

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No. 44/2015

U/s. 489 (B)/489 (C) IPC

G.R. No.2324/2012

State of Assam

- Vs -

1. Hakim Ali Sarkar

2. Soleman Ali

Committing Magistrate : Sri S. Datta, Chief Judicial Magistrate, Dhubri.

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.
Sri Anam Uddin Ahmed, Advocate for the defence.

Date of Evidence : 08-06-2015, 02-07-2015, 28-07-2015, 02-09-2015, 07-10-2015,
22-12-2015, 26-02-2016 & 15-06-2016

Argument Heard : 19-07-2016

Date of Judgment : 02-08-2016

J U D G M E N T

The prosecution case in brief is that SI (G) Ashim Saikia, DC (G) Field Team, BSF, Panbari had lodged a FIR at Gauripur Police Station to the effect that on specific information as to FICN racket being run in general area near Gauripur bus stand, a joint operation was carried out by team comprising personnel of DC (G), BSF, Panbari and OC, Gauripur Police Station at 1400 Hrs. and nabbed accused Hakim Ali Sarkar and Soleman Ali. Rs.50,000/- in 100 units of Rs.500/- denomination Indian currency notes suspected to be fake had been recovered from Hakim Ali Sarkar. During preliminary questioning both suspects confessed to their involvement in FICN trade through one Jaffar Ali.

2. On the basis of FIR, a case was registered by the OC, Gauripur P.S. U/s.489 (B)/489 (C) of IPC against accused persons namely Hakim Ali Sarkar and Suleman Ali. After investigation charge sheet was filed U/s.489 (B)/489 (C) of IPC against above named accused persons.

3. Accused persons appeared before the Court. Charges U/s.489 (B)/489 (C) of IPC had been framed against the above accused persons. Charges had been read over, explained and interpreted to above accused persons to which accused persons pleaded not guilty and claimed to be tried.

4. Prosecution had examined as many as 14 (fourteen) P.Ws and accused persons were examined u/s.313 of Cr.PC on the circumstances coming up against them in the evidence of P.Ws. The accused persons pleaded total denial and declined to adduce any evidence in their defence.

Heard learned advocates.

5. **Points for determination:**

1. *Whether on 24-12-2012 accused persons trafficked in forged currency notes knowing the same to be forged?*
2. *Whether on the same day, time and place accused persons were found in possession of forged currency notes knowing the same to be forged and intending to use them as genuine?*

DECISIONS AND REASONS THEREOF

6. PW-1, S.I. Ashim Saikia's evidence reveals that on 24-12-2012 in the morning he had learnt from confidential source that at Hotel Pushpa, Gauripur that deal in fake currency notes was in progress. Sri A. Senthil Kumar Deputy Commandant (G), BSF issued command to a team comprising some BSF personnel including PW-1 for the said operation. There was also O.C., Gauripur Police Station with PW-1 in the team. They had arrived at hotel Pushpa and arrested those suspected persons. PW-1 identified both Hakim Ali and Suleman Ali to be those persons they had arrested. During search on the spot PW-1 had found 100 numbers of Rs.500 denomination FICN from Hakim Ali. They had also found Rs.615/- in Indian currency notes from Soleman Ali and Rs.12,537/-in Indian currency notes from Hakim Ali. Fake notes had been seized on the spot and those notes, alongwith seizure list and accused persons were handed over to Gauripur Police Station. PW-1 had lodged the FIR. Ext-1 is the FIR bearing his signature ext-1 (1). Ext-2 is the seizure list bearing his signature, ext-2 (1).

In the cross-examination PW-1 expressed ignorance as to the numbers of those seized fake currency notes. PW-1 admitted to being posted at Panbari at the relevant point of time. PW-1 further admitted to taking up the search operation without any written instruction from A. Senthil Kumar. PW-1 stated the time of their arrival at Hotel Pushpa to be around 2 p.m. According to PW-1 accused persons were inside a room at hotel Pushpa. PW-1 admitted to have prepared ext-2 in the BSF camp. PW-1 admitted not having shown any independent person as witness. Before search, PW-1 had not got body of the accused persons searched by some other person.

7. PW-2, ASI Bhajan Ch. Das On 24-12-2012 at around 1-30 p.m. had been informed by D.C (G), A. Senthil Kumar who issued command to a team for the operation comprising some BSF persons and there was also police personal from Gauripur P.S. At Hotel Pushpa two persons, Hakim Ali and Suleman Ali had been arrested. During search on their persons 100 numbers of Rs.500 denomination FICN from Hakim Ali had been recovered along with Rs.615/- and Rs.12,537/- in ICN. Fake notes had been seized on the spot and those notes along with seizure list and accused persons were handed over to Gauripur Police Station.

In cross-examination he admitted not remembering the numbers of those fake currency notes seized from the accused persons. PW-2 reiterated having arrived at hotel Pushpa at around 2 p.m. PW-2 admitted to have prepared ext-2 in the BSF camp. They had not shown any independent person as witness.

8. PW-3 ASI Sajal Kr. Sarkar ASI (G) Regiment No.85790 1189 had also accompanied PW-1 and PW-2 on 20-04-2012 to hotel Pushpa, Gauripur. PW-3 had received Specific information with regard to deal in fake currency notes being in progress at Hotel Pushpa, Gauripur. They had nabbed three persons, Soleman Ali, Hakim Ali and one another who managed to flee. During search of those persons Rs.50,000/- of Rs.500/- denomination had been recovered. Those two persons had confessed to have obtained those FICN from Fekamari. S.I. (G) Ashim Saikia had seized those notes and had prepared the seizure list. The accused along with fake currency notes were handed over to the Gauripur P.S.

In cross examination PW-3 stated about seeing the Manager and other guests present in the hotel. PW-3 further stated not knowing accused persons earlier. On the day of the alleged occurrence PW-3 came to know of them. Seizure list was prepared at BSF camp. PW-3 stated not getting themselves searched before the search on the accused persons had been conducted.

9. PW-4, H/C Prasanth Kumar had also accompanied S.I. (G). Ashim Saikia and his team to nab FICN dealer. They all had come to hotel Pushpa at Gauripur. Suleman Ali and one Hakim Ali had been caught with Rs.50,000/- of Rs.500/- denomination FICN had been recovered from the possession of Suleman Ali on personal search. The search was made by S.I. Ashim Saikia. Thereafter, the accused, seized materials and F.I.R. were handed over to the P.S.

In his cross-examination PW-4 stated that he was with the guard party. PW-4 identified accused persons present in the Court to be those persons they had arrested for being in possession of FICN.

10. PW-5 Rohini Kr. Nath had accompanied the team headed by S.I. (G) A. Saikia. They had caught Hakim Ali and Soleman Ali at hotel Pushpa, with Rs.50,000/- in FICN had been recovered on personal search. Since he was inside the jeep outside, he is not aware as to from whom FICN had been recovered. Thereafter the accused, fake currency notes and the seizure-list were handed over to Gauripur P.S.

In his cross-examination PW-5 reiterated being with the guard party outside.

11. PW-6 Ranjan Kumar Lakra had identified the accused Soleman in the Court. PW-6 stated being on the guard duty. The accused persons had been caught at hotel Pushpa at Gauripur. Two persons namely Hakim Ali and Soleman Ali had been caught. FICN had been recovered from their possession. Both accused persons along with seizure had been handed over to the police.

In cross-examination PW-6 stated not knowing accused persons earlier. According to PW-6 arrested two persons had been caught at the hotel and brought to the BSF camp.

12. P.W-7, Nal Kumar Barman had stated knowing accused persons. He is a driver in BSF. He had driven BSF personnel on the day of the alleged occurrence to hotel Pushpa following receipt of secret information with regard to deal in fake Indian currency notes in progress at hotel Pushpa. Accused persons were caught with some fake Indian currency notes at hotel Pushpa.

In cross-examination PW-7 had stated that he was with the guard party.

13. PW-8 P.P. Guru Prasad, a member of the search team had known accused persons. In the month of December, 2014 he along with other BSF personnel following secret information had arrived at hotel Pushpa at Gauripur and apprehended accused persons with some fake Indian Currency notes.

In cross-examination PW-8 had stated that he was standing outside as member of the guard party. He was also not aware from whom fake Indian currency notes were recovered.

14. PW-9 Sri A. Senthil Kumar identified both accused persons present in the Court. On a special intelligence report regarding FICN racketeers operating in the Gauripur area, PW-9 as Deputy Commandant, Field, GP, Panbari on 24-12-2012 initiated a special operation to nab those racketeers. A team comprising BSF personnel and police of Gauripur P.S. had conducted the joint operation at hotel Pushpa at Gauripur and nabbed two persons at about 1400 hours. During search of those persons fake currency notes to the tune of Rs.50,000/- in the denomination of Rs.500/- in 100 units had been recovered. Recovered articles had been handed over to Gauripur P.S. along with seizure list and FIR.

In cross-examination, PW-9 admitted to not knowing accused persons earlier. On the day of the alleged occurrence, PW-9 stated to have visited the place of occurrence. The seizure list was prepared at his office. Accused persons were found inside the hotel Pushpa at Gauripur.

15. PW-12 Md. A.K.M. Islam Sarkar had stated that on the day of the alleged occurrence he was inside the Gauripur P.S. when police had brought in two persons and fake currency notes recovered from them. Those fake currency notes had been seized in his presence through ext-3 bearing his signature ext-3 (1).

16. PW-13 Dr. (Ms) Tiloka Das on 07-01-2013 Director received one sealed envelope from Superintendent of Police, Dhubri in connection Gauripur P.S. Case No.589/2012 u/s.489 (B)/489 (C). After opening the sealed envelope 100 units of disputed notes of Rs.500/- denomination were marked by PW-13 as Q1 to Q100 and corresponding reverse sides of those currency notes had been similarly marked as Q1/1 to Q100/1. On examination those currency notes had been found to be fake bank notes. Ext-4 is her report bearing her signature ext-4 (1).

17. PW-14 S.I. Abdul Malek Sk, S.I. of Police attached to Gauripur P.S. on 24-12-2012 was entrusted with the present case for investigation. At Pushpa Hotel at Gauripur, Hakim Ali Sarkar and Soleman Ali had been found in possession of 100 units of Rs.500/- denomination currency notes and genuine Indian currency notes amounting to Rs.12,537/- and one driving license. These articles had been seized by the search team comprising BSF and police on the spot and was brought to the police station where again PW-14 had seized the said seizure list, ext-2 along with seized articles vide ext-3 seizure list bearing PW-14's signature ext-3 (2). Accused persons had been brought to the police station and PW-14 had forwarded those accused persons to the court. PW-14 had visited the place of occurrence and had prepared the sketch map of the place of occurrence. Ext-6 is the sketch map bearing his signature ext-6 (1). PW-14 had also examined witnesses at the place of occurrence. PW-14 had sent those fake currency notes for examination to FSL, Guwahati. He had collected the report and submitted charge sheet against both accused persons. Material ext-Q-1 to Q-100 are those Indian fake currency notes identified by PW-14 in the Court on being produced before him. PW-14 stated seizing those fake currency notes from the possession of the BSF personnel along with seizure-list. Ext-7 is the charge sheet bearing his signature ext-7 (1).

In his cross-examination PW-14 stated to have examined one Sanjay Karmakar and Biswajit Sarkar both employees of hotel Pushpa, Gauripur.

Above is the threadbare discussion of the evidence on record.

18. In the course of argument learned advocate for the accused argued that the search was illegal since police officer had not made the search. The O.C, Gauripur P.S. who had accompanied the team was not a seizure witness. No

independent witnesses had been cited as seizure witness. The seizure was prepared at the BSF camp as per PW-2 ASI B.C. Das and as such there is every scope for raising doubt as to the recovery of FICN from accused Soleman in the hotel Pushpa. Mensrea with regard to the possession of counterfeit currency notes was not proved. In support of his contention, learned counsel for accused persons had related the position of law discussed in the decision in Prodip Deb Nath and State of Tripura as reported in 2013 (1) GLJ 717 wherein it was held in para-11 as such "The common thread that passes through all these penal sections is the knowledge of the currencies of being counterfeit. Unless mensrea is proved the offences under both the sections cannot be held to have been established in evidence. In this regard, the Apex Court in Umashanker Vs. State of Chhattisgarh as reported in (2001) 9 SCC 642 has observed as under:

"8. A perusal of the provisions, extracted above, shows that mensrea of offences under sections 489B and 489C is, "knowing or having reason to believe the currency notes or Bank notes are forged or counterfeit". Without the afore mentioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or Bank notes, is not enough to constitute offence under section 489B of IPC. So, also possessing or even intending to use any forged or counterfeit, currency notes or Bank notes is not sufficient to make out a case under section 489C in the absence of the mensrea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mensrea. 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 mensrea. On the date of the incident, the appellant was said to be an 18 years 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 not option but to hold that the charges framed under section 489 B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489B and 489C IPC and acquit him of the said charges.[M. Mammutti Vs. State of Karnataka]

In Para-13 of the said decision it was further held that "this Court is really in a quandary on what authority the PW 11 had got to cause search and seizure for the reason that under the statute except the police officer or the officers subordinate to that of the police station is authorized under Sec. 102 of the Cr.PC to cause search and seizure in the manner as prescribed therein..... The informant ought to have brought the accused with the counterfeit currency notes to the police station and handed him over to the police officer who is competent to cause investigation in accordance with law.

19. On the other hand learned P.P had submitted that the FIR says that the operation was jointly conducted by O.C, Gauripur P.S. and BSF personnel. After the accused persons along with seized fake currency notes had been handed over to the Gauripur P.S. by BSF personnel the investigation had been carried out by S.I. of police on the same day and as such the violation of Sec. 102 of Cr.PC search was not conducted by police officer is misconceived.

20. Now coming to the evidence of PW-1, SI Ashim Saikia, PW-2 ASI Bhajan Ch. Das, PW-3, ASI Sajal Kr. Sarkar and PW-9, A Senthil Kumar and SI Abdul Malek Sk. they have all corroborated each other about being members of a team that had conducted a search operation on 24-12-2012 at hotel Pushpa Gauripur and all of them have also corroborated each other with regard to being present at the time the PW-1 had recovered 100 units of Rs.500/- denomination fake currency notes from Hakim Ali one of the accused. According to above witnesses accused Soleman and Hakim Ali had been found in the same room at hotel Pushpa and both of them had confessed to them to be dealing in fake currency notes. PW-1 had proved the seizure list ext-2 bearing his signature ext-2(1) with regard to the seizure of 100 units of Rs.500/- denomination FICN from Hakim Ali. Further as per the evidence of PW-1 O.C. Gauripur P.S. had been present during search operation. Thus the contention of the Id defence counsel that the search was illegal since it not according to the spirit of section 102 of Cr.P.C. as it was not done by police was present is not acceptable. Further the evidence of PW-14, the IO of this case reveals that he had seized the ext-2, seizure list by which 100 units of Rs.500/- denomination currency notes had been seized after recovery from accused Hakim through ext-3 seizure list bearing his signature ext-3(1) on 24-12-12 the day recovery of FICN had been made and both recovered

currency notes and accused persons had been handed over to Gauripur Police Station. Thus the position of law discussed in the decision in Prodip Deb Nath and State of Tripura as reported in 2013 (1) GLJ 717 in para 13 with regard to section 102 of Cr.P.C. the seizure being held unauthorized, not done by any police officer, seized articles not having been produced at the police station and the investigation not having been done by a police officer is again not applicable in the present context of the case. Further the observation of Apex court in Umashanker Vs. State of Chhattisgarh as reported in (2001) 9 SCC 642 discussed above that "*possessing or even intending to use any forged or counterfeit, currency notes or Bank notes is not sufficient to make out a case under section 489C in the absence of the mensrea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mensrea.....*" is not applicable in the present case again since in the light of section 8 of the Evidence Act the apex court in its decision as reported in AIR 1960 SC 500 had held that piece of conduct can be held to be incriminating which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence is material.

21. In the present case accused persons had been with Rs.50,000/- in fake currency notes inside a room in a hotel. Those 100 units of Rs.500/- currency notes proved to have been recovered from accused Hakim had been reported fake currency notes by PW-13 Dr. (Ms) Tiloka Das discussed above. Thus it is evident that Rs.50,000/- in fake currency notes had been recovered from accused Hakim Ali inside the room at hotel Pushpa. It is in the evidence of PWs discussed above that the accused persons had confessed to their dealing in fake currency notes in presence of above PWs. Though this confession is extra judicial confession not sufficient to convict the accused persons but in the light of the evidence discussed above PWs who all corroborated each other finding both accused persons present inside a room and having confessed to be involved in dealing in fake currency notes before above PWs indicates that though the fake currency notes had been recovered from Hakim Ali but accused Soleman is also proved to have been a party to the deal in fake currency notes that was in progress inside the room at hotel Pushpa, Gauripur. Considering the large numbers of FICN recovered and seized it is the accused persons who are to explain as to the possession of such large number

of FICN and that they did not have the knowledge that those currency notes were fake on the face of the prosecution having been able to establish that the currency notes amounting to Rs.50,000/- found in their possession were fake.

22. Now Section 106 burden of proving fact especially within knowledge when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. S-106 is exception to the rule of burden of proof envisaged in section 101 of Evidence Act which puts the burden on the person who asserts existence of certain facts to prove those facts.

23. Accused persons maintained silence all along in their examination u/s.313 of Cr.PC with regard to the recovery of Rs.50,000/- in FICN from their possession by pleading total denial and neither adduced any evidence as to how they came to be in possession of such large numbers of fake currency notes. The burden was on them to explain it. Their failure to do so raises an adverse inference against them and for such inference we conclude that their possession was not mere conscious possession, they meant either to use the counterfeit currency notes or transport them.

24. In continuation of the discussion of the evidence, I am however inclined to relate the observation made by the Hon'ble High Court of Allahabad (LUCKNOW BENCH) in Criminal Appeal Nos. 261 and 262 of 2014 decided on: 23.02.2016, Appellants: Ashfaque and Ors. Vs. Respondent: State of U.P. wherein it was held in para 26 as such " 26. After dealing with this whether the appellants had possessed the necessary mensrea, the second aspect is whether recovery of large number of counterfeit currency notes are sufficient to establish that their possession amounts to an offence punishable under Section [489-B](#) IPC. This section prohibits use of or trafficking with the counterfeit currency notes. Since the appellants had preferred to plead total denial, they had not cared to explain as to why such currency notes were in their possession though according to provisions contained in Section [106](#) of the Evidence Act the burden was on them to explain it. Their failure to do so raises an adverse inference against them and for such inference we conclude that their possession was not mere conscious possession, they meant either to use the counterfeit currency notes or transport them. In the case of Rayab Jusab Sama v. State of Gujarat [[MANU/GJ/0434/1998](#) : 1999 Cri.

L. J. 942] the Division Bench of Gujarat High Court has held the possession of large number of fake currency notes to be a case of active transportation of such notes. The observation made by the Division Bench in that case also substantiates the view formed by us. Para-10 of the report reads as under: the learned counsel for the appellant contended that the prosecution had failed to prove the offence under S. [489-B](#) of the Indian Penal Code even if it is held that the offence of possession the fake currency notes under S.[489-C](#) is proved. This submission is wholly erroneous because the evidence clearly establishes that the appellant was found carrying 250 fake currency notes on a public road in the city of Bhuj concealed in a Thela beneath cloth pieces as alleged in the charge. He was, therefore, transporting the said currency notes at the time when he was apprehended with them. Therefore, this is not a case of mere dormant possession, but, it is a case of active transportation of the currency notes, which would fall within the expression 'traffics in such currency notes.' Section [489-B](#) of the Indian Penal Code clearly contemplates the cases where the counterfeit currency notes are received from any other person as also the cases where a person traffics in such currency notes knowing or having reason to believe the same to be forged or counterfeit. In our opinion, these ingredients of the offence under S.[489-B](#) are clearly established against the appellant. He was not only carrying 250 counterfeit currency notes on 9.4.1996 but he had concealed 101 other such counterfeit currency notes which he later discovered before the Panchas on 12.4.1996. It is, therefore, clearly established that the appellant was trafficking in these counterfeit currency notes which he had received from some source. The appellant is, therefore, rightly held guilty of the offences under Ss. [489-B](#) and [489-C](#) of the Indian Penal Code by the trial Court and we are in complete agreement with the reasoning adopted by the trial Court for reaching its conclusions on this count..... In view of above we come to the conclusion that the arguments to challenge the conviction of the appellants under Section [489-B](#) IPC also fail and charge against the appellants under Section [489-B](#) IPC stands proved beyond reasonable doubt."

25. In the light of the law points discussed above with regard to the upholding the conviction for both offences u/s.489 (B) and 489 (C) of IPC in the above decision of the Allahabad High Court and considering the facts and circumstances coming up in the present case being almost similar to the facts and

circumstances discussed in the above decision of the Allahabad High Court, I am inclined to hold in the light of the discovery of Rs.50,000/- in fake currency notes from the possession of accused persons is not only indicative of the fact that they had been in possession of fake currency notes but the considering the large amount of fake currency notes in their possession, is indicative of the fact that they intended to traffic in those fake currency notes and both the offences u/s.489 (B)/489 (C) of IPC stand proved as against both accused persons.

26. Thus summing up, I hold in the light of the above discussion of evidence of PWs and law point discussed in the decisions cited by both sides that the prosecution has been able to establish charges u/s. 489 (B)/489 (C) of IPC against accused persons namely Hakim Ali Sarkar and Soleman Ali beyond all reasonable doubt and they are convicted accordingly.

27. Accused persons are heard on the point of sentence. Accused persons pleaded for leniency. Taking into consideration the gravity of the offence proved to have been committed by accused persons and its impact on the economy in general, I do not find it a fit case for releasing both accused persons on Probation of Good Conduct. However, taking into consideration of the plea of leniency both accused persons are sentenced to R.I for 4 years on each count and fine of Rs.5,000/- on each count. I/d of fine to S.I. for 3 months on each count. Earlier detention if any of the accused persons to be set off as against sentence of imprisonment imposed. Accused persons be given a copy of the judgment free of cost immediately. A copy of the judgment be sent to the DM, Dhubri. The seized articles be disposed of in due course of law. The sentence of imprisonment will run concurrently.

Given under my hand and seal of this Court on this 2nd day of August, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

APPENDIX

A. Prosecution Witnesses.

PW-1	-	S.I. Ashim Saikia
PW-2	-	ASI Bhajan Ch. Das
PW-3	-	ASI Sajal Kr. Sarkar
PW-4	-	H/C Prasanth Kumar
PW-5	-	Const. Rohit Kr. Nath
PW-6	-	Const. Ranjan Kumar Lakra.
PW-7	-	H/C Nal Kumar Barman
PW-8	-	Const. P.P. Guruprasad
PW-9	-	Sh. A. Senthil Kumar
PW-10	-	Md. Mozirul Hoque
PW-11	-	C/No.180 Azahar Ali Mollah
PW-12	-	Md. A.K.M. Islam Sarkar
PW-13	-	Dr. (Ms.) Tiloka Das
PW-14	-	S.I. Abdul Malek Sk.

B. Court Witness

Nil

C. Defence Witness

Nil

D. Prosecution Exhibits.

Ext-1	-	FIR
Ext-2	-	Seizure list
Ext-3	-	Seizure list
Ext-4	-	Expert Report
Ext-5	-	Forwarding of report
Ext-6	-	Sketch Map
Ext-7	-	Charge sheet.
Mat. Ext-	Q1 to Q-100	– IFCN.

D. Defence Exhibit

Nil