

108-2 cases

CRA-S-105-SB-2005

Date of decision: 05.02.2024

Sanjiv and others

.....Appellants

Versus

State of Punjab

..... Respondent

Darshan Singh

CRA-S-139-SB-2005

.....Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Karandeep S. Sidhu, Advocate
for appellant Nos.1 and 2 in CRA-S-105-SB-2005.

Mr. Madan Gupta, Advocate for appellant No.3.

Mr. Mohd. Yousaf and Mr. Abdul Aziz, Advocates
for the appellant in CRA-S-139-SB-2005.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. Both these criminal appeals arising out of a common judgment, are thus being decided together.
2. Challenge in the present appeals is to the judgment/order dated 20.12.2004, passed by the learned Additional Sessions Judge (Adhoc), Jalandhar, whereby the appellants were convicted and sentenced to undergo rigorous imprisonment for three years, for the offence punishable under Section 489-C IPC.
3. Succinctly, the facts are that on 12.05.2001, when SHO Nirmal Singh alongwith other police officials were on patrolling duty in connection with the

checking of miscreants and suspected vehicles, they received secret information that some persons, having machine to print fake currency notes, are sitting in the revenue limits of village Boparai. Upon this, the policy party went there and apprehended the accused namely Sanjeev, Darshan Singh, Sarabjit Singh and Rajwinder Singh for selling the fake currency notes and having the machines to print fake currency notes. An FIR was registered against the accused-appellants.

4. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the accused-appellants and the case of the accused-appellants was committed to the Court of Sessions. On finding a prima facie case, charges under Sections 489-C IPC were framed against them, to which they pleaded not guilty and claimed trial.

5. In order to bring home the guilt of the accused, the prosecution examined PW1 S.P. Janjua, Deputy Treasurer, Reserve Bank of India; PW2 Constable Vijay Kumar; PW3 ASI Gurpartap Singh; PW4 Inspector Nirmal Singh and PW5 Gurcharan Singh HC. On closure of the prosecution evidence, statements of the accused-appellants were recorded under Section 313 Cr.P.C. They denied all the incriminating circumstances that appeared against them in the prosecution case while pleading false implication by the police. In defence, they examined two witnesses namely DW1 Bikram Singh and DW2 HC Nishan Singh.

6. On scrutinizing the evidence led by the parties and hearing the counsel, the trial Court finding the prosecution proved beyond reasonable doubt, convicted and sentenced the accused-appellant as noticed above.

7. Aggrieved appellants are before this Court.

8. Learned counsel would contend that the appellants were falsely

implicated in the present case and there were infirmities in the prosecution version. Further that the investigation was also tainted. The place of recovery from where the computer, scanners etc. were seized was an open and accessible place, thus, could belong to anyone, these being easily available in the market. Despite there being shops near the place of recovery, but no independent witness was joined. It was highly improbable that the accused Rajwinder Singh @ Bhola managed to run away from the spot where fully armed police officials were present. Further, SHO Nirmal Singh who recovered the notes and arrested the accused himself conducted the investigation, rather in such cases, the investigation should be carried out by another independent senior officer. The prosecution case is wholly improbable and not worthy of any credence. In the alternative, prayer for reducing the sentence awarded to the appellants to the period already undergone was made as they had suffered a protracted trial of 23 years, belong to the poor strata of society, not previous convicts and having a large family to support. They never misused the concession of bail granted to them. Reliance has been placed on the judgments in **Palanisamy vs. The State represented by the Inspector of police** 2023 LiveLaw (SC) 643 and **Krishna Nandan Sah vs. The State of Bihar** 2018 (4) ECrC 244.

9. Per contra, learned State counsel submits that after appreciating the evidence led by the prosecution, the trial Court has rightly convicted the accused-appellants. The accused belong to different places but they were found at one place was itself suspicious circumstance and from their possession the recovery of fake currency notes was effected. He thus, prays for the dismissal of the present appeal. However, the factum of the period undergone by the appellants

and also their non-involvement in any other case is affirmed.

10. Heard the learned counsel on either side and perused the record with their able assistance.

11. Evidently, PW4 SHO Nirmal Singh had specifically named the appellants, who were apprehended at the spot with fake currency notes. The said statement stood corroborated by PW3 ASI Gurpartap Singh, who was also a part of the said police party and a recovery witness. As per statement of Nirmal Singh, efforts were also made to join the independent witness but none was willing and the trial Court found that in absence of it, there is still no reason to disbelieve their testimonies, which are trustworthy and reliable.

12. Insofar as the contention of the appellants that they had been falsely implicated in the present case, there were infirmities in the prosecution version. It has to be borne-in-mind that a huge quantity of counterfeit currency was recovered from the appellants and therefore, it prima-facie proves their involvement in the commission of the offence. Subsequent recoveries of computers, printers, scanner, material for making stamps etc. effected are corroborative evidence. There was no explanation of the reason of they having got together at the spot, when they all belonged to different places. No evidence was also led with regard to their assertion of false implication. The procedure adopted while effecting the recovery of these items and subsequently infirmities pointed out in the prosecution version even if accepted to be a lapse on the part of the Investigating Agency, still this alone would not be sufficient to exonerate the appellants. Hon'ble the Supreme Court in the case of **Yogesh Singh vs. Mahabeer Singh and others**, 2016(4) RCR (Criminal) 753 (S.C.), laid down that defective investigation by itself cannot also

be a ground for acquittal. It was held that in such cases, there is a legal obligation on the part of the Court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent and as to whether such lapses affected the object of finding out the truth. In **Karan Singh vs. State of Haryana**, 2013 (4) RCR (Crl.) 205, it was held by Hon'ble the Supreme Court that unless lapses made on the part of investigating authorities are such, so as to cast a reasonable doubt on the case of the prosecution, or seriously prejudice the defence of the accused, the Court would not set aside the conviction of the accused merely on the ground of tainted investigation.

13. In **Gajoo vs. State of Uttarakhand**, 2013(1) Criminal Court Cases 393, it has been held by the Hon'ble Supreme Court of India that a defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court. In **Abu Thakir and others vs. State rep. by Inspector of Police, Tamil Nadu**, 2010(2) Criminal Court Cases 334, the Hon'ble Supreme Court of India held that even if the investigation is illegal or even suspicious, the rest of the evidence must be scrutinized independently of the impact of it. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. If the Court is convinced with the testimony of a witness to the occurrence to be true, the Court is free to act on it albeit the investigating officer's suspicious role in the case.

14. Hon'ble the Supreme Court in **Mukesh Singh vs. State (NCT of Delhi)**, (2020) 10 SCC 120, held that with respect to offences under the IPC, there is no specific bar against the informant/complainant investigating the case.

15. In **Birbal Nath vs. State of Rajasthan**, 2023 SCC OnLine SC 1396, Hon'ble the Supreme Court held that "contradictions in two statements may or may not be sufficient to discredit a witness, Sections 145 read with 155 of Evidence Act, 1872 must be carefully applied in a given case. Coming back to the instant case, the Court accepted that "Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other words, they are not big farmers. The rural setting, the degree of articulation of such a witness in a Court of Law are relevant considerations while evaluating the credibility of such a witness. Moreover, the lengthy cross examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness."

16. On conspectus evaluation and in light of the judgments referred to hereinabove, this Court finds no infirmity or perversity in the impugned judgment of conviction, which is thus upheld.

17. Insofar as the prayer for reducing the sentence of the appellants to the period already undergone is concerned, it would be worthwhile to make a reference to the judgment in **Palanisamy's** case (supra), wherein the accused was convicted under Section 489C IPC and Hon'ble the Supreme Court reduced the sentence of five years imposed by the High Court to that of the period already undergone. Similarly, in **Krishna Nandan Sah's** case (supra), the accused was convicted under Section 489A, 489B and 489C, the Patna High Court reduced the sentence of accused to the period of custody already undergone by him.

18. In **Satish vs. State of U.P.**, (2021) 14 SCC 580, Hon'ble the Supreme

Court had observed that, “Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free roaming criminals creating havoc in the lives of ordinary peace loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first time offenders ought to be liberally accorded a chance to repent their past and look forward to a bright future. [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112]”.

19. When viewed humanistically, the appellants having suffered the ignominy of trial since long; successfully warded off their crime-proneness-an evident learning of a lesson; their socio-economic circumstances, this Court finds extenuation to be implicit. Thus, it would serve the ends of justice to reduce their sentence to the period already undergone, however, keeping the fine intact.

20. The order of sentence dated 20.12.2004 is modified to the aforesaid extent and as such, the present appeals stand partly allowed.

21. A photocopy of this order be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

05.02.2024
Hemant

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No