

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.49 of 2017

Arising Out of PS. Case No.-15 Year-2012 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

Azmulla Ansari @ Sahil Ansari Son of Reyazul Ansari, Resident of Village-
Pujhan Patjirwa, P.S.- Shripur, Pujha, District- West Champaran.

... .. Appellant/s

Versus

- 1. The State of Bihar Bihar
- 2. The Economic Offences Unit, Bihar, Patna Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1186 of 2016

Arising Out of PS. Case No.-15 Year-2012 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

Amit Kumar son of Girish Chandra Sinha, resident of Village- Vaunahari,
P.S.- Adapur, District- East Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 49 of 2017)
For the Appellant/s : Mr.Umesh Chandra Verma, Adv.
Mr. Abhishek Kumar, Adv.
Mr. Hemant Ray, Adv.
For E.O.U. : Mrs. Soni Srivastava, Adv.
For the State : Ms.Shashi Bala Verma, A.P.P.
(In CRIMINAL APPEAL (DB) No. 1186 of 2016)
For the Appellant/s : Mr. Ajay Thakur, Adv.
Mr.Md.Imteyaz Ahmad, Adv
For E.O.U. : Mrs. Soni Srivastava, Adv.
For the State : Mr. Ganesh Prasad Jaiswal, A.P.P.



**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)**

Date : 09-10-2023

Both the appeals have been taken up together and are being disposed off by this common judgment.

2. These appeals are directed against the judgment of conviction dated 30.09.2016 and order of sentence dated 01.10.2016, passed by learned Additional Sessions Judge – IX, East Champaran, Motihari in Sessions Trial No. 188 of 2013/Serial No. 101 of 2015 arising out of Economic Offence Unit Patna P.S. Case No. 15 of 2012 whereby the appellants have been held guilty for the offences punishable under Sections 489(B), 489(C)/120(B) of the I.P.C. and have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- each under Section 489(B) of the I.P.C.; rigorous imprisonment for five years each, to pay a fine of Rs. 5,000/- each under Section 489(C) of the I.P.C.; imprisonment for life and to pay a fine of Rs. 10,000/- under Section 120(B) of the I.P.C. In default of payment of fine, the appellants have been directed to suffer further six months rigorous imprisonment. The sentences, however, have been ordered to run concurrently.

3. According to the written statement (Ext. 3) of the informant (P.W. 9), the occurrence took place on 10.09.2012 for



which written statement was given to the Officer-in-charge of the Economic Offence Police Station, Bihar, Patna whereafter the F.I.R. was registered.

4. The prosecution case, in brief, is that on 09.09.2012, the informant received confidential information that on 10.09.2012, a significant quantity of counterfeit currency notes was to arrive at the Motihari bus stand. The smugglers, originating from Kaliachak, Malda Town, West Bengal, are perhaps responsible for this operation, and they intend to transport the consignment of counterfeit currency to Raxaul.

5. Based on such information, a team of police officials was constituted, including Deepak Prakash (PW-7), Sanjeev Kumar (PW-2), Rajesh Narayan Verma (PW- 5), Krishna Kumar Gupta (PW- 4), Vijay Kumar (PW- 1) and Ashok Kumar Rai(PW- 10).

6. The informant (PW-9) has alleged that on 10th of September 2012 at approximately 9:00 A.M., he along with his team arrived at Chhatauni Chowk near Motihari Bus Stand and apprehended two individuals. Upon questioning, they identified themselves as Azmulla Ansari @ Sahil Ansari and Amit Kumar. A motorcycle belonging to the appellant/Amit Kumar was also seized. During the search, a black bag containing 878 counterfeit



Indian currency notes of 1000 denomination, alongwith a black colored mobile phone of Nokia company, was recovered from the possession of appellant/Azmulla Ansari @ Sahil Ansari. Additionally, it was asserted that the counterfeit Indian currency notes of 1000 denomination totaling about Rs. 20,000/- alongwith a mobile phone of Carbon company was recovered from the possession of appellant/Amit Kumar.

7. When appellant/Amit Kumar was interrogated he disclosed that his brother-in-law/Deependra Kumar and his cousin/ Sudhir Kumar Kushwaha had come to his residence about six months ago and had asked him to join the business of fake currency notes. They obtained fake currency from Matahur @ Mansoor, Kaliachak, Malda, West Bengal and circulated it in the local market to earn profits. It is alleged that on the day of the occurrence, co-accused Sudhir Kushwaha had told the appellant/Amit Kumar that co-accused/Sattar Miyan and appellant/Azmulla Ansari @ Sahil Ansari would carry the fake currency to Chhatauni Bus Stand, Motihari. Appellant/Amit Kumar met appellant/Azmulla Ansari @ Sahil Ansari at the Bus Stand.

8. On the basis of the written statement (Ext. 3) of the informant (PW- 9), Economic Offence Bihar, Patna P.S. Case No.



15 of 2012 dated 10.09.2012 was initially registered under Sections 489(A), 489(B), 489(C), 120(B) of the I.P.C. and later on, Section 16 of the Unlawful Activities (Prevention) Act, 1967, was added. Routine investigations followed. The statement of the witnesses came to be recorded and on completion of the investigation, charge-sheet was submitted against the appellants under Sections 489(A), 489(B), 489(C), 120(B) of I.P.C. The investigation was kept pending in respect of other co-accused persons. The learned Trial court was pleased to frame charges against the appellants under Sections 489(A), 489(B), 489(C), 120(B) of I.P.C. to which they pleaded not guilty and claimed to be tried.

9. In order to bring home the guilt of the appellants, the prosecution examined altogether fourteen witnesses. PW-1 Vijay Kumar, PW-2 Sanjeev Kumar, PW-3 Musafir Miyan, PW-4, Krishna Kumar Gupta, PW-5 Rajesh Narayan Verma, PW-6 Vishwanath Patel, PW- 7 Deepak Prakash, PW- 8 Tejmul Haque, PW-9 Vinay Krishna (Informant) PW-10 Ashok Kumar Rai, PW-11 Jai Prakash Yadav, PW- 12 Jai Narayan Prasad, PW-13 Sanjeev Kumar and PW-14 Sanjay Kumar I (I.O.).

Prosecution has relied upon following documentary evidence on record:-



Ext. 1 - Seizure list of appellant/Azmulla Ansari.
Ext. 2 - Seizure list of appellant/Amit Kumar.
Ext. 3 - Written statement.
Ext. 4 - Order of S.H.O. on written statement to register
FIR.
Ext. 4/1 - Writing and signature of S.H.O. on formal
FIR.
Ext. 5 - CAF of Mob. No.- 7209783520.
Ext. 5/1 - CAF of Mob. No.- 7549322229
Ext. 6 - CAF and CDR of Mob. No.- 7209783520
Ext. 6/1 - CAF and CDR of Mob. No.- 7549322229
Ext. 7 - Forensic Science Laboratory and investigation
report of seized notes.
Ext. 8 - Certificate of Cyber Crime Cell issued by
Sanjeev Kumar.
Ext. 9 - Charge-sheet No. 09/12 dated 05.12.2012.
Ext. 10 - Confessional statement of appellant/Amit
Kumar.
Ext.10/a - Confessional statement of appellant/Azmulla
Ansari @ Sahil Ansari.

Prosecution has also proved the Material Ext. X/1 to
X/20 as counterfeit Indian currency recovered from appellant/Amit
Kumar and Material Ext. X/21 to X/898 as counterfeit Indian
currency recovered from appellant/Azmulla Ansari @ Sahil Ansari
and both the material exhibits bear the signature of Ashu Kumar,
Scientist of FSL.

Appellant/Amit Kumar has also relied upon following
documentary evidence in his defence:-

Ext. A – Admit card of Graduation of appellant/Amit
Kumar.
Ext. B – Web copy of admit card of Amit Kumar issued
by SSC, Allahabad.



No document has been produced on behalf of the appellant/Azmulla Ansari @ Sahil Ansari in his defence.

However, the defence of the appellants as gathered from the cross examination of PWs. as well as from their statements under Section 313 of Cr.P.C. is of total denial of the charge.

10. After hearing the parties, the learned Trial court convicted the appellants and sentenced them as aforesaid.

11. The learned counsel for the appellants has submitted that the prosecution has failed to prove the case under Section 489 (B) of the IPC against the appellants. The conviction therefore under Section 489 (B) is bad in law. The conspiracy angle has not been proved by the prosecution as the I.O. had not made any investigation regarding the role played by the associates as had been alleged in the F.I.R. It has also not been proved as to how the counterfeit currency was carried to the said bus stand from Kaliachak, Malda Town, West Bengal and who were the persons, who brought in the smuggled counterfeit Indian currency. The I.O. has not made proper investigation with regard to the role assigned to the other associates in the smuggling of counterfeit Indian currency. He has further submitted that there is contradiction in the evidence of PWs-1, 2, 4, 5, 7, 9 and 10, who are police personnel and their evidence cannot be relied upon. The seizure list witnesses



have not supported the case of the prosecution. Not a single independent witness has supported the case of the prosecution. It has further submitted that the prosecution failed to prove that the money, which was shown to have been recovered from the possession of the appellants, was factually sent to the FSL for its examination. No police official from Chhatauni Police Station has been examined in the present case. The prosecution has not proved the mobile number or other call details as per law and on this ground alone, the learned Trial court erred in convicting the appellants under Section 120(B) of the IPC. There was no material before the Trial court to find the appellants guilty under Sections 489(B) and 489(C) of the IPC.

12. On the contrary, the learned counsel appearing for the Economic Offence Unit assisted by the learned A.P.P. has submitted that the statement of informant (PW-9) unequivocally supports the story of prosecution regarding the time, manner and place of occurrence. The appellants were found in suspicious condition and they attempted to flee away on seeing the police party. The raiding team, on the basis of reliable confidential information, had reached at Chhatauni Bus Stand and had apprehended the appellants with counterfeit currencies. All the members of raiding team have supported and corroborated the



story of prosecution. The other PWs have also supported the story of prosecution as narrated by the informant (PW-9).

13. Sanjay Kumar I (PW-14), who is the I.O. of the case, has supported and corroborated the story of prosecution. The FSL report also confirms that the recovery made from both the appellants, was of counterfeit currency. There was no reason to disbelieve the version of the informant and other members of raiding team merely because they belonged to the police service. It has further been submitted that in a catena of judgments, the Hon'ble Supreme Court has held that the prosecution story cannot be thrown out merely because of prosecution witnesses being police officials.

14. It is imperative to meticulously examine the testimony of PW-9, who is the informant of this case. He had provided a detailed account of elucidating how the raiding team successfully apprehended the appellants. He has reiterated what he had stated in his written report. During the cross examination, he could not be discredited on the issue of recovery of counterfeit currency from the appellants.

15. PWs. 1, 4 and 5 were the members of raiding team who have categorically supported the version of PW-9 regarding such recovery of counterfeit currency from the possession of



appellants/Azmullah Ansari and Amit Kumar. PW-4 had identified both the appellants in court.

16. Sanjeev Kumar (PW-2) is also member of raiding team. He had prepared the seizure list of counterfeit currency which was recovered from the possession of the appellant/Azmulla Ansari. It bears his writing and signature and has been marked as Exhibit-1.

17. Deepak Prakash (PW-7) is also one of the members of the raiding team. He had prepared the seizure list of 20 counterfeit Indian notes of 1000 denomination which was recovered from the possession of the appellant/Amit Kumar. Seizure list bears his writing and signature which stands marked as Exhibit-2.

18. Ashok Kumar Rai (PW-10) is the driver at E.O.U. Police Station at Patna. He has stated that he alongwith the raiding team arrived at Chhautauni Bus Stand, Motihari from where all the police officials went away separately. He has stated that two persons were apprehended and both were taken to Patna on the vehicle.

19. Jai Prakash Yadav (PW-11) and Jai Narayan Prasad (PW-12), both have supported the story of prosecution. PW-11 has stated that confessional statement of appellant/Azmulla Ansari was



recorded in which he has admitted his guilt. PW-12 has stated that confessional statement of appellant/Amit Kumar was recorded in which he has also admitted his guilt.

20. Sanjeev Kumar (PW-13) has stated during examination-in-chief that he demanded CDR from 10.08.2012 to 10.09.2012 and CAF from the concerned telephony company on the basis of direction given by the I.O. (PW-14) which reflects communication between the appellants and others.

21. Sanjay Kumar I (PW-14) is I.O. of the case. He has supported the story of prosecution and has stated that he had received the written statement of S.I. of E.O.U.; seizure list and the sealed exhibits. During the course of investigation, he had recorded the re-statement of informant and had also taken the detailed statements of other PWs. He sent the seized counterfeit Indian currency to FSL, Patna. The report of seized items recovered from each of the appellants confirms that all the notes were not genuine Indian currency. On the basis of CDR of seized mobiles and the confessional statement of appellants, he came to the conclusion that the appellants were in contact with the other accused for circulating the counterfeit Indian currency.



22. Musafir Miyan (PW-3) and Tejmul Haque (PW-8) have not supported the case of prosecution and have been declared hostile.

23. Vishwanath Patel (PW-6) is an independent witness also is the witness of seizure list. He has not supported the case of the prosecution and has taken an about turn at the trial.

24. It is pertinent to note here that seized counterfeit currency were sent to FSL for examination. The result of examination reveals that all the notes were counterfeit currency.

25. In the present case, we do not find any compliance of Section 65-B of the Indian Evidence Act as has been explained in *Anvar P.V. Vs. P.K. Basheer & Ors.; (2014) 10 SCC 473* and *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors.; (2020) 7 SCC 1*. There is no certificate on record as contemplated under Section 65-B of the Indian Evidence Act, 1872. This definitely makes the evidence with respect to the CDRs, which is the sole basis for proving the case of conspiracy as against the appellants, as inadmissible in the eyes of law.

26. PW-13 could not have certified that the CDRs of various telephones were obtained through the telephone companies, which information was generated in usual course.



27. In the present case, the CDR is inadmissible piece of evidence because of non-compliance of Section 65-B of the Indian Evidence Act.

28. The written statement covers broadly two aspects of the story of prosecution. The first aspect is related with how the police officials alongwith the informant proceeded towards Chhatauni Bus Stand, Motihari on the basis of reliable confidential information and how the trap was laid by constituting raiding team. When the team came nearer, the suspects began to leave the place of occurrence but they were apprehended and significant quantity of counterfeit notes were recovered from their possession. The second part of the written statement is based upon the disclosure made by appellant/Amit Kumar. On that point, the I.O. (PW-14) has not made any investigation regarding the linkages of the appellants and their associates and the modus of circulation of counterfeit Indian currency. Nothing has been whispered in the investigation regarding the other associates of the appellants. Ext. 6 and 6/1 do not reflect that appellants were associated with other accused as nothing has been collected by the I.O. during the investigation regarding the activities of other associates who were directly or indirectly linked with the appellants.



29. In this way, the offence under Section 120(B) of the IPC is not made out against the appellants/ Azmulla Ansari @ Sahil Ansari and Amit Kumar. The judgment of the Trial court with regard to the offence of Section 120(B) of the IPC thus is not justified and, hence, the same is set aside.

30. It is evident that huge quantity of counterfeit Indian currency was recovered from the possession of the appellant/Azmulla Ansari @ Sahil Ansari and the evidence of PWs. 9, 14 and others who have prepared the seizure lists have specifically supported the prosecution story. There is no reason to disbelieve the version of PW-9 and other PWs. as same is corroborated and supported by other witnesses and material available on record.

31. Hence, the conviction of the appellant/Azmulla Ansari @ Sahil Ansari under Sections 489(B) and 489(C) is upheld.

32. The appellant/Amit Kumar from whose possession only 20 counterfeit Indian currency of 1000 denomination was recovered and on the said point the evidence of prosecution witnesses are quite consistent and there is no reason to disbelieve the version of prosecution witnesses. So far as the nature of recovery is concerned, prudently and pragmatically no offence is



made out under Section 489(B) of the IPC against the appellant/Amit Kumar. Hence, the conviction of appellant/Amit Kumar under Section 489(B) of the IPC is set aside but his conviction under Section 489 (C) is upheld.

33. The counsel of the appellants have submitted that both the appellants were of having young age at the time of alleged occurrence and they have the chances to streamline their life for better future. The counsel for the appellants further submitted that the I.O. has not produced any material that appellants have any criminal background.

34. In the light of the aforesaid submission, we deem it appropriate to reduce the sentence of the appellant/Amit Kumar to the period already undergone by him, which would meet the ends of justice. Hence, the sentence imposed against the appellant/Amit Kumar vide order dated 01.10.2016 is reduced to period of custody which he has already undergone.

35. So far as sentence of the appellant/Azmulla Ansari @ Sahil Ansari is concerned, he has been sentenced to life imprisonment under Section 489(B) of the IPC. We find that in the attending circumstances, a ten years rigorous imprisonment would be sufficient to meet the ends of the justice.



36. During the trial, the appellant Azmulla Ansari @ Sahil Ansari was in custody from 10.09.2012 to 16.08.2013 and thereafter he is in custody since the date of judgment of conviction i.e. 30.09.2016. The total period of custody undergone by the appellant is near about 08 years. His sentence is thus altered to ten years rigorous imprisonment.

37. The appellant/Amit Kumar is on bail, his liabilities under the bail bonds is cancelled.

38. In the aforesaid manner, both the appeals are partly allowed.

(Alok Kumar Pandey, J)

(Ashutosh Kumar, J)

alok/shahzad-

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