

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 499 of 2018

ANARUL ISLAM
VS.
THE STATE OF WEST BENGAL

For the Appellant	: Ms. Sreyashee Biswas, Adv.
For the State	: Mr. Saswata Gopal Mukherjee, Id. P.P. Ms. Faria Hossain, Adv. Mr. Anand Keshri, Adv.
Hearing concluded on	: 27 th February, 2023
Judgement on	: 15 th March, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this appeal is to the judgement and order of conviction passed by learned Additional Sessions Judge, 2nd Fast Track Court, Jangipur, Murshidabad in Farakka P.S. Case No. 405 of 2011 dated 2nd October, 2011. Anarul Islam stands convicted for committing offence under Section 489B and 489C of the Indian Penal Code.
2. Briefly stated, S.I. Barun Gayen informed the Inspector-in-charge of Farakka Police Station about recovery of 110 fake Indian currency notes (hereinafter referred to as 'FICN') of Rs. 1000/- and black colour numberless Discover Motorcycle. It is contended that on 2nd October, 2011 at about 14.45 hours he along with A.S.I. Niranjana Sarkar,

Constable Tridip Singha Ray, Constable Sudanshu Swarnakar and Home Guard Sadek Ali reached at New Farakka near Apanjan Sweets Shop in course of RT-II mobile duty to work out secret information. He found two persons riding a motorcycle taking U-turn having perceived presence of police. However, police managed to catch hold of them and in presence of witnesses searched them. From the right pocket of Murshed Sk. 60 numbers of FICNs were recovered and 50 numbers of FICNs were found from the pants of Anarul Islam. They could not explain such possession. The currency notes were seized under proper seizure list and the accused persons were arrested. The information since disclosed offence cognizable in nature Frakka P.S. Case no. 405 of 2011 dated 2nd October, 2011 was registered under Section 489B and 489C of the Indian Penal Code. Police took up investigation and submitted charge sheet against the accused persons. Trial commenced on 2nd December, 2013 and pleading his innocence Anarul Islam stood the trial. The other accused person was a juvenile. To bring home charges prosecution examined as many as nine witnesses.

3. It goes without saying that in order to crown success prosecution needs to prove the accused person had in his possession fake currency notes, and he either sells, buys or receives the same or otherwise trafficks or uses as genuine, such fake currency notes, knowing or having reason to believe the same to be forged or counterfeit. In order to prove the charge under Section 489C of the Indian Penal Code prosecution is to prove apart from possession of

forged or fake counterfeit notes, the knowledge of the accused person about the forged or counterfeit notes and his intention to use the same as genuine.

4. According to P.W. 1 in presence of witnesses, after apprehending the accused persons he searched and recovered 60 numbers of FICNs of Rs. 1000/- from the right pocket of the pant of Murshed Sk and 50 numbers of FICNs of Rs. 1000/- from the right pocket of pants of Anarul Islam. The seizure list is admitted into evidence as Exhibit-4. According to P.W. 1 the entire process started at about 14.45 and at about 16.35 hours it was completed. Danesh Sk as P.W. 2 stated that two years ago at New Farakka More Police was checking motorcycle and seized one motorcycle without number plate. He was asked to attend the police station and police took his signature on one document and on some currency notes. The signatures of the witness on four pages of seizure list were admitted as Exhibit-2 series. Signature on the arrest memo was admitted as Exhibit-3/1 and signature on the currency notes was admitted as Mat Exhibit-I/1 and Mat Exhibit II/1. He was examined by the prosecution in the light of Section 154 of the Evidence Act and during cross-examination he stated that without having any knowledge about the content of the document he put his signature.
5. P.W. 3, Home Guard, Sadek Ali stated about the interception, recovery and seizure of the currency notes at Farakka Police Station as well as the arrest of the accused persons. During cross-examination he stated that the accused persons were kept in the

police station for 2/3 days. He could not say if after discussion with O.C. Gayen Babu forwarded the accused persons to the Court. P.W. 4, Constable Tridip Singha Roy, one of the members of the raiding party stated that 110 of fake currency notes in the denomination of Rs. 1000/- were seized from the possession of Anarul Islam. P.W. 5, Sudanshu Swarnakar another member of the raiding team stated that currency notes were recovered from the carriage box of motorcycle. P.W. 6, Firoj Sk was the driver of the police vehicle at the relevant point of time who identified his signatures on the seizure list and arrest memo as well as on the currency notes. He was examined by the prosecution in the light of Section 154 of the Evidence Act and during cross-examination he stated that on 2nd October, 2011 at about 2.00 p.m. he was sitting near Apanjan Sweets Shop. At that time, Officer of Farakka Police Station detained two motorcycle riders. He denied rest of the suggestions put to him and during cross-examination he stated that he put his signatures in the police station being asked by the police officer. Niranjana Kumar Sarkar, retired Sub-Inspector of Police stated that on 2nd October, 2011 he was posted at Farakka Police Station as A.S.I. and was on mobile duty with S.I. Barun Gayen. They left the police station at 2.40 p.m. and reached Apanjan Mistanna Bhandar at 2.45 hours. A motorcycle was intercepted, Gayen Babu searched the driver of the motorcycle first and recovered 60 notes in the denomination of Rs. 1000/- from the right pocket of his pants and from the pillion rider he recovered 50 notes in the denomination of Rs. 1000/-. The witness denied the

suggestions put to him. Apurba Kumar Aich is one of the Investigating Officers who submitted charge sheet against the accused persons under Section 489B and 489C of the Indian Penal Code after obtaining the report from Bharatio Note Mudran Private Limited, Salboni. P.W. 9, Srimanta Kumar Dutta is one of the two investigating Officers who was entrusted with the case for investigation. According to P.W. 9, Barun Gayen, Sub-Inspector of Police gave him a seizure list, arrest memo, copy of FIR, seized alamat of this case which he handed over to the Malkhana Officer. He went to the place of occurrence with the informant, prepared rough sketch map admitted as Exhibit-6 and recorded statement of witnesses under Section 161 of the Cr.P.C. He forwarded the accused persons to the Court of learned A.C.J.M. with prayer for police custody. On his transfer he handed over the case docket to the Officer-in-charge of Farakka Police Station. During cross-examination he stated that he did not check the log book to know whether the informant was on mobile van duty or not. He did not mention the name of the driver and the vehicle number used during mobile duty to the informant. He did not produce the seized alamat before the Court while he forwarded the accused persons. He did not interrogate Malkhana Officer. He did not examine either the owner or any of the member staff of Apanjan Sweets Shop. He denied all other suggestions put to him.

6. Thus upon perusal of evidence of prosecution witnesses, I find that

the factum of seizure is doubtful. There is lack of coherence in the testimony of prosecution witnesses as to the factum of recovery and seizure of FICNs from the possession of accused person. When one witness says notes were recovered from the motorcycle and others claimed to have obliged the police by putting signature sitting at the police station, it would not be unjust to say that prosecution fails to prove beyond doubt the recovery of fake currency notes 110 in numbers and such failure strikes at the root of the prosecution case.

7. There is no evidence as such to suggest that the appellant had any intention to use the FICNs as genuine. Therefore, charge under Section 489B of the I.P.C. cannot be said to have been proved. Amidst discrepancies, which are not minor in nature, the factum of recovery of FICN from the possession of the appellant becomes doubtful and it shrouds the case of prosecution with dense shadow of suspicion. Therefore, charge under Section 489C of the I.P.C. also cannot be said to have been proved.
8. Under such circumstances, I am of the view that the impugned judgement cannot be sustained. Accordingly, I set aside the impugned judgement and record an order of acquittal extending benefit of doubt to the appellant. The appellant be set at liberty and be discharged from bail bond.
9. Let a copy of this judgement along with LCR be sent down to the learned Trial Court for information and necessary compliance.

10. Urgent photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)