

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present

The Hon'ble Justice Siddhartha Roy Chowdhury

C.R.A. 15 of 2020

Md. Sahid Alias Sahidul

-Versus-

The State of West Bengal

Mr. Rajdeep Majumder,
Mr. Pritam Roy,
Ms. Shyanti Poddar

...for the appellant

Mr. Saswata Gopal Mukherjee, Id. P.P.,
Mr. Sandip Chakraborty,
Mr. Saryati Dutta

..for the State

Heard on : 06.09.2022, 29.11.2022,
09.02.2023, 04.04.2023
and 20.04.2023.

Judgement on : 20.04.2023

The Court:

This appeal impeaches the judgment and order of conviction passed by the learned Additional District & Sessions Judge, 3rd Court, Barrackpore, 24 Parganas (North) in Sessions Trial No. 03 (10) 2015, arising out of

S.C. 294 of 2015. By the impugned judgment, the learned Trial Court was pleased to record the order of conviction and directed the convict to undergo simple imprisonment for 5 years for committing offence under Section 489B of the Indian Penal Code with default clause and to undergo simple imprisonment for 5 years for the offence committed under Section 489C of the Indian Penal Code with default clause.

Briefly stated on 28th May, 2015, Sub-Inspector of Police Sanjib Das at about 11.35 hours went to Narayanpur West Beraberi, Methorpara to work out a source information. At about 12.05 hours, having reached at Narayanpur, he found one person who was surrounded by some frenzied people. He rescued the man from the clutches of those persons and came to know that the man came to the steel furniture shop near Titumir Sporting Club by riding a motor cycle without any registration number. He decided to purchase one Steel Showcase with Almirah at a price of Rs. 8,000/- and paid eight currency notes having denomination of Rs. 1,000/- each. The shop owner Yunus Ali of West Beraberi, however smelt a rat and requested the said

person to change the notes which the man refused to do. Police was informed and they came.

The said person, being interrogated by S.I. Sanjib Das introduced himself as Md. Sahid and also admitted that he had in his possession fake currency notes and he used those notes as genuine. In presence of two independent witnesses, S.I. Sanjib Das conducted search of the person after offering himself to be subjected to search by the accused person. Md. Sahid searched SI Sanjib and his associate in the presence of police personnel but nothing was recovered. Thereafter, maintaining all formalities, S.I. Sanjib Das searched the person of Md. Sahid and recovered 42 numbers of Indian Currency Notes having denomination of Rs. 1,000/- from a folio bag which was in the left hand of Md. Sahid. He recovered eight such currency notes, which Md. Sahid had given to the shopkeeper. As Md. Sahid failed to justify his possession in respect of those currency notes, police seized the currency notes including the mobile phone and the motor cycle in presence of the independent witnesses. Copy of the seizure list was given to the accused person. Police brought the accused

person under arrest to the police station and the arresting officer informed the Officer-in-Charge of the Airport Police Station in writing about the entire incident.

The information since disclosed offence cognizable in nature, Airport P.S. Case No. 138/2015 dated 28th May, 2015 was registered under Sections 489B/489C/120B of the Indian Penal Code. Police took up investigation and submitted charge sheet against the accused person.

Trial commenced on 5th August, 2015 when charge was framed against the accused persons under Sections 489B/489C of the Indian Penal Code. The accused person stood the trial, pleading his innocence.

To crown success, prosecution examined as many as 7 witnesses. The learned Trial Court after considering the evidence on record both oral and documentary, was pleased to pass the judgment impugned.

Assailing the impugned judgment Mr. Pritam Roy, learned counsel for the appellant submits that the prosecution failed to prove the charges beyond reasonable doubt. The learned Trial Court passed the

impugned judgment, which is but manifestation of misreading of evidence. My attention is drawn to the seizure list Ext.-3 and to the testimony of shopkeeper PW-6 Yunus Ali. PW-6 in his oral testimony claimed to have been given eight pieces of currency notes, having denomination of Rs.1,000/- each by the accused person and according to PW-6, police prepared a seizure list in respect of those eight notes. The seizure list Ext.-3, however, narrates a different story, from the said document it appears that S.I. Sanjib Das seized 50 pieces of Indian Currency Notes having denomination of Rs. 1,000/- each from the accused at West Beraberi, Methorpara near Titumir Sporting Club. According to Mr. Roy, prosecution forwarded the 50 pieces of Indian Currency Notes for examination but evidence of PW-6 unerringly indicates that those notes were not recovered by police from the possession of the accused person. There is no explanation as to non-production of seizure list prepared by the seizure officer on the date of alleged incident from the alleged place of occurrence, after taking 8 number of notes from the shopkeeper. While adducing evidence, the Investigating Officer of the case

as PW-7 stated to have prepared a sketch map indicating the place of occurrence, which is admitted as Ext.-8. In the Ext.-8, the place of occurrence was marked as “A” shop of Yunus Ali. The evidence of PW-6, when is considered in contradiction with the document Ext.-8, the factum of seizure gets a further jolt. According to Mr. Roy, when the factum of seizure becomes doubtful, there is no reason for the learned Trial Court to hold that the alleged FICN were recovered from the possession of the appellant or he ever tried to use the same as genuine.

Mr. Dutta, the learned counsel for the State with all fairness submits that seizure list, Ext.-3 and sketch map Ext.-8 when considered, taking lumen from the oral testimony of P.W.-6, the shopkeeper, the factum of seizure becomes doubtful.

In order to prove charge under Sections 489B and 489C of the Indian Penal Code, prosecution is under obligation to prove beyond reasonable doubt that the accused person either sold or otherwise trafficked or used as genuine, the forged or counterfeit currency notes, knowing or having reason to believe the same to be forged. PW-1, the seizure officer, who claimed to have

recovered fake currency notes from the possession of the accused person, stated that the accused made a statement admitting the fact that he was possessing the fake currency notes, but such a statement is inadmissible under the law. In order to bring on charges under Section 489C of the Indian Penal Code. Prosecution is to prove that accused person had in his possession forged or counterfeit currency notes and had the intention to use the same as genuine. With the failure on the part of prosecution to prove the factum of seizure beyond reasonable doubt, the prosecution case is bound to cave in. Learned Trial Court did not consider these glaring discrepancies, as stemmed out from the seizure list as well as from the testimony of PW-6, the shopkeeper. No document was seized to substantiate that P.W.-6 had his shop where the alleged incident took place.

In absence of unity of time, place and action, I am of the view that the impugned judgment suffers from infirmity. Prosecution since has failed to prove the factum of recovery of fake Indian Currency Notes from the possession of the accused person, in my humble

opinion, the impugned judgment should not be allowed to remain in force and should be set aside, which I accordingly do. Consequently, the appeal succeeds. The accused person is found not guilty of the charges under Section 489B and 489C of the IPC.

Let a copy of the judgement along with the LCR be sent down to the learned Trial Court.

(Siddhartha Roy Chowdhury, J.)