

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 408 of 2008

**Uday Bera
-Vs-
The State**

For the Appellant : Mr. Santanu Talukdar
(Amicus Curiae)

For the State : Mr. Avishek Sinha

Heard on : 22.02.2023, 21.03.2023, 04.08.2023.

Judgment on : 10.08.2023.

Ananya Bandyopadhyay, J.:-

1. The instant criminal appeal is preferred against the judgment and order dated 31.05.2008 passed by Learned Additional District & Sessions Judge, First Fast Track Court, Chandernagore, Hooghly in Sessions Trial Case No. 06/2008, Sessions Case No. 205/2007 convicting the appellant for the offence punishable under Section 489B and 489C of the Indian Penal Code and sentenced for the offence punishable under Section 489B of the Indian Penal Code for imprisonment of 3 (three) years rigorous imprisonment along with payment of fine of Rs. 1,000/- in default to suffer rigorous imprisonment for six months more and the sentence for the imprisonment for 2 (two) years rigorous imprisonment along with the payment of fine of

Rs.500/- in default to suffer rigorous imprisonment for three months for the offence punishable under Section 489C of the Indian Penal Code.

2. The prosecution case originated on the basis of a complaint lodged by officer in charge T.K.S police station which precisely stated on 29.05.04 at about 10.hours, he received an information of a brawl at BPR market near T.K.S railway station whereby he deputed SI G.Mal, ASI S.Banerjee to report him about the incident. On reaching the spot SI G. Mal informed him about the person named Uday Bera to be in possession of four pieces of counterfeit notes who was detained by the local people confessing before the assembled public to be in possession of such counterfeit note. Subsequently, the complainant reached the spot and learnt the said Uday Bera to be a vegetable seller of B.P.R area.
3. The Learned Amicus Curiae for the appellant submitted that:
 - i. The Learned Additional District Sessions Judge, First Fast Track Court, Chandernagore, Hooghly was in error in not holding that the witnesses could not be relied upon as trustworthy when each of them gave contradictory statement in respect of number of forged notes seized from the appellant.
 - ii. The Learned Judge was in error in not holding that the prosecution had not been able to prove it's case by proving the Expert Report (Ext.6) by the Expert and the Learned Judge had erroneously relied on the said Expert Report which did not bear a date.

- iii. The Learned Judge in paragraph 2 of Judgment had disbelieved the number of forged notes and in another paragraph he had believed the number of fake notes.
 - iv. The Learned Judge did not consider that the F.I.R. had been lodged after arrest of the Appellant and after alleged seizure of the forged notes.
 - v. For that the Learned Judge was wrong in relying upon the confession before the police and relying upon the alleged extra judicial confession although not proved according to law.
 - vi. The Learned Judge was wrong in believing the police about the place of seizure when P.W. 1, P.W. 2, and P.W. 5 deposed that they were made to signed in the police station.
 - vii. The Learned Judge was wrong in not considering that the forged notes were not sealed after seizure.
 - viii. The Learned Judge did not consider that the possession of the notes by the appellant and the intention to use the notes were not proved.
 - ix. The Learned Judge did not consider that the deposition of the witnesses are full of contradictions and discrepancies and prayed that the appeal be allowed.
4. The Learned Advocate for the State submitted the absence of any cogent proof to substantiate the possession and dealing of the appellant in fake currency notes. The intermediaries were not added as the accuseds. Out of 4 alleged currency notes only one was recovered. The extra-judicial

confession was obtained out of duress on the next day, the note was detected to be fake by the Arotdar.

5. In all fairness, the Learned Advocate for the State submitted the prosecution to have failed to establish its case and the appeal shall be allowed.
6. PW-2, Sushil Porel claimed to own a shop at BPR Market of Tarakeswar wherefrom he sold fishes. On the relevant date and time i.e. on 25.05.2004 in between 9.30 to 9.45, he had given an exchange of Rs.100/- note to a person who came to him seeking the same. Subsequently he had given the note of Rs.100/- to his fish Arotdar and on his enquiry PW-2 called the person from whom he received the said note and the said person revealed the appellant to have given him the said note. Thereafter, police was summoned and the appellant was questioned to which he replied to have received the said currency note from a customer and had sought for an exchange through a person. The police seized the forged currency note and had taken the appellant to the police station. He identified his signature on the seizure list marked Exhibit 1/1 and the seizure list to be Exhibit-I.

During his cross-examination PW-2 deposed that the appellant running a business in the same locality for the past five years did not directly give him the currency note.

7. PW-3, the wife of PW-2 corroborated the statement of PW-2, inter alia, stating that the appellant had sought for an exchange of Rs.100/- note through a boy. Thereafter another boy was sent to obtain an exchange of Rs.100/- note subsequently which raised suspicion and both the boys were called for who stated to have been given the currency notes for exchange by

the appellant. During her deposition in cross-examination, PW-3 stated to have received the money for exchange at about 7.30/8 p.m. on the previous day.

8. PW-4, Samir Malik and PW-5, Sundar Karmakar deposed to have been acquainted with the appellant who professed as a vegetable vendor in the aforesaid market and affirmed to have received a Rs.100/- currency note from the appellant to glean an exchange from the shop of PW-2 and PW-3 individually.
9. PW-6, Bablu Sarkar, the Arotdar of fish at the BPR Market failed to recollect the incident of forged currency note before the Court during his examination denying to have known the appellant. He further deposed in his cross-examination to have heard the incident of forged note without any personal knowledge of the same.
10. The Arotdar, PW-6 who supposedly had initiated the issue of detection of forged currency note mobilizing PW-2 and PW-3 in action denied having any personal knowledge of the same refuting the incident to be based on hearsay. The deposition of PW-2 and PW-3 with regard to time and date are contradictory. PW-7 and PW-8 admittedly could not establish a chain of circumstance whereby the appellant could be inculpated to have been in possession and knowledge of the said currency note to be counterfeit and subsequent action of wrongful gain to his credit. The document marked as Exhibit-6 is not beyond reasonable doubt.
11. PW-7, the ret'd. S.I. Paresh Chandra Ray deposed to failed to detect a racket operational in dealing with forged currency notes obtaining the appellant on

remand and thereafter transferred the investigation to DEB Hooghly for completion.

12. PW-8 Sri A.K.Acharya the then S.I of police at DEB Hooghly could not establish the commissioning of a racket likewise PW-7. He obtained the report of opinion of the General Manager India Security Press, Nasik Road stating that the seized notes were fake, counterfeit and forged marked as Ext.6.
13. Under the facts and circumstances of the case in absence of proof of commission of the offences by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.
14. In view of the above discussions, the appeal is allowed.
15. I record my appreciation for the able assistance rendered by Mr. Santanu Talukdar, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.
16. Accordingly, the instant criminal appeal stands disposed of.
17. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
18. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)