IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 650 of 2013

Rabi Roy & Anr.
-Vs-
The State of West Bengal

For the Appellants (Amicus Curiae)	: Mr. Apalak Basu
For the State	: Ms. Faria Hossain Mr. Anand Keshari
Heard on	: 27.02.2024, 12.03.2024, 25.04.2024, 22.05.2024, 04.10.2024
Judgment on	: 24.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against a judgment and order of conviction dated 07.05.2013 & 08.05.2013 passed by the Learned Additional Sessions Judge, Sadar, Cooch Behar in Sessions Trial No.8(02)/11 arising out of Sessions Case No.10/2011 convicting the appellants under Section 489C of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 5 years.

2. The prosecution case precisely stated on 26.06.07 at 16:25 hours the complainant reached in front of the shop of Pranabesh Majumder, Station Road, Haldibari and found the appellants were standing with FICN. The FICN was given to Rajib Roy (PW-11), the worker of the shop

by Dipu Roy (appellant no.2). The complainant interrogated and arrested the appellants at 16:35 hours. The I.C. and B.D.O. of Haldibari came to spot at 16:30 hours and on search two numbers of FICN in the back pocket of Rabi Roy (appellant no.1) and one number FICN was in the hand of Rabi Roy (appellant no.1) and rest in the back pocket of Dipu Roy (appellant no.2) were seized. During investigation it was revealed that FICN was received by the appellants from one Shymal Roy who was discharged.

3. On the basis of the aforesaid complaint, the Police initiated Haldibari P.S. Case No.43/07 dated 26.06.2007 for alleged offence punishable under Sections 489A/489B/489C of the Indian Penal Code against the appellants.
4. After completion of investigation, the Police submitted charge-sheet against the appellant under Sections 489B/489C of the Indian Penal Code.
5. The charge was framed against the appellants to whom he pleaded not guilty and claimed to be tried.
6. In order to prove its case, the prosecution examined as many as 12 witnesses and exhibited certain documents.
7. The Learned Amicus Curiae representing the appellants submitted that the charge was defective and it did not specify the number of notes. There was no evidence to suggest that the appellant had the knowledge or reason to believe that the notes were fake. There was not even a single witness who claimed to have completely seen the exact seizure as well as identified the appellant on dock. The exact number of FINCs were not established. It was not proved what was recovered from whom. The

examination under Section 313 of the Code of Criminal Procedure was faulty and material questions were not put to the appellants.

8. The Learned Advocate representing the State submitted as follows:-

   i. The prosecution had been able to proof all reasonable grounds that the notes seized from the possession of the appellants were in fact Fake Indian Currency Notes. PW-14 had sent the FICNs for F.S.L. examination and had collected the report marked as Exbt.-13 which clearly shows that the currency notes so seized from the appellants what in fact fake.

   ii. Although it was true that some independent witnesses had either deposed for the first time in Court or had deposed different versions of the incident as had taken place but merely because there were certain debeations in the narration of the witnesses did not itself prove that the entire prosecution case was a lie.

   iii. The quality of evidence should be taken into consideration instead of the quantity of evidence. In the present case all the police witnesses had deposed in the same thing along with the other public witnesses excepting few. The defense had miserably failed to demonstrate the by cross-examination as to why the police witnesses shall falsely implicate the appellants. The defense had miserably failed to demonstrate the enmity of the police witnesses with the appellants because of which they could had been falsely implicated in the present case. In absence of any such cross-examination it was impossible for the Court to hold that the police witnesses should be disbelieved merely because few public witnesses had deposed differently about the incident.

iv. The present appeal was directed against the judgement where by the appellants were convicted for the commission offence under Section 489C of the Indian Penal Code. The ingredients of that Section shall be deemed to be proved if the fact of seizure of FICN from the possession of the appellants therein was proved. In that case majority of the witnesses excepting PW-5 and PW-6 had deposed that they had witnessed the seizure of the said currency notes from the appellants and on examination the said notes, they were found to be forged by the expert whose report was exhibited during the course of trial.

v. The appellants had failed to give any explanation as to why the recovered counterfeit notes were in their possession. The appellants in fact ahd not disowned their L.T.I.'s in the seizure list which was prepared by the prosecution and proved during the course of trial. In spite of all opportunities being afforded to the appellants, they had miserably failed to demonstrate the possession of the alleged counterfeit note.

vi. The point being taken on behalf of the appellant that the framing of charge was defective did not had good ground as the legislature in its wisdom had enacted the provision of Section 464 of the Cr.P.C. Providing therein that even if there was an appellant error or defect shall not be ground for declaring to be bad in law.

vii. The appellants had raised another complaint of faulty examination under Section 313 of Cr.P.C. It was trite law that merely because the Learned Judge had failed to put forward certain relevant circumstances shall not been considered as fatal to the prosecution case until and unless being defense could show that it had been prejudiced by such circumstances being not explain to it.

viii. The prosecution had been able to prove its case beyond at all reasonable ground and had been able to prove that the appellants had found in possession of FICN and hence the conviction should be affirmed.

9. A circumspection of the prosecution witnesses revealed as follows:-

i. PW-1 deposed that about 3/4 years ago, at about 10 a.m., he was at the sweet-meat shop of Satyen Babu, when an unknown man purchased some sweets and handed over Satyen Babu a currency note of Rs.500/-. Satyen Babu told that unknown man that he had no change for that currency note and asked the persons who were present if changes were available. He took the said currency note and exchanged the same by denomination of Rs.100/- to Satyen Babu and returned home.

On that very day, at about 11:00 p.m., Satyen Babu, a police officer accompanied with an unknown person came to his home. Then Satyen Babu asked him to take out the said currency note of Rs.500/- which he received from the said unknown person for giving him change. Then he handed over the said currency note to police. Thereafter, police wrote something on a paper and took his signature on it. The witness identified his signature on the seizure list which was marked as Exbt.-1.

ii. During his cross-examination PW-1 stated that police visited his home once only. Subsequently, police never met him. Police never recorded his statement. He had narrated the incident for the first time before that court. His home at Berubari and the sweet meat shop of Satyen Babu was at Sipahi para, Berubari. He could not say who handed over the said currency note of Rs.500/- to Satyen Babu. Satyen Babu took the change of the said currency note of Rs.500/- from him. He handed over that currency note to police which he received from Satyen Babu. He examined the note at the time of receiving it. He could not say the number of the said note. He also could not say the number of the note which he handed over to police. Police asked him to put his signature on a paper and he put his signature. He could not say the contents of the paper on which he put his signature. He had stated before the police that an unknown person came to the shop of Satyen Babu to purchase sweet-meat in his presence and he handed over a currency note of Rs.500/- to Satyen Babu. Police did not record his statement on that very day.

iii. PW-2 deposed that about 2½ years ago, in the afternoon, he heard a hue and cry from the shop of one Pranabesh Majumder. He rushed to the shop. The persons present, told him that counterfeit currency notes were found from certain persons. He heard that some five hundred rupees take currency notes were recovered. Subsequently, police arrived there. Police asked him what he knew about the incident. He replied that he knew nothing. Police asked him to sign on a paper so that he might be cited as a witness. He could not say the number of five hundred rupees counterfeit currency notes recovered on that day.

iv. During his cross-examination PW-2 stated that he could not state from whom counterfeit currency notes were recovered and what was the amount of fake currency notes. He had not seen the counterfeit notes.

v. PW-3 deposed that on 26.06.2007 he was in-charge of the cash section of Jalpaiguri Central Co-operative bank, Haldibari branch. Their bank was in the first floor and there was a carpenter shop by the side of the road. One Naresh Chandra Sarkar was the owner of that carpenter shop. At about 03:30 p.m., on 26.06.2007 Naresh Babu came to him with a Rs.500/- Indian Currency Note and asked him to examine whether it was genuine or not. On examination he suspected the said note as a counterfeit note. He had been working in cash section for about 26 years. He told Naresh Babu that the said note was a fake currency note. Naresh Babu talked two person from whom he received the said Rs.500/- Indian Currency note and asked from where they got the said note. The said two persons made different statements and there was no symmetry in their statements. A good number of people were assembled there who asked the said two persons to take out all notes from their possession and ultimately 9/11 numbers of Rs.500/- Indian Currency notes were found from the pocket of one of the said two persons. He was present there. He examined the said notes and suspected that all the said 9/11 numbers of Rs.500/- currency notes were fake notes.

vi. During his cross-examination PW-3 stated that on the date of incident he was working in their bank in the first floor of the building. On that day some other employees of their bank were also present in their bank. He could not recollect the number of the said Rs.500/- Indian currency note which was brought by Naresh to him for examination. Naresh Sarkar handed over the said note to him for examination. He got down the bank to the spot on hearing hue and cry and police also arrived there. He could not state the numbers of the said 9/11 Rs.500/- fake currency notes which were found from the possession of one of the miscreants. Police did not prepare any seizure list at the spot. Police took the said notes and took the said two persons at the P.S. He had not examined the notes by any machine. He suspected the notes as fake notes on the basis of his experience. He could not state from whose pocket the said notes were recovered. He had not witnessed recovery of notes from the possession of any of the miscreants. Police asked him whether said notes were genuine or not. He had not stated before the police that Naresh Sarkar went to him with one Rs.500/- Indian Currency note and asked him to examine the said note whether it was genuine or not. He had also not told the police that 9/11 number of currency notes were recovered from the possession of one of the miscreants. It was true that he had seen the said two people about one year ago and he could not identify the said two persons exactly.

vii. PW-5 reiterated the statements in the complaint.

viii. PW-6 corroborated the evidence of PW-5.

ix. PW-7 was declared hostile by the prosecution.

x. PW-8 deposed certain years ago at about 10:00 a.m., a man aged about 18/20 years came to his shop and handed over 500 rupees note after purchasing 'ladoo' from his sweet meet shop. He purchased 'ladoo' for Rs.20/-. As he had no change of Rs.500/-, a person Bansi roy by name told him that he would give him change of Rs.500/-. He gave him changes and he refunded Rs.480/- to the purchase of 'ladoo'. The said purchaser left his sweet meet shop. At about 10:00 p.m., on that day his son came to his home and told him that police called him at their shop. He went to their shop. Police told him that the 500 rupees note which he received from a person was a fake note and asked him to go to Bansi Roy. The person who handed over Rs.500/- note to him was accompanying the police. They went to the home of Bansi Roy. He asked Bansi Roy to hand over the said 500 rupee note as the police told him to be a forged note. Bansi Roy took out the said 500 rupees note which he received from him and handed it over to police. Police seized the note. The seizure list was marked as Exbt.-1(A). The witness also identified his signature on a five hundred rupee note being no.7DD993342 marked as Exbt.-6.

xi. During his cross-examination stated that police seized the note from Bansi Roy. Police recorded his statement.

xii. PW-9 deposed certain years ago police came to their locality at night and enquired about Bansi Roy. Police asked Bansi Roy to give the 500 rupees note which he got from a person at a sweet meet shop at Sepali para. Police prepared a report and took his signatures on that report and on the 500 rupees note. The witness identified his signature in the seizure list dated 26.06.0 being no.7DD993342, which was marked as Exbt.-1/B & Exbt.-6/A.

xiii. During his cross-examination stated the report was prepared of the home of Bansi Roy. Bansi Roy handed over the 500 rupees note to police. He could not say whether Bansi Roy signed the note. He could not say why police took his signature. He could not say why police did not take signature of other person.

xiv. PW-10 deposed that he was an Inspector of B.S.F. On 03.07.07 he was posted under Ratanpur B.O.P., as an S.I., he could not recollect whether police of Mekhliganj took his assistance for raiding the home of any Madhusudan Roy or Parimal Adhikary on 03.07.07.

xv. PW-11 deposed that the incident occurred certain years ago. He was inside the shop room of Pranabesh Majumder when two men came and purchased two cold drinks at about 3/4 p.m. The said two person gave him a note of Rs.500/- and asked him for the balance amount. He showed the note to Naresh Sarkar, another shop owner who showed the said note to the staff of Co-operative bank. The bank officials told that the said note was a fake note. The matter was reported to police and police took the said two persons to P.S. About 8/10 FICN were found from the possession of the said two persons. All fake notes were Rs.500/- denomination. He was unable to identify the said two person if they were shown to him. Police took his signatures in the seizure lists which were marked as Exbt.-2/C & Exbt.-3/C.

xvi. During his cross-examination stated that he resided at Haldibari, Shantinagar. He did not know the persons from whom the notes were seized. He was unable to identify them if they were shown to him. He could not say how the notes were seized. Police asked him to sign beyond which he knew nothing.

xvii. PW-12 deposed that he was a retired A.S.I. of police. On 26.06.06 he was posted at Maynaguri P.S. as an A.S.I. On that day, the I.C., Haldibari P.S. Case to Maynaguri P.S. and accompanied him as a local officer for recovery of FICN. The I.C., Haldibari P.S. went to the home of one Rabi Roy and arrested accused Rabi Roy along with FICN. He identified his signature in the seizure list marked as Exbt.-5/A. The signature of the witness in the alleged FICN was marked as Exbt.-7 & Mat. Exbt.-2. The black money bag as identified by the witness was marked as Mat. Exbt.-3.

xviii. During his cross-examination stated that he could not recollect whether any label was fixed on the money bag. There was no special identification mark in Mat. Exbt.-3 which he had identified that day.

xix. PW-13 deposed that on 26.06.2007 he was attached to Haldibari P.S. as I.C. of police. On that date S.I., Ashit Deb Singha lodged a suo-moto complaint and accordingly he started Haldibari P.S. Case No.43/07 dated 26.06.07, prepared a formal F.I.R., marked as Exbt.-8, Exbt.-4/1 & Exbt.-3. Ten numbers of forged notes were seized, marked as Mat. Exbt.-1. Out of those notes bearing no.7DD993345 and 7BD992996 content his signature as well as signature of the appellant which were marked as Exbt.-9, Exbt.-9/1, Exbt.-10, Exbt.-10/1.

xx. During his cross-examination stated that on that date he was in charge of the P.S. he did not prepare any separate seizure list in respect of two notes containing mine as well as accused persons' signatures. Those two notes containing his signatures were also seized from the possession of Rabi Roy and Dipu Roy. Note bearing no.7BD992996 was seized from Dipu Roy and another note bearing no.7DD993345 was seized from Rabi Roy. Other notes did not content his signature or the signature of accused. He did not put any special mark of identification in those two notes. He went to P.O. and before leaving P.S. an entry was made in the G.D. book. Exbt.-2 and Exbt.-3 were prepared in the same place.

xxi. PW-14 deposed that he was a S.I. of police. On 26.06.07, he was attached to Haldibari P.S. as S.I. of police. On that date, Haldibari P.S. Case No.43/07 dated 26.06.07 were endorsed to him for investigation. During investigation, he visited P.O. and drew a rough sketch map along with index, marked as Exbt.-II. That P.S. case started on the basis of suo-moto F.I.R., lodged by Ashit Deb Singha along with a seizure list, which was marked as Exbt.-5/B. He seized one forge note Rs.500/-, which was marked as Mat. Exbt.-5. He also seized another forge note Rs.500/- from Basiram Roy under a seizure list, which were marked as Mat. Exbt.-A/1, Exbt.1/C. A statement of Shyamal Roy was shown to the witness. He stated to him that "I'll be able to cause to catch that person who gave m the thirteen numbers of Rs.500/- notes. I'll also cause to catch that person with whom I talked over telephone", which was marked as Exbt.-12. Thereafter he sent all the 12 seized notes to F.S.L. for examination and report. Subsequently, he collected the report. F.S.L., report was shown to the witness, marked as Exbt.-13.

xxii. During his cross-examination stated that he had no personal knowledge about the seizure in respect of seizure list and in respect of seized 10 notes which he received at the time of receiving charge of investigation. He took up the charge of investigation at 19:45 hours. The F.I.R., was filed at 19:45 hours. As per Exbt.-3 a seizure list was prepared at 16:55 hours. It was seized in connection with G.D. entry no.1256 dated 26.06.07. He did not seize that G.D. There was no reference of the said G.D. entry in the F.I.R. Exbt.-3 was shown to the witness. From that seizure list it could not be said that it was seized in connection with the present case. Exbt.-2 shown to the witness. It was also seized on the basis of G.D. entry from that seizure list.

10. In ***Umashanker v. State of Chhattisgarh***[1], the Hon'ble Supreme Court held the following:-

> *"7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial*

[1](2001) 9 SCC 642

transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is 'knowing or having reason to believe the currency notes or banknotes are forged or counterfeit'. Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea..."

11. The following was held by the Hon'ble Supreme Court in ***Shabbir Sheikh* v. *The State Of Madhya Pradesh*[2]**:-

"Similarly, the ingredients which are required to constitute an offence under Section 489C are as follows: (i) The note in question is a currency note or bank note; (ii) Such note was forged or counterfeited; (iii) The accused was in possession of the currency note or bank note; (iv) The accused intended to use the same as genuine;(v) the accused knew or had reason to believe the note to be forged.

Apex Court in the case of Uma Shankar v. State of Chhattishgarh, (2001) 9 SCC 642, to submit that Mens rea i.e. ("knowing or having reason to believe the same to be forged or counterfeit") which are the essential ingredients to constitute the offence under Sections 489-B and 489-C have to be proved by the prosecution. A reference has also been made to the judgment passed in the case of M. Mammutti v. State of Karnataka, (1979) 4 SCC 723 in support of their arguments that a mere recovery of

[2]CRA 162 of 2015,

currency notes from them would itself not be sufficient to prove the offence where the prosecution has not shown that the appellants had knowledge or reason to believe that the notes were counterfeit and therefore, the conviction in the case of M. Mammutti (supra) was set aside."

12. The Hon'ble Supreme Court held the following in ***K. Hashim v. State of T.N.***[3]:-

> ***"49.*** *Section 489-C deals with possession of forged or counterfeit currency notes or banknotes. It makes possession of forged and counterfeited currency notes or banknotes punishable. Possession and knowledge that the currency notes were counterfeited notes are necessary ingredients to constitute offence under Sections 489-C and 489-D...."*

13. The fake currency notes were not recovered from the custody of the appellant. The edifice of prosecution case was exclusively based on assumption and suspicion. The investigating agency did not trace out the origin of the currency notes to have been in the possession of the appellant. Mere possession of fake currency notes without '*mens rea',* knowledge of the implication of the same as well as the intention to use it for wrongful gain the ingredients to constitute an offence under Section 489C cannot be sustained.

14. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.

15. Under such facts and circumstances, the judgment and order of conviction dated 07.05.2013 & 08.05.2013 passed by the Learned

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[3](2005) 1 SCC 237

Additional Sessions Judge, Sadar, Cooch Behar in Sessions Trial No. 8(02)/11 arising out of Sessions Case No.10/2011 is set aside.

16. Accordingly, the instant criminal appeal being CRA 650 of 2013 stands disposed of.

17. There is no order as to costs.

18. I record my appreciation for the able assistance rendered by Learned Advocate Mr. Apalak Basu as Amicus Curiae, appearing for the appellant, in disposing of this appeal.

19. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

20. 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.)