

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 100 of 2003

**Pranab Roy
-Vs-
The State of West Bengal**

For the Appellant : Mr. Partha Sarathi Bhattacharyya
Mr. Bhaskar Seth

For the State : Mr. Avishek Sinha

Heard on : 18.11.2025

Judgment on : 24.02.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is directed against an order of conviction and judgment dated 26.02.2003 passed by the Learned Additional Sessions Judge, Contai, Midnapore in Sessions Trial No.XVII/April/2001 arising out of G.R. Case No.110/1994 in connection with Digha Police Station Case No.8 of 1994, thereby convicting the appellant under Sections 489A/489B/489C/489D/468/120B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5000/-, in default, to suffer rigorous imprisonment for another 6 months for the offence under Section 489A of the Indian Penal Code and to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.3000/-, in default, to suffer rigorous imprisonment for another 4 months for the offence under Section

489B of the Indian Penal Code and to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.3000/-, in default, to suffer rigorous imprisonment for another 6 months for the offence under Section 489C of the Indian Penal Code and to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.2000/-, in default, to suffer rigorous imprisonment for another 6 months for the offence under Section 489D of the Indian Penal Code and to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.1000/-, in default, to suffer rigorous imprisonment for another 6 months for the offence under Section 120B of the Indian Penal Code and all the sentences will run concurrently.

2. The prosecution case precisely stated one Ramani Kanta Maity was the owner of a Lodge 'Chalantika' at Digha. The informant narrated on 15.02.1994 at about 12:30 P.M., a boy arrived at the lodge in search of a room wherein he was asked to pay a sum of Rs.50/- as a rent. Agreeably the boy placed a hundred rupee note which the informant suspected to be fake and the employees namely Netai Sahoo and Matilal Khatua were shown the said note who, accordingly, were suspicious of the same to be counterfeit. Instantaneously, the boy tried to escape but was intercepted by said Matilal Khatua and on interrogation, the boy confessed the hundred rupee note to be counterfeit claiming to be in possession of other counterfeit notes apart from the specific hundred rupee note as aforesaid.
3. The incident was informed to the police station on telephone whereby Asit Kumar Hazra and Sailesh Sekhar Kundu arrived at the lodge and on interrogation, the boy disclosed his identity to be Sujoy Kumar Singh, son of

Radhakrishna Singh of Belbani under P.S. Ramnagar. He further stated to reside with Kanai alias Swapan Manna at Haridebpur, Kolkata in the house of Tulsi Das and assisted him in his work. The said Kanai alias Swapan Manna had entrusted him with the counterfeit notes to circulate the same in the market and also to visit Digha. The counterfeit notes were manufactures by the aforesaid Kanai at his rented house at Haridebpur through the machines used for the purpose of manufacturing such counterfeit notes installed therein. The informant thereafter searched for Sujoy Kumar Singh and the counterfeit notes were recovered and were seized under a seizure list.

4. On the basis of a written complaint lodged by the complainant, Digha Police Station Case No.8 of 1994 dated 15.02.1994 under Sections 489A/489B/489C/489D/468/120B of the Indian Penal Code was initiated for investigation.
5. Upon conclusion of the investigation, the Investigating Agency submitted a charge-sheet against the appellant under Sections 489A/489B/489C/489D/468/120B of the Indian Penal Code against the appellant to which he pleaded not guilty and claimed to be tried.
6. In order to prove its case, the prosecution examined as many as 13 witnesses and examined certain documents.
7. The Learned Advocate representing the appellant argued on the following points:-

- i. Identification of the appellant:- Appellant Sujay Kumar Singh named one Prabhat Roy. Case against Sujay Kumar Singh was filed before

trial. PW-5, the landlord of the house at Haridevpur failed to identify the appellant, either by name or by face. PW-8, another tenant of the house in his chief stated that he knew the appellant by face but not by name and that he failed to state how many number of appellant were arrested by the police. However in his cross-examination, he stated except two persons he did not know anyone else. In absence of any concrete supportive evidence, mere presence of the signature in the seizure list did not confer any confidence that the appellant was connected with the crime which was allegedly committed in the house at Haridevpur.

- ii. Seizure:- Place of seizure at Haridevpur was doubtful inasmuch as the seizure list contained an address of the place of seizure as 'Nonamath, Haridevpur, P.S. Thakurpukur, South 24 Paraganas' where as PW-5 stated the address of his house as 'Holding no. 224, Ostad Amir Kha Sarani, under Thakurpukur P.S. Therefore, it could not be safely concluded that those two addresses were of the same and identical house. Further, PW-5 stated his house was of two stories whereas raid was conducted in a three storied building. From the sketch map, it would appear that raid was conducted on the second floor of the house and without reference to the building of 'asbestos shed' on the second floor.
- iii. PW- 8 stated PW-5, owner of the house was not present at the time of seizure/raid but on the next day he met the police at P.S. Thakurpukur as reflected in the seizure list dated 17.02.1994. The

signature of the witnesses appearing therein indicated that PW-5 signed the said seizure list afterwards. The presence of PW-5 at the time of raid/seizure was evident through the incongruous mode and manner of the signature. Therefore, on the basis of such frivolous seizure, the appellant cannot be convicted. Further, identification of the appellant by PW-5, if there was any, had been unreliable as his presence could not be established.

- iv. Recovery from the 'room' of Kanailal Manna, without the proof of appellant's presence therein could not subjectively indict the appellant. Lastly it was the case of the prosecution that such raid was conducted pursuant to 'leading statement' of Sujoy Singh, but no such leading statement viz. statement under Section 161 of the Code of Criminal Procedure was ever exhibited.
- v. Except the currency notes, no other articles were sent for expert opinion. It is the case of the prosecution, that only four numbers of counterfeit 10 rupee note were seized from the room of Kanailal Manna. Therefore, even if it was presumed for the sake of argument that the appellant was present therein, he could not be booked in the present case.
- vi. Applicability of the offences under which the appellant was convicted: *Mens rea* and knowledge of the appellant as to such counterfeit notes are the very essential ingredients of the offences charged against. The prosecution miserably failed to prove the presence of any such ingredients in respect of the present appellant.

- vii. The ingredients of the Sections of the offences charged with and the evidence available on record were baseless and unfounded.
- viii. Section 489A of the Indian Penal Code was applicable to an accused whoever counterfeits, or knowingly performs any part of the process of counterfeiting any currency note or bank note. In the present case, there were as many as six witnesses examined who were alleged to be present at the Haridebpur house wherefrom, viz. PW-5, PW-6, PW-7, PW- 8, PW-9 and PW- 13. Amongst those witnesses, none had stated the appellant had any role in connection with the offence alleged or specified his categorical overt act. The most vital witness, as posed by the prosecution was PW-5 whose presence at the time of seizure was extremely doubtful, coupled with the fact that the appellant's *mala fide* criminal intention viz. *mens rea* had not been reflected anywhere in the entire evidence.
- ix. Section 489B of the Indian Penal Code dealt with an accused who 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. From the definition of the offence under the said Section, there was no evidence to that effect. It was reiterated that mere presence of signature on the seizure list could not confer any right upon the investigating agency to book the person for commission of any offence.

- x. Section 489C of the Indian Penal Code applied to a person who had in his possession any forged or any counterfeit currency note or bank note knowing or having reason to believe or same to be forged or counterfeit and intending to use the same as genuine or that it might be used as genuine. In this case, nothing had been recovered from the possession of the appellant nor any *mens rea*, even contended, on the part of the appellant and as such the appellant could not be found guilty under this Section.”
- xi. Section 489D of the Indian Penal Code related to whoever made or performed, any part of the process of making, or bought or sold or disposed of, or had in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it was intended to be used for forging or counterfeiting any currency note or bank note. Mere presence, if at all, at the place of seizure did not *ipso facto* draw a presumption that the appellant either took part in the commission of the offence, if any or that he had shared his mind in such alleged commission of the offences. The law required something more, one of which was the *mens rea*, particularly in an offence relating to counterfeiting of currency note. It was not an offence like hurt or culpable homicide where the presence of *mens rea* might not have been seen in the evidence, but the accused might be convicted on account of not being careful, exceeded his right to private defence or acted recklessly. Such analogy was totally unknown particularly in the offence relating to

counterfeit of notes. None of the alleged 38 items seized, were sent for forensic examination. Therefore, whether those articles could have been used in such offence had not been decided.”

- xii. Section 120B of the Indian Penal Code subscribed the primary ingredient of meeting of mind with *mens rea* and as such the Section provided "*whoever is a party to a criminal conspiracy to commit an offence*" meant thereby that there should be an exchange of mind towards commission of any offence. Unless any specific allegation and clinching evidence could be justified, the appellant could not be convicted for criminal conspiracy in as much as his *mens rea* in the crime had not been established rather, nowhere the same had been reflected in the entire prosecution case.
- xiii. Framing of charge in a criminal case was a very important to begin with the trial of an accused. If charges were framed under different heads, Court might convict an accused under any or no head of charges. Court should not be impulsive in convicting an accused only on the reason that charge had been framed.
- xiv. The instant appeal had been amongst other provision of law, convicted under Section 120B of the Indian Penal Code. The scheduled form 'charges with four heads' with regard to Section 120B Indian Penal Code stated as follows-

“I, Shri..... Sessions Judge hereby charge you as follows-that on the same day and same time at the Sixthly- That you, same place (meant 15.02.1994, at about 12:30 hours at Chalantika Lodge at Digha, as

referred in the First Charge) to do an illegal act namely after making a criminal conspiracy you stouter to prepare forged/counterfeit notes in pursuance of the said agreement to commit the above stated offences and thereby committed an offence punishable under Section 120B of the Indian Penal Code, and within the cognizance of this Court of Sessions.”

- xv. The plain meaning of the above charge under Section 120B IPC as formulated was to the effect that the appellant had been involved in the wrongful act on the date, time and place above noted in pursuance of the said agreement to commit the above stated offences.
8. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal shall be dismissed.
9. A circumspection of evidence of the prosecution witnesses reveals as follows:-
 - i) PW-1 deposed he was an employee of “Chalantika” Lodge at Digha. He had stated in his evidence on 15.02.94 as he was working in the said Lodge owned by Ramani Kanta Maity, one Sujoy Singh came to hire one room of that Lodge. Sujoy Singh handed over one note of hundred rupees to the owner of the said Lodge and the owner suspected the same to be forged. He had stated that Ramani Kanta Maity called him and others. After seeing the said one hundred rupees note, PW-1 and others stated to Ramani Kanta Maity that the said note was counterfeit. Thereafter, the owner of the said Lodge told

Sujoy Singh to replace it. Sujoy Singh tried to escape. PW-1 and Netai Sahoo intercepted him. Ramani Kanta Maity informed the incident to Digha P.S. over phone. Police recovered 9 notes of hundred rupees and on interrogation Sujoy Singh stated the counterfeit notes were printed in Calcutta. Sujoy Singh also stated to police that one Kanailal Manna @ Kanai Manna and other 2 persons were involved in printing counterfeit notes. A seizure list, which was marked as Exbt.-1/1 comprised of nine notes and contained an envelope of hundred rupees notes, marked as Mat. Exbt.-I Series and Mat. Exbt.-II respectively.

- ii) PW-2 deposed to be the owner of “Chalantika” Lodge at Digha. He recounted on 15.02.1994 at about 12:00/12:30 hours one Sujoy Singh came to his Lodge to hire one room and he gave one hundred rupee note to him. Being suspicious, he called two staff who also suspected the said note to be forged. Sujoy Singh tried to flee. Netai Sahoo and PW-1 caught hold of Sujoy Singh and took him to the lodge. Thereafter, police arrived and searched the accused Sujoy Singh and thereafter, 9 one-hundred-rupee notes were recovered from Sujoy Singh. Police interrogated Sujoy Singh who disclosed other persons were also engaged in printing counterfeit notes in Calcutta.

PW-2 also deposed in his presence, the police prepared the seizure list and he signed on the same which was marked as Exbt.-1/2. The

counterfeit notes recovered from the possession of Sujoy Singh which were marked as Mat. Exbt.-I Series.

iii) PW-3 deposed the complaint was written by him according to the instruction of PW-2 within the premises of "Chalantika Lodge". He deposed to have seen one Sujoy Singh surrounded by the public who informed the Police Officer of one factory for printing counterfeit notes was in Calcutta. On enquiry, Sujoy Singh disclosed the names of Kanailal Manna @ Kanai Manna, Pranab Roy and Sarat Kumar Dey to have been engaged in printing the counterfeit notes in Calcutta.

iv) PW-4 corroborated to the evidence of PW-1, PW-2 and PW-3.

v) PW-5 deposed to be the owner of the house in which Kanailal Manna @ Kanai Manna resided as a tenant in Calcutta. He had stated the alamats (38 items) to have been recovered from his house from the 2nd floor of that building. He disclosed on 17.02.1994 at about 02:00/02:30 a.m., at night O.C. Digha P.S., along with other police personnel reached his house at the instance of one Sanjoy Singh. Two other persons residing with Kanailal Manna @ Kanai Manna, had been arrested. Police arrested the appellant and the alamats were taken to Thakurpukur P.S., Calcutta.

PW-5 had categorically stated from the rented room of Kanailal Manna @ Kanai Manna, the said alamats were recovered by the police. The materials and instruments for manufacturing counterfeit notes were also identified by the PW-5

- vi) PW-6 deposed to have signed the seizure list dated 17.02.94 which contained 38 items, marked as Exbt.-3/2. He also disclosed the police to have arrested probably 3 persons and he could not identify the said persons as he was drowsy.
- vii) PW-7 deposed on 15.02.1994, to have been posted at Digha P.S. as S.I. of police. He filled up the formal F.I.R., which was marked as Exbt.-3. He had deposed as a duty officer he noted the then O.C., of Digha P.S. seizing 9 one hundred rupees counterfeit notes and arresting one Sujoy Singh. PW-7 testified that the O.C. of Digha P.S. had taken 4 ten rupees notes with him which were marked as Mat. Exbt.II to II(c) series.
- viii) PW-8 deposed to have been a tenant under Tulsi Charan Das at Haridebpur Nonamath under P.S. Thakurpukur, Calcutta. On 17.02.1994 at about 02:30/03:00 a.m., at night he woke up from sleep due to whisper of certain persons. He had disclosed one Kanailal Manna @ Kanai Manna was sleeping on the 2nd floor. PW-8 also stated he knew Pranab Roy by face but he did not know his name. Police personnel went to the room of the accused persons and seized ten rupee notes and one machine and other parts of the said machine, which were marked as Exbt.-3/2 & Exbt.-3/3.
- ix) PW-9 deposed on 15.02.94 he was posted at Digha P.S. as O.C. and received information from PW-2 over phone. Thereafter, he registered one G.D. and went to "Chalantika Lodge" along with his Home Guard No.470093, Nagen Jana. After arriving at the place of

occurrence, he interrogated Sujoy Singh who was detained by PW-2 and others. Sujoy Singh disclosed his address to him. The other persons who were present on the spot stated to him that Sujoy Singh handed over one Rs.100/- rupees counterfeit note to PW-2 and they detained Sujoy Singh. He searched Sujoy Singh and after search, nine hundred-rupee counterfeit notes were recovered from him. He prepared the seizure list in presence of two witnesses i.e. PW-1 and PW-2. He further disclosed after receiving the written complaint he sent the same to P.S. through home guard Nagen Jana for initiating the specific case. Jagat Jiban Goswami the then O.C. was in-charge of P.S.

x) PW-9 also stated to have investigated the case. During investigation, he prayed for police remand of the accused Sujoy Singh. The Ld. S.D.J.M., Contai allowed police remand for 5 days and thereafter, the accused Sujoy Singh was taken to the house of Tulsi Charan Das at Haridebpur, Calcutta where the machine for preparing counterfeit notes was seized. PW-9 further had stated Sujoy Singh told them Kanailal Manna @ Kanai Manna was their ring lead and he manufactured the counterfeit notes. PW-9 identified the accused persons namely Kanailal Mann @ Kanai Manna, Pranab Roy and Sarat Kumar Dey. PW-9 also deposed he seized 4 ten rupees notes from the room where the accused persons were staying.

xi) PW-10 deposed on 15.02.1994 he was posted as S.I. of police at Tamluk as D.D.I. He stated on 06.06.94, he assumed the charge and

received got the counterfeit notes, seizure list and other articles. PW-10 had sent the counterfeit notes to the General Manager, Currency Note Press to ascertain the veracity that the said notes were counterfeit. On 22.04.1996, he made over charge to D.D.I., Tamluk on his transfer.

xii) PW-11 deposed he was the S.I. of police who took over charge of the investigation on 24.04.96. He found the case pending for expert report and sent a letter to Currency Note Press, Nasik Road, Maharashtra on 12.06.96 for report in respect of the alleged counterfeit notes. He also sent one letter to Bank Notes Press, Dewas, Madhya Pradesh to obtain the report as regards alleged counterfeit notes on the same date. The said two organizations sent report to Court and from Court he collected the copy of the said reports and thereafter submitted charge-sheet against the accused persons namely Sujoy Kumar Singh, Kanailal Manna @ Kanai Manna, Pranab Roy and Sarat Kumar Dey.

xiii) PW-12 deposed he was the Home Guard. On 15.02.94 he was posted at Digha P.S. He went to Chalandika Lodge with the O.C. Digha P.S. and as per direction of O.C. Digha P.S. he handed over the F.I.R. He was interrogated by the I.O.

xiv) PW-13 deposed on 16/17.02.94 he was posted at Thakurpukur P.S. as S.I. of police and on that day he was on night duty. On 16.02.94 at about 12:00 at night certain officers from Digha P.S. went to Thakurpukur P.S. with one accused person. He disclosed being

informed by the Police Officers of Digha P.S. of one boy being arrested on the charge of manufacturing counterfeit notes and the assistance of Thakurpukur P.S. was required to unravel the truth. Accordingly, PW-13 assisted Digha Police in the investigation. PW-13 along with other Police Officers of Digha P.S. surrounded the house where the accused persons were residing. They narrated the fact to the local people and went up to the 2nd floor of the house along with the accused person Sujoy Singh. Firstly, they searched themselves according to rules and thereafter, they asked the accused person Sujoy Singh to call the persons who were residing in the said room. The accused person Sujoy Singh knocked the door of the room and called the persons who were residing in the said room. The door was opened and PW-13 and others entered the room and found 3 persons along with counterfeit notes and instruments. PW-13 stated he signed both sides of the seizure list which were marked Exbt.-3 and Exbt.-3/2 series.

10. The Hon'ble Supreme Court in the case of **UMASHANKER vs. STATE OF CHHATTISGARH**¹, has observed 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

¹ (2001)9 SCC 642

of the commercial 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. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of PW 2, PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, “presumed” such a mens rea. On the date of the incident the appellant was said to be an eighteen-year-old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C IPC and acquit him of the said charges (see: *M. Mammutti v. State of Karnataka*).”

11. The Hon'ble Supreme Court in the case of **M. MAMMUTTI vs. STATE OF KARNATAKA**², has observed the following: -

“...There is no evidence of any witness to show that the counterfeit notes were of such a nature or description that a mere look at them would convince any person of average intelligence that it was a counterfeit note. Nor was any such question put to the accused under Section 342 CrPC. The High Court has affirmed the judgment of the learned Sessions Judge on the ground that in his statement under Section 342 made before the committing Court the accused has made a statement different from that made in the Sessions Court and therefore the appellant had reason to believe that notes in his possession were counterfeit notes. Here the High Court is not correct because even in the statement before the committing Court in Ex. P-13 which appears at p. 154 of the paper-book, the appellant has stuck to the same statement which he made before the Sessions Court that he had sold three quintals of tamarind fruits and from the purchaser he received a sum of Rs 390 in two rupee notes. We are not able to find any inconsistency between the answer given by the accused in his statement under Section 342 before the Sessions Judge and that before the Committing Court specially on the point that the appellant had the knowledge or reason to believe that the notes were counterfeit.If the notes were of such a nature that mere look at them would convince anybody that it was counterfeit such a presumption could reasonably be drawn. But the difficulty is that the prosecution has not put any specific question to the appellant in order to find out whether the accused knew that the notes were of such a nature. No such evidence has been led by the prosecution to prove the nature of the notes also. In these circumstances, it is impossible for us to sustain the conviction of the appellant. For these reasons, therefore, the appeal is allowed,

²(1979) 4 SCC 723

conviction and sentences passed on the appellant are set aside, and the appellant is acquitted of the charges framed against him.”

12. The Hon’ble Supreme Court, in the case of **KALI RAM vs. STATE OF HIMACHAL PRADESH**³, has observed the following: -

“17. The last piece of evidence upon which the High Court has maintained the conviction of the accused consists of the confession of the accused contained in letter PEEE sent by Sahi Ram (PW 4) to the Station House Officer Renuka, The first question which arises for consideration in respect of letter PEEE is whether it is admissible in evidence. Section 162 of the Code of Criminal Procedure reads as under:

“162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

³(1973) 2 SCC 808

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Section 32, clause (1) of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act.”

Bare perusal of the provision reproduced above makes it plain that the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1), or for the purposes mentioned in sub-section (2) with which we are not concerned in the present case. The prohibition contained in the Section relates to all statements made during the course of an investigation. Letter PEEE which was addressed by Sahi Ram to Station House Officer was in the nature of narration of what, according to Sahi Ram, he had been told by the accused. Such a letter, in our opinion, would constitute statement for the purpose of Section 162 of the Code of Criminal Procedure. The prohibition relating to the use of a statement made to a police officer during the course of an investigation cannot be set at naught by the police officer not himself recording the statement of a person but having it in the form of a communication addressed by the person concerned to the police officer. If a statement made by a person to a police officer in the course of an investigation is inadmissible, except for the purposes mentioned in Section 162, the same would be true of a letter containing narration of facts addressed by a person to a police officer during the course of an investigation. It is not permissible to circumvent the prohibition contained in Section 162 by the investigating officer obtaining a written statement of a person instead of the investigating officer himself recording that statement.

.....

19. *Reference has been made by Mr Khanna to the case of Sita Ram v. State of Uttar Pradesh wherein it was held by majority that a letter addressed by the accused to a Sub-Inspector of police containing*

his confession was not inadmissible under Section 25 of the Indian Evidence Act. There is nothing in the aforesaid judgment to show that the letter in question had been written during the course of the investigation of the case. As such, this Court in that case did not consider the question as to whether the letter in question was inadmissible under Section 162 of the Code of Criminal Procedure. As such, the State cannot derive much help from that authority.

.....

21. *Although letter PEEE has been held by us to be inadmissible, we would still have to deal with the oral deposition of Sahi Ram that the accused had made a confession to him on November 28, 1968. The version of the accused in this respect is that Sahi Ram is inimical to him as he had a dispute with him because of some misappropriation committed by Sahi Ram in connection with the smuggling of opium. According to Sahi Ram, he happened to meet the accused on November 28, 1968 when the accused made a confession to him about his having committed the murder of Dhianu and Nanti. The story about the gratuitous confession made by the accused to Sahi Ram, in our opinion, hardly inspires confidence. It is not the case of the prosecution that the police was after the accused and that the accused in that connection went to Sahi Ram to seek his help and made a confession to him. Sahi Ram is the son of a village Lambardar. It has been argued on behalf of the accused appellant that the police, with a view to see that the crime relating to the murder of Dhianu and Nanti might not remain untraced, utilised the services of Sahi Ram for bringing in the evidence regarding the extra judicial confession of the accused. Looking to all the circumstances we find this contention to be not devoid of all force. Mr Khanna submits that both the trial court and the High Court have accepted the evidence of Sahi Ram and we should not interfere with the concurrent finding in this respect. We find it difficult to accede to this submission because we find that both the trial court as well as the*

High Court were influenced by the fact that Exhibit PEEE was admissible in evidence. As letter PEEE has been held by us to be not admissible and as we find that the statement of Sahi Ram about the extra judicial confession is otherwise also lacking in credence, there should not arise any difficulty in this Court disagreeing with the above finding of the trial court and the High Court.

.....

23. *Observations in a recent decision of this Court, Shivaji Sahabrao Bobade v. State of Maharashtra to which reference has been made during arguments were not intended to make a departure from the rule of the presumption of innocence of the accused and his entitlement to the benefit of reasonable doubt in criminal cases. One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.*

24. *Leaving aside the cases of statutory presumptions, the onus is upon the prosecution to prove the different ingredients of the offence and unless it discharges that onus, the prosecution cannot succeed. The Court may, of course, presume, as mentioned in Section 114 of the Indian Evidence Act, the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The illustrations mentioned in that Section, though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in similar circumstances can be made under the provisions of the Section itself. Whether or not a presumption can be drawn under the Section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behaviour is so complex that room must be left for play in the joints. It is not possible to formulate a series of exact propositions and confine human behaviour within strait-jackets. The raw material here is far too complex to be susceptible of precise and exact propositions for exactness here is a fake.*

25. *Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a*

finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

26. *It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. The Courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the*

Courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, in our opinion, is more apparent than real. As observed on p. 3 of the book entitled The Accused by JA Coutts 1966 Edition, "When once it is realised, however, that the public interest is limited to the conviction, not of the guilty, but of those proved guilty, so that the function of the prosecutor is limited to securing the conviction only of those who can legitimately be proved guilty, the clash of interest is seen to operate only within a very narrow limit, namely, where the evidence is such that the guilt of the accused should be established. In the case of an accused who is innocent, or whose guilt cannot be proved, the public interest and the interest of the accused alike require an acquittal."

.....

28. *The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of Shivaji Sahabrao as is clear from the following observations:*

"Certainly it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distinction between "may be" and "must be" is long and divides vague conjectures from sure conclusions."

13. The Hon'ble Supreme Court in the case of **SHARAD BIRDHICHAND SARDA vs. STATE OF MAHARASHTRA**⁴, has observed the following: -

"143. *Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court viz. Circumstances 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As*

⁴(1984) 4 SCC 116

these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of Hate Singh Bhagat Singh v. State of Madhya Pradesh this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In Shamu Balu Chaugule v. State of Maharashtra this Court held thus:

“The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.”

144. *To the same effect is another decision of this Court in Harijan Megha Jesha v. State of Gujarat where the following observations were made:*

“In the first place, he stated that on the personal search of the appellant a chedi was found which was blood stained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement under Section 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant....”

145. *It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the*

appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.

.....

151. *It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.*

152. *Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh and Ramgopal v. State of Maharashtra. It may be useful to extract what Mahajan, J. has laid down in Hanumant case:*

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused.

Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made:

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *King v. Horry* [1952 NZLR 111] thus:

“Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.”

156. Lord Goddard slightly modified the expression “morally certain” by “such circumstances as render the commission of the crime certain”.

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. *Horry case* [1952 NZLR 111] was approved by this Court in *Anant Chintaman Lagu v. State of Bombay* as also the principles enunciated by this Court in *Hanumant case* have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — *Tufail case* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] , *Ramgopal case* [(1972) 4 SCC 625 : AIR 1972 SC

656] , *Chandrakant Nyalchand Seth v. State of Bombay* [Criminal Appeal No 120 of 1957, decided on February 19, 1958] , *Dharambir Singh v. State of Punjab* [Criminal Appeal No 98 of 1958, decided on November 4, 1958 printed on green papers in bound volumes]. There are a number of other cases where although *Hanumant* case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed v. Delhi Administration* [(1974) 3 SCC 668, 670 : 1974 SCC (Cri) 198, 200 : (1974) 2 SCR 694, 696] , *Mohan Lal Pangasa v. State of U.P.* [(1974) 4 SCC 607, 609 : 1974 SCC (Cri) 643, 645 : AIR 1974 SC 1144, 1146] , *Shankarlal Gyarasilal Dixit v. State of Maharashtra* [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] and *M.G. Agarwal v. State of Maharashtra* [AIR 1963 SC 200 : (1963) 2 SCR 405, 419 : (1963) 1 Cri LJ 235] — a five-Judge Bench decision.

158. *It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:*

“But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation,. . . such absence of explanation or false explanation would itself be an additional link which completes the chain.”

159. *It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:*

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,*
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and*
- (3) the circumstance is in proximity to the time and situation.*

160. *If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus:*

“Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additionalcircumstances, if other circumstances point unfailingly to the guilt of the accused.”

161. *This Court, therefore, has in no way departed from the five conditions laid down in Hanumant case. Unfortunately, however, the High Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. Where the prosecution is unable to prove any of*

the essential principles laid down in Hanumant case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General.

162. *Moreover, in M.G. Agarwal case, this Court while reiterating the principles enunciated in Hanumant case observed thus:*

“If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt.”

In Shankarlal, this Court reiterated the same view thus:

“Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment.”

163. *We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh this Court made the following observations*

“Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

14. The offences alleged pertain to “counterfeiting”, possession and circulation of forged currency notes which creates instability of the national currency and the economic viability of the State. Consequently, the law insists upon a strict and an exact standard of proof requiring the prosecution to establish ingredient of the alleged offences with clarity, credibility and legal certainty.
15. The cardinal principle of criminal jurisdiction endows that the liberty of an individual cannot be imperiled on the basis of conjectures, surmises or suspicion. However great the suspicion may appear, it cannot assume the character of legal proof. The prosecution must provide on the strength of its own evidence and demonstrate, beyond reasonable doubt, the appellant not only perform the physical acts attributed to him, but also possess the requisite mental element namely knowledge or reason to believe that the currency notes in question, have been counterfeited.
16. The offences under Section 489B and 489C of the Indian Penal Code in particular required proof that the appellant attempted to use or possessed forged currency, knowing or having reason to believe the same to be counterfeit. Similarly, offences under Section 489A and 489D of the Indian Penal Code requires cogent proof that the appellant was involved in the manufacture of counterfeit currency or had possession of instruments intended for such counterfeiting. These ingredients constitute the very foundation of criminal liability under the aforesaid provisions.
17. The genesis of the prosecution case lies in the alleged incident which occurred on 15th February 1994 at Chalandika lodge at Digba. PW1 and employee of the said lodge deposed the appellant Sujoy Singh arrived at the

lodge, seeking accommodation and handed over a currency note of Rs.100/- to the proprietor. According to the witness, the proprietor entertained a suspicion regarding the authenticity of the note and called the staff members including PW1, who allegedly shared the same suspicion. It was further stated that when the appellant was asked to replace the note, he attempted to flee, whereupon he was apprehended by the staff and thereafter handed over to the police.

18. The testimony of PW-1, when examined established no more than the circumstances in which the appellant came to be detained. The witness stated of a suspicion entertained by the lodge owner and the staff members. Yet the witness did not explain the basis upon which such suspicion arose, nor did he demonstrate how the counterfeit nature of the currency note could be discerned at that moment. More importantly, the witness did not bring on record any circumstance, which would indicate with compelling clarity that the appellant himself possessed knowledge of the counterfeit character of the currency note.

19. The prosecution relied upon the testimony of PW-2, the proprietor of the lodge. His deposition broadly reiterated the account of PW-1. PW-2 stated upon receiving the note, he suspected it to be counterfeit and therefore summoned his staff members who concurred with his suspicion. According to him, the appellant attempted to flee but was apprehended before the police arrived.

20. Even if the testimony of PW-2 is accepted in its entirety, it merely established that the witnesses inculcated doubts regarding the genuineness

of the currency note. Suspicion raised by a witness, however, genuine, it may appear, it cannot be equated with proof of the appellant's knowledge. The prosecution had not placed before the Court any circumstance which would reveal the appellant tendered the currency note with the awareness that it was forged. The law required such knowledge must emerge from clear and convincing evidence; it could not be inferred merely because the witnesses suspected the note to be counterfeit.

21. The evidence of PW-3, who stated that he drafted the written complaint on the instruction of PW2 within the premises of the knowledge was essentially formal. His testimony did not illuminate the circumstances surrounding the alleged offence, nor did it contribute to establish the culpability of the appellant.
22. Similarly, PW-4 corroborated the evidence of the earlier witnesses. However, such corroboration remained only peripheral and did not provide any independent material capable of establishing the mental element required for commission of the offences.
23. The prosecution had also referred to certain statements allegedly recounted by the appellant during police interrogation to the effect that counterfeit notes were printed in Calcutta and that certain persons, namely Kanai, Manna, Alias Kanai Manna, Pranab Roy and Sarat Kumar Dey were involved in the printing operation. However, such statements before the police officers are rendered inadmissible by the express provisions of Section 25 and 26 of the Indian Evidence Act, save and except to the limited extent permitted

under Section 27 of the said Act, where a discovery of fact was made in consequence of such information.

24. In the present case, the prosecution had not convincingly demonstrated any material discovery was conducted solely on the basis of the alleged disclosure statements. Consequently, the reliance placed upon such statements cannot legally fortify the prosecution case.
25. The testimony of PW-5, who claimed to be the landlord of the premises where Manna resided as a tenant in Calcutta referred to the alleged recovery of certain materials and instruments from the said premises. While the witness stated that the police recovered several articles from a room on the second floor of his house, the evidence did not establish that the present appellant exercised control over such premises, nor participated in the alleged manufacturing activity. The prosecution had not demonstrated that the appellant was seen using the alleged instruments or that the seized materials were recovered from his possession.
26. In absence of such evidence, the prosecution had failed to satisfy the requirements of Section 489A of the Indian Penal Code which penalized the act of counterfeiting currency and Section 489D of the Indian Penal Code, which concerned possession of instruments intended for such counterfeiting.
27. The evidence of PW-6 and PW-7, who recounted the preparation of seizure list and other investigative formalities did not materially advance the prosecution case. Their testimony merely established procedural aspects of the investigation and did not prove the essential ingredients of the offences alleged.

28. Considerable reliance had been placed upon the testimony of PW-9, the investigating officer, who deposed nine currency notes of Rs.100/- each to have been recovered from the possession of the co-accused. Yet, even if the recovery is accepted, the law does not permit the court to presume guilt merely from possession. For the offence under section 489C of the Indian Penal Code, the prosecution must establish that the appellant was in conscious possession of counterfeit currency with knowledge or reason to believe that the same was forged. Moreover it was intended to be utilized for wrongful gain. The prosecution evidence remained conspicuously silent on this vital aspect. No circumstance had been brought on record, which would demonstrate how the appellant could be attributed with knowledge that the currency notes were counterfeit.
29. The remaining witnesses, PW-10, PW-11, PW-12 and PW-13 have largely deposed the continuation of the investigation, forwarding of documents and assistance during search operations. Their testimony does not establish any direct nexus between the appellant and the manufacturer or circulation of counterfeit currency.
30. When the entire evidence is considered cumulatively, it becomes apparent that the prosecution case suffers on substantial gap and evidentiary infirmities. The chain of circumstances sought to be established by the prosecution did not form a coherent and continuous sequence pointing inevitably towards the guilt of the appellant. Instead, the evidence exposes areas of uncertainty which cannot be ignored.

31. In the present case, the prosecution had failed to prove that the appellant was involved in the manufacture of counterfeit currency to attract Section 489A of the Indian Penal Code. It has also failed to demonstrate that he knowingly used or attempted to use forged currency as genuine, which is the essential ingredient of Section 489B of the Indian Penal Code. The evidence did not establish that the appellant was in conscious possession of counterfeit currency with knowledge of its falsity as required under Section 489C of the Indian Penal Code. Likewise, the prosecution has not proved that the appellant possessed instrument or materials intended for the purpose of forging currency which is necessary for invoking section 489D of the IPC.
32. In cases involving counterfeit currency, the expert opinion regarding the nature of the note constitutes a crucial foundation of the prosecution case and such evidence must be proved with clarity and precision. The prosecution has failed to produce any material which demonstrates how such knowledge can be attributed to the appellant; the mere presence at the spot of recovery of currency notes without proof of knowledge cannot sustain a conviction under the opposite provision of section 489C of the Indian Penal Code.
33. The prosecution evidence when tested on the anvil of judicial scrutiny falls short of the standard required to sustain a conviction. The defence of the prosecution case appears to rest upon suspicion and inference rather upon the firm foundation of legally admissible proof. It is a settled principle as to where the evidence portrays reasonable doubt; the appellant must receive

the benefit of the same. Presumption of innocence continues to operate in favour of the appellant until displaced by reliable and unimpeachable evidence.

34. The prosecution failed to specify direct overt act of the appellant to be indicted. The appellant's face was identified without being named which created wreckage in the prosecution case, minimalising substantial, concrete and regular involvement in the offences charged with.
35. In case of doubt and suspicion, the view which is in favour of the appellant is generally accepted. The appellant's *mens rea* could not be proved by the prosecution in furtherance of his ulterior motive in constituting the ingredients comprising the charged offences. The circumstantial evidence of mere presence at the time of recovery of the seized articles devoid of proof of active participation cannot be relied upon.
36. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 100 of 2003 is allowed.
37. Accordingly, the instant appeal being CRA 100 of 2003 is disposed of.
38. There is no order as to costs.
39. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
40. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)