(2010) 03 CHH CK 0044

In the Chhattisgarh High Court

Case No : Criminal Appeal No''s. 02, 22, 43 and 52 of 2004

Kurukshetra Sena and Others — APPELLANT

Vs

The State of Chhattisgarh — RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 315
Penal Code, 1860 (IPC) — Section 120B, 489B, 489C
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3

Citation : (2011) CriLJ 2493

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Judgement

T.P. Sharma, J.—Criminal Appeal No. 2/2004 filed by Kurukshetra Sena, Criminal Appeal No. 22/2004 filed by Narendra Kumar Jain, Criminal Appeal No. 43 filed by Rawalmal Jain and Criminal Appeal No. 52/2004 filed by Narsingh Lal Maheshwari, Babulal Inadi and T. Appal Suri are arising out of the judgment of conviction and order of sentence dated 10.12.2003 passed by the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Jagdalpur, in Sessions Trial No. 107/2002, therefore, they are being disposed of by this common judgment.

2. The aforesaid criminal appeals are directed against the judgment of conviction and order of sentence dated 10.12.2003 passed by the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Jagdalpur, in Sessions Trial No. 107/2002, whereby and whereunder learned Special Judge after holding appellant Narendra Kumar Jain guilty for the offence punishable under Sections 489 B and 489C read with Section 120B of the Indian Penal Code sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs. 10,000/ -, in default of payment of fine to further undergo rigorous imprisonment for nine months and rigorous imprisonment for two years and six months and to pay fine of Rs. 6000/ -, in default of payment of fine to

further undergo rigorous imprisonment for nine months and appellants Narsingh Lal, Kurushetra Sena, Babulal Inadi, Rawalmal Jain and T. Appal Suri guilty for the offence punishable under Sections 489 C read with Section 120B of the Indian Penal Code and each of them have sentenced to undergo rigorous imprisonment for two years and six months and to pay fine of Rs. 7000/ -, in default of payment of fine to further undergo rigorous imprisonment for nine months, respectively.

3. Conviction is impugned on the ground that without there being any evidence, especially conscious possession of fake currency notes with intent to use the same as genuine, the Court below has convicted and sentenced the appellants as aforementioned the thereby committed illegality.

4. Case of the prosecution, in brief, is that Renu (PW-4) working as Gangman in Railway Department posted at Tokapal was paid his salary by the department containing currency note of Rs. 500/ -, he contacted to appellant Narendra Jain for change of Rs. 500/ -, appellant Narendra gave 5 currency notes of Rs. 100/ - denomination. After taking the same, Renu (PW-4) went to chicken shop and paid Rs. 100/ -, then chicken shopkeeper asked to show other currency notes and after perusing the same, shopkeeper told that currency notes are not genuine and are counterfeit. Other persons also present there. Station House In charge Frejerpur G.N. Singh (PW-7) was on patrolling near railway station, Tokapal. Renu (PW-4) made a complaint relating to the aforesaid fake currency notes and lodged dehati nalishi vide Ex.P/15. 5 currency notes were seized from Renu Ex.P/17. During the course of investigation, investigating officer interrogated appellant Narendra Kumar Jain and seized 13 currency notes of Rs. 500/ -, 46 currency notes of Rs. 100/ -, 12 currency notes of Rs. 50/ - and another 4 currency notes of Rs. 100/ - vide Ex.P/19. He also seized 15 currency notes of Rs. 500/ -, 103 currency notes of Rs. 100/ -, 5 currency notes of Rs. 50/ -, 4 currency notes of Rs. 10/ -, 2 slips containing names of the persons, another 5 currency notes of Rs. 100/ - from accused Narsingh Lal vide Ex.P/20. Investigating officer also seized 5 currency notes of Rs. 500/ -, 24 currency notes of Rs. 100/ -, 3 currency notes of Rs. 50/ -, another 2 currency notes of Rs. 100/ - and 4 currency notes of Rs. 50/ - from accused K.K. Sinha vide Ex.P/21. During the course of investigation, investigating officer seized 3 currency notes of Rs. 500/ -, 19 currency notes of Rs. 100/ -, 6 currency notes of Rs. 10/ - and another currency note of Rs. 500/ - and Rs. 100 from accused Rawalmal vide Ex.P/22. Likewise, investigating officer seized 13 currency notes of Rs. 500/ -, 61 currency notes of Rs. 100/ -, one currency notes of Rs. 50/ -, 9 currency notes of Rs. 10/ - and 5 currency notes of Rs. 100/ - from accused T.R. Suri vide Ex.P/23. Investigating officer also seized 19 currency notes of Rs. 500/ -, 100 currency notes of Rs. 100/ -, 96 currency notes of Rs. 100/ -, 100 currency notes of Rs. 50/ -, 19 currency notes of Rs. 50/ -, 39 currency notes of Rs. 10/ -, another 3 currency notes of Rs. 100/ -, 4 currency notes of Rs. 50/- and 4 slips containing names of some persons from accused Babulal vide Ex.P/23. F.I.R. on zero number was registered vide Ex.P/16. Finally F.I.R. was lodged vide Ex.P/3. Spot

map was prepared vide Ex.P/25. Accused persons were arrested vide arrest memos Exs.P/26 to P/32. Seized currency notes were sent for examination to General Manager, Currency Note Press, NasiK Road, Maharashtra vide Ex.P/33. Vide reports Exs.P/34 and P/35, 6 currency notes of Rs. 100/ - and 3 currency notes of Rs. 50/ - were found same numbers and were counterfeit.

5. Statement of the of the witnesses were recorded u/s 161 of the Code of Criminal Procedure, 1973 (in short ''Code'') and after completion of investigation, charge sheet was filed before the Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Court of Sessions, Bastar at Jagdalpur. The case was relating to Section 3(i)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, therefore, the case made over to the Special Judge under Atrocities Act, Jagdalpur.

6. In order to prove the guilt of the accused/appellants, the prosecution has examined as many as 8 witnesses. Statements of the accused/appellants were recorded u/s 313 of the Code where they denied the circumstances appearing against them and claimed innocence and false implication in the crime in question. The accused have also examined defence witnesses Sushil Sahu (DW-1), Maheshchandra Joshi (DW-2). Accused Rawalmal Jain has examined himself as defence witness and has deposed that on the alleged date of incident i.e. 22.12.2001, he was present in his house situate at Vrundawan Colony, Jagdalpur where the police came and took signature on some documents and thereby he has taken defence of alibi. Sushil Singh (DW-1) has deposed in his evidence that some persons were present at Parpa, they told that they have caught red handed fake currency notes, Renuram and Mahesh Joshi were also present, he went along with Mahesh Joshi to bank and showed the same to the bank officer, then bank officer told that currency notes are fake. He also telephoned to police station Frejerpur and incharge of Police Station Frejerpur reached there and inquired into the matter. Renuram informed the police officer that he has received fake currency notes from one Narayan Singh who had gone towards Chilmili. While they were passing near village Aarapur, the persons who had given currency notes to Renu were coming from jeep, then police officer stopped the jeep, Renu indicated the persons who had given fake currency notes to him, then police took those persons to police station where notes were seized vide Exs.P/19 and P/21. Defence witness Maheshchandra Joshi has also corroborated seizure of Exs.P/19 and P/21.

7. After affording opportunity of hearing to the parties, learned Special Judge has convicted and sentenced the accused/appellants as aforementioned.

8. I have heard learned Counsel for the parties, perused the judgment impugned and record of the Court below.

9. In the present case, seven accused persons were tried jointly and on the basis of the evidence adduced on behalf of the prosecution learned Special Judge/ Additional Sessions Judge, Jagdalpur has convicted appellant Narendra Kumar

Jain u/s 489B and 489C read with Section 120B of the Indian Penal Code and appellants Narsingh Lal, Kurushetra Sena, Babulal Inadi, Rawalmal Jain, T. Appal Suri u/s 489C read with Section 120B of the Indian Penal Code.

10. Mr. Jitendra Gupta and Mr. Rishi Rahul Soni, learned Counsel appearing for appellant-Narendra Kumar Jain in Criminal Appeal No. 22 of 2004 submitted that in order to convict appellant Narendra Kumar Jain u/s 489B and 489C read with Section 120B of the Indian Penal Code, the prosecution was under obligation to prove the ingredient of the offence at the time of incident. He has sold or purchased or received from any person or otherwise traffics in or uses as genuine knowing or having reason to believe the same to be forged or counterfeit. The prosecution was under obligation to prove that the appellant was in possession of currency note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or it may be used as genuine. Without any such intention or knowledge, the circumstances that it may be used as genuine, the only possession of counterfeit note is not offence punishable under Sections 489B and 489C read with Section 120B of the Indian Penal Code. Learned Counsel contended that at the time of seizure, no any fake currency notes were seized from the appellants, but after obtaining the report from the Currency Press Note, the prosecution has manipulated seizure memos while adding numbers of fake currency notes in the seizure and that part of the seizure memos and the evidence is not admissible in the evidence.

11. On the other hand, learned Counsel appearing on behalf of other appellants submitted that the prosecution has utterly failed to prove any conspiracy for using fake currency note as genuine against the appellants. The prosecution has also utterly failed to prove the possession of counterfeit note with the appellants, therefore, any conviction or sentence under Sections 489B and 489C read with Section 120B of the Indian Penal Code are not sustainable under the law.

12. Learned Counsel for appellant-Narendra Kumar Jain placed reliance in the matter of M. Mammutti v. State of Karnataka1 in which the Apex Court has held that mere look at them would not convince anybody that they were counterfeit and in absence of any specific question of possession of counterfeit note to the accused, conviction under Sections 489B and 489C of the Indian Penal Code is not sustainable under the law. Learned Counsel further placed reliance in the matter of Umashankar v. State of Chhattisgarh2 in which the Apex Court has held that mens rea is essential ingredient to constitute the offence under Sections 489B and 489C of the Indian Penal Code and the prosecution is required to prove mens rea that the appellant was in possession of counterfeit currency note knowing or having reason to believe the same to be forged or counterfeit and in absence of such prove, any conviction under Sections 489B and 489C of the Indian Penal Code is not sustainable under thee law.

13. Mr. Alok Dewangan, learned Counsel appearing for appellant-Kurushetra Sena placed reliance in the matter of Veera swamy Shanmugam Sundaram v. The State of A.P.3 in which the High Court of Andhra Pradesh has held that in the

absence of any knowledge of counterfeit note or factum of possession of counterfeit note, conviction of the appellants under Sections 489B and 489C of the Indian Penal Code is not sustainable under the law. Learned Counsel further placed reliance in the matter of Madan Lal Sarma v. The State4 in which the High Court of Calcutta has held that mere possession of forged note does not shift burden on accused to prove innocence and knowledge or reason to believe that note was forged has to be proved. Learned Counsel also placed reliance in the matter of Umashankar (supra).

14. In order to appreciate the argument advanced on behalf of the parties, I have examined the evidence adduced on behalf of the prosecution and defence. In the present case, defence has examined Sushil Singh (DW-1) and Maheshchandra Joshi (DW-2) the witnesses of Exs.P/19 and P/21. Ex.P/19 is seizure of genuine notes along with fake currency notes from appellant Narendra Kumar Jain and Ex.P/21 is seizure of genuine notes along with fake currency notes from appellant Narsingh. Sushil Singh (DW-1) has deposed in his evidence that on the date of incident some persons were standing in front of his shop, they told that they have caught red handed fake currency notes. Mahesh Joshi (DW-2), complainant Renu and Damru Sethiya were also present there, then they went to the bank along with these currency notes. Officer of the bank examined the notes and infirmed that the alleged currency notes were fake and they also informed the police station Prejerpur and police station Prejerpur immediately came to the bank and interrogated Renuram whom Renu Ram informed that Narayan Singh has given fake currency notes to him, then they chased and went towards Chilmili, at that time some persons were coming from jeep, police officials stopped the jeep and asked Renu ram that who had given fake currency notes, Renu Ram identified the persons, then they took all the persons to police station. After sometime, he along with Mahesh Joshi went to police station where the notes were seized. He has further deposed that when he reached to the police station with Mahesh Joshi, at that time all the accused persons were in custody. The police have not seized notes from the accused persons. In his cross- examination, he has admitted signature over seizure memos Exs.P/17 and P/19 to P/24 relating to seizure of genuine and fake currency notes from all accused persons. Substantially his evidence reveals that Renu has intimated him and bank officer and also the police that these accused persons have given fake currency notes to him. The police officials took the accused persons to police station where seizure memos were prepared. Maheshchandra Joshi (DW-2) has admitted his signature over Exs.P/19 and P/21 and also in Exs.P/17 to P/24. He has identified accused Narendra Kumar Jain and Renu Ram, but has denied the suggestion that currency notes were seized from different accused, although he has admitted signature over seizure memos. The evidence of both the persons reveals that at the time of seizure and at the time of incident, police apprehended the appellants and they have signed over seizure memos and documents. Appellant Rawalmal Jain has examined himself as defence witness u/s 315 of the Code who has deposed that prior to 17.12.2001

till 19.12.2001 he was not present at Jagdalpur and he was busy in his treatment, but has admitted his presence at Jagdalpur on 22.12.2001. In his cross-examination he has admitted that his reservation slip does not bear his name. He has denied the presence of accused persons in police station, but other defence witnesses have specifically deposed and admitted the presence all the accused persons in police station.

15. Renu (PW-4) has deposed in his evidence that on 22.12.2001 Railway officer came for payment of salary, he received salary, he requested Narendra Kumar Jain for change of Rs. 500/ - currency note, then Narendra Kumar Jain gave him 5 currency notes of Rs. 100/ - denomination. Out of 5 currency notes, he gave one currency notes of Rs. 100/ - to chicken shopkeeper. He asked for other notes and also asked from whom he has received and also told him that currency notes are fake, then he told to police officer present on duty. In his detail cross-examination, he has admitted that frequently he will take money from Narendra Kumar Jain and also used to return the same to Narendra Kumar Jain. He has also admitted that he has given Rs. 500/ - to Khodiya Seth, Rs. 500/ - to Narsingh and Rs. 500/ - to Narendra Kumar Jain for change. F.I.R. also reveals that he along with Damru, Mahesh Joshi and Sushil Singh went to State Bank. The Manager of the State Bank has also examined and informed that currency notes are not genuine. Branch Manager also telephoned to police station. The appellants were running business of money lending, they went from jeep towards Chilmili. Hemnath @ Damru (PW-2) has deposed in his evidence that Renu came to him and given Rs. 100/ -, he saw the currency note, the colour of currency notes were dark and was thicker other than normal currency note, then he asked Renu from where he obtained these currency notes, Renu told him that he has obtained the same as a result of change. He has also produced another notes which were also not genuine, then he along with Mahesh Joshi went to State Bank, the officer of the State Bank told them that currency notes were fake. This witness has not supported the case of the prosecution and the prosecution declared him hostile. In his cross-examination, he has deposed that Renu has not told the name of any person or Narendra Jain. Arjun Singh Sethiya (PW-3), brother of Hemnath (PW-2) has corroborated the evidence of Renu (PW-4). The evidence of these witnesses clearly reveals that currency notes found in possession of Renu were not genuine and at the first instance, currency notes appear to be fake. Ishwar Kumar Rajpal (PW-6) Manager, Bhartiya State Bank, Branch Tokapal has deposed in his evidence that on 22.12.2001 Mahesh Chandra Joshi, Hemnath @ Damru, Sushil Kumar Singh and some other persons came to his bank and they produced three currency notes of Rs. 100/ - for examination. After examination he told them that these notes are not genuine on the basis of their prima facie appearance. He has also deposed that he directed them to come at office time, but they have lodged the report.

16. The matter was mainly investigated by G.N. Singh (PW-7) who has deposed that on 22.12.2001 at Tokapal he has registered dehati nalishi Ex.P/15 at the instance of Renu and also registered F.I.R. vide Ex.P/16. He has deposed that he

has seized 5 currency notes from Renu vide Ex.P/17, one commander jeep from M. Narayanrao vide Ex.P/18. Currency notes from accused Narendra Jain vide Ex.P/19. He has further deposed that he has also seized currency notes from accused Narsingh vide Ex.P/20, from K.K. Sinha vide Ex.P/21, from accused Rawalmal vide Ex.P/22, from accused T. Appal Suri vide Ex.P/23 and from accused Babulal vide Ex.P/24. In his detail cross-examination he has admitted that at the time of incident he was on village patrolling and Renu informed that at Tokapal about the incident. He has denied the suggestion that he has not seized any currency notes vide Exs. P/17 and P/19 to P/22. He has admitted in para 12 of his cross- examination that he seized currency notes from accused K.K. Sena vide Ex.P/21. He has specifically stated in paras 13 to 20 of his cross-examination that he has seized different denomination notes from different persons vide Exs.P/17 to P/24 and he has denied the suggestion that he has not seized currency notes mentioned as additional in the aforesaid seizures from accused concerned. D.S. Uike (PW-6) Sub Divisional Officer has deposed in his evidence that he has conducted investigation and has sent currency notes for examination to Currency Note Press, Jail Road, Nasik vide Ex.P/12 and has received report vide Ex.P/13 which reveals that date of currency notes sent for examination. 29 currency notes of Rs. 100/ - denomination and 10 currency notes of Rs. 50/- denomination were of same numbers. The prosecution has also examined another Sub Divisional Officer D.R.S. Uike (PW-8) probably he was on witness examined as PW- 6. He has deposed that he has conducted investigation. He has deposed that he has sent currency note for examination to Currency Note Press, Jail Road, Nasik vide Ex.P/33 and reports are Exs.P/34 and P/35.

17. In the present case, firstly charge was framed and witnesses were examined in the capacity of the Additional Sessions Judge, but after framing of additional charge for the offence punishable under the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, these witnesses were again examined, therefore, he has deposed that report of currency notes as Exs.P/34 and P/35, but the same is one and the same as Ex.P/13 and P/14 which reveals that 5 currency notes of Rs. 100/ - denomination having same bearing number 6ND 335933, 5 currency notes of Rs. 100/- denomination were having same bearing number 6ND 335935, 5 currency notes of Rs. 100/ - denomination were having same bearing number 6ND 335936, 4 currency notes of Rs. 100/ - denomination were having same bearing number 2VU 538839, 5 currency notes of Rs. 100/- denomination were having same bearing number 2VU 538840 and 5 currency notes of Rs. 100/ - denomination were having same bearing number 2VU 538841. Reports Exs.P/34 and P/35 also reveal that 4 currency notes of Rs. 50/ - denomination were having same bearing number 5EE 954726, 4 currency notes of Rs. 50/ - denomination were having same bearing number 5EE 954727 and 4 currency notes of Rs. 50/ - were having same bearing number 5EE 954728. Total 29 currency notes of Rs. 100/- denomination and 10 currency notes of Rs. 50/- were same numbers and they were not genuine and were counterfeit. The appellants have admitted the possession of genuine notes, but

have specifically denied the possession of notes seized from their pockets and were specifically found fake. In cross-examination of G.N. Singh (PW-7), he has specifically denied the suggestion that he has not seized currency notes which has been mentioned in the seizure memos Exs.P/17 and P/19 to P/24 from other pockets of the appellants.

18. In the present case, it is pertinent to note that seizures have been made on 22.12.2001. After completion of investigation, charge sheet has been filed on 31.1.2002 and copy of the charge sheet has also been supplied to the appellants on the same day i.e. 31.1.2002. Charge sheet along with letter sent to Currency Press Note and receipt of the letter for examination of Currency Press Note with note were filed along with charge sheet, at that time, report of Currency Note Press was not available to the prosecution. Same currency notes were examined by Currency Note Press vide its report dated 14th October, 2002, after about 9 months of filing of the charge sheet. It reveals that after receiving receipt of report of analysis, no opportunity of tempering or addition in seizure memos was available to the prosecution. Vide Ex.P/17, 5 currency notes of Rs. 100/ - denomination were seized from complainant Renu. As per report of Currency Note Press Exs.P-13/35, these 5 currency notes of 6 ND and 2VU series were fake and not genuine on account of their appearance and the fact that more than one currency notes were found of same number. Vide Ex.P/19, following currency notes were also found from upper shirt of Narendra Jain bearing following numbers:

i) Rs. 100/ - denomination 6ND 335935

ii) Rs. 100/ - denomination 6ND 335936

iii) Rs. 100/ - denomination 2VU 538840

iv) Rs. 100/ - denomination 2VU 538841

v) Rs. 50/ - denomination 5EE 934728

which were according to report Ex.P-13/35 were not genuine and were counterfeit. Vide Ex.P/20 along with other currency notes including currency notes bearing numbers 6ND 335933 and 6ND 335935 were also seized from accused Narsingh Lal from his pocket (pocket of shirt) which were not genuine and were counterfeit as per report Ex.P-13/35. As per Ex.P/21, two additional notes of Rs. 100/ -, 4 additional notes of Rs. 50/ - along with 4 currency notes of Rs. 50/ - were also found from the pocket of K.K. Sinha. Out of the aforesaid currency notes, 2 currency notes bearing numbers 5EE 934726 and 5EE 934729 were not genuine and were counterfeit as per report Ex.P-13/35. As per seizure Ex.P/22 along with other currency notes, 3 currency notes bearing numbers 6ND 335936, 6ND 335935 and 6ND 335933 were found right side of pocket of accused Rawalmal which were not genuine as per report Ex.P-13/35. Vide Ex.P/23, 5 currency notes were also seized from accused T. Appal Suri of Rs. 100/ - denomination bearing numbers 2VU 538840, 2VU 538840, 6ND 335936, 6ND 335935 and 6ND 335933 which were not genuine and were counterfeit as per report Ex.P-13/35. Vide Ex.P/24 along with other currency notes of Rs. 100/- and 4 currency notes of Rs. 50/ - have been seized from accused Babulal from his pocket of shirt bearing numbers 2VU 538839, 2VU 538841 and 6ND 335933 were not genuine and were counterfeit as per report Ex.P-13/35.

19. These seizure memos reveal that all the appellants were in possession of genuine currency notes and also in possession of counterfeit currency notes which were holding in different parts not with other currency notes found in bulk quantity from the appellants, may be as a result of their salary or other receipt.

20. The evidence of Renu (PW-4) is safe to rely up to the extent that he has received 5 currency notes. He requested for change of currency note of Rs. 100/ - denomination to Narendra Jain and Narendra Jain gave him 5 currency notes of Rs. 100/ - which was finally seized vide Ex.P/17. His evidence is corroborated by the evidence of Hemnath @ Damru (PW-2) and Arjun Singh Sethiya (PW-3). Hemnath @ Damru (PW-2) has deposed in his evidence that Renu produced one currency note before him which was appearing as not genuine at the first instance on the basis of its appearance, then on being asked, Renu told that he has received the aforesaid notes from one person, Renu has requested for change of Rs. 500/ - and has received these currency notes as a result of such change. Seizure witnesses Sushil Singh (DW-1) and Maheshchandra Joshi (DW-2) have admitted their signature over seizures memos Exs.P/17 and P/19 to P/24. Defence witness Sushil Singh (DW- 1) has examined in support of defence has specifically admitted in his evidence that Renu was in possession of currency notes, they went along with Renu before the bank and Bank Manager after examining the same has told that note was not genuine, then he also informed the police. The police came and he along with Renu went towards Chilmili, they made all the persons at Aarapur, they were coming by deep, Renu identified them and thereafter the police took them to the police station. After sometime they also reached to the police station and signed over seizure memos, at that time, accused persons were in lock-up. He has specifically denied separate seizure from separate persons and has deposed that all the currency notes were already present in the table of police officer and police officer has taken signature over seizure memos. If the evidence of this witness is considered, then it reveals that Renu has received fake currency notes from some person which has examined by the bank officer, then they went towards Chimili where the persons who has given fake currency notes to Renu, had gone. While they were going towards Chilmili at Aarapur, persons were coming by jeep, police officer stopped them, then Renu intimated the police officer that he has received fake currency notes from these persons and thereafter, the alleged seizure were prepared at the instance of Renu. When the accused persons stopped they were in custody and seizure were prepared in the name of the accused persons in which Sushil Singh (DW-1) and Maheshchandra Joshi (DW-2) had put their signatures over seizure memos. Exs.P/17 and P/19 to P/24 are not small papers. It bears huge numbers of currency notes and other things.

21. These witnesses have not deposed that if the notes were not seized from the accused persons, then why they have signed over seizure memos and what was compelling circumstances. They have not deposed that they were under threat or fear, in other words, the evidence of Sushil Singh (DW-1) reveals that police officer direct to come to police station means he was having sufficient opportunity to go to his house, instead of going to police station. In these circumstances, the evidence of Sushil Singh (DW-1) and Maheshchandra Joshi (DW-2) reveals that they are concealing the truth relating to independent seizure of currency notes from different accused persons, but they have admitted their presence before and after seizure.

22. In these circumstances, the evidence of G.N. Singh (PW- 7) is substantially remain for consideration. He is police officer. His evidence cannot be discarded only on the ground that he is police officer and interested in the outcome of the case. While dealing with the question i.e. evidentiary value of the statements of Police Officers, the Apex Court has held in the case of Anil alias Andya Sadashiv Nandoskar v. State of Maharashtra5, that testimony of police officials are not liable to be discarded merely because they are police officials. However, their evidence should be carefully scrutinized and independently appreciated. The Apex Court further held that witnesses being police officers do not by itself create a doubt about their creditworthiness if non- examination of Panch witnesses is explained satisfactorily. Para 5 of the said judgment reads as under:

Indeed all the 5 prosecution witness who have been examined in support of search and seizure were members of the raiding party. They are all police officials. There is, however, no rule of law that the evidence of police officials has to be discarded or that it suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinised and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness. We have carefully and critically analysed the evidence of all the 5 police officials. There is nothing on the record to show that any one of them was hostile to be appellant and despite lengthy cross-examination their evidence has remained unshaken throughout. These witnesses have deposed in clear terms the details of the trap that was laid to apprehend the appellant and the manner in which he was apprehended. Their evidence regarding search and seizure of the weapons from the appellant is straightforward, consistent and specific. It inspires confidence and learned Counsel for the appellant has not been able to point out any serious, let alone fatal, infirmity in their evidence. In our opinion, the factum of search and seizure of the country-made revolver from the conscious possession of the appellant has been established by the prosecution beyond any reasonable doubt. The explanation given by the prosecution, for the non-examination of the two panch witnesses, which is supported by the report Ext. 24 filed by PW 4 PI Gaikwad is satisfactory. The evidence on the record shows that the raiding party made sincere efforts to join with them two independent panchas at the time of search and seizure and they were so joined. They were also cited as prosecution witnesses and summoned to give evidence. However, despite diligent efforts made by the prosecuting agency to serve them, they could not be located or traced and therefore they could not be examined at the trial. In the face of the facts stated in report Ext. 24, the correctness of which has remained virtually unchallenged during the cross-examination of PW 4, the non-examination of the two panchas cannot be said to be on account of any oblique reason. Their non-production at the trail thus has not created any dent in the prosecution case. The prosecution cannot be accused of withholding these witnesses since it made every effort to trace and produce them at the trial but failed on account of the fact that they had left the addresses furnished by them at the time of search and their whereabouts could not be traced despite diligent efforts made in that behalf. We, therefore, do not find any reason to doubt the correctness of the prosecution version relating to the apprehension of the appellant, the search and seizure by the raiding party and the recovery from the appellant of the country-made revolver and cartridges for which he could produce no licence or authority because of the non- examination of the panch witnesses. We find that the evidence of PW 1 to PW 5 is reliable, cogent and trustworthy.

23. Further, in the matter of P.P. Beeran v. State of Kerala6 it has been held by the Apex Court that reliance can be placed on the uncorroborated evidence of the Sub Inspector of Police.

24. The evidence of G.N. Singh (PW-7) inspire confidence and it is truth worthy that he has seized currency notes from all the accused persons vide Exs.P/17 and P/19 to P/24. His evidence is corroborated by the evidence of Sushil Singh (DW- 1) and Maheshchandra Joshi (DW-2), especially relating to presence of all the accused persons at the time of seizure. As per report of Currency Note Press Ex.P-13/35, some of the currency notes found in possession of the accused persons are not genuine and were counterfeit. Report reveals that currency notes were clearly distinguishable from genuine currency notes, especially quantity of numbering, it was very poor, it was slightly thicker then normal currency notes. Report also reveals that currency notes found in possession of the accused persons clearly distinguishable from the original currency notes.

25. It is common practice of the man that when he received some currency notes from his office or from shop or from other sources, then he does not examine or inquire the genuineness of the currency notes by using any instrument and normally used to keep in his pocket or purse along with other currency notes.

26. Only possession of counterfeit currency notes is not sufficient for conviction of the accused persons under Sections 489 B and 489 C of the Indian Penal Code, but the prosecution is required to prove that fake or counterfeit currency notes were in possession of the accused persons with their knowledge and they were in possession of currency notes with intent to use the same as genuine or that it may be used as genuine.

27. In the present case, all the appellants were also having genuine currency notes, but they were having these notes in other pockets. They were in possession of the alleged counterfeit currency notes in their different pockets along with few genuine currency notes.

28. The special feature of this case that 5 currency notes of Rs. 100/ - were bearing same numbers and 5 sets of currency notes having 5 currency notes in each sets were having same number. Likewise, 4 currency notes of Rs. 100/- were having same numbers, 4 currency notes of Rs. 50/- were having same numbers, 3 currency notes of Rs. 50/- and another sets of Rs. 50/ - were having same numbers or in case of casual possession of fake or counterfeit currency notes, it would be difficult to presume that the person was in possession of counterfeit currency notes having knowledge that same is counterfeit and was in possession with intent to use the same as genuine, but this specific character of this case that the appellants had kept these fake currency notes in different pockets and most of the currency notes were having same numbers. The appellants were moving together on the date of payment of salary of railway employees for releasing their loan advance to employees show that all the appellants were having definite knowledge of fake currency notes which were in their possession.

29. In these circumstances, in the absence of any explanation that they were in possession of fake currency notes for other purposes, the only inference would be possible that they were in possession of counterfeit currency notes knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine. The evidence of Renu is sufficient for drawing inference that appellant Narendra Kumar Jain has used counterfeit currency notes as genuine.

30. The evidence adduced on behalf of the prosecution is not sufficient for drawing inference that the appellants have entered into illegal agreement for conspiracy and in furtherance of illegal agreement, they were in possession of counterfeit currency notes. The evidence adduced on behalf of the prosecution is sufficient for drawing inference that appellant Narendra Jain was in possession of counterfeit notes and has intentionally used the same as genuine. He was also in possession of counterfeit notes having knowledge with intent to use the same as genuine or that it may be used as genuine. The evidence adduced on behalf of the prosecution is sufficient for conviction of appellant Narendra Kumar Jain u/s 489B and 489C of the Indian Penal Code and appellants Narsingh Lal, Kurushetra Sena, Babulal Inadi, Rawalmal Jain and T. Appal Suri u/s 489C of the Indian Penal Code.

31. While convicting the appellants under Sections 489C read with Section 120B of the Indian Penal Code, the Court below has not considered the fact that the prosecution has not adduced evidence sufficient for punishment of criminal conspiracy and in furtherance of criminal conspiracy, the appellants were in possession of fake currency notes.

32. As regards the question of sentence, this Court in the matter of Reman alias Raman S/o Hiralal Bhandekar and Anr. etc. v. State of Chhattisgarh7 has held in para 25 as under:

25. As regards question of sentence, the offence committed by the accused/ appellants is the offence against the symbol of sovereignty and affects the bone of the commercial transaction which ultimately affects the governance of the country. The appellants have been sentenced by the trial Court to undergo rigorous imprisonment for three years and pay fine of Rs. 2000/ - each. They do not deserve any sympathy by this Court.

33. For the foregoing reasons, Criminal Appeal No. 22 of 2004 filed on behalf of appellant Narendra Kumar Jain is partly allowed on technical ground. Conviction of appellant Narendra Kumar Jain under Sections 489B and 489C read with Section 120B of the Indian Penal Code is modified to Section 489B and 489C of the Indian Penal Code, however, sentence imposed by the Court below is maintained. Criminal Appeal No. 2/2004 filed by Kurukshetra Sena, Criminal Appeal No. 43 filed by Rawalmal Jain and Criminal Appeal No. 52/2004 filed by Narsingh Lal Maheshwari, Babulal Inadi and T. Appal Suri are also partly allowed on technical ground. Conviction of appellants Kurukshetra Sena, Rawalmal Jain, Narsingh Lal Maheshwari, Babulal Inadi and T. Appal Suri u/s 489C read with Section 120B of the Indian Penal Code is modified and instead thereof, they are convicted u/s 489C of the Indian Penal Code, however, sentence imposed by the Court below is maintained.