IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 332 of 2008

Habi @ Habibur Rahaman Mallick
-Vs-
The State of West Bengal

For the Petitioner	: Mr. Sekhar Basu, Sr. Adv. Mr. Manas Kr. Das Mr. Aritra Kr. Talukdar
For the State	: Ms. Faria Hossain Mr. Anand Keshari
Heard on	: 10.02.2023, 13.02.2023
Judgment on	: 27.04.2023

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 17th April, 2008 and 18th April, 2008 respectively passed by the Learned Additional Sessions Judge, 2nd Court Nadia in Sessions Trial No. (iv) (vi) (07) arising out of Sessions Case No. 106 (3) (07) convicting the appellant under Section 489 (C) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for 6 months more.

2. The prosecution case precisely stated on 13.10.2005 at 15:15 hours the Sub-Inspector of Police filed a complaint at Dhubulia P.S. whereby the appellant Habibur Rahaman Mallick alias Habi resident of Chapra, Balir

Mathpara P.S. Chapra, Nadia was apprehended with forged currency notes of Rs.100/- denomination amounting to Rs. 48,000/- in a plastic bag. On 13.10.2005 at about 10:05 hours de-facto complainant along with A.S.I. Pravat Biswas, Constable 747 Madhab Mondal, Constable 1679 Swapan Ghosh on the basis of a secret information registered Dhubulia P.S. GD entry number 533 dated 13.10.2005 and left for Sonatola. On reaching Sonatola at about 10:55 hours the aforesaid persons ambushed near Sonatola Ghat at a bamboo grove keeping their police vehicle at a distance. They found a person approaching towards them in a boat crossing the river 'Khari' and were identified as Habi by the source. The police surrounded the person in proximity to them and on query he disclosed his name to be Habibur Rahaman Mallick of Chapra Balir Mathpara who was carrying a plastic bag with a huge amount of cash, comprising of Rs.48,000/- all of Rs. 100 currency notes out of which two Indian currency notes of 100 rupees denomination had identical number.

It was also found that two Indian Currency Notes of Rs. 100/- denomination having same number of 20p665323, 20p665306, 20p665309, 20p665308, 20p665376 respectively, three Indian Currency Notes of Rs. 100/- denomination having same number of 20p665382, 20p665387, 20p665384 respectively, four Indian Currency Note of Rs. 100/- denomination having same number 20p665376, 20p665394,20p665383 respectively, five Indian Currency Note of Rs. 100/- denomination having same number 20p665397, six Indian Currency Notes of Rs. 100/- denomination having same number

20p665369, 20p665385, 20p665387 respectively, seven Indian Currency Notes of Rs. 100/- denomination having same number of 20p665377, 20p665326, 20p665325, 20p665367, 20p665331 respectively, eight Indian Currency Notes of Rs. 100/- denomination having same number 20p665361, 20p665327, 20p665305, 20p665310, 20p665398, 20p665996, 20p665365, 20p665366, 20p665368, 20p665371, 20p665357, 20p665360, 20p665358, 20p665353, 20p665352, 20p665351, 20p665350, 20p665349, 20p665348, 20p665386 respectively, nine number of Indian Currency Notes of Rs. 100/- denomination having same number 20p665304, 20p665311, 20ps665312, 20p665399, 20p665370, 20p665359, 20p665356, 20p665355, 20p665354, 20p665352, 20p665337, 20p665331, 20p665339, 20p665388, 20p665389, 20p665390, 20p665391 respectively. There were fourteen, fifteen and nineteen numbers of Indian Currency Notes of Rs. 100/- denomination having same number of 20p665332, 20p665333, 20p665336 respectively. There were eighteen numbers of Indian Currency Notes of Rs. 100/- denomination having same number of 20p665334, 20p665335 respectively.

3. The appellant confessed those notes to be of fake Indian currency which were forged. In the presence of villagers namely Azizur Rahaman Mondal and Babu Sarki of Sonatola P.S. the appellant was arrested for trafficking and possessing forged currency notes which were seized under the seizure list along with the plastic packet in the presence of the public witnesses who signed the seizure list. The signature of the appellant was obtained on

the seized currency notes. On the basis of the statement of the present appellant recorded under Section 161 of Code of Criminal Procedure Yunus @ Unish Chowdhury and Akbar Ali Gain @ Gyne were arrested for keeping the forged currency notes seized as aforesaid.

4. On the basis of the complaint as aforesaid Dhubulia P.S. Case No. 166/05 dated 13.10.2005 under Section 489 (B)/489 (C) of the Indian Penal Code was instituted. On completion of the investigation charge sheet was filed under the aforesaid Sections on 20.10.2206. Charges were framed against the accused persons under Section 489 (C) of the Indian Penal Code to which accused persons pleaded not guilty and claimed to be tried. On conclusion of the trial the accused persons namely Yunus @ Unish Chowdhury and Akbar Ali Gain @ Gyne were acquitted of the charges under Section 489 (C) of the Indian Penal Code and the present appellant was convicted as aforesaid.

5. The prosecution in order to establish its case cited 16 witnesses and exhibited certain documents.

6. The Learned Advocate for the appellant submitted the evidence of PW-1 to be concocted which was not corroborated by other witnesses present at the spot. The seizure was not conducted in accordance to law. There were discrepancies in the statements of PW-8, PW-9 and PW-10. The evidence of PW-14 reflected contradictions as to who took the alleged fake notes from the Malkhana but did not record the seizure in register and sent the same for expert opinion to prove the same to be forged or fake. PW-5 and PW-6 despite being independent charge sheeted witnesses did not support

the prosecution case and were declared hostile which established the fact that the seizure was not conducted in their presence, their signature and the impression were obtained by the police upon threat. The Learned Trial Judge did not consider that mere possession of forged notes did not constitute an offence under Section 489(C) of the Indian Penal Code in absence of the motive commit the offence. The investigation carried out by PW-16 was prejudicial to the appellant and accordingly the appeal shall be allowed and the order of conviction to be set aside.

7. The Learned Advocate for the State submitted that latches in the prosecution case were not material as long as the crux of the case remained constant. The evidence of the independent witnesses who did not support the prosecution case could not be fatal. The other police officers supported the case. During his examination under Section 313 of the Indian Penal Code the appellant did not deny his signature on the seized currency notes and possession of counterfeit notes which was sufficient to prove mens rea and the prosecution had been successful in proving its case and the appeal be dismissed.

8. Assailing the evidence of the prosecution witnesses it transpired that PW-1 reiterated the narrative of the complaint during his testimony before the Court. He identified the seizure list marked 'Exhibit-1' which stated Serial 1 to Serial 11 were the seized forged currency notes and the item no. 12 was the seized plastic bag which were thereafter marked 'MAT Exhibit-1'. He further identified his signature along with the contents in his hand writing being the petition of complaint marked 'Exhibit-2'. PW-1 had

endorsed S.I. Narayan Chandra Rakshit to investigate the case. During his cross examination PW-1 could not remember the name and sex of the person at whose instance he received the source information. PW-1 further did not inform the receipt of source information to his superior. Moreover, the GD entry number 533 dated 13.10.2005 was not mentioned in the F.I.R. wherein the time of leaving the police station was not mentioned nor but he mentioned the name of the driver of the police jeep by which he left the police station. PW-1 did not serve notice to the witnesses to be present at the spot or call the local Panchayat Member before arresting the appellant nor did he seek permission from the owner of the bamboo grove for ambushing. PW-1 did not mention in the F.I.R. whether he asked the passengers to remain present who were accompanying the appellant on the boat. PW-1 further stated that *"I did not mention in my F.I.R. prior to searching the accused who was permitted to search me. No notice was issued on my part either to the accused or to the witnesses for searching ourselves. There is no mention in my F.I.R. the particular place where I seized the articles and prepared seizure list. So far my memory goes one or two shops may be situated in the Sonatola Ghat. He did not call them at that time as their shops are situated at far distance from that place. I do not find the said seized plastic bag before the Court today. I wrote down the list of the case in his personal diary but he did not handover the same to the Investigating Officer. It is not possible for me to say for from what Ghat the accused was coming by boat after crossing the river Jalangi. I did not mention in the F.I.R. the time as regards to process of* *seize and seizure. I did not take any photographs of the accused along with the seized article before entering into the P.S. and also video tape recording of the accused. I also did not inform any Executive Magistrate or B.D.O. of the locality before and after arresting and before seize from the accused. I did not bring the source to the P.S. after arresting the accused. I also did not mention in the F.I.R. the age of the source."*

9. PW-2 identified his signature on the document marked as 'Exhibit-3/1' further stating to have been called by the police directing to him sign on a blank paper which he signed. He was declared hostile by the prosecution.
10. PW-3 deposed to have been ignorant of the reason of the arrest of the appellant by the police and identified his signature on the document marked 'Exhibit-4/1' and was declared hostile by the prosecution.
11. PW-4 too was declared hostile by the prosecution.
12. PW-5 Azizur Rahaman was declared hostile by the prosecution who earlier stated to have signed the seizure list at the direction of the Darogababu being threatened as refusal to sign would have implicated him in the case.
13. PW-6 and PW-7 were declared hostile in similar manner as that of PW-5.
14. PW-8 corroborated the evidence of PW-1 as far as the arrest of the appellant and seizure of the fake notes of Indian currency are concerned. During his cross examination PW-8 stated *"When we caught hold of the said person near the bamboo groves at Sonatola Ghat nor all the local people arrived there. I did not count the said bundles myself". The said Sonatola Ghat is 10 to 15 yards from the said bamboo groves.* PW-8 further

stated he did not sign any paper at that time and there were witnesses who had crossed the said river and reached Sonatola Ferry Ghat on the same boat. PW-8 could not remember the name of these passengers. He further stated there was no special mark of identification by him on the said notes. He was not the expert of forged notes, on seeing the 'MAT Exhibit-1' PW-8 stated that the appellant had signed on it and therefore he was constrained to hold that the forged notes were recovered from his possession and he did not find any plastic bag produced before the Court.

15. PW-9 was a member of the raiding party who concurred to the evidence of PW-1 and PW-8. However, in his cross examination he stated that *"the colour of the said plastic bag in which the said notes were lying was white. It is not possible for me to say as regards to the size of that bag even by guess, and also the number of the handles of the bag. I cannot remember what was written in the said plastic bag. I do not find the said plastic bag today in Court. We started from the P.S. at about 8.30 to 9 A.M. by motor cycle. I cannot say the name of the owner of the said motorcycle, and thereafter I also did not go to know as to who is the owner of the said motorcycle. I cannot remember that on the relevant date went to the Sonatola Fari or not. He cannot remember how many numbers of bundles were there in those notes. We did not come to the Sonatola Ferry Ghat in a body by motor cycle. I did not sign in the seizure list. I cannot say the name of the persons who signed in the seizure list."*

16. PW-10 accompanied PW-1 on the mission on the relevant date and during his cross examination stated that "*at first we reached there and*

thereafter the said public came there. At that time we were sitting inside the bamboo grooves near Sonatola Ferry Ghat. I cannot say the length and breadth of that bamboo grooves. I do not find the said plastic bag before the court today. I cannot say in which hand the said bag was held by the accused person. We reached in the said Sonatola Ferry Ghat at about 10.30 to 11.00 A.M. I did not enter into the Sonatola Police Fari but officer went there. I did not call the police of the Sonatola Ferry Ghat. I did not enter into the said Fari. I also did not sign in the said notes. I cannot say how many bundles of those notes were there. For about 2 or 4 local public were present there at the time of seizure and arrest."

17. PW-11 deposed to have received 492 pieces of 100 notes for expert opinion and identified the report prepared by him marked 'Exhibit-5'. *He further stated that in my report N*A notes are also mentioned in my said report.* During his cross examination PW-11 stated *"it cannot be ascertained when those notes in question were sent to me for examination. I cannot say in what condition those notes in question I received. This is the seal of Learned C.J.M. Nadia in an envelope in which the said notes were sent to me by seal covered. This is the seal of the court and signature of Learned C.J.M. in the envelope. This is marked 'Exhibit-a. I did not receive the same in sealed condition; I cannot say whether I received the same as example seal. I did not compare as regards to both the seals. I have no knowledge about the sealing and resealing of the notes in question by envelope. On seeing 'MAT Exhibit-1' this witness stated that each note contains the seal of the laboratory. But I did not give any number."*

18. PW-14 on completion of the investigation filed the charge sheet on 20.10.2006.

19. PW-14, stated to have conducted investigation of the case as per the direction of the Superintendent of Police, Nadia and further submitted that he sent the fake currency notes and Indian currencies to Nasik for expert opinion through Learned C.J.M Nadia vide exhibit 'A' 'B' 'C' which were alleged to have been recovered from the accused person. Exhibit A alleged to be recovered from the possession of accused Habibur Rahaman, Exhibit B alleged to be recovered from accused Yunus @ Unish Chowdhury and Exhibit C alleged to have been recovered from the possession of accused Akbar Ali Gain @ Gyne. He also sent the Indian currency notes viz. denominations of Rs. 10/-, Rs. 20/- and Rs. 50/- along with the fake notes. He sent the fake notes 492 in number in all Rs. 100/- note. He sent the same along with the forwarding notes and challan. The carbon copies of the forwarding notes and challan in 8 pages were marked exhibit - 7 collectively. On 14.09.2006 he received the expert report from Nasik concerning exhibit - A, exhibit - B and exhibit – C which were sent by him through Ranjit Kumar Banerjee through requisitions. The documents bore his hand and signature, marked exhibit 6. Thereafter he submitted Charge Sheet against the three accused persons on 20.10.2006 under Section 489B/489C of the Indian Penal Code.

20. PW-16 conducted the initial investigation and thereafter transmitted the Case Diary to PW-14 for further investigation.

21. PW-16, the Investigating Officer arrested the appellant and other co-accused persons Akbar Ali Gain @ Gyne and Yunus @ Unish Chowdhury. In his deposition he further stated that *"On 19.10.2005 I arrested the accused Akbar Ali Gyne and recovered seven fake currency notes o denomination of Rs.100/- each and forty note of Indian currency of Rs.10/- each, two number of Indian currency notes of Rs.50/- each and five numbers of Indian currency notes of Rs.20/- each. Accordingly, I prepared the seizure list in presence of the witnesses who signed on it and accd. Akbar Ali Gyne put his L.T.I. on it. This is the said seizure list in original prepared by me under my hand and signature and this be marked as ext.4. On 19.10.2005 at about 7-55 to 8-15 hours I arrested the accused Unish Chowdhury from his house of Jatinnagar and recovered Rs.500/- fake currency notes of hundred rupees each in denomination and one hundred and fifty Indian currency notes of Rs.10/- each from his possession and seized the same. Thereafter, I prepared the seizure list in presence of witnesses who signed on it and accused Unish Chowdhury put his L.T.I. on it. This is the said seizure list prepared by me under my hand and signature and this be marked as ext. 3. Thereafter on being transferred I handed over the C.D. to the O.C. of that P.S. on 24.10.2005."*

22. During his cross-examination PW-16 stated that *"there is no such investigation on my part as regards to the information of source. There is also no note in the C.D. as regards to gender of the source and his whereabouts. I took the said alamats from the P.S. Malkhana but I did not seize the Malkhana register. There is also no such note in my C.D. as*

regards to M.R. number. I did not examine the Malkhana Babu under Section 161 Cr. P.C. I also did not obtain any receipt as regards to the handing over of the alamats to me. I took no snap of those alamats in presence of B.D.O or any other person when that was remained in Malkhana and also vice versa. There is also no note in the C.D. as regards to any seal affixing of Malkhana at the time of taking alamats from Malkhana. I did not examine the boat man of Sonatala Ferry Ghat and I also did not seize the said boat. I also did not examine any of the passengers of the boat on the relevant date and time. I did not seize any G.D. entry of Sonatala Police Fari and I also did not examine any Police Officer of Sonatala Police Fari. On seeing ext. 9, this witnesses that there is no mention in the sketch map as regards to their sitting coming from which direction and also watching of the accused Habibur.

I do not find any polythene bag in the Court room in which the currency notes were contained. I also did not examine the owner of the bamboo grove as well as nearby persons of the area. I also did not examine the respectable persons i.e. Teachers, Panchayat Prodhan etc. of village Sonatala. I did not seize the dairy of Dhubulia P.S. to show that on the relevant date and time the police jeep went to the P.O. and also did not seize the oil consumption log book/report of the vehicle and I also did not examine the police driver of the said vehicle. There is no such note in the C.D. that the police personnel went to the P.O. by motor cycle.

Not a fact that I have created the false case only in order to satisfy my superior. After arresting the accused Habibur, I never went to his house for *search. Dhubulia hospital is nearer to Dhubulia P.S. one has to go to the P.S., he is to go in front of Dhubulia B.D.O office for rest.*

I did not make any packet and seal while I seized the same from Unish and Akbat Ali. I also did not obtain any signature either of the witnesses or of the accused persons. Thereafter, I deposited the said seized alamats to the Police Malkhana but I cannot say the M.R. register number of those alamats."

23. Out of 16 prosecution witnesses, the independent witnesses of the seizure list witnesses namely, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-7 were declared hostile by the prosecution.

24. PW-1, who filed the petition of complaint and subsequently filled up the formal First Information Report being the Officer-in-Charge of the Dhubulia Police Station had endorsed PW-16, S.I. Narayan Ch. Rakshit to investigate the case.

25. At the time of intercepting the appellant the Investigating Agency did not cite the passengers or the boatman as witnesses who were crossing the river Jalangi along with appellant. The seized plastic bag which carried the fake currency notes was not produced before the Court. The river ghat wherefrom accused crossed the river Jalangi as well as the time taken to process seizure of forged notes were not mentioned in the First Information Report. None of the members of the raiding police personnels signed the seizure list. The boatman and accompanying passengers were not interrogated. The boat was not seized.

26. The First Information Report marked as Exhibit-2 inter alia sated as follows:

> *"All those facts suggested that those Indian currency notes were forged and on being asked, in presence of villagers Habibar Rahaman Mallick confessed that those currency notes were forged. Then I arrested him for trafficking and possessing forged Indian currency note and seized an the forged currency note under proper seizure list along with the plastic packet and obtained signature of the public witnesses on the seizure list. I also obtained signature of accused person on an seized currency notes."*

27. In ***Dipakbhai Jagdishchandra Patel Vs. State of Gujarat & Anr.***[1] the Hon'ble Supreme Court observed:

> *"27. Section 25 of the Evidence Act, 1872 (hereinafter referred to as "the Evidence Act", for short) renders inadmissible a confession made to a police officer. It declares in fact that no confession made to a police officer shall be proved as against a person accused of any offence.*
>
> *28. Section 26 of the Evidence Act, on the other hand, reads as follows:*
>
>> *"**26. Confession by accused while in custody of police not to be proved against him.**-No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.*
>>
>> *Explanation.-In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such*

[1] 2017 SCC OnLine Guj 2473

> *headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)."*

29. Section 27 of the Evidence Act carves out an exception.

30. In Law of Evidence by M. Monir, 17th Edn., p. 555, we notice the following discussion regarding the distinction between Section 25 on the one hand and Section 26 on the other hand:

> *"... The section deals with confessions which are made not to Police Officers but to persons other than Police Officers, e.g., to a fellow prisoner, a doctor or a visitor, and makes such confessions inadmissible if they were made whilst the accused was in the custody of a Police Officer. In Section 25 the criterion for excluding a confession is the answer to the question. "To whom was the confession made?" If the answer is that it was made to a Police Officer, the confession is absolutely excluded from evidence. On the other hand, the criterion adopted in Section 26 for excluding a confession is the answer to the question. "Under what circumstances was the confession made?" If the answer is that it was made whilst the accused was in the custody of a Police Officer, the law lays down that such confession shall be excluded from evidence, unless it was made in the immediate presence of a Magistrate."*

28. In ***Mahabir Mandal Vs. State of Bihar***[2], it was observed by the Hon'ble Supreme Court that:

> *"46. Coming to the case of Kasim, we find that there is no reliable evidence as may show that Kasim was present at the house of Mahabir on the night of occurrence and took part in the disposal of the dead body of Indira. Reliance was placed by the prosecution upon the statement alleged to have been made by Kasim and Mahadeo accused at the police station in the presence of Baijnath PW after Baijnath had lodged report at the police station. Such statements are legally not admissible in evidence and cannot be used as substantive evidence. According to Section 162 of the Code of Criminal Procedure, no statement made by any person to a police officer in the course of an investigation shall be signed by the person making it or used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. The only exception to the above rule is mentioned in the proviso to that section. According to the proviso, when any witness is called for the prosecution in the enquiry or trial, any part of his statement, if duly proved, may be used by the accused and with the permission of the court by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. The above rule is, however, not applicable to statements falling within the provisions of Clause 1 of Section 32 of the Indian Evidence Act or to affect the provisions of Section 27 of that Act. It is also well established that the bar of inadmissibility operates not only on statements of witnesses but also on those of the accused (see Pakala Narayana Swami v. King Emperor)."*

[2] (1972) 1 SCC 748

29. The appellant as per statement recorded in the First Information Report, marked as Exhibit-2 and the deposition of PW-1 had confessed that the currency notes were forged and thereafter he was arrested for trafficking and possessing forged Indian currency notes. In view of the aforesaid provision of law and observation of the Hon'ble Supreme Court as cited above, the confession made to a police officer is clearly inadmissible even if it does contain admissions by virtue of Section 162 of Criminal Procedure Code, such admissions are inadmissible evidence.

30. In ***Arun Nivalaji More V. State of Maharashtra***[3], the Apex Court while interpreting the concept of 'knowledge' in the Clause (ii) of Section 300 I.P.C. (which is akin to 'knowledge' as used in Clause (iii) of Section 299 I.P.C.) the Court held as follows:-

> *"16. Having regard to the facts of the case it can legitimately be urged that clauses Fristly and Fourthly of Section 300 IPC were not attracted. The expression "the offender knows to be likely to cause death" occurring in clause Secondly of Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the word "knowledge" is-the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. In the context of criminal law the meaning of the word in Black's Law Dictionary is as under:*
>
> *"An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact.*

[3] (2006) 12 SCC 613

'It is necessary … to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not foreknown as certain or even probable. Conversely, there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended."

31. In Blackstone's Criminal Practice the import of the word "knowledge" has been described as under:

"Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that it is so although, unlike intention, it is of no relevance whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."

32. The Law Commission of the United Kingdom in its 11th Report proposed the following test:

"The standard test of knowledge is-Did the person whose conduct is in issue either knows of the relevant circumstances or has no substantial

doubt of their existence?" [See Textbook of Criminal Law by Glanville Williams, (p.125).]

33. "Where there is no will to commit an offence, there can be no just reason to incur the penalty". – Sir Mathew Hale.

The familiar Latin maxim '*actus non facit reum nisi mens sit rea*'—the act does not render one guilty unless the thought is also guilty—expresses the essential concept of the principle of mens rea. At least in the case of the more severe crimes, simply committing a criminal act (or causing the state of events that the law prohibits) is insufficient to constitute a crime. In most cases, there must also be certain element of improper intent or misconduct to comprise an offence.

34. The term 'Actus Reus' literally means "guilty act," and generally refers to an overt act in furtherance of a crime.

Actus Reus is related to the actual work and action that is required for the completion of the crime. Only thinking about killing someone is not murder until action is taken in order to kill the other person. The action alone also cannot be considered as crime. Both mens rea and actus reus operate conjointly. A crime can only take place where both these elements are simultaneously present. In order to find whether these elements are present or not the facts, circumstances of the case must be taken into consideration as to what is the actual intention behind the actions of the perpetrator. The criminal intent must be translated into action repugnant to law.

35. Section 489C of the Indian Penal Code states as follows:

> *“**489C. Possession of forged or counterfeit currency-notes or bank-notes.—**Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”*

36. The essentials elements to constitute an offence under Section 489C of the Indian Penal Code primarily involve ‘knowledge’ and ‘reason to believe’ that the currency notes were forged or counterfeit.

37. In the case of ***Bur Singh Vs. Crown***[4] of Lahore High Court and in the case of ***Bachan Singh Vs. Stae of Punjab***[5] of Punjab and Haryana High Court it was observed as follows:

> *"10. In order to sustain the convictions of Joginder Kaur, appellant, the prosecution has not only to prove that she had the possession of counterfeit note, Ext. p-1, ensuring it or having reason to believe it as such, but further to prove circumstances which lead clearly, indubitably and irresistibly to her intention to use the notes on the public as has been held in Bur Singh v. Crowns. It has further been held that such intention could be proved by a collateral circumstance that she had palmed off such notes before, or that she was in possession of such notes in such large numbers, that her possession for any other purpose was inexplicable. The facts as found are that*

[4] 1930 SCC OnLine Lah 61
[5] 1981 SCC OnLine P&H 47

she had on her person only one made-up note, that she was an illiterate lady and that anybody as Shri Darshan Kumar Ahluwalia, PW 2, would have us believe could be misled to treat it as a genuine note. She gave the note to Kundan Lal, PW 2 and he told her that it was not a genuine note and his belief was confirmed when he showed it to others as well. It has nowhere been asserted that the note was ever returned to her and having known fully well or having reason to believe the same to be forged for counterfeit she yet made another attempt to palm it off. Thus, tendering alone such note to Kundan Lal, PW, unless the prosecution could prove that it was with dishonest intention so as to cause wrongful loss to him and wrongful gain to herself would not make her act to fall squarely within Sections 420/511, Penal Code, or to have come within the mischief of Section 489-B or 489-C, Penal Code. The inference sought to be drawn that she must have known or reason to believe the note, Ext. PI, to be counterfeit because her husband accompanying her was found to be in possession of similar notes is entirely misplaced for no common intention has been attributed to them and they have not been charged with the aid of Section 34, Penal Code. For the individual act of Joginder Kaur she cannot be convicted for the above-named offences and must be extended the benefit of doubt.

11. With regard to the case of Bachan Singh it is to be noted that he was found in possession of 13 counterfeit ten rupee notes. He is an ironsmith by profession and barely literate. How could he have the knowledge or reason to believe the same to be counterfeit is one part but the other important part is whether he intended to use the same as genuine or that they may be used as genuine has further to be proved by the prosecution. It was held in Bur Singh v. Crown, that mere possession of a forged note is not an offence under the Penal Code and in order to bring a case within the purview of Section 489-C, Penal Code, it was not only necessary to prove that the accused *was in possession of forged notes but it should further be established that:*

(a) at the time of his possession he knew the notes to be forged or had the reason to believe the same to be forged or counterfeit; and

(b) he intended to use the same as; genuine. No further collateral circumstances in the case have been brought forth such as the accused had palmed off such notes before, or that he was in possession of such and similar notes in such large numbers, that his possession for any other purpose was inexplicable."

38. In ***Umashanker Vs. State of Chhattisgarh***[6] the Hon'ble Supreme Court observed as follows:

"7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is 'knowing or having reason to believe the currency notes or banknotes are forged or counterfeit'. Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case

[6] (2001) 9 SCC 642

under Section 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea.) The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of PW 2, PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, "presumed" such a mens rea. On the date of the incident the appellant was said to be an eighteen year old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C IPC and acquit him of the said charges (see M. Mammutti v. State of Karnataka)."

39. The report dated 27th July, 2006 submitted by Works Manager for General Manager, Currency Note Press, Nashik Road to the Chief Judicial Magistrate, Krish Nagar, District- Nadia states as follows:

"Sir,

The notes mentioned in the attached Annexure "A" confiscated in the crime under reference, were received in sealed condition alongwith the other notes by hand through Shri Bikash Nag SI and Somnath Mondal-ASI. These 22 notes are examined here in detail by comparing with Genuine Specimen notes and are found having all security features of genuine note.

Hence these 22 Nos. of notes as mentioned in the Annexure "A" are "Genuine Currency Notes". These Rs. 10 x 15, Rs. 20 x 5, Rs. 50 x 2 notes are returned herewith in sealed condition after examination.

Please acknowledge the receipt of the same.

....

Conclusion: The referred suspected notes were received in intact sealed condition by had through Shri Bikash Nag, S.I. & Somnath Mondal ASl and are returned in sealed condition after examination.

These referred suspected notes are ***<u>COUNTERFEIT NOTES</u>***.

*ON FRONT: The body printing lacks sharpness. The tint printing is in the form of dots and not in line pattern as per genuine note design. The word "****Mahatma Gandhi****" are unsharp. The rosette design in the centre of the notes lacks sharpness and is broken. The R.B.I. seal lacks sharpness and fine details are crude. Intaglio printing is absent.*

ON BACK: The tint design lacks sharpness and printing ink colours do not match with genuine note.

Note:- The said report is self explanatory and kindly admit the same as evidence Under Section 292/293 Chapter XXIII C.R.P.C. 1973 (No. 2 of 1974)"

40. PW-11, deduced the expert opinion stating the number of genuine notes and forged notes as above mentioned.

41. PW-8, 9 and 10 accompanied PW-1 i.e. the complainant on raid and asserted the evidence of PW-1.

42. Under the provisions of Section 313 of Cr.P.C. in reply to the question by the Trial Court the appellant answered as follows:

> "*P.W.s 1, 8, 9 and 10 have stated in their evidence that on 13.10.05 they got source information at about 12.00 P.M. and accordingly they hid themselves in a bamboo grove at Sonatola Ghat. At that time you came by boat towards Sonatala Ghat taking a plastic bag in hand. Thereafter, they checked the bag and recovered Rs. 48,000/- each consist of*

one hundred rupee notes and impresence of witnesses seized that currency by way of appropriate seizure list and you failed to give any satisfactory reply for custody of such money by way of supporting papers. Thereafter having tested those currencies it was detected that those notes are spurious. On questioned you gave your name and address. They have identified you in the Court and the said spurious notes have been marked as Mat. Ext. I. What will you say about this?"

"Sir, I am innocent. It is all false. The Police did not recover any money from me".

43. In the case of ***Sujit Biswas Versus. State of Assam***[7], in para - 20, the Hon'ble Supreme Court has held thus:

> *"12. It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr. P.C., is to meet the requirement of the principles of natural justice, i.e. audi alterum partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the*

[7] (2013) 12 SCC 406

Evidence Act, as the accused cannot be cross-examined with reference to such statement."

44. In the instant case no specific question was put to the appellant regarding the further intent of the fake currency notes. The appellant was not asked whether he knew the currency notes to be fake and what he intended to do with it in future. The prosecution failed to establish the intention of the appellant to deal with the seized currency notes considering to use the same as genuine currency notes.

45. The prosecution failed to establish the 'mens rea' or the guilty motive on the part of the appellant to commit the crime. The prosecution further failed to establish that the appellant had sufficient 'knowledge' or 'reason to believe' that the currency notes were not genuine.

46. Accordingly, the criminal appeal is allowed.

47. The judgment and order dated 17th April, 2008 and 18th April, 2008 passed by the Learned Additional Sessions Judge, 2nd Court Nadia in Sessions Trial No. (iv) (vi) (07) arising out of Sessions Case No. 106 (3) (07) are set aside.

48. Connected application if any is also disposed of accordingly.

49. There is no order as to cost.

50. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

51. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)