

CRA-S-417-SB-2005

-1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-417-SB-2005

Reserved on:20.02.2023

Date of Pronouncement:-12.05.2023

Avtar Singh alias Tari

...Appellant

vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Ms. Parul Aggarwal, Advocate/Amicus Curiae
for the appellant.

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab.

N.S.Shekhawat J.

1. The present appeal is directed against the judgment of conviction and order of sentence dated 15.01.2005, passed by Learned Additional Sessions Judge (Adhoc), Fast Track Court-II, Hoshiarpur, whereby the present appellant was convicted for the offence punishable under Section 489-C of Indian Penal Code (for short 'IPC') and was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/-, alongwith default stipulation.

2. As per the version of the prosecution, Inspector Surjit Singh, CIA, Staff, Hoshiarpur was interrogating Avtar Singh @ Tari, appellant/accused during the course of investigation of FIR No.462 dated 27.12.2002, under Sections 307, 399, 148, 149 of IPC and Sections 25, 54, 59 of Arms Act and the

appellant/accused suffered a confessional statement before him that Surinder Singh @ Shinda S/o Gurcharan Singh, resident of Bohar High Kalan, Police Station Ahimadgarh, District Sangrur, Harjinder Singh @ Jinder, S/o Jora Singh, resident of Bohar High Kalan, Police Station Ahimadgarh, Gurdip Singh, S/o Charan Singh, resident of Jogi Majra and Kuldip Singh S/o Mohinder Singh, resident of Kuthala, District Sangrur used to supply fake currency notes to him. After getting the fake currency notes from these persons, the appellant/accused used to supply and circulate the currency to the general public. He further stated that he had kept few fake Indian currency notes in a plastic envelope and had hidden the currency notes in an envelope in a room of his house and only he had knowledge with regard to the same and could get the same recovered. The appellant/accused also disclosed that Narinder Singh and Sohan Lal also used to take fake currency notes from the abovesaid persons. This disclosure statement of the appellant/accused was recorded by Surjit Singh, Inspector, CIA Staff. On this, Shivraj Singh, ASI was called and he reached there alongwith other police officials. Thereafter, the appellant/accused was taken in a private vehicle to his house and as per his disclosure statement, he led the police party to a room in his house and produced 12 currency notes of the denomination of Rs.500/-, which were kept in a plastic envelope in a suitcase. The number of all the currency notes was 4BA-345662 and on this, Shivraj ASI had put his initials on the said notes which were taken into possession by the police vide separate recovery memo. After preparing the recovery memo, ASI Shivraj Singh conducted the initial investigation. The statements of various

witnesses were recorded under Section 161 Cr.P.C. and the accused was formally arrested in the present case.

3. After ASI Shivraj Singh, the investigation was handed over to ASI Rajwinder Singh, who arrested the other accused and also conducted further investigation in the case. Finally, the report under Section 173 Cr.P.C. was prepared and was produced in the Court.

4. The appellant/accused was tried alongwith other co-accused and charge was ordered to be framed against him and his co-accused under Sections 489-B read with Section 120-B IPC. However, the appellant/accused as well as his co-accused were acquitted of the said charge. The present appellant/accused was additionally charge-sheeted under Section 489-C IPC and was finally convicted of the said charge.

5. Eleven prosecution witnesses were examined to prove the charge against the present appellant. The prosecution examined PW-1 Paramjit Singh, Sarpanch, who was declared hostile by the Public Prosecutor. He clearly stated that no extra judicial confession was made before him in December, 2002 by the accused. The prosecution further examined PW-2 Sukhwinder Singh, who also did not support the case of the prosecution. Similarly, PW-3 Tara Singh also did not support the case of the prosecution. HC Gurmail Singh was examined as PW-4, who stated that 12 fake Indian Currency notes of denomination of Rs.500/- each were deposited with him, while he was posted as SHO of Police Station Bullowal by Shivraj Singh, ASI and Serial No.4BA-345662 was mentioned on all the notes. He stated that these notes were sent on 13.01.2003 for checking through HC. These currency notes were again entrusted to HC

CRA-S-417-SB-2005

-4 -

Jagtar Singh on 28.01.2003 for examination by expert of Security Press in Dewas (MP). After re-checking, the notes were again deposited with him. ASI Rajwinder Singh was examined as PW-5, who conducted part of the investigation in the present case. The prosecution further examined V.K. Bansal, Treasurer, Reserve Bank of India as PW-6. He stated that on 17.03.2003, 12 currency notes of denomination of Rs.500/- each were produced before him for reporting about its genuineness. He had seen 12 notes Ex.P1 to Ex.P12, which were checked by him. He had examined these notes manually and had also placed on record his report Ex.PD. In his cross-examination, he stated that notes were the photocopies of genuine currency notes. All the instructions for checking were at Security Press, Nasik and there was one lab for testing the genuineness and that was the final authority for making report. The prosecution further examined HC Jaswinder Singh as PW-7, who was posted at Police Station Bhullowal and had taken 12 notes to Reserve Bank of India for checking and report. He also brought the report of the expert. MHC Govinder Kumar was examined as PW-8, who produced the record pertaining to FIR No.462 dated 27.12.2002 of Police Station Sadar. ASI Shivraj Singh was examined as PW-9, who supported the case of the prosecution as mentioned in the FIR. HC Jaswant Singh was examined as PW-10, who was part of the police team with PW-9 ASI Shivraj Singh and also supported the contents of the initial complaint. Inspector Surjit Singh was examined as PW-11, in whose presence, the disclosure statement Ex.PK was suffered by the accused and he had recorded the same, which led to recovery of fake currency notes.

6. After recording the statements of all the prosecution witnesses, the statement of the appellant/accused was recorded under Section 313 Cr.P.C. and he pleaded his false implication. He stated that he was in custody in a case FIR No.462 and his signatures were obtained by the police on plain papers and he was falsely implicated in the present case. After the statement under Section 313 Cr.P.C, no defence witness was examined by the accused.

7. I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

8. Learned counsel for the appellant vehemently argued that in the present case, the appellant/accused was already in custody in a different case from 27.12.2002 to 02.01.2003. It has been alleged by the prosecution that he suffered a disclosure statement on 02.01.2003. It is unbelievable that the accused/appellant was interrogated since 27.12.2002 and still he did not suffer the statement for about five days and he suffered the disclosure statement with regard to the facts of this case on 02.01.2003 i.e. on his last day of remand. Still further, in the instant case, there was no expert evidence to show that the notes recovered from the present appellant were counterfeit currency. The prosecution had examined PW-6 V.K. Bansal, who had manually checked the currency notes. He also stated that all the instructions for checking the currency notes were at Security Press, Nasik and there was a lab for testing the genuineness and that is the final authority for making a report. Thus, the learned trial Court has wrongly placed reliance on the testimony of PW-6 V.K.Bansal and the expert report Ex.PD. Still further, learned counsel for the appellant vehemently argued that in the present case, the prosecution examined

PW-1 Paramjit Singh, PW-2-Sukhwinder Singh and PW-3 Tara Singh, however, none of them have supported the case of the prosecution. There was no independent corroboration of the version of the prosecution and he was falsely involved in the present case by the Investigating Officer of the earlier case. Even no other independent witness was associated during the course of investigation by the police. Learned counsel for the appellant further argued that the recovery of the currency notes had not taken place from him nor the prosecution led any evidence to show the conscious possession of the appellant over the currency notes.

9. The submissions made by learned counsel for the appellant have been countered by the learned State counsel by submitting that in the instant case, the accused was being questioned by the Investigating Officer of a different case and during the said process, he suffered disclosure statement on 02.01.2003, which led to the recovery of counterfeit currency from his house, where his exclusive possession was there. Consequently, the disclosure statement has led to the recovery of a fact and the said evidence was admissible against him. Apart from that, there was report of expert Ex.PK, which was placed on record subsequently and was liable to be believed. Still further PW-6 V.K. Bansal had served the Reserve Bank of India for almost 37 years and prepared a report Ex.PD and he had specifically stated that these currency notes were counterfeit. Apart from that, the witnesses of the prosecution had amply proved the prosecution case and the non-examination of independent witnesses would have no adverse effect in the present case. Even the appellant/accused led the police party to the disclosed place and the recovery was effected from

him. With these submissions, learned State counsel prayed for upholding the judgment of conviction.

10. In the present case, the present appellant was in custody from 27.12.2002 to 02.01.2003 in case FIR No.462 dated 27.12.2002 and during the said process, he suffered the disclosure statement Ex.PK in the presence of PW-11 Inspector Surjit Singh. He was questioned from 27.12.2002 and he suffered the disclosure statement on 02.01.2003 and there was nothing unusual in that. Still further, after recording the disclosure statement, the appellant/accused was taken in custody by PW-9 ASI Shivraj Singh and he took him to the disclosed place that is his house in village Sham Chaurasi, from where, 12 counterfeit notes of Rs.500/- denomination were recovered from the Southern side of his residential room. The denomination number of all the currency notes was the same, which was 4BA-345662 and the notes were taken into possession vide recovery memo Ex.PF, which was attested by HC Hans Raj and HC Jaswant Singh. While appearing as PW-9, ASI Shivraj Singh supported the case of the prosecution and he was subjected to lengthy cross-examination. However, his testimony could not be shattered in any manner. Thus, it is apparent that in pursuance of the disclosure statement, the recovery of counterfeit currency had been effected from him and this could be part of legal evidence, which was correctly believed by the learned trial Court.

11. It has been held by the Hon'ble Supreme Court in the matter of ***“Mehboob Ali and another Vs. State of Rajasthan”***; 2015(4) R.C.R. (Criminal) 944 as follows:-

“14. Section 27 of Evidence Act refers when any “fact” is deposed. Fact has been defined in section 3 of the Act. Same is quoted below :

“Fact” means and includes—

- (1) any thing, state of things, or relation of things, capable of being by the senses;
- (2) any mental condition of which any person is conscious.

Illustrations:

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact. “Relevant”. —
One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.”

15. XXX XXX XXX XXX

16. This Court in **State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru [(2005) 11 SCC 600]** has considered the question of discovery of a fact referred to in section 27. This Court has

considered plethora of decisions and explained the decision in **Pulukuri Kottaya & Ors. V. Emperor [AIR 1947 PC 67]** and held thus :

“125. We are of the view that **Kottaya case [AIR 1947 PC 67]** is an authority for the proposition that “discovery of fact” cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.

126. We now turn our attention to the precedents of this Court which followed the track of Kottaya case. The ratio of the decision in Kottaya case reflected in the underlined passage extracted supra was highlighted in several decisions of this Court.

127. The crux of the ratio in Kottaya case was explained by this Court in **State of Maharashtra v. Damu. Thomas J.** observed that: (SCC p. 283, para 35)

“The decision of the Privy Council in **Pulukuri Kottaya v. Emperor** (supra) is the most quoted authority for supporting the interpretation that the ‘fact discovered’ envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.”

In **Mohd. Inayatullah v. State of Maharashtra [1976 1 SCC 828]**, Sarkaria, J. while clarifying that the expression “fact discovered” in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by

giving the gist of what was laid down in Pulukuri Kottaya case (supra). The learned Judge, speaking for the Bench observed thus: (SCC p. 832, para 13)

“Now it is fairly settled that the expression ‘fact discovered’ includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see **Pulukuri Kottaya v. Emperor** (supra); **Udai Bhan v. State of U.P.** [1962 Supp (2) SCR 830]).”

17. In **State of Maharashtra v. Damu Gopinath Shinde & Ors.** [AIR 2000 SC 1691] the statement made by the accused that the dead body of the child was carried up to a particular spot and a broken glass piece recovered from the spot was found to be part of the tail lamp of the motorcycle of co-accused alleged to be used for the said purpose. The statement leading to the discovery of a fact that accused had carried dead body by a particular motorcycle up to the said spot would be admissible in evidence. This Court has laid down thus :

“36. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by

restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of the Privy Council in **Pulukuri Kottaya v. Emperor AIR 1947 PC 67** is the most quoted authority for supporting the interpretation that the “fact discovered” envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

37. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which “distinctly relates to the fact thereby discovered”. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In this case, the fact discovered by PW 44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motorcycle.

38. How did the particular information led to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the Investigating Officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot.

39. In view of the said discovery of the fact, we are inclined to hold that the information supplied by A-2 Guruji that the

dead body of Dipak was carried on the motorcycle up to the particular spot is admissible in evidence. That information, therefore, proves the prosecution case to the abovementioned extent.”

12. Learned counsel for the appellant submitted that there was no evidence to show that the currency notes recovered from the present appellant were counterfeit currency notes. In fact, I find no substance in the said argument. The prosecution examined PW-6 V.K.Bansal, Treasurer, Reserve Bank of India, Chandigarh, who had examined the currency notes recovered from the present appellant. First of all, all the currency notes were bearing the same serial number, which were exhibited as Ex.P1 to Ex.P12. This fact alone clearly proves that the currency recovered from the present appellant was counterfeit currency. Apart from that, PW-6 V.K.Bansal, Treasurer had the experience of working in Reserve Bank of India for a period of 37 years and he had prepared the report Ex.PD, which was duly exhibited by him. As per the said report, the paper of the currency was ordinary and the printing and colour of the notes was also ordinary. He further stated in the report that the intaglio printing and the watermark were absent and the notes were the photocopies of genuine notes. He clearly stated that the notes in question were forged. Apart from that, notes were sent to the Security Press, Nasik and the report submitted by Mr. J.N. Gupta, Chemist, G-II/Technical official, Ink Factory Bank, Notes Press, Dewas (M.P.) was exhibited as Ex.PK and it was proved on record that all the currency notes of denomination of Rs.500/-, recovered from the present appellant were not the genuine notes. Thus, in the light of the said expert

evidence, it is apparent that the counterfeit currency was recovered from the present appellant and the findings are liable to be upheld by this Court.

13. Apart from that, I find no force in the submission made by learned counsel for the appellant that PW-1 Paramjit Singh, PW-2 Sukhwinder Singh and PW-3 Tara Singh had turned hostile and the prosecution case was liable to be disbelieved by this Court. In fact, in the present case, the prosecution examined 11 witnesses in all and other official witnesses had duly supported the case of prosecution. In fact, there is no law that the evidence of an official witness cannot be relied upon. When a case is based on the testimonies of official witnesses, it puts the Court on its own guard to scrutinize the evidence with great care and caution. In the instant case, the official witnesses had no reason to falsely involve the present appellant in a case under Section 489-C of IPC. Even no motive has been attributed by the present appellant for his false implication. Consequently, this Court has no hesitation in relying upon the testimonies of official witnesses, which inspire confidence and appeared to be truthful. Still further, this Court finds no substance in the argument raised by the learned counsel for the appellant that the recovery of currency notes was not effected from the conscious possession of the present appellant. In fact, the present appellant had suffered the disclosure statement during the course of investigation in the presence of PW-11 Inspector Surjit Singh and was later on questioned by PW-9 ASI Shivraj Singh. The appellant/accused took ASI Shivraj Singh to the disclosed place that is his house in village Sham Chaurasi, and from the Southern side of his residential room, he got recovered 12 notes of the denomination of Rs.500/-. Apart from the appellant, no other person was

CRA-S-417-SB-2005

-14 -

aware of the currency notes and this clearly shows that the recovery had taken place from his conscious possession and the argument raised by learned counsel appellant is liable to be rejected.

14. I have carefully gone through the findings recorded by the learned trial Court in the light of the evidence and the settled law. Learned trial Court has recorded valid reasons for convicting the present appellant and the findings recorded by the learned trial Court do not suffer from any material irregularity or illegality and do not warrant any interference by this Court.

15. As a consequence, the impugned judgment of conviction and order of sentence dated 15.01.2005, passed by learned Additional Sessions Judge (Adhoc), Fast Track Court-II, Hoshiarpur are upheld and the appeal is accordingly, ordered to be dismissed.

16. All pending applications, if any, are also disposed off, accordingly.

17. Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial court record be sent back.

18. In the end, I record my appreciation for Ms. Parul Aggarwal, learned Amicus Curiae, who had rendered able assistance to this Court.

(N.S.SHEKHAWAT)
JUDGE

12.05.2023
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Whether speaking/reasoned : Yes
Whether reportable : Yes