2009 is preferred by accused No.4 Mohd Iqbal Awliar Rehman Shaikh, Criminal Appeal No.1063/2009 is preferred by accused No.9 Pyari Begum Jamal Mulla, Criminal Appeal No.1116/2009 is preferred by accused No.2 Sahebali Akas Ali shaikh, accused No.3 Gulam Rabbani Akas Ali Shaikh, accused No.5 Mohd. Jamal Husain Ali Ahmed Shaikh & accused No.10 Ibrahim Joynal Maulik, and Criminal Appeal No.891/2012 is preferred by accused No.1 Annu Sahebali Shaikh. Accused Nos.11 & 12 were acquitted.

4. The impugned judgment and order records the conviction as under :

- (i) Accused No.1 Annu Sahebali Shaikh was convicted for the offence punishable under Section 489-B of IPC and was sentenced to suffer RI for ten years and to pay fine of Rs.1000/- and in default of payment of fine to further undergo SI for one month.

- (ii) Accused No.1 Annu Sahebali Shaikh was also convicted for the offence punishable under Section 420 of IPC and was sentenced to suffer RI for five years and to pay fine of Rs.1000/- and in default of payment of fine to further undergo SI for one month.

Both the sentences were directed to run concurrently.

- (iii) Accused Nos.2 to 10 were convicted for the offence punishable under Section 489-C of IPC and were sentenced to suffer RI for five years each and to pay fine of Rs.1000/- each and in default of payment of fine to further undergo SI for one month each.

- (iv) Accused Nos.1 to 10 were acquitted from the charges of commission of the offence punishable under Sections 3 and 6 of the Passport Rules 1950 read with 3(1) of the Foreigners Order, 1948 read with Section 14 of Foreigners Act, 1946.

. They were granted set off under Section 428 of Cr.PC.

- (v) Accused Nos.11 & 12 were acquitted from the charges of commission of the offence punishable under Sections 489-B, 489-C and Section 120-B of IPC.

5. All the appellants before this Court have already completed their sentence. However, all of them chose to exercise

their right to argue these appeals and, therefore, I have heard learned appointed counsel Ms. Gauri Velankar for the appellants in Criminal Appeal Nos.1027/2009, 1063/2009 and 1116/2009 and Ms. Sahana Manjesh for the appellant in Criminal Appeal No.891/2012. I have also heard Smt. Veera Shinde, learned APP for the State.

6. The prosecution case, in brief, is as follows :

On 11.9.2007, the first informant Rameshkumar Gupta came to Dongri police station and informed the police that one woman had given him a currency note of Rs.1000/- for purchasing apples. He returned Rs.950/- to her. She went to a hawker who was selling bed-sheets. He was near the shop of the first informant. The same woman purchased two bed-sheets from him for Rs.150/-, but, instead of giving him the change given by the first informant, she gave another currency note of Rs.1000/-. The first informant suspected the genuineness of the note given by her. He examined it and was convinced that it was a counterfeit note. He asked the hawker to keep watch on that woman. The first

informant came to the police station and gave his information to the police. He produced that currency note before the police. Based on his information, C.R. No.126/2007 was registered. The police went to the spot. That woman was confronted; she was accused No.1 Annu Sahebali Shaikh. She was found to carry 15 notes of Rs.1000/- denomination and 8 notes of Rs.500/- denomination. The notes were seized. She led the police party to her husband i.e. accused No.2 Sahebali Akas Ali shaikh, who was waiting for her near Sandhurst Road Railway Station, Mumbai. The police took his search and found 17 notes of Rs.1000/- denomination and 26 notes of Rs.500/- denomination. Suspecting them to be counterfeit notes, even those notes were seized. Both the accused No.1 & 2 were arrested. On 12.9.2007, during interrogation at about 5.00 p.m., accused No.2 Sahebali Akas Ali shaikh showed willingness to produce counterfeit currency notes from his house. He was taken to Juipada village as per his instructions. They went to a room in a chawl. Accused No.3 Gulam Rabbani and accused No.4 Mohd. Iqbal Awliar Rehman Shaikh were present in the room. Accused No.2 took out one

plastic bag kept below the roof. There were 5 currency notes of Rs.1000/- and 20 currency notes of Rs.500/-. The notes were seized, which were kept in plastic bag, labels of the panchas who were present there were affixed thereon. Accused No.3, who was present there, was searched. He was found to possess one plastic bag containing counterfeit notes. Even those notes were seized and sealed. Accused No.4 was found to carry 10 currency notes of Rs.1000/- and 46 currency notes of Rs.500/-. They were also seized and sealed. Accused Nos.3 & 4 were arrested. The house was searched and a bag containing passports of accused Nos.1, 2, 3 & 4 were found.

7. On 15.9.2007 at about 4.30 p.m., accused No.1 showed willingness to point out two shops where she had used fake currency notes. Accordingly she led the police party to two shop owners namely Yunus Mansuri and Javed Gulam Mohd. Shaikh. Yunus was dealing in garments and Javed was a vegetable vendor. They produced notes of Rs.1000/- each, which were given by accused No.1 to them. Those notes were also seized.

8. On 21.9.2007, accused No.3 Gulam Rabbani gave information that the counterfeit currency notes were given to him by accused No.5 and that accused No.5 used to visit Haji Ali Dargah every Friday. The police arranged to lay a trap. Accused No.5 Mohd. Jamal Hussein Ali Ahmed Shaikh was accordingly caught, who was found with 247 notes of Rs.1000/- denomination and 109 currency notes of Rs.500/- denomination. He, in turn, led the police party to Kharghar in an apartment. Accused Nos.6, 7, 8 and 9 were present there. All of them were found to possess fake currency notes. Accused No.9 was having 100 currency notes of Rs.1000/-. Accused No.5 also led the police party to accused No.10 Ibrahim Joynal Maulik on 23.9.2007. He was arrested on 26.9.2007. He was found in possession with 12 currency notes of Rs.500/- each. Accused No.10, in turn, took the police to accused Nos.11 & 12 who allegedly were conducting *hawala* rackets and Rs.7 Lakhs were found, however, accused Nos.11 & 12 are acquitted.

9. The fake currency notes were sent to Government

Press, Nashik along with a forwarding letter on 26.11.2007. In all, the purported value of those notes was Rs.10,40,000/-. A copy of the forwarding letter is produced at Exhibit-71. The report was received from the Government Press at Nashik. The report is produced on record at Exhibit-72. The report mentions that the Nashik Press had received 909 notes of Rs.1000/- denomination and 262 notes of Rs.500/- denomination. In all, 1171 notes were received and all of them were found to be not genuine. The notes were received in 5 + 10 khaki & polythene envelopes. The forged notes were returned along with respective envelopes in which they were received. It was a clear opinion that the suspected notes were counterfeit notes. The report dated 3.1.2008 is produced on record at Exhibit-72.

10. The investigation was completed and the charge-sheet was filed. All the accused faced the trial as mentioned earlier. During trial, the prosecution examined 14 witnesses. Those included the first informant, the panch witnesses for various recoveries and the investigating officers. The defence of the

accused was of total denial. At the conclusion of the trial, the appellants were convicted and sentenced as mentioned earlier.

11. The prosecution evidence, in short, is as follows :

(I) PW-1 Rameshkumar Gupta was the first informant. He was a fruit-seller doing business at Dongri Market. He has deposed that on 11.9.2007, one lady purchased apples from him worth Rs.50/-. She gave him a note of Rs.1000/-. He returned Rs.950/-. He saw that the same lady went to another stall and purchased one blanket. There again she gave Rs.1000/- note. PW-1 suspected because that woman already had the change given by him. He suspected that the note could be fake. He spoke with the other shop-owner from whom she had purchased a blanket. He has deposed that both of them caught the lady. He went to the police station and called the police. Police came at the spot and took that lady with them. Police recorded his statement at the police station and lodged the FIR. He identified the accused No.1 as the same lady. He, however, could not identify his own FIR but identified his signature on the FIR.

In the cross-examination, he deposed that Dongri police station is about ten minutes walk from his stall. He caught that lady at around 7.00 p.m. to 7.30 p.m. He reached the police station within ten minutes. He returned to the spot within ten minutes. The police constable came with him and took the lady with him back to the police station. His statement was not recorded at the spot. He denied the suggestion that he had merely signed the complaint which was already prepared by the police. He has deposed that the police recorded his statement on the next day and obtained his signature.

The FIR is produced on record at Exhibit-63, which shows that it was registered at 8.15 p.m. on 11.9.2007. The information was received at 8.00 p.m. from the first informant. The FIR mentions name of the other stall owner as Rafiquil. He had kept watch on the lady while the informant had come to the police station. The first informant had mentioned the number of the note in the FIR.

(II) PW-2 Shamrao Bhavkar was a pancha for arrest of the accused No.1 and seizure of the notes from her. According to him,

the police arrested accused No.1 with fake currency notes. She led the police to the accused No.2, who was standing at the Sandhurst railway station. He was also arrested. He was found to carry fake currency notes in the denominations of Rs.1000/- and Rs.500/-. This witness identified both accused Nos.1 & 2 in the Court. He also identified the notes which were seized from them. He identified the brown coloured wrapper affixed with seal and label bearing signatures of panchas. The packet containing the fake currency notes and the notes were shown to him. He identified those notes. The panchnama was made in his presence in respect of arrest of accused No.2 and seizure of notes. The panchnama is produced on record at Exhibit-29.

In the cross-examination, he conceded that there were no specific identification marks on the notes to enable him to identify them. Exhibit-29 shows that accused No.2 was found to possess 17 notes of Rs.1000/- denomination and 26 notes of Rs.500/- denomination. Their numbers are noted in the panchnama. The number of the currency notes of Rs.1000/- were in the series “8BN” and “7DN”. Importantly, the number of the

note mentioned in the FIR was also in the 7DN series i.e. “7DN605491”.

(III) PW-3 Yunus Mansuri is another witness connected to accused No.1. He has deposed that he had a ready-made garment shop at Dongri. In the month of September, 2007, 5 to 6 days before 15.9.2007, the accused No.1 had come to his shop and bought a frock for Rs.100 but had given a note of Rs.1000/-. Subsequently he came to know from another shopkeeper that a lady had cheated him by giving fake currency note of Rs.1000/-. PW-3 then got suspicious about the note of Rs.1000/- given to him by that lady. He suspected that it was a fake currency note. Then he went to the police station. Police seized that fake currency note in presence of two panchas. He identified accused No.1 as the same lady who had given fake currency note of Rs.1000/-.

In the cross-examination, he deposed that he did not remember when exactly he went to the police station. He admitted that the first informant's shop was in the same lane as his shop. He denied the suggestion that at the instance of police he

was deposing falsely.

(IV) PW-4 Javed Gulam Mohd. Shaikh was another person to whom accused No.1 had given a fake currency note of Rs.1000/-. He was selling potatoes. She had purchased some onions and potatoes from his stall and had given him Rs.1000/- note. He identified accused No.1 as the same woman who had given that note to him. On 15.9.2007 the police recorded his statement. The police had brought that lady to his shop. He identified the note by its number. Significantly this witness is not cross-examined at all and, therefore, his evidence has remained unchallenged.

(V) In this context, the evidence of PW-9 Nasim Lalani is also important because her evidence pertains to accused No.1. She has deposed that on 11.9.2007, she was called in front of Durrani Manzil. Accused No.1 was present there. The police showed accused No.1. She was carrying a purse. The police found 8 currency notes of Rs.500/- and 15 currency notes of Rs.1000/- in fake currency. They were in serial numbers. The fake currency notes of Rs.1000/- started from the series '7DN'. That lady was

having a carry-bag containing some apples and two bed-sheets. They were also seized. The panchnama is produced on record at Exhibit-39. Two bed-sheets were identified by this witness. This witness identified accused No.1 as the same lady. The currency notes kept in the money-purse was seized by affixing lable. This witness identified the money purse, fake currency notes and the packet.

She denied the suggestion in the cross-examination that she mentioned the series '7DN' at the instance of the police. She denied the suggestion that the police did not seize fake money from the accused No.1.

The panchnama is produced on record at Exhibit-39. It was conducted between 8.30 p.m. to 9.00 p.m. on 11.9.2007. The panchnama does mention the series of Rs.1000/- notes starting with '7DN'.

(VI) PW-8 Subhash Shirsat was another pancha. He was called by Dongri police officers on 15.9.2007. Accused No.1 made voluntary disclosure statement in his presence that she was willing

to show two shops from where she had purchased some articles. Then she led to the shop of PW-3 Yunus and PW-4 Javed. PW-8 was also a pancha when accused No.10 had led the police party to accused Nos.11 & 12 but, since accused Nos.11 & 12 are acquitted this part of his evidence is not discussed

(VII) PW-5 Lakki Bawa and PW-6 Murlidhar Patil are not of much importance. PW-5 had allowed accused No.4 to stay with him for a few days and he had seen accused No.4 using Rs.1000/- currency note. PW-6 Murlidhar Patil was the pancha when accused No.5 Mohd. Jamal had taken the police to a room at Shanti Nagar, Bhiwandi and at his instance a note-book was seized containing some information.

(VIII) PW-7 Madhukar Madhavi was a person who allegedly had given the room on rent to accused No.3. He has also identified accused Nos.1 & 2 who had visited that house. He has deposed about the seizure of fake currency notes from the roof of the room which was given to accused No.2. In the cross-examination, he admitted that there was no leave and licence agreement in respect

of that room.

(IX) PW-10 Mohd. Sharif Allaudin Shaikh is another important witness. He was a pancha. He was called on 12.9.2009. In his presence, accused No.2 showed willingness to show the house where he had kept fake currency notes and also to point out his associates. Accused No.2 led the police party and the panchas to Juipada in Jui Nagar. They were taken to room No.2 in a chawl. Accused Nos.3 & 4 were present when accused No.2 took out fake currency notes from the room. Accused Nos.3 & 4 were also having fake currency notes. All the notes were seized. He deposed that he would be able to identify the currency notes based on their numbers mentioned in the panchnama. The panchnama is produced at Exhibit-31. Accused No.2 took out the currency notes from a cupboard. There were 5 currency notes of Rs.1000/- and 20 currency notes of Rs.500/-. Accused No.3 was having 10 notes of Rs.1000/- and 40 notes of Rs.500/-. Accused No.4 was having 9 notes of Rs.1000/- and 47 notes of Rs.500/-.

In the cross-examination, he deposed that his business

place was around 7 to 10 minutes walking distance from the police station. He had acted as a pancha for the first time. He denied the suggestion that he was deposing falsely and that for avoiding penalty and to avoid the police harassment he signed on the panchnama which was already prepared.

This witness was also examined on the point that accused No.3 had pointed out accused No.5 when he was arrested at Haji Ali Dargah and on his search 247 notes of Rs.1000/- and 109 notes of Rs.500/- were seized. He identified those notes in the Court as also the polythene bag and the label. Thereafter accused No.5 took him to the accused at Kharghar where accused Nos.6, 7, 8 and 9 were present and from whom different fake currency notes were seized. From accused No.9 100 fake currency notes of Rs.1000/- were seized. They were kept in a polythene bag. The panchnama was produced at Exhibit-49-A.

(X) PW-11 Manik Raja was another pancha. He was called by the police on 26.9.2007. In his presence the accused No.10 was arrested. He was found to possess 2 currency notes of Rs.1000/- each and 12 currency notes of Rs.500/- each. Those notes were

seized. The panchnama is produced at Exhibit-45. According to the prosecution case, accused No.5 had led the police party to accused No.10.

(XI) PW-12 PSI Sunil Sawant was the police officer who had taken down the FIR. The first informant had approached him. He had seized the currency notes of Rs.1000/- produced by the first informant. He had arrested the accused Nos.1 & 2. He identified the currency notes, their wrapper, the notes connected with accused No.1 and also the currency notes connected with accused No.2.

(XII) PW-13 PI. Santosh Bagwe had carried out further investigation and he has deposed about the investigation that led to arrest of accused Nos.3 & 4.

(XIII) The rest of the investigation was carried out by PW-14 PI Ravi Gidde. He has deposed about the rest of the investigation leading to arrest of accused Nos.5 to 12 and the seizure of other fake currency notes. He had sent the seized currency notes under a covering letter to Nashik Press. He produced the covering letter at

Exhibit-71 and produced the report of the Nashik Press at Exhibit-72. PI Bagwe (PW-13) had filed the charge-sheet. PW-14 identified the currency notes seized in this case. There is absolutely no cross-examination as far as keeping the seized notes together, sending them under one covering letter and receiving of the report.

. This in short is the prosecution evidence.

12. Learned Counsel for accused No.1 submitted that the prosecution has failed to prove beyond reasonable doubt that the notes were counterfeit notes. The prosecution case is full of loopholes and the conviction could not be based on such evidence. There were no details of notes mentioned either in the covering letter or in the report. There is no linking evidence as to exactly which notes were sent and how they were sent. The *mens rea* of the accused No.1 in using a counterfeit note is not established. PW-1's evidence does not inspire confidence. It is not made clear at exactly what point of time the accused No.1 was arrested. The specific note produced by him was not connected to the accused

No.1 and there is nothing to show that the same note was sent for examination. PW-1 had admitted that he has signed the FIR on the next day. Therefore, there is scope to believe that his FIR is manipulated. There is no arrest panchnama of accused No.1. There is serious doubt about the evidence of PW-3 as to whether he approached the police on his own or as to whether accused No.1 had led the police to his shop. The other shop-keeper from whom the bed-sheet was purchased by accused No.1 was not examined. The other articles purchased by accused No.1 from PW-3 and PW-4 were not produced on record. Therefore, it is not proved that she has actually used the fake currency notes in purchasing those articles.

13. She relied on the judgment of a Division Bench of this Court in the case of **Mohd. Farooque Yusuf Chaiwala Vs. State of Maharashtra**¹ to contend that there is no linking evidence to show that the currency notes which were seized were the notes which were actually sent for examination. It is observed in the said judgment that even after prosecution evidence was accepted, all

¹ 2011 SCC OnLine Bom 521

that it would show that some currency notes were sent to India Security Press, Nashik for examination and opinion about the notes being counterfeit has been received with respect to some notes, but there was no evidence to indicate that the report received from the India Security Press, Nashik relates to the notes allegedly seized from the accused in that case. She relied on this observation to support her contention.

14. Learned counsel for other appellants submitted that the prosecution case is based only on the evidence of panchas and police officers. No other witnesses from any of the houses are examined. She also adopted the arguments advanced by learned counsel for the accused No.1.

15. Learned APP opposed these appeals. According to her, the prosecution has proved its case beyond all reasonable doubts. She submitted that all the notes were sent under one covering letter and not a single note was found to be genuine and, therefore, there was no scope to argue that the notes used either by accused No.1 or which were possessed by other accused were

genuine notes. In this view of the matter, the prosecution has sufficiently proved the case against the accused.

16. I have considered these submissions. As far as the contention that the FIR was signed on the second day is concerned, in this particular case it will make no difference because on 11.9.2007 itself not only accused No.1 but accused No.2 was also arrested possessing counterfeit notes. Therefore, the investigation had already commenced. It all started with the information which PW-1 had given to the police. Therefore, signing of the FIR on the next day will not make real difference. At the highest it can be termed as an irregularity which does not go to the root of the matter. The police had the definite information on which they acted and arrested accused No.1 and accused No.2. Accused No.1 was caught on the spot and she led the police to accused No.2 and he was arrested near Sandhurst Road Railway Station. Both these accused were found to possess counterfeit notes.

17. The other part of evidence of PW-1 is sufficiently

trustworthy. The narration appears to be truthful. He had reasonable suspicion because inspite of having change, the accused No.1 had used another Rs.1000/- note. The intention was to get genuine notes by using Rs.1000/- counterfeit note. That also establishes her *mens rea* and her deliberate intention and knowledge to use the counterfeit currency notes to obtain genuine money in return.

18. The evidence against her is produced in the form of evidence of PW-3 & PW-4 as well. Though there is some doubt whether PW-3 approached the police on his own or whether accused No.1 led the police to his shop; there no such doubt as far as PW-4 is concerned. His evidence is specific that the accused No.1 had led the police to his shop. Significantly PW-4 is not cross-examined at all and, therefore, his evidence cannot be brushed aside. All these are incriminating circumstances against accused No.1.

19. Apart from that, PW-8 & PW-9 have also lent support to the prosecution story against the accused No.1. PW-9 has

proved the recovery from accused No.1. The panchnama is produced at Exhibit-39. Thus, the prosecution has sufficiently proved that the notes were seized from the accused No.1.

20. The entire chain of evidence as narrated by different prosecution witnesses show that one seizure led to another and one disclosure by one accused led to finding of other accused and seizure from them. There is a complete chain and the prosecution has established every single circumstance to complete the chain. Accused No.1 had led to accused No.2. From them, the notes were seized. After that accused No.2 had led to place from where accused Nos.3 & 4 were arrested possessing notes. Accused No.3 had led to accused No.5 who in turn had led to accused Nos.6 to 9 and also to accused No.10. There is a continuing thread in all these raids.

21. The panchas' evidence at different stages inspires confidence and there is no reason to doubt their versions. There is hardly any favourable answers which would be advantageous to any of the accused. The evidence is quite trustworthy.

22. The only question which needs some consideration is about the submission as to whether the notes which were seized during this entire operation were the exact notes which were sent to Nashik Currency Press for examination. In that context, the evidence of PW-14 PI Gidde is important. He is the investigating officer who had sent these notes under a covering letter to Nashik Currency Press. However, there is absolutely no cross-examination suggesting or throwing doubt about the notes being different from what were seized during this operation. The prosecution case is that all the notes were sent together in one packet. The reports also mentions five khaki and ten polythene packets. Thus, at each and every stage when the notes were seized and sealed, the same packets were sent for examination. It is mentioned so in the report. After the notes and packets were returned, they were identified by witnesses and the panchas. The lables and the signatures were identified.

23. As rightly submitted by learned APP, not a single currency note out of these notes was found to be genuine. All the notes were declared to be counterfeit notes.

26. Considering the above discussion, it can safely be held that the prosecution has proved its case beyond reasonable doubt against all the accused. Therefore, there is no reason to interfere with the conclusions, findings and the sentence recorded by the trial Court. Hence, all the appeals are dismissed.

PRADIPKUMAR
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