IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.465 OF 2024
WITH
INTERIM APPLICATION NO.1884 OF 2024
IN
CRIMINAL APPEAL NO.465 OF 2024

Babasaheb Bhaskar Said .... Appellant/ Applicant

versus

The State of Maharashtra .... Respondent

WITH
CRIMINAL APPEAL NO.415 OF 2024
WITH
INTERIM APPLICATION NO.1656 OF 2024
IN
CRIMINAL APPEAL NO.415 OF 2024

Ananda Doulat Kumbharde .... Appellant/ Applicant

versus

The State of Maharashtra .... Respondent

WITH
CRIMINAL APPEAL NO.423 OF 2024
WITH
INTERIM APPLICATION NO.1702 OF 2024
IN
CRIMINAL APPEAL NO.423 OF 2024

Harish Walmik Gujar .... Appellant/ Applicant

versus

The State of Maharashtra .... Respondent

WITH
CRIMINAL APPEAL NO.505 OF 2024
WITH
INTERIM APPLICATION NO.1993 OF 2024
IN
CRIMINAL APPEAL NO.505 OF 2024

Kiran Balkrushna Girme .... Appellant/ Applicant

versus

The State of Maharashtra .... Respondent

…….

- Mr. Pratik Kalantri, Advocate for Appellant in APEAL/505/2024.
- Mr.Tuushar Sonawane, Advocate for Appellant in APEAL/415/2024.
- Mr. Vaibhav D. Kadam, Advocate for Appellant in APEAL/423/2024.
- Mr. Vivekanand V. Krishnan a/w Rishabh Tiwari, Advocate for Appellant in APEAL/465/2024.
- Smt. Manisha R. Tidke, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 21st AUGUST, 2024

<u>JUDGMENT</u> :

1. All these Appeals are decided by this common order today, because they arise out of the same impugned Judgment and Order. For the sake of convenience, the Appellants are referred to either by their status in the trial as the particular accused or by their names in the following discussion :

- The Appellant Harish Walmik Gujar in Appeal No.423 of 2024 was the original accused No.1.
- The Appellant Babasaheb Bhaskar Said in Appeal No.465 of 2024 was the original accused No.2.
- The Appellant Ananda Doulat Kumbharde in Appeal No.415 of 2024 was the original accused No.6.
- The Appellant Kiran Balkrushna Girme in Appeal No.505 of 2024 was the original accused No.7.

2. They were tried before the Additional Sessions Judge, Nashik, in Sessions Case No.433 of 2021. There were three more

accused i.e. accused Nos.3, 4 and 5. They were acquitted from all the charges.

3. The learned Judge vide his Judgment and Order dated 22/03/2024, convicted and sentenced the present Appellants as under:

(i) The Appellants Harish Gujar and Babasaheb Said were convicted for commission of offence punishable u/s 489-B r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer rigorous imprisonment for 6 months.

(ii) The Appellants Harish Gujar and Babasaheb Said were convicted for commission of offence punishable u/s 489-C r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer rigorous imprisonment for 6 months.

(iii) The Appellants Ananda Kumbharde and Kiran Girme were convicted for commission of offence punishable u/s 489-A r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer rigorous imprisonment for 6 months.

(iv) The Appellants Ananda Kumbharde and Kiran Girme were convicted for commission of offence punishable u/s 489-B r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer rigorous imprisonment for 6 months.

(v) The Appellants Ananda Kumbharde and Kiran Girme were convicted for commission of offence punishable u/s 489-C r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer rigorous imprisonment for 6 months.

(vi) The Appellants Ananda Kumbharde and Kiran Girme were convicted for commission of offence punishable u/s 489-D r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of

Rs.5,000/- each and in default of payment of fine to suffer rigorous imprisonment for 6 months.

(vii) All the substantive sentences were directed to run concurrently.

(viii) The Appellants were granted set off u/s 428 of Cr.P.C.

4. Heard Mr. Pratik Kalantri, Mr.Tuushar Sonawane, Mr. Vaibhav D. Kadam, Mr. Vivekanand V. Krishnan learned counsel for the Appellants and Smt. Manisha R. Tidke, learned APP for the State.

5. The prosecution case is that, on 06/09/2021, the accused No.1 Harish Gujar tried to use a Rs.100/- note to purchase vegetables from a vegetable seller. It was realized that he had used a fake currency note. Therefore, the crowd gathered there. He was accompanied by the accused No.2 Babasaheb Said. The crowd started beating both of them. The Police Patil of the village namely Waman Palva came there. Both the accused i.e. the accused No.1 Harish and accused No.2 Babasaheb were

taken to police station. The Panchas were called. Their personal search was conducted. It was found that both of them together possessed 194 currency notes of Rs.100/- denomination and one currency note of Rs.500/- denomination. The police officers sent those notes to the bank officers working with SBI. According to the bank officers, they were counterfeit notes, but they informed that they were not authorized to give final opinion regarding that. The police registered the FIR in the night at around 08.45 p.m. The accused Nos.1 and 2 were arrested.

6. During investigation, the role of accused Nos.3, 4 and 5 was revealed and they were also arrested, which subsequently led to the arrest of the accused No.6 Ananda Kumbharde, who in turn gave statement to the police that he would show the place where the counterfeit notes and the instruments used for making counterfeit notes were kept. As per the information, the police went to the place where the accused No.7 Kiran Girme was found with a the computer, a colour printer, ink bottles and some printed counterfeit notes. Another Panchanama was carried out at that place and the accused No.7 was also arrested.

7. During investigation, the notes recovered from the accused Nos.1 and 2 were sent for examination to the officers working with the Government Printing Press. Their report revealed that those notes were counterfeit notes. The investigation was completed and the charge-sheet was filed. All the accused faced the trial.

8. During the trial, the prosecution examined 8 witnesses including the police officers, who had lodged the FIR and conducted the investigation, the officer from SBI, the Police Patil referred to hereinabove, two vegetable sellers, the Pancha who was present during all the three Panchanamas and the concerned person from the Currency Note Press, who had produced the report regarding those notes on record. The defence of the accused was of total denial. Accused No.1 Harish took a specific defence in his examination u/s 313 of Cr.P.C. that he had a stall at Umbarthan village. He had some dispute with the villagers and therefore, he was falsely implicated. The other accused simply adopted the defence of total denial.

9. Learned Judge considered the evidence on record and concluded that the prosecution has failed to prove the case against the accused Nos.3, 4 and 5. However, the learned Judge concluded that the prosecution had established the possession of the currency notes as mentioned earlier. The accused Nos.1, 2, 6 and 7 were held guilty. On this conclusion, the Appellants were convicted and sentenced as mentioned earlier.

10. P.W.1 ASI Sahare was attached to Surgana Police Station on 06/09/2021. He deposed that, when he was on duty, the Police Patil Waman Palva of village Umbarthan brought two persons with the help of other villagers to the police station at about 02.00 p.m. as they were found using the counterfeit notes in Umbarthan market. API Bodke took personal search of these persons i.e. accused No.1 Harish and accused No.2 Babasaheb in the presence of two independent Panchas. Those two accused had used counterfeit currency notes for purchasing articles in the market at about 11.30 a.m. They were assaulted by the local people and therefore they were brought to the police station in a

private vehicle. He further deposed that the accused No.1 was found in possession of 94 fake Indian currency notes of Rs.100/- denomination and one note of Rs.500/- denomination. He was having a four wheeler with him. The other person was accused No.2 and he had 99 fake Indian currency notes of Rs.100/- denomination. Both of them had mobile phones and Aadhar cards. The Seizure Panchanama was prepared. A letter was given to the officers of SBI at Surgana branch for examination of those notes. The said letter dated 06/09/2021 is produced on record at Ex.101. The bank officers confirmed that those notes were fake currency notes. The report to that effect was produced on record at Ex.102. After receiving that report, the FIR was lodged against those two accused. The FIR is produced on record at Ex.103. This witness identified the articles produced before the Court, which included 194 currency notes of Rs.100/- denomination and one note of Rs.500/- denomination.

In the cross-examination, he deposed that the distance between the Umbarthan village and Surgana police station was 18 kms. He did not visit Umbarthan village after the accused were brought to the police station. He had not carried out any investigation except lodging of the FIR. The investigation was carried out by API Bodke.

11. The FIR produced on record at Ex.103 shows that it was registered at C.R.No.43/2021 Surgana police station at 08.45 p.m. on 06/09/2021. The FIR mentions the numbers of notes possessed by both the accused i.e. accused Nos.1 and 2.

12. The request letter dated 06/09/2021 for procuring services of Panchas is produced on record at Ex.105. It was brought in the cross-examination conducted on behalf of the accused No.1. The said letter was addressed to the chief officer of Nagar Panchayat, Surgana. There was a reference to C.R.No.I-43/2021 of Surgana Police Station in that letter.

13. P.W.2 Rohit Bapat was working as Deputy Manager, Currency Note Press at Nashik. In October 2021, the Assistant Manager and In-charge of the counterfeit note examination received the seized notes in this case. The case was assigned to

this witness for his opinion. He carried out the examination of 194 notes of Rs.100/- and one currency notes of Rs.500/-. He found that the cut of size of notes was not correct. The size of printed design was not correct. The paper quality was different. He did not find any water marks of any number. The security threads were imitated by green coloured foil. It was not original. The print quality sharpness was not matching. In short, they were counterfeit notes. Accordingly, he prepared this report dated 10/11/2021. It is produced on record at Ex.110.

In the cross-examination, he deposed that he received only one note which was printed only on one side. He received all the currency notes packed in one envelope. He volunteered that it was in a sealed condition.

14. P.W.3 Deepak Nikumbhe was the Branch Manager of SBI at Surgana. He deposed that on 06/09/2021, he was called to Surgana police station. He stated that at the first instance, he was convinced that they were counterfeit notes. But according to him he was not authorized to declare any notes as counterfeit

notes. However, he gave a written opinion with the signature and seal of the bank. That report is produced on record at Ex.102. He identified the said notes, which were produced in Court at Article A. Nothing much is elicited from his cross-examination.

15. P.W.4 Waman Palva was the Police Patil of village Behudne. On 06/09/2021, He had gone to Umbarthan weekly market at about 10.00 a.m. to 11.00 a.m. One Manjulabai Gumbade was selling vegetables. She was saying that somebody had given her a fake note of Rs.100/-. He had purchased vegetables of worth Rs.20/- and Manjulabai had returned Rs.80/- to him. There were about 15 to 20 villagers. P.W.4 took the two accused in a car and brought them to Surgana police station. He gave their names as Harish and Babasaheb. The police officer took search of these two accused and found the aforementioned currency notes, which were counterfeit.

In the cross-examination, he admitted that he had not entered this incident in his register. He admitted that he was not knowing the incident with Manjulabai, when he gave his statement to police. He could not explain as to why it is not mentioned in his police statement that Manjulabai had told him that out of Rs.100/- given to her, she had returned Rs.80/-. He admitted that he went at that place because two persons were assaulted by others at the spot. He answered that they had checked the pockets of those two accused, but currency notes were not found. However, there was no further question put to him in that behalf. At the same time, he denied the suggestion and answered that it was not true that 194 currency notes of Rs.100/- and one currency note of Rs.500/- denomination were found from the accused. In spite of this statement, the learned prosecutor had not taken any effort to cross-examine the P.W.4, in that regard who apparently gave this answer to help the accused.

16. P.W.5 Manjulabai Gumbade was the vegetable seller. She deposed that two persons approached her and purchased coriander worth Rs.10/-. They gave her a note of Rs.100/-. She returned Rs.90/-. The same persons went to one Baban and

bought Garlic worth Rs.20/-. Again they had paid Rs.100/- to Baban, who had returned Rs.80/-. She realized that the note was fake. She confronted these persons. They started running. 2 to 3 boys came there and caught them. They called the police. The police came there and took them away. She could not give the names of those persons and she could not identify those two persons. Therefore, she was declared as a hostile witness.

In the cross-examination conducted on behalf of the prosecution, she deposed that the three villagers named Shivram Gavit, Manu Chander and Subhash Jadhav along with Police Patil Waman Palva took those two persons away. Those two gave their names as Harish and Babasaheb. She stated that whatever she was deposing before the Court could not be told to the police by her.

17. P.W.6 Baban Gavit was the other vegetable vendor. His examination-in-chief was exactly similar to P.W.5 Manjulabai. He also could not name the two accused. Therefore, he was declared hostile. He was cross-examination by the learned

prosecutor and at that time he admitted that those two accused had given their names as Harish and Babasaheb.

In the cross-examination, he added that the note given to him of Rs.100/- was not taken from him by anybody.

18. P.W.7 Aziz Shaikh, was the Pancha for the three Panchanamas. He has deposed that on 06/09/2021, the police officers of Surgana Police Station came to his office and requested for two Panchas. This witness and Manoj Pawar went to Surgana Police Station for the Panchanama. They were told by the police that personal search of the two persons was to be carried out. Accordingly, search of accused No.1 Harish was taken. He was found with 94 fake currency notes of Rs.100/- and one fake note of Rs.500/-. He also had a mobile phone, a car and Aadhar card. The accused No.2 was having 99 currency notes of Rs.100/-. The Panchanama was carried out. It was produced on record at Ex.125. He identified the notes produced as Article 8 in the Court. He identified the other Articles i.e. Article F to Article Q. Those were the Articles recovered from the

premises where the process of printing those notes was carried out. On 12/09/2021, he was again called to the police station. At that time, accused No.6 Ananda gave a statement that he would lead the police party to the place where the counterfeit notes were made. Accordingly, the police were taken to the premises where the accused No.7 was present. That Panchanama is produced on record at Ex.126. Search of that place was conducted. They recovered 13 Articles including the printer, photocopying machine, ink etc. The Seizure Panchanama is produced on record at Ex.127.

On 14/09/2021, again he was called to Surgana police station. At that time, one fake currency note of Rs.500/- was recovered in his presence. He deposed that a print of Rs.500/- note on an A4 size paper was taken. That Panchanama was produced on record at Ex.129. He identified the accused Nos.1, 2 and 7. He could not identify accused No.6 properly. He stated that the printout on A4 size paper was taken at Vinchur and the printout was taken by accused No.7 Kiran.

In the cross-examination, he denied the suggestions given to him. In the further cross-examination, he deposed that the two Panchanamas dated 12/09/2021 and 14/09/2021 were carried out at Surgana police station. He denied that the police had only obtained his signature on the Panchanama. He added that he was not aware who was the owner of the place from where all these Articles were recovered.

19. The Panchanama at Ex.128 is regarding the statement given by the accused No.6 Ananda, whereby he had showed willingness to show the place where the accused No.7 was making those counterfeit notes. Rest of the statement in that memo is inadmissible. Pursuant to that statement, the police went to that place where the accused No.7 was present and about 13 Articles including the colour printer, etc. were recovered. More importantly, there were 87 papers of A4 size having print of Rs.100/- notes on both the sides. There were 90 such papers having the print of those notes, each of Rs.100/- denomination. There were 265 colour prints on A4 size papers. In addition, there were 150 prints having four currency notes of

Rs.500/- on one side. All these articles were quite incriminating. The Panchanama dated 14/09/2021 produced on record at Ex.128 was in respect of the demonstration given by the accused No.7 for taking the printout.

20. P.W.8 API Nilesh Bodke had conducted the investigation. He has narrated as to how the accused Nos.1 and 2 were brought to the police station. He has deposed about the search conducted and recovery of those counterfeit notes from those two persons. He identified all the articles produced in the Court. He has deposed about the recovery of various articles and some printouts from the accused No.7. He also deposed about the demonstration given by the accused No.7.

In the cross-examination, he deposed that the currency notes were kept with police till 28/10/2019. He admitted that the investigation did not reveal that the accused Nos.3, 4 and 5 had counterfeit notes in their possession. He also admitted that there were no counterfeit notes found with the accused No.6 and there was no evidence against him except his statement made in the memorandum Panchanama. The notes seized from the accused No.7 were not sent for examination. He did not have any proof that the house was owned by the accused No.7.

This, in short, was the evidence led by the prosecution.

21. Learned counsel for the accused Nos.1 and 2 submitted that the prosecution has not proved that both of them had actually used the counterfeit notes in the market. The notes which the accused No.1 had allegedly given to the two vegetable vendors, were not recovered from those vendors and they are not part of the investigation. The evidence of those two vegetable vendors is vague and therefore, the prosecution has not proved that the accused Nos.1 and 2 had actually used any counterfeit notes. He further submitted that the requisition letter calling for the Panchas, mentioned the C.R. number. This was not possible because according to the prosecution case, the search was conducted in the afternoon. The FIR was lodged only in the night at about 08.45 p.m. and therefore, the requisition letter could not been have issued prior to conducting the

Panchnama and it could not have mentioned the C.R. number. They further submitted that the evidence of Police Patil actually helps the defence of the accused Nos.1 and 2 that they were not possessing any counterfeit notes.

22. Learned counsel appearing for the accused No.6 submitted that even the Investigating Officer has admitted that besides the memorandum statement given by the accused No.6, who led the police to the place where the accused No.7 was found with the various articles; there is no material against the present accused No.6. He submitted that his memorandum statement is not admissible, as far as the confessional part is concerned and the said statement does not show any authorship of concealment, as far as the accused No.6 is concerned. Therefore, in any case, the said memorandum statement is not incriminating against the accused No.6 at all. Admittedly, nothing was found from the accused No.6 and the prosecution has not established any nexus between the accused Nos.6 and 7.

23. Learned counsel for the accused No.7 submitted that

there is no evidence to show that the said house was owned by the accused No.7. There is nothing to show that the accused No.7 had given these currency notes to the accused Nos.1 and 2, which were recovered from them. Thus, there is absolutely no nexus between the accused No.7 on one hand and the rest of the accused on the other. He submitted that the Pancha has admitted that the Panchanamas dated 12/09/2021 and 14/09/2021 were conducted at the police station, which raises serious suspicions about the genuineness of those Panchanamas. He submitted that the currency notes recovered from the possession of the accused No.7 were not sent for further testing and therefore, there is no evidence to show that they were counterfeit notes.

24. Learned APP submitted that the investigation carried out showed nexus between all the accused. However, the investigating agency could not connect any admissible material with the accused Nos.3, 4 and 5, which resulted in their acquittal. The prosecution case was that the accused No.7 had made those counterfeit notes and had distributed them to all the

other accused who had used those notes. Thus there was nexus between all the accused. She submitted that the evidence of the Panchas and the Investigating Officer show that those accused were possessing the counterfeit notes and they had actually used them. The evidence of Panchas and the Investigating Officer are supported by the P.W.4 Police Patil Palva and those two vegetable vendors P.W.5 and P.W.6. The report of the currency notes given by the press as well as by the bank officers was proved beyond reasonable doubt that all those notes recovered from accused Nos.1 and 2 were not genuine. She therefore submitted that the trial Court's Judgment and Order may not be interfered with.

25. Before discussing the evidence in this case, it is necessary to reproduce the relevant sections 489-A, 489-B, 489-C and 489-D.

> "**Section 489-A : Counterfeiting currency-notes or bank-notes.**
>
> Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment

of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 489-B : Using as genuine, forged or counterfeit currency-notes or bank-notes.

Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 489-C : 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.

Section 489-D : Making or possessing instruments or

materials for forging or counterfeiting currency-notes or bank-notes.

Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

26. The prosecution has to prove that the ingredients of these sections for which these accused are convicted are satisfied based on the evidence led against them. As far as the accused Nos.1 and 2 are concerned, they are convicted for the commission of offences punishable u/s 489-B and 489-C i.e. for use and possession of forged or counterfeit currency notes. As far as the use of notes is concerned, the evidence of P.W.4, 5 and 6 would be material in this connection. P.W.4 Police Patil Waman Palva did not have personal knowledge about these two accused

using those two currency notes. Therefore, the material witnesses would remain P.W.5 and P.W.6 in this regard. However, they were declared as ‘hostile witnesses’. Their evidence regarding the actual use of those currency notes is vague. They have not clearly deposed as to which of these accused had actually given them those fake currency notes. This currency notes were not recovered from either of these witnesses. Therefore, the prosecution has failed to prove that the accused No.1 or 2 had actually used the counterfeit currency notes as is required u/s 489-B of the IPC. Therefore, their conviction and sentence to that extent will have to be set aside.

27. The evidence regarding possession of those counterfeit notes against the Accused Nos. 1 and 2 will have to be considered. In that connection, the prosecution has examined P.W.1, P.W.7 and P.W.8. All these three witnesses are consistent regarding the fact that the accused Nos.1 and 2 were found with those counterfeit notes. The accused No.1 was having 94 currency notes of Rs.100/- and one currency note of Rs.500/-. The accused No.2 was having 99 currency notes of Rs.100/-. All

these notes were proved to be counterfeit, through evidence of P.W.2 and P.W.3. The accused were immediately brought to the police station after the crowd gathered in the market place. Thereafter, their personal search was conducted in the presence of the Panchas. It is not the defence of the accused that those notes were planted on their person. Though there is a reference to the C.R. number in the requisition letter for the Panchas, the FIR proforma shows that the police station was informed immediately at 11.30 a.m. on 06/09/2021 itself regarding the occurrence of the incident. Therefore, the requisition letter calling for the Panchas' service mentioning the C.R. No. will not make the prosecution case doubtful. No police officer was cross examined on that point. The prosecution has proved its case beyond reasonable doubt regarding the possession of those counterfeit notes with the accused Nos.1 and 2. Therefore, conviction u/s 489-C against these two accused will have to be upheld.

28. As far as the Accused No.6 is concerned, as discussed above, the only evidence produced by the prosecution against

him is in respect of the memorandum Panchanama. As mentioned earlier, there is no authorship of concealment of any incriminating article. Nothing incriminating was found from the accused No.6. At the highest, he can be attributed the knowledge of the place where accused No.7 Kiran was conducting his activities of counterfeiting the currency notes. There is no admissible incriminating piece of evidence against the accused No.6, that he had possessed those notes or had helped other accused in any manner. Therefore, benefit of doubt will have to be given to him and his entire conviction will have to be set aside.

29. As far as the accused No.7 is concerned, there are two serious incriminating circumstances against him. The police party had conducted raid at his premises on 12/09/2021 and had recovered various articles including the printer, ink and A4 size papers, on which the counterfeit notes were printed. All these articles were found with the accused No.7. Therefore, though the ownership of the premises was not proved, the prosecution has proved beyond reasonable doubt that all these

incriminating articles, including the prints on A4 size paper were found with the accused No.7 in his possession. Besides this, the Panchanama dated 14/09/2021 is also an incriminating piece of evidence. On that date, the accused No.7 had given the demonstration of taking printout of the currency notes.

30. P.W.7 Pancha in his cross-examination had stated that the Panchanama dated 12/09/2021 and 14/09/2021 were conducted at Surgana police station. However, his examination-in-chief in that behalf cannot be ignored. He has clearly stated that the accused No.7 Kiran had shown how the printouts were taken by him. The prints were taken on A4 size paper. Therefore, even his evidence shows that the demonstration was given by the accused No.7 Kiran.

31. P.W.8 API Bodke has also deposed about this demonstration. Thus, the prosecution has proved beyond reasonable doubt that the accused No.7 had made and printed the counterfeit currency notes found with him and also had in his possession the instruments and the material which was used

to make those counterfeit notes. Thus, the prosecution has proved its case beyond reasonable doubt against the accused No.7 for commission of offence punishable u/s 489-A, 489-C and 489-D of the IPC. However, those two Panchanamas dated 12/09/2021 and 14/09/2021 did not show that the accused No.7 had actually used those counterfeit notes in his possession, as is required u/s 489-B of the IPC. Therefore, his conviction u/s 489-B will have to be set aside. But his conviction u/s 489-A, 489-C and 489-D will have to be upheld.

32. Having reached this conclusion, I have heard the parties on the sentence imposed on the accused.

33. Learned counsel for the accused Nos.1 and 2 submitted that the accused Nos.1 and 2 are in custody for about 1 year and 8 months already.

34. Learned counsel for the accused No.7 submitted that his entire family is dependent on him and his family is suffering for about three years because of his sentence. The accused No.7

is in custody for 2 years and 11 months and therefore some leniency be shown to them.

35. Learned APP, on the other hand, submitted that the offences are serious and therefore no leniency be shown to them.

36. I have considered these submissions. The possession of the currency notes is punishable u/s 489-C of the IPC. This is a lesser offence than the other offences i.e. u/s 489-A, 489-B and 489-D of IPC. I have already discussed as to how the accused Nos.1 and 2 cannot be said to have committed the offence u/s 489-B. Therefore, considering the lesser offence attributed to them, they can be sentenced for lesser punishment. In my opinion, a sentence of 4 years rigorous imprisonment, besides imposition of fine, would meet the ends of justice.

37. As far as the accused No.7 is concerned, as I have held that he cannot be convicted u/s 489-B, but his conviction u/s 489-A, 489-C and 489-D will have to be upheld. Since he is to be

acquitted u/s 489-B, some concession in the sentence of 7 years rigorous imprisonment imposed on him can be shown to him. Instead of 7 years, the accused No.7 can be sentenced to suffer rigorous imprisonment for 6 years.

38. Hence, the following order :

ORDER

(i) The Criminal Appeal No.415 of 2024 filed by the accused No.6 Ananda Doulat Kumbharde is allowed. His conviction and sentence recorded by the learned Additional Sessions Judge, Nashik, in Sessions Case No.433 of 2021, vide the Judgment and Order dated 22/03/2024, is set aside. He is acquitted of all the charges.

(ii) The Appellant Ananda Kumbharde is in custody. He shall be released forthwith, if not required in any other case. Before his release, he shall execute a PR bond of Rs.30,000/- (Rupees Thirty Thousand only) ensuring his presence, in case the Appeal against acquittal is preferred.

(iii) Criminal Appeal No.423 of 2024 preferred by the accused No.1 Harish Walmik Gujar and Criminal Appeal No.465 of 2024 preferred by the accused No.2 Babasaheb Bhaskar Said are partly allowed.

Both of them are acquitted from the charges of commission of offence punishable u/s 489-B of r/w 34 of the Indian Penal Code. Consequently, the sentence imposed on them for commission of that offence by the Trial Court is set aside.

Their conviction u/s 489-C r/w 34 of the Indian Penal Code is maintained. However, instead of rigorous imprisonment for 7 years, they are sentenced to suffer rigorous imprisonment for 4 years. They are also sentenced to pay fine of Rs.5,000/- each and in default of payment of fine to suffer rigorous imprisonment for six months.

(iv) The Appeal preferred by the accused No.7 Kiran Balkrushna Girme i.e. Criminal Appeal No.505 of 2024 is partly allowed. The conviction of Appellant Kiran Girme u/s 489-B r/w 34 of the Indian Penal Code and the consequent sentence are set aside. However, the Appellant Kiran Girme's conviction u/s 489-A, 489-C and 489-D is maintained. The conviction would be simplicitor under those sections and not with section 34 of the Indian Penal Code.

(v) The Appellant Kiran Girme is sentenced to suffer rigorous imprisonment for 6 years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer rigorous imprisonment for 6 months for offence punishable u/s 489-C of the Indian Penal Code.

(vi) The Appellant Kiran Girme is sentenced to suffer rigorous imprisonment for 6 years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer rigorous imprisonment for 6 months for offence publishable u/s 489-A of the Indian Penal Code.

(vii) The Appellant Kiran Girme is convicted u/s 489-D of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 6 years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer rigorous imprisonment for 6 months.

(viii) All the substantive sentences are directed to run concurrently.

(ix) All the Appellants who are convicted are granted set off u/s 428 of Cr.P.C.

(x) The rest of the clauses in the operative part of the impugned Judgment and Order which are not inconsistent with this operative part, are maintained.

(xi) The Appeals along with their Interim Applications are disposed of.

MANUSHREE NESARIKAR

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(SARANG V. KOTWAL, J.)