

Before Kuldip Singh, J
STATE OF PUNJAB — Appellant

versus

SUKHDEV SINGH @ SUKHA — Respondent

CRA No. AS-43 of 2015

March 11, 2015

Indian Penal Code, 1860 — Ss. 489A, 489B, 489C & 420 — Code of Criminal Procedure, 1973 — S. 313 — Indian Evidence Act, 1872 — S. 106 — Fake currency — Search of accused resulted in recovery of four bundles of fake currency notes of denomination of Rs. 500, wrapped in polythene bag — Accused was charge-sheeted under section 489C IPC, to which he pleaded not guilty on main plea that accused had no knowledge that these were fake currency notes — Held, that — Accused was found in possession of huge number of high denomination fake currency notes — It was well within knowledge of accused from where he obtained those fake currency notes; hence, knowledge of accused that currency notes are forged was to be presumed as those notes were not meant to be thrown away and were to be used as genuine — Respondent stood convicted under section 489-C IPC.

Held that, there was no requirement to join the independent witness. The recovery was from the bank of the drain where no independent witness could be expected. There is also no requirement that the DSP must be called in such like cases.

(Para 14)

Further held that under Section 106 of the Indian Evidence Act, 1872, when the facts are especially within the knowledge of any person, the burden of proving the said fact is upon him. In this case, the accused was found in possession of 399 fake currency notes of denomination of Rs. 500. The notes were in four bundles. It was well within the knowledge of the accused that from where he obtained those fake currency notes.

(Para 16)

Held, that in this case, the knowledge of the accused that the currency notes are forged or counterfeit is to be presumed. Obviously, the notes were not meant to be thrown away and were to be used as

genuine. Therefore, the ingredients of Section 489-C, IPC are fulfilled in the present case.

(Para 17)

Further held that the witnesses have supported the prosecution case and the recovery has been proved beyond all reasonable doubts. The reasoning given by the trial Court is not acceptable. It is based on surmises, conjectures and unacceptable reasoning.

(Para 19)

Nikhil K. Chopra, Deputy Advocate General, Punjab *for the appellant-State*.

Divya Sharma, Advocate (Legal Aid Counsel) for respondent.

KULDIP SINGH, J.

(1) The State of Punjab has filed this appeal against the judgment dated 6.5.2013, passed by the learned Additional Sessions Judge, Tarn Taran, vide which accused Sukhdev Singh alias Sukha was acquitted of the offence punishable under Section 489-C of the Indian Penal Code (in short 'IPC').

(2) The brief prosecution story is that on 8.9.2010, SI Kamaljit Singh (Station House Officer) alongwith other police officials, while going from Police Station Khalra to village Narli, confronted the accused near the defence drain at about 5:30 PM. At that time, accused was coming on a motorcycle make Hero Honda Splender from the side of village Sidhwan on the *kachha* road. After inquiring about name and address of the person, his search was carried out, which resulted in the recovery of four bundles of fake currency notes of denomination of ₹500/-, wrapped in a polythene bag. The total number of fake currency notes of denomination of ₹500/ came to 399, which was found to be ₹1,99,500/-. The same were taken into possession. Rough site plan of place of recovery (Ex.P7) was prepared.

(3) On 27.10.2010, ASI Joginder Singh and HC Nishan Singh deposited the fake currency notes in Government Currency Notes Press, Nashik Road, Maharashtra, for analysis. After the receipt of the report from the Government Currency Notes Press, Nashik Road, Maharashtra, the challan under Sections 489-A, 489-B, 489-C and 420 IPC was presented.

(4) Accused was charge sheeted under Section 489-C IPC, to which he pleaded not guilty.

(5) To prove its case, prosecution examined ASI Joginder Singh (PW1), Inspector/IO Kamaljit Singh (PW2), Onkar Nath, Junior Assistant, DTO Office, Tarn Taran (PW3), Sanjeev Kumar Sood (PW4), HC Bakshish Singh, then MHC (PW5), Gur Lal Singh (PW6) and closed the prosecution evidence.

(6) When examined under Section 313 Cr.P.C., accused denied as incorrect the evidence led against him. He did not lead any evidence in defence.

(7) After hearing learned Additional Public Prosecutor for the State, learned counsel for the accused and going through the file, the learned Additional Sessions Judge, Tarn Taran, vide judgment dated 6.5.2013, acquitted the accused of the charge framed against him.

(8) I have heard learned Deputy Advocate General for the State, learned amicus-curiae (legal aid counsel) for the accused and have also carefully gone through the file.

(9) In this case, the alleged recovery was of 399 fake currency notes of ₹500/-. These notes were stated to have been recovered from a polythene bag carried by the accused. While acquitting the accused, the learned Additional Sessions Judge, Tarn Taran, has relied upon some discrepancies. ASI Joginder Singh (PW1) and Inspector/IO Kamaljit Singh (PW2) stated in their testimonies that the total number of fake currency was 199, though actually it was 399. It was further held that no independent witness was joined in the investigation. The Deputy Superintendent of Police was also not called to join the investigation. No question was put to the accused that from where he obtained those currency notes. It was further held that the prosecution could not prove that the accused was having knowledge or reason to disbelieve that such currency notes were forged or counterfeit.

Section 489-C IPC provides as under:-

“Section 489-C Possession of forged or counterfeit currency-notes or bank-notes.-Whoever has in his possession any forged or counter-feit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it ay be used as genuine, shall be punishad with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

(10) A perusal of report of the Government Currency Notes Press, Nashik Road, Maharashtra, (Ex.P10) shows that in the report though the size of the note was found to be same, but there were glaring dissimilarities regarding paper being not genuine, imitation of water marks, security thread and ink shade not matching. The numbering of the notes was also fake.

(11) Now, the question would arise whether the accused was having the knowledge that these are fake currency notes?

(12) The fact that the ink shade was not matching is itself a ground to doubt that the currency notes are not genuine. The currency notes were not only few, but were 399 in number. The discrepancy regarding the actual number of notes, as stated by the witnesses and as noticed by the trial Court, is to be ignored, since notes were counted and total number of 399 notes were exhibited. The error in telling the total number of notes may be due to slip of tongue or may be due to clerical error in typing while recording the evidence. However, the fact remains that 399 fake currency notes of ₹500 denomination were recovered from the accused.

(13) Now, further question would arise whether any independent witness was required to be joined?

(14) I am of the view that in the present case, there was no requirement to join the independent witness. The recovery was from the bank of the drain where no independent witness could be expected. There is also no requirement that the DSP must be called in such like cases.

(15) In order to support the prosecution case, the prosecution examined Inspector Kamaljit Singh, the then SHO (PW2) as well as ASI Joginder Singh (PW1). Both of them stated that accused was apprehended from the defence drain on the *kachha* road, while he was riding Hero Honda Splender motorcycle. They also proved that fake currency notes of denomination of ₹500/- were recovered. Though, they stated that 199 notes of ₹500/- were recovered, but they stated that these were put in a *dibba* plastic and were sealed. During the examination of Inspector Kamaljit Singh (PW2), on the request of the learned Additional Public Prosecutor for the State, the parcel of the fake currency notes was opened in the Court and it was found that there were 399 fake Indian currency notes, which were exhibited as Ex.MO1 to MO399. In this way, the recovery of fake currency notes from the accused is proved.

(16) Under Section 106 of the Indian Evidence Act, 1872, when the facts are especially within the knowledge of any person, the burden of proving the said fact is upon him. In this case, the accused was found in possession of 399 fake currency notes of denomination of ₹500/-The notes were in four bundles. It was well within the knowledge of the accused that from where he obtained those fake currency notes.

(17) I am of the view that in this case, the knowledge of the accused that the currency notes are forged or counterfeit is to be presumed. Obviously, the notes were not meant to be thrown away and were to be used as genuine. Therefore, the ingredients of Section 489-C IPC are fulfilled in the present case.

(18) Learned counsel for the appellant-State has relied upon the authority of the Hon'ble Supreme Court *in K. Hashim versus State of Tamil Nadu*¹, as well as the authority of this Court in *Ibrahim Sattar Ganchi versus Inspector of Customs*,².

(19) In the present case, the witnesses have supported the prosecution case and the recovery has been proved beyond all reasonable doubts. The reasoning given by the trial Court is not acceptable. It is based on surmises, conjectures and unacceptable reasoning.

(20) As a result of the foregoing discussion, the present appeal is allowed. The impugned judgment dated 6.5.2013, passed by the learned Additional Sessions Judge, Tarn Taran, is set aside and accused/respondent stands convicted under Section 489-C IPC. Keeping in view the nature of recovery, the accused is sentenced to undergo rigorous imprisonment for three years and fine of ₹5,000/-, in default thereof, to further undergo rigorous imprisonment for six months. Accused/respondent is ordered to be arrested immediately and committed to jail to undergo the remaining part of the sentence.

(21) Accordingly, the present appeal is allowed.

M. Jain

¹ 2004 (4) RCR (Criminal) 982

² 2010 (4) RCR (Criminal) 329