(2016) 08 GUJ CK 0058

In the Gujarat High Court

Case No : Criminal Appeal No. 287 of 2006

State of Gujarat APPELLANT

Vs

Jyotsnaben W/o. Jasubhai RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, Section 34, Section 489B, Section 489C

Citation : (2016) 3 GujLH 597

Hon'ble Judges : Mr. Anant S. Dave and Mr. B.N. Karia, JJ.

Bench : Division Bench

Advocate : Mr. Rutvij Oza, APP, for the Appellant No. 1; Abated, for the Opponent/Respondent No. 8; Hcls Committee, Advocate, for the Opponent/ Respondent Nos. 7, 9; Mr. Kaivan K. Patel, Advocate, for the Opponent/ Respondent Nos. 7, 9; Mr. Jaivik J. Bhatt for Mr Pm L

Final Decision : Dismissed

Judgement

Mr. B.N. Karia, J. (Oral)—By preferring the present Criminal Appeal under Section 378 [1](3) of the Code of Criminal Procedure, 1973 ["CrPC" for short], the appellant-State of Gujarat has challenged the common judgment and order dated 31st March 2005 passed by the learned Addl. Sessions Judge, Fast Track Court No.1, Jamnagar in Sessions Cases No.127 of 2001 & 35 of 2002, whereby, the respondents herein have been acquitted of the charge for the offence punishable under Sections 489 [b](c), 489 [b], 489 [c], 120B read with Section 34 of the Indian Penal Code ["IPC" for brevity].

2. Brief facts of the prosecution case are ? in order to use fake currency notes of Rs. 500/- denomination as real bank notes and to circulate them in use at various places in Indian currency, all the accused persons, in collusion with the deceased accused Valimamad Rahim, who expired after production of the charge-sheet, transacted with one another, kept them in their possession and before the period of one or two months of 16th June 1999, they often met each other at various places with a common intention of mixing the said fake notes in Indian

currency, transacted fake notes of Rs. 500/- denomination and kept them in their possession with an intention to circulate them as real notes in Indian currency. In this way, the accused persons hatched criminal conspiracy and on 16th June 1999, at about 7:00 hours in the evening, the accused no.2 Hasam Maher Ali Hemnani, in collusion with deceased accused Valimamad Rahim, who has expired, gave fake currency note of Rs. 500/- denomination for the purchase of goods to Bavanji Meghjibhai Savaliya, owner of Sheetal Provision Stores, located in Sadhna colony, Jamnagar to use it as real one, despite having knowledge of the same being counterfeited. Further, on 17th September 1999, at about 1:00 hours, he got petrol filled in his vehicle at Kirti petrol pump and gave a fake currency note of the denomination of Rs. 500/- by using it as real one. Further, on 17th September 1999, the accused no.5 Husen Valimamad Kakle residing outside Sasa Gate of Kuchchh-Bhuj city, kept three fake currency notes of the denomination of Rs. 500/- in pocket of his pant to use them as real ones, when the same were found and recovered. On 14th September 1999 in the evening, the accused no.4 Devchand Dahyabhai Kathriya used fake currency note of the denomination of Rs. 500/- as real one and made payment towards treatment taken at the place of Dr. V.C. Sathve, an Eye Surgeon of Jamnagar and towards medicine bill of Vipul Vinodray, the owner of Umiyaji medical store. Further, on 22nd September 1999, during 16:00 to 16:45 hours, one fake currency note of the denomination of Rs. 500/- was found from a drawer of table in the house of the aforesaid accused, located in Block No. 17, Laxminarayannagar, Near Khari canal, Thakkarnagar, Ahmedabad. Further, on 21st September 1999, during 20:00 to 21:00 hours, two fake currency notes of Rs. 500/- each were found in a cupboard having glass doors from the residential house of the accused no.7 Praful Maganlal Soni, House No.2, Vaishali Apartment-2, Near C. N. Vidyalaya, Ambavadi, Ahmedabad. Further, on 22nd September 1999, during 17:00 to 18:30 hours, two fake currency notes of the denomination of Rs. 500/- were found in a cupboard in the residential house of the accused no. 3, located in Block No. 28, Prakash Society, Naroda Area, Ahmedabad. Further, on 22nd September 1999, during 07:00 to 08:00 hours, three fake currency notes of the denomination of Rs. 500/- were found from a bag in the residential house of the accused no.1 Jyotsnaben and her husband the accused no. 8 Kuberbhai, located in village Halisha, District Dahegam, Ahmedabad. In this way, all the accused persons colluded one another at different times with an intention to use fake currency notes of the denomination of Rs. 500/- as real ones at Samkhiyali, Halisha, Ahmedabad and Jamnagar, kept them in their possession, circulated them as real ones and have committed an offence, afore stated.

3. The complainant is Police Sub Inspector Mr. B.T. Zala, who had been discharging his duty at City ''A'' Division, Khambhaliya Police Chowky, Jamnagar at the time of the incident in this case. As per his complaint, on 17th September 1999, Rajendrasinh Shivubha Jadeja, working as a Cashier at Lalpur by-pass Petrol pump, stated before Balubha Gagubha, P.S.O. of Jamnagar City ''A'' Division Police Station that a person, namely Hasambhai, got petrol filled in the

vehicle, bearing registration no. GJ 10 L 7394 at his petrol pump and gave one fake currency note in the denomination of Rs. 500/-. As the said currency note was suspected to be fake, he produced the said counterfeited note before P.S.O., who recorded his statement and registered a "Janva Jog" Entry No. 244/99 on 17th September 1999 at Jamnagar City ''A'' Division Police Station and seized aforesaid fake currency note of rupees five hundred, bearing number 6CA027618; as per details made out in the panchnama. Further investigation was sent towards him as P.S.I. The inquiry in respect of owner of the said scooter was conducted in the R.T.O. and it was found that it is registered in the name of "Hasam Maherali Hemnani", resident of Sadhna Colony, Block No. M.65, House No. 4042. Therefore, the complainant searched the said place, where a scooter was seen outside the house. As its owner Hasam Maherali''s residential house was on the second floor, two panchas Bharatkumar Durgashankar, resident of Jamnagar and Ashok Viththaldas Thakrar, resident of Jamnagar were called and house of the aforesaid person was searched in presence of two panchas and other staff members viz., H.C. Pravinsinh Bhikhubha, P.C. Sukhdevsinh Ranjitsinh, P.C. Nikul Mukundray. His wife Kherun Nishaben was present in the house and two fake notes of Rs. 500/- denomination from black coloured leather purse along with other articles were found from the house. These fake currency notes were found to be of the same kind of notes, as were produced by Rajendrasinh before P.S.O. at the Police station. As the colour of both notes stuck with fingers and size of both notes were different than normal currency notes, it was found that they were fake. Both the currency notes were found having numbers 6CA027618 and 4CH306573 respectively. Therefore, as both currency notes were found to be fake, P.S.I. seized them after putting them in a cover and sealing the same. This complaint was given against aforesaid Hasam Maherali. The P.S.O. Balubha Gagubha Vaghela registered an offence punishable under Section 489[B](c) IPC against accused vide I-C.R. No. 353/99 at Jamnagar City ''A'' Division Police Station and made an entry thereof, vide Entry no. 14/99 in the station diary and handed over papers of investigation to P.S.I. Shri B.T. Zala for onward investigation. Thereafter, Mr. Sukhdevsinh Zala, P.I. of Jamnagar City ''A'' Division Police Station, took over investigation. At that time, he had been discharging his duty as P.I. at Jamnagar City ''A'' Division Police Station. He recorded statements of concerned witnesses during his investigation. As witness Bavanji Meghjibhai produced fake currency note in the denomination of rupees five hundred before the panchas on 17th September 1999, the same was seized by drawing a panchnama. Similarly, as witness Ashokbhai Ramanikbhai also produced a fake currency note in the denomination of rupees five hundred on 17th September 1999, the same was seized by drawing a panchnama. The Police, therefore, arrested accused Jyotsanaben and Hasam Maherali and seized currency note in the denomination of rupees five hundred found from the reddish brown coloured purse in the right side pocket of his pant. Dr. Sathye produced fake currency note in the denomination of rupees five hundred before him and the same was also seized drawing panchnama. As witness Vipul Vinodray produced fake currency note in the denomination of Rs. 500/=, he also seized it by drawing a panchnama. P.S.I. Chauhan searched the house of Bharatbhai Ambalal Patel, who has passed away. Mr. Chauhan searched house of accused Devchand Dayabhai. He searched house of the accused no. 3 Dhiren Kanubhai and seized muddamal by drawing a panchnama. P.S.I. Mr. Chauhan seized muddamal currency note of Rs. 500/= denomination after searching house of accused Jashubhai Kuberbhai. Whereas, P.S.I. Sukhdevsinh Zala searched house of accused Kamlesh Jethalal. Mr. Chauhan drew a search panchnama of the house belonging to Ratibhai Dayabhai. In this manner, the house of accused persons were searched and as fake currency notes were found and the same were seized. The bills of Sankalp Hospital and Umiya Medical were seized. The statements of three witnesses were recorded under section 164 of CrPC before Chief Judicial Magistrate in this case. A police "yaadi" was sent to add section 34 of IPC in the FIR. The abstracts of register of Shital Hotel was seized. As involvement of other accused persons was also revealed at the end of investigation and sufficient evidence was found against all the accused persons, accordingly the Investigating officer filed charge sheets in the court.

4. Since the case was not triable by the Court of learned Chief Judicial Magistrate, First Class, Jamnagar, the same were committed to the Court of learned Sessions Judge at Jamnagar where it were numbered as Sessions Case No. 127 of 2001 and 35 of 2002. At trial, all the respondents-accused pleaded not guilty and claimed to be tried. Therefore, prosecution examined in all forty one witnesses and produced and place reliance upon 36 documentary evidences in support of its case. However, at the end of trial, the prosecution has given closing purshis and the matter was fixed for arguments by the learned Addl. Sessions Judge, Jamnagar, who after hearing respective sides was pleased to acquit all the respondents of the charge levelled against them vide common judgment and order dated 31st March 2005; which is impugned in the present Appeal.

5. At the outset, we would like to state that by virtue of Oral Orders dated 11th July 2016 and 2nd August 2016, this Court took note of the demise of original accused no. 8- Jasubhai Kuberbhai Chaudhari on 27th June 2009 and original accused no. 4-Devchandbhai Dahyabhai Kathiriya on 24th April 2016, and had accordingly, ordered abatement of the Appeal qua these respondents.

6. Heard learned advocates for the respective sides at length.

7. Learned APP Mr. Rutvij Oza appearing for the appellant-State strongly assailed the common impugned judgment and order dated 31st March 2005 passed by the learned Addl. Sessions Judge, Fast Track Court No. 1, Jamnagar in Sessions Case Nos. 127 of 2001 & 35 of 2002 acquitting the respondents-accused contending the same to be contrary to law, evidence on record and against the settled principles of justice, warranting interference at the hands of this Court. It is further urged that the learned trial Judge has not properly appreciated the oral as well as documentary evidence in its proper perspective, though the prosecution has clearly proved the common intention of the respondents-

accused. He pleaded that all the respondents with a common intention, prepared fake currency notes of Rs. 500/= denomination and thereby committed offence punishable under Section 489[B], (c) read with Section 34 of IPC. That, the accused no.2-Hasam Maherali Hemnani came on his vehicle bearing registration no. GJ-10-L-7390 and after filling petrol from a petrol pump, gave fake currency note to Rajendra Shivubha Jadeja. That, no test identification parade was required of A2 because he was identified by PW-Rajendra Shivubha Jadeja, a Petrol Pump Attendant to whom fake currency note of Rs. 500/= was given. That Police Inspector- Sukhdevsinh Zala by drawing a panchnama at Exh. 100 has proved seizure of fake currency notes and it is duly supported by this witness before the trial Court, however, by not accepting his oral testimony, the learned trial Judge has committed a grave error. That, acquitting all the accused from the charge by the learned trial Judge is improper, perverse and bad in law. That, the prosecution has clearly proved its case against the accused beyond reasonable doubt. That, the testimony of prosecution witnesses, particularly of Police officers, cannot be discarded merely on the ground that panchas have not supported theory of the prosecution case. Therefore, it was humbly urged by him to quash and set-aside the impugned common judgment and order acquitting the accused in Sessions Case No. 35 of 2002 and 127 of 2001, by allowing this Appeal.

8. Per contra, learned advocate Shri Jaivik J. Bhatt appearing for Mr. P.M Lakhani, learned advocate for the respondents-accused nos. 1, 3, 5 and 6 in his arguments submitted that the prosecution has clearly failed to establish ingredients of Section 489 [B] and 489 [C] read with Section 34 of the Indian Penal Code against the accused. He further urged that under Section 489[B] IPC, the burden is on the prosecution to prove that at the time when the accused was possessing counterfeit notes, he knew that it was forged one and mere possession of such notes by him would not sift his burden to prove his innocent possession of such notes. Knowledge or reason to believe that the note was forged has to be proved to fix the liability under Section 489 [B] and 489 [C] IPC. Mere recovery of fake currency notes from the house of any of the accused or purchase of petrol, medicines or sarees from merchant or dealer of petrol agency would not help the prosecution to convict the accused unless they establish that it is only because who kept the fake currency notes which were recovered. That, whenever a criminal statute uses the expression "possession", it postulates both conscious and exclusive possession. Where the accused was living with his wife and other family members in his house and at the time of recovery of two fake currency notes from the pocket of his pent, though his wife was present, in absence of any proof that such counterfeit currency belonged to the accused and he kept it in his exclusive possession in his house, it cannot be said that the recovery was satisfactory and that the accused was in actual or conscious possession of those currency notes and the accused cannot be roped by Section 489-C IPC. That, the prosecution has failed to establish that the accused intermittently used counterfeit currency as genuine or that might be

used as genuine. None of the prosecution witnesses, panchas in respect of recovery of fake currency-notes either from accused or from the witnesses have supported the prosecution theory and all of the independent panch witnesses have turned hostile, as nothing fruitful material was found from their testimonies, helping the prosecution and its theory. That the statement recorded under Section 164 CrPC does not incriminate the accused by any way, and therefore, they are not useful to the prosecution. No name of the accused was given in the statement recorded under Section 164 CrPC. There is no evidence produced by the prosecution of hatching conspiracy by the accused in using the fake currency notes, receiving fake currency notes and using the same in the market knowing it to be fake/counterfeited. That, the learned trial Judge has rightly appreciated the evidence and by a well reasoned ordered, acquitted all the respondents, and therefore, no interference is warranted without any cogent and satisfactory evidence to connect the accused in the crime. Hence, it was requested to dismiss the Appeal.

9. Learned advocate Mr. Pradip J. Patel appearing for Mr. V.H Kanara, learned advocate for the respondent no. 2 [original accused no.2] has supported arguments advanced by Mr. Jaivik J. Bhatt, learned advocate for the respondents no. 1, 3, 5 & 6 and further urged that in absence of A2, raid was carried out by the Police officials at his residence, where wife of A2 was present as per prosecution theory and from a pent-pocket of A2, two fake currency notes were found and recovered, and a panchnama in this respect was prepared by Investigating officer, but none of the panchas who are independent, have supported the panchnama recovering two fake currency notes, and therefore, in absence of there being any other evidence available against A2, the learned trial Judge has rightly acquitted him of the charge, and therefore, it was urged by him to dismiss the present appeal.

10. Likewise, learned advocate Shri Kaivan K. Patel appearing for the respondents no. 7 & 9 also supported the submissions advanced by learned advocate appearing for the respondents no. 1,3 & 5 and made a request to this Court to dismiss the Appeal as no evidence is found against his clients viz., respondents no. 7 & 9, during the trial.

11. Having heard learned advocates appearing for the respective sides, considered facts of the case and perused the record of the trial Court, before discussing the facts of the case, we would like to examine the legal position in respect of scope of interference by this Court in an appeal filed against acquittal.

12. In case of Sadhu Saran Singh v. State of Uttar Pradesh & Ors., reported in (2016) 4 SCC 357, the Apex Court while discussing scope of interference in appeal against acquittal order, held and observed as under :-

"20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal in Sambasivan v. State of Kerala, (1998) 5 SCC 412 has held :

"7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

13. First of all, let us re-read and appreciate the provisions, when the prosecution had charged the accused persons under Section 489 [B] and 489 [C] read with Section 34 IPC.

13.1 An offence punishable under Section 489-B IPC, has the following three essential ingredients viz., [a] selling, buying or receiving from any person or otherwise trafficking currency note or bank note; [b] any forged or counterfeit currency note or bank note; and [c] knowing or having reason to believe that such note was forged or counterfeit. Thus, to bring home an offence under Section 498-B IPC ? [a] the prosecution has to prove that the relevant currency note or bank note was forged or counterfeit; [b] that the accused sold to or received from some person, or trafficked in, or used as genuine the aforesaid currency note or bank note; [c] that when the accused did so, he had knowledge or reason to believe about its being forged or counterfeit. Therefore, in order to sustain the conviction of an accused, the prosecution has not only to prove that he had the possession of counterfeit note, having reason to believe it as such, but also to prove circumstances which lead clearly, indubitably and irresitably to his intention to use/circulate the notes in the public.

14. Now, if we go through Section 489-C IPC, the ingredients which are required to constitute an offence are viz., [a] the note in question is a currency note or bank note; [b] such note was forged or counterfeited; [c] the accused was in possession of the currency note or bank note; [d] the accused intended to use the same as genuine; and [e] the accused knew or had reason to believe the note to be forged. Thus, the first and foremost ingredient for invoking Section 489-C is that the accused must possess and that it must be the possession of forged or counterfeit currency notes or bank notes. Whenever a criminal statute uses the expression ''possession'', it postulates both conscious and exclusive

possession. Where the accused was living with his wife and other family members in his house and at the time of recovery of the bag containing fake currency notes from the house, his wife was actually present, in absence of any proof that bag belonged to the accused and he kept it in his exclusive possession in his house, it cannot be said that the recovery was satisfactory and that the accused was in actual or conscious possession of those currency notes and the accused cannot be roped by Section 489-C IPC.

15. Now, if we examine evidence of prosecution case in the form of their witnesses, PW-17 Pravinsinh Bhikhubha Jadeja is an ASI who accompanied the raiding party lead by PSI Shri B.T Zala [PW-21]. He, of course, supported version of the prosecution and has given specific details regarding the raid carried out by PW-21 : Shri Batuksinh Takhatsinh Zala. Another prosecution witness Shri Ashokbhai Ramnikbhai Kankhara [PW-18 at Exh. 111] is the owner/administrator of Kirti Petrol Pump. He has given instructions to PW-19 Rajendra Shivubha Jadeja to inform about fake currency notes to the Police.

15.1 PW-19 Shri Rajendra Shivubhai Jadeja is an employee, who was serving as a Cashier/Attendant at the Petrol Pump viz., Kirti Petrol Pump owned by PW-18, who on instructions received from the owner of the Petrol Pump accordingly informed the Police about receipt of fake currency note of Rs. 500/= denomination bearing serial No. 6CA 027618 and a seizure panchnama was prepared and produced at Exh. 78.

15.2 Another prosecution witness Bavanji Meghabhai Savaliya [PW-20] is the owner of Shital Provision Stores. As per his statement at Exh. 113, he has received currency note of Rs. 500/= bearing serial no. 6CD 010860 and as per prosecution case, a seizure panchnama was prepared and produced at Exh. 100. This witness has not supported the prosecution case and hence, he is declared hostile witness. PW-21 : Shri Batuksinh Takhatsinh Zala is PSI who was examined at Exh. 121 is the first informant who carried out investigation of the owner of vehicle No. GJ 10 L 7394. As per his statement, he has verified the ownership of the afore stated vehicle from Road & Transport office and has produced Yadi vide Exh. 157. From the verification made by him, he found that the vehicle was in the name of Hasam Meharali Hemnani ie., A2. Communication letter and a copy of register from RTO are produced by him at Exh. 158 & 159 respectively. He raided the house of A-2 Hasam and at that time, wife of A2 only was present at his residence. He has seized material from the house being article nos. 2 to 31. He also found two currency notes of Rs. 500/= denomination bearing serial no. 6CA 027618 and 4CH 306573 vide Article 33. Panchnama Exh. 76 of raid conducted at the house of A2 Hasam was drawn in presence of PW-1 Bharatkumar Durgashanker Bhatt and PW-2 Hemantkumar Yogeshwar Sharma. PW-22 Harjibhai Parbatbhai Nandasana is a Police Sub Inspector who has investigated the crime for a limited period. He has effected arrest of A9 & A10 and filed supplementary charge sheet against these accused persons.

15.3 Prosecution examined Dr. Vilas Vijay Sathe [PW-23 at Exh. 123]. He is an

Ophthalmologist having his own hospital named "Sankalp Eye Hospital". He has received one fake currency note of Rs. 500/= bearing serial no. 8AQ 113428 from A-4, but this witness was not able to identify this accused person before the Court and had only stated that on examination of eyes, he can identify him. A seizure panchnama of recovering a fake currency note of Rs. 500/= denomination is produced by the prosecution at Exh. 96.

15.4 PW-24 Vipul Vinodbhai Patel is owner of Umiyaji Medical Stores. In his testimony, he has deposed of his having received a fake currency note of Rs. 500/= denomination from A-4, but he was also unable to identify A-4. A seizure panchnama of recovering fake currency note was drawn by the Investigating Agency and produced on record at Exh. 141.

15.5 PW-25 Balubha Gagubhai Vaghela is examined at Exh. 128. He has got registered a "janva jog" entry No. 244/1999 from PW-19 Rajendrasinh. His statement was also recorded by the Police after registering of an FIR, being I-C.R No. 353 of 1999. Whereas, Shri Vijaykumar Chimanlal Thakker [PW-33] is Receptionist/Manager of Nilkanth Hotel where A-9 Kamleshbhai had stayed on 6th August 1999. As per his version, the said A-9 use to visit Nilkanth Hotel and stay there. In support of his say, this witness has produced abstracts of entries made in the Visitors'' register which are placed on record at Exh. 152 along with Cash Memo receipt issued to Kamleshbhai at Exh. 153. PW-36 Kirankumar Nathalal Sakariya is a Junior Clerk in the RTO office. He has supported the version of PW-2 B.T Zala in respect of verification of the vehicle number from his office. PW-37 Liluben Rambhai Modhvadiya is a Police Constable who accompanied PW- 21 B.T Zala at the time of raid being conducted at the house of A2-Hassam. He has supported the version of PW- 17 Pravinsinh and PW-21 B.T Zala. Another prosecution witness Shri Nimesh Janakrai Amsarani is examined as PW-39 at Exh. 188. He has his own Saree Shop situated at C-19, Super Market, Jamnagar. As per his deposition, when he went to deposit money in the Bank, at that time, the Cashier of the said Bank informed him to send some elderly person as two currency notes of Rs. 500/= each were found to be fake/ counterfeited. PW-40 Kamleshbhai Dhirajlal who was examined at Exh. 190 has supported the version of PW-30 Nimeshbhai Janakrai Amsarani. PW-41 Sukhdevsinh Hanubha Zala is a Police Inspector who was examined at Exh. 199. He has certainly tried to support the prosecution case, unfortunately, whatever panchnamas were prepared by the investigating agency of recovery made of fake currency notes or articles from the residence of A2 ie., articles no. 2 to 31, have not supported the prosecution theory and all of them have turned hostile. Bharatbhai Durgashanker Bhatt [PW-1 : Exh. 75] is a panch-witness no.1 in the panchnama conducted during the search and seizure of the house of A2-Hasambhai. He has turned hostile and has not supported the case of prosecution. The panchnama has been exhibited, as the signature in the said document has been identified by him.

15.6 If we consider the raid conducted at the residence of A2 on 17th September

1999 at 11:00 am, it appears that there were about thirty documents which were seized from the said house of A-2; including two fake currency notes of Rs. 500/ = each, bearing serial nos. 6CA 027618 and 4CH 306573. During the search and seizure, A2 Hasam was not present in his house, while vehicle bearing registration No. GJ 10 L 7394 was found parked in the flat. PW-2 Hemantkumar Yogeshwar Sharma was examined at Exh. 77. He is panch no. 1 in the panchnama drawn when a raid was conducted for production of a fake currency note, bearing serial no. 6CA 027618 by witness-Rajendra Jadeja. The said panchnama for production of fake currency note at the instance of Rajendrabhai is exhibited at Exh. 78. This witness is a hostile panch having not supported the prosecution theory. The said panchnama Exh. 78 was exhibited only because the witness has identified his signature and his pair-witness is PW-3 Yogeshbhai. Panchnama Exh. 78 was prepared on 19th September 1999 at 8:40 pm. PW-Rajendra Jadeja has produced one fake currency note, which he suspected to be fake. He was given this currency note by one person who had filled petrol in vehicle bearing registration no. GJ 10L 7394. He came to the Police Station because the owner of the Petrol Pump Shri Ashokbhai had instructed him to do so. He has not disclosed any name of the accused in the said panchnama Exh. 78. PW-3 Yogeshbhai Vasantbhai Ganatra is panch no. 2 in Panchnama at Exh. 78. He has also turned hostile and not supported the case of prosecution. PW-4 at Exh. 80 is Amadbhai Hajibhai who is panch no. 1 for the arrest of A1-Jyotsnaben Jasubhai. He has also turned hostile not choosing to support the prosecution case. Exh. 81 is panchnama of arrest of A1- Jyotsnaben Jasubhai Chaudhari from whom nothing was either recovered or discovered, while she was arrested. This document is exhibited because signature of pancha was identified by him. Pair witness of panchnama at Exh. 81 is PW-5 Farukhbhai Hussain.

15.7 If we consider panchnama Exh. 81 which is drawn in respect of arrest of A1 Jyostnaben Jasubhai Chaudhary, it appears that nothing was seized from her, while she was arrested. PW-5 Farukhbhai Hussain, who was examined at Exh. 82, on the same lines does not support the contents of panchnama Exh. 81 for arrest of A1. Even the contents of the panchnama were not proved by the Police officer [PW-41].

15.8 If we examine testimony of PW-6 Mahendrabhai Kantilal Bhavsar [Exh. 83], he happens to be a panch witness of panchnama drawn in respect of raiding the house of A-7-Prafulbhai. It appears from record that A-7 Prafulbhai was not present in the house, when the raid was carried out. This witness has turned hostile, not giving any support to the prosecution case. Panchnama is produced at Exh. 84, which was prepared on 21st September 1999 at 20:00 hours. As per panchnama, fake two currency notes were found from the residence, bearing serial no. 8Q113428 and 8AR 722747.

16. Now, if we analyse testimony of PW-7 Balwantbhai Vithalbhai Patel [Exh. 85], it appears that he is panch no. 1 in the panchnama of raid which was conducted at the house of A-4 Devchandbhai. This witness has also turned hostile and has

not chosen to extend support to the prosecution case. This panchnama at Exh. 84 was exhibited only because he has identified his signature.

16.1 If we look at Exh. 86, it is a Panchnama of the raid carried out at the house of A4-Devchandbhai. It reveals that A-4 Devchandbhai was not present, when the raid was conducted by the police, however, his wife was present. During the raid, one currency note bearing serial no. 8AJ 113428 was recovered and seized by drawing a panchnama. However, contents of this panchnama at Exh. 86 were not proved by the Police Inspector [PW-41]. PW- 8 : Nileshbhai Thakker is panch no. 2 of the panchnama drawn in respect of raid conducted at the house of A-5 Hussain Walimammad Kakkal. On same lines of previous panch, this witness has turned hostile and has not agreed to support the prosecution case. It is just because he has identified his signature made in the panchnama at Exh. 89, this document was taken on record and exhibited.

17. If we look at panchnama Exh. 89, which was prepared on 17th September 1999 at 22:45 hours, it reveals that A5-Hussain Walimmad Kakkal was not present at his residence when the raid was conducted and from where three notes were found, bearing serial nos. 1CE 322773; 8CT 107681 and 2RP 451618. Panch no. 1 of panchnama at Exh. 91 is PW-9 Kalabhai Ramabhai. He was examined at Exh. 90, however, this witness too has not supported the prosecution theory. The said document was exhibited only due to identification of signature made by this witness. Exh. 91 is a panchnama which was prepared on 22nd September 1999 at 8:00 pursuant to the arrest of A8 Jasubhai. The raid was conducted at the house of A8 with a suspicion that more muddamal fake currency notes would be found from the place. While preparing this panchnama Exh. 91, A1-Jyotsnaben Jasubhai was present. Three currency notes bearing serial nos. 2AP 451618 and two currency notes were bearing serial no. 2BU 070619. Contents of this panchnama were not proved by PW-41 who prepared this panchnama. PW-10 Alimamad Abdulbhai who happens to be panch of a panchnama Exh. 91 for conducting raid at the house of Jasubhai too has not extended support to the prosecution case and has turned hostile. PW-11 Badarali Kasam Arab is panch no. 2 in the panchnama Exh. 96 which was drawn in respect of currency note produced by Dr. V.V Sathey. This panchnama at Exh. 96 was drawn on 21st September 1999 on production of a fake currency note at the instance of Dr. V.V Sathey to whom A4 Devchandbhai had given on 14th September 1999, bearing serial No. 8AQ 113428. It transpires from the record that the contents of this panchnama were not proved by the Police Inspector ie., PW-41 Sukhdevsinh Hanubhai Zala. PW-12 Salimbhai Daudbhai is panch no.1 of the panchnama Exh. 100 which was drawn in respect of recovery of a fake currency note at the instance of Bavanji Savaliya. This witness has turned hostile and has not supported the case of prosecution.

18. If we look at this panchnama at Exh. 100, it was drawn on 17th September 1999 at 17:00 hours. It appears that this panchnama was drawn in the Police Station at the instance of one witness viz. Bavanji Savaliya showing recovery of

one currency note bearing serial No. 6CD 010860. PW-13 Dharmendrabhai Vrajlal Lakhani at Exh. 104 has preferred to support the co-panch Salimbhai Daudbhai [PW-12] and in turn has not supported the case of prosecution and thereby was declared a hostile witness. PW-14 Ashokbhai Vithaldas Thakker was examined at Exh. 102. He also turned hostile and has not supported the case of prosecution. Another prosecution witness viz., Dilipbhai Bhimjibhai Chavda was examined as PW-15 at Exh. 103. He is panch no. 1 in panchnama for arrest of A2 Hasambhai Hemnani. He has not supported the prosecution case and thereby declared a hostile witness. Panchnama Exh. 104 was drawn in respect of arrest and seizure of one fake currency note bearing serial no. 2BU 070619 made from A2 Hasambhai Hemnani on 20th September 1999 at 00:15 hour. Unfortunately, contents of this panchnama were not proved by Investigating officer [PW-41]. On the same lines, another prosecution witness Mohanbhai Bhanubhai Rathod who was examined as PW- 16 at Exh. 105 is panch no. 2 of panchnama Exh. 104. He too has turned hostile, not supporting the prosecution theory. PW-17 Pravinsinh Bhikhubha Jadeja is Asstt. Police Sub Inspector. He was examined at Exh. 110. He initiated inquiry on the tip off received by PSO, Babha from one Rajendra Shivubha who filled in petrol in a vehicle No. GJ 10 L 7394 and in turn received a fake currency note of Rs. 500/= denomination. He swiftly acted and sought information from RTO as to the ownership of the aforementioned vehicle and found the same to be of one Hassam Nurani. He conducted raid at the house of accused-Hassam where his wife was present and recovered certain articles; including two fake currency notes bearing serial no. 4CH 306573 and 6CA 027618, which were found from the wallet of a pant of accused- Hassam. The said recovery was made in presence of panchas, but as discussed above, panchas have not supported the theory of prosecution. PW-18 Ashokbhai Kankhara was examined at Exh. 111. He is the owner of a Petrol Pump and a hear say witness. Nothing incriminating against any of the accused person was found by the trial Court.

18.1 PW-19 at Exh. 112 is Rajendra Shivubhai Jadeja. He is a Petrol Pump Attendant-cum-Cashier and an informant in respect of fake currency note by him from one of the customers who filled-in petrol in the vehicle and in turn gave the said note. Unfortunately, he has turned hostile and nothing comes on record as to who had given him the said fake currency note.

18.2 PW-20 Bhavanji Meghabhai Savliya is owner of Shital Provision Store. According to his testimony at Exh. 113, one unknown person had given him a currency note of Rs. 500/= denomination bearing serial no. 6CD 010860. He has no idea who had given this fake currency note. Therefore, this witness was declared a hostile witness. Batuksinh Takhatsinh Zala PW-21 is a Police officer who had taken over investigation, pursuance to complaint and statement made by Rajendrabhai. As per his testimony at Exh. 114, he had conducted raid at the house of Hussam Maherali along with two panchas viz., [a] Durgashanker Bhatt and [b] Ashok Thakker ie., PW-1 & P14 respectively from where two currency notes came to be recovered from wallet in which there was a Card belonging to accused-Hassam. The said two fake currency notes bear serial nos. 6CA 027618 and 4CH 306573. However, he admits in his cross examination that while investigation was with him, no other name of any accused person were revealed.

18.3 Another Police officer PW-22 Shri Harjibhai Nadasana at Exh. 122 had taken over investigation for sometime and had again handed over investigation to Police Inspector. While he was investigating the crime, he had taken over custody of A8 Jasubhai Chaudhari from Ahmedabad by a transfer warrant and had also sought remand of the said accused along with remand of A9 Kamleshbhai Badiyani. In his cross examination, he admits of having not prepared any arrest panchnama in respect of two arrests made of the afore stated accused persons. He also admits in his cross examination that during investigation, he has not found any incriminating from both the accused persons arrested by him.

18.4 Dr. Vilas Vijay Shathe [PW-23 : Exh. 123] was given a fake currency note of Rs. 500/= denomination by A4 Devchandbhai on 14th September 1999. He had learnt that the said Devchandbhai had given said fake currency note to his Assistant on the counter, bearing serial no. 8AQ 113428. He was unable to identify A4-Devchandbhai before the Court.

18.5 PW-24 Vipulbhai Patel was examined at Exh. 124. He is owner of a Medical Store to whom A4 Devchandbhai had given one currency note of Rs. 500/= denomination on 14th September 1999. This witness has also failed to identify A4 before the Court. In his cross examination, this witness has stated that during the said period, there were 20 to 25 currency notes of Rs. 500/= each out of which, one was identified to be counterfeited by the Police.

18.6 PW-25 at Exh. 128 is Balubha Gaglubhai Vaghela who was PSO before whom Rajendrasinh had disclosed about fake currency note and who had transferred the investigation to Shri BT Zala. PW-26 Nasirbhai Bachubhai Mansuri at Exh. 135 supported the version of PW-6 and had not supported the prosecution case. In the same way, PW-27 Narayanbhai Panchal at Exh. 136 is a panch no. 2 of panchnama which was conducted at the residence of A3 Dhirenbhai where search and seizure was carried out. He has not supported the prosecution case, but panchnama was exhibited at Exh. 137, which was prepared on 22nd September 1999 at 17:30 pm. While preparing panchnama Exh. 137, A3 Dhirenbhai was not present in his house when the raid was conducted. As per panchnama, two fake currency notes were found bearing serial no. 4CH 306573. However, contents of panchnama were not proved by the Investigating officer PW-41. He only identified signature of Police officer Shri Chauhan.

18.7 PW-28-Exh. 138 Shri Iqbalbhai Nurabhai is a hostile panch of recovery of panchanam drawn at the instance of Ashokbhai PW-18. Due to identification of signature, this panchanama is exhibited. This panchanam was drawn on 17th September 1999 at 18:00 hours. The said panchnama was prepared with a view to connect A-2 Hasambhai Maherali, however, the said panchanam is not proved by the prosecution. In fact, Ashok is the author of this panchnama, but he is not asked by the prosecution about recovery of bills from the petrol pump. Moreover, the bill is drawn in the name of one Kasambhai ? vehicle no. GJ 10 L 7394 and is not in the name of Hasambhai Maherali. Contents of this panchanam have not been proved by the I.O [PW-41].

18.8 Another panch viz., Tapubhai Nanjibhai [PW-29] is examined at Exh. 140. He is panch no. 1 of panchnama Exh. 141 which was drawn in respect of production of fake currency note from medical store. This witness has not supported the prosecution theory and has been declared hostile by the trial Court. The only reason behind exhibiting this document is the signature which this witness has identified before the Court. Exh. 141 is a panchnama which was drawn on 21st September 1999 at 12:45 hours in respect of collecting a fake currency note from the Medical Store at the instance of Vipul Vindorai Patel, bearing serial no. 8AR 7227. Contents of this panchanam are not proved by Police Inspector [PW-41]. Another panch witness Shri Nareshbhai Lakhmanbhai is PW-30 who was examined by the prosecution at Exh. 142. This witness supports the version given by co-panch PW- 29 and has been declared hostile.

18.9 Bachubhai Shankerbhai Prajapati is PW-31 examined by the prosecution at Exh. 149. He is panch witness of search and seizure conducted by the Police at the house of A3 Dhirenbhai. However, he has not supported the prosecution case. PW-32 Nurmamadbhai Hajibhai is examined at Exh. 150. He is a co-wormer of PW-19 Rajendrabhai, who had submitted a fake currency note from the petrol pump of Rs. 500/= denomination. But, this witness too has not extended support to the case of prosecution.

18.10 PW-33 Vijaykumar Chimanlal Thakker, Hotel Manager of Nilkanth Palace, Ahmedabad is examined by the prosecution at Exh. 151. He has stated that on 6th August 1999, A9-Kamleshbhai had visited his Guest House and thereafter on various dates, however, nothing incriminating was found against the said accused. Abstract of the Register maintained by the said Nilkanth Hotel is brought on the record at Exh. 152 which depicts only that A9 Kamleshbhai had been often visiting Nilkanth Hotel as and when he used to visit Ahmedabad.

19. PW-34 Mukeshbhai Kanjibhai Vala is examined at Exh. 154. He is a co-worker of PW-19 Rajendrabhai who had submitted fake currency note of Rs. 500/= denomination from the Petrol Pump. He is declared hostile by the trial Court. On the same lines, PW-35 Hitendrasinh Nathubha Solanki [Exh. 155] who is also a co-worker of Rajendrabhai [PW-19], who had submitted a fake currency note. He too has not support the prosecution theory and has been declared hostile by the trial Court.

19.1 PW-36 Kirankumar Nathalal Sakariya is examined at Exh. 156. He is an RTO officer, who had provided details of the vehicle bearing registration no. GJ 10 L 7394. A Yadi Exh.157 is brought on the record along with reply given to the Police officer vide letter dated 17th September 1999 and a copy of registration details of vehicle bearing registration no. GJ 10 L 7394. Yadi dated 17th

September 1999; reply to the Yadi given to the Police officer as well as registration details are produced on record at Exhs. 157, 158 and 159 respectively. This information would not be in favour of prosecution case, as other witnesses have not supported the prosecution case in respect of connecting any of the accused with the crime. Exh. 158 is reply to Yadi dated 17th September 1999 describing A2 Hasambhai as the registered owner of vehicle bearing registration no. GJ 10 L 7394, and whereas, Exh. 159 carries details of registration of aforesaid vehicle owned by A2 Hasambhai.

19.2 PW-37 Liluben Rambhai is examined at Exh. 160. She is a lady constable who had accompanied the raiding party at the house of A2 Hasambhai. PW-38 Ratilal Dayabhai is friend of A9-Kamleshbhai and A4- Devchandbhai. He has turned hostile and chosen not to support the prosecution theory at the trial. PW-39 Nimeshbhai Janakrai is a shop owner who had sold three Sarees to two unknown persons and in turn received two fake currency notes of Rs. 500/= denomination. As per his testimony at Exh. 188, he described the date of incident to be 22/23rd September 1999. He was unable to identify any of the accused persons before the Court. His statement under Section 164 CrPC was recorded and produced at Exh. 189. Nothing is found incriminating against any of the accused from this statement at Exh. 189. He stated that there were three unknown persons. But, no Test Identification Parade was conducted.

19.3 PW-40 Kamleshbhai Dhirajlal is brother of the above shop owner and from whose statement, recorded under Section 164 CrPC, nothing incriminating is found against any of the accused persons. He too was unable to identify any of the accused persons before the trial Court. His statement recorded under Section 164 CrPC has been brought on the record by the trial Court at Exh. 191. On the same lines of his brother, who was previously examined, he supports that there were three unknown persons, but since no test identification parade was conducted, he was unable to identify them before the trial Court.

19.4 PW-41 at Exh. 199 is Police Inspector Shri Sukhdevsinh Zala who conducted entire investigation. Various documents have been exhibited by the trial Court at the instance of this witness, however, amongst them in quite a few documents, panchas were examined, which according to this Court is a glaring lacunae on the part of the prosecution to prove guilt.

20. Hence, possession of the fake Indian currency note from any of the accused persons was not established by the prosecution while examining even the independent panchs. Mere possession or use of counterfeit currency notes is not punishable. The accused must have knowledge or reason to believe that the notes were counterfeits or forged. The prosecution, therefore, shall have to invariably prove those ingredients enunciated under the provisions of Section 489-B & 489-C IPC. In the instant case, the prosecution has miserably failed to prove those ingredients viz., of selling, buying or receiving or otherwise trafficking in or using as genuine any forged or fake currency note and/or bank note with a knowledge or reason that such note was forged or counterfeit. The

prosecution has also failed to establish that the accused were in possession of the forged or counterfeit currency note or bank note and they knew that the said currency note/s to be forged or had reason to believe it to be so and they have intended to use it as genuine. Therefore, the onus lies on the prosecution to prove intention to foist the notes on the public, which in the instant case, has not been proved, and thus, the mere possession of fake currency note by the accused does not shift the burden to the accused to prove their innocence. No cogent and positive evidence is even brought on the record to prove the conspiracy. The proof of conspiracy is strictly conditional, upon there being reasonable grounds to believe that two or more persons has conspired together to commit an offence.

21. Apart from above pivotal facts, the learned trial Judge has also pointed out other serious lacunae in the prosecution case. Recovery of fake currency notes was not proved by the prosecution as well as possession of the same by the accused, since it was not supported by any of the panch witnesses. Recovery of fake currency notes is also not established since the witnesses of the seizure panchnama have turned hostile.

22. For the manifold reasons and in light of above discussion, we find no compelling and substantial reason to interfere with the impugned common judgment and order dated 31st March 2005 passed by the learned Addl. Sessions Judge, Fast Tack Court No.1 Jamnagar in Sessions Case Nos. 127 of 2001 & 35 of 2002. Hence, the present Appeal fails and the same is dismissed. No costs.