

(2016) 05 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 286 of 2011.

State of Himachal Pradesh

APPELLANT

Vs

Litesh Dhawan and Others

RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Evidence Act, 1872 — Section 114, 154
Penal Code, 1860 (IPC) — Section 489A, 498C

Citation : (2016) 3 RCRCriminal 458 : (2016) 3 SimLC 1536

Hon'ble Judges : Rajiv Sharma;Chander Bhusan Barowalia, JJ.

Bench : Division Bench

Advocate : Parmod Thakur, Additional Advocate General, for the Appellant; Anup Chitkara, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J. - The present appeal is maintained by the State of Himachal Pradesh against the judgment of acquittal, dated 12th November, 2010, passed by learned Sessions Judge, Kullu, district Kullu, Himachal Pradesh in Sessions Trial No. 16 of 2010, whereby the respondents-accused are acquitted in a case under Sections 420, 489B, 489C read with Section 120B of the Indian Penal Code with a prayer to set aside the judgment and to convict and sentence the respondents-accused in accordance with law.

2. Briefly stated, facts giving rise to the present appeal are that as per prosecution story, on 25.9.2009, ASI Rajender Singh alongwith ASI Rek Chand, Constable Bhupender Singh, L.H.C. Rakesh Kumar, HHC Shanker Lal was present at Bajaura Check Post barrier. At about 1.30 in the noon, one Thapa Ram, son of Dhani Ram, resident of village Banala, District Mandi, came there and disclosed that three persons sitting in Car No. DL-1CJ-1083 came to his shop and purchased a cold drink of Pepsi company and they had given a currency note of Rs. 500/- denomination. He after deducting the price of the cold drink, returned the remaining amount to the persons sitting in the car. However, when he

minutely checked the currency note, the same appeared to him to be a fake currency note. Thapa Ram also disclosed that the said car No. DL-1CJ-1083 was coming towards Kullu. At about 1.45 p.m. the said Honda City car reached at Bajaura barrier and it was signaled to stop. Incidentally, Kapil Dev, son of Bala Ram, Pradhan, Gram Panchayat Jhiri and Paras Ram, son of Hirda Ram, residents of Jhiri also came there. In the presence of Bala Ram, Paras Ram and Thapa Ram, the said car was checked and it was found that three persons were sitting in the car. Names of those persons were ascertained and they disclosed their names as Rishav Arora, son of Darshan Kumar Arora, Litesh, son of Sanjiv Dhawan and Amit Mahajan, son of Rajiv Mahajan. On opening dais board of the car, the police found currency notes of Rs. 46,365/- of different denominations. The police also found a sum of Rs. 36,000/- in the shape of six note of Rs. 1000/- denominations and sixty notes of Rs. 500/- denomination, which were kept concealed underneath and back of the seat upon which Amit Mahajan and Litesh were sitting. As per prosecution, these currency notes appeared to be fake currency notes as the security thread on those currency notes was not found in the centre, but on one side. The water mark of RBI was missing and the paper used was found to be of inferior quality. The printing was not engraved, but the same was pressed.

3. The police also found certain packets of edible items and cold drinks. These items were also taken into possession. The police also found copy in which details of exchange of currency notes was found mentioned. The vehicle as well as currency note were taken into possession. The currency notes recovered from the dais board of the car were put in a separate parcel, the currency notes recovered from the rear portion of the vehicle were separately sealed in parcel and the parcels were thereafter sealed with 5-5 seals of impression A. Other articles were put in plastic bag and sealed with seal A. As the respondents-accused were found to have committed the offence punishable under Sections 420, 120-B, 489-B, 489-C of the Indian Penal Code, as such a case was registered with Police Station CID, Shimla.

4. The police also took into possession the currency notes, which were stated to be given to different shopkeepers for purchasing cold drinks and other edibles. All the currency notes were sent to Currency Notes Press, Nasik Road, Maharashtra and after receipt of report with regard to the currency notes, challan was presented before the Court.

5. In order to prove its case, the prosecution examined as many as ten witnesses. PWs 1 to 3 were independent witnesses.

6. We have heard learned counsel for the parties, gone through the record and have examined the evidence minutely.

7. Kapil Dev (PW-1) is an independent witness. When he appeared in the witness box, he deposed that on 25.9.2009 at about 1.00 p.m. he alongwith Paras Ram was summoned by the police. When they reached at Bajaura Check Post, they

noticed that one vehicle was parked by the police. Accused persons were made to sit in the check post and the police party was counting the currency notes. This witness was declared hostile by the learned Public Prosecutor, but he denied that he gave any statement to police. However, he admitted his signature on Exts. PW-1/A and PW-1/B, but he voluntarily deposed that he reached at the spot when the police party was counting the currency notes and his signatures were obtained on the parcels. He denied the suggestion that any seal was handed over to him.

8. Thapa Ram (PW-2) deposed that about 7-8 months ago one person came to his shop after parking his vehicle at about ten feet distance. The said person, according to him, was accused Amit and he purchased Pepsi cold drink bottle and gave a currency note of Rs. 500/- denomination and after deducting the cost of bottle, he returned Rs. 450/- Since he doubted the genuineness of the said currency note, as such he came to Bhunter in order to purchase certain articles for his shop. When he reached at Police Post, Bajaura, he noticed that number of persons had gathered there and they told that some persons with currency notes have been nabbed. He gave said note to police which was given by the person, who purchased cold drink from him, which was taken into possession vide memo Ex.PW-1/B. In cross examination, this witness deposed that he reached Bajaura at about 10.00 a.m. and daily sale these days in his shop was Rs. 500-700. He deposed that when he heard about the fact that some persons with fake currency notes were nabbed, then this raised suspicion in his mind and at that time he was having Rs. 14,000-15,000/- with him, but he could not disclose about the denomination of the said notes. He further stated that he had not seen accused Amit prior to incident.

9. Kiran (PW-3) deposed that in the month of November, when her husband had gone to take his lunch, she was sitting in the shop. At about 11.00 a.m., a black coloured car stopped in front of her shop and a boy came out and asked for a cold drink and gave currency note of Rs. 500/-. After deducting Rs. 20/-, as cost of bottle, she returned Rs. 480/- to him. This witness could not identify the accused in Court. As per her, she put the said note in cash box. On the same night, police persons came to her shop and took out currency note of Rs. 500/- from cash box. She identified recovery memo Ex. PW-3/A. She deposed that when memo was prepared, its contents were not read over to her.

10. The prosecution has not examined Hari Krishan, Bansi Lal, Onkar Singh, Nanda Devi, Ses Ram and Paras Ram as having won over by the accused persons and PW Lal Chand as repetitive in nature.

11. H.C. Kartar Singh (PW-4) deposed that on 25.9.2009, ASI Rajender Singh, I.O. deposited the case property consisting of five sealed parcels with this witness. He further stated that three parcels were sealed with seal A, one with seal H and fifth one was sealed with seal L.M. put the entire case property in Malkhana. On 28.9.2009, police deposited two parcels one sealed with seal T and other with seal K alongwith seal impressions of T and K. On 20.9.2009, police

deposited two parcels one sealed with seal T and other with seal K alongwith seal impressions of T and K. He further deposed that on 20.10.2009, this witness handed over six sealed parcels to ASI Rajender Singh alongwith sample seals A, T, K, L and H.

12. PW-5 was working as MHC, P.S., CID, Shimla. As per him, on 20.10.2009, ASI Rajender Singh deposited six sealed parcels out of which parcel No. 1 was sealed with five seals of A. The sealed parcel was stated to be containing currency notes of Rs. 46,365/-. Parcel No. 2 sealed with five seals of A was stated to be containing counterfeit currency notes of Rs. 36,000/-. Parcel No. 3 sealed with five seals of Rs. was stated to be containing fake currency note of Rs. 500/-. Parcel No. 5, sealed with five seals of K, was stated to be containing currency note of Rs. 500/- and parcel No.6, sealed with four seals of H, was stated to be containing 41 US Dollar and few Nepali currency notes alongwith specimen impressions of seals A, T, K, L and H and other seal impression of seal A. He handed over the sealed property alongwith sample seals on 23.10.2009 to HHC Bihari Lal and Constable Bhupender Singh with a direction to deposit the same with Government Security Press Nasik vide RC No. 4/09. The said constable also brought a parcel sealed with seven seals of Government Security Press, Nasik on 3.11.2009. In cross examination, he was confronted with his statement mark D, wherein the fact that I.O. deposited the case property with this witness has not been recorded. He also admitted that he did not mention in statement mark D the fact that the case property was deposited in the Malkhana.

13. Constable Bhupender Kumar (PW-6) also remained associated with the investigation of the case. At about 1.30 p.m., as per this witness, one Thapa Ram came and produced currency note of Rs. 500/- denomination before ASI Rajender Singh and expressed his suspicion about the note that the same was counterfeit one. He also disclosed to the I.O. that a vehicle Honda City bearing No. DL 1CJ 1083 came from Mandi side and three occupants were there in the car who purchased cold drinks of Pepsi brand by paying the amount. Thereafter, I.O. took the said note to the bank at Bajaura, who opined that the said note is fake. At about 1.45 in the noon vehicle No. DL ICJ 1083 came there which was signaled to stop, three persons were found sitting in it and he identified the accused persons who were found sitting in the vehicle. On checking Rs. 46,365/- were recovered from the dais board of the vehicle. In addition to this, few currency notes were recovered from the seat cover of the rear seat and some under the seat amounting to Rs. 36,000/- The notes which were recovered from the dais board, as well as which were recovered from the rear seat were separately put in parcel and sealed with seal H. Edible items found from the vehicle were also put in the bag. All these articles were taken into possession vide memo Ex. PW-1/A. Thereafter ruqa Ex. PW-10/B was prepared by the I.O. and handed over to this witness with a direction to take the same to Police Station CID Shimla. The said ruqa was given to this witness by SHO, CID after making endorsement which he handed over to ASI Rajender Singh at Bhuntar. On 23.10.2009 this witness alongwith Bihari Lal had gone to Government

Security Press, Nasik alongwith parcels which were given to him by Police Station, CID, Shimla. The authorities at Government Security Press, Nasik handed over one sealed parcel by affixing seven seal on the same which was deposited by this witness with MHC, P.S. CID, Shimla. In cross examination this witness deposed that when he returned back from Shimla, he only submitted ruqa to I.O.

14. HHC Bihari Lal (PW-7) alongwith Bhupender (PW-6) took the case property consisting of six sealed parcels to Government Security Press, Nasik. The case property was given to them by MHC, Balbir Singh (PW-5).

15. P.C. Sahoo (PW-8) is the Assistant Works Manager, Currency Note Press, Nasik. He has proved on record the report Ex. PW-8 B with regard to the counterfeit currency notes. This witness has stated that note of Rs. 500/- and Rs. 100/- denominations were found to be counterfeit notes, as per his report. He has deposed that when he received the currency notes for examination, those were not in sealed packet.

16. Learned Deputy Advocate General has argued that the learned Court below has failed to appreciate the evidence, as the prosecution has proved the case beyond reasonable doubt. On the other hand, Mr. Anup Chitkara, Advocate, has argued that the prosecution story is full of doubts. No recovery is proved. All the independent witnesses have gone hostile and those independent witnesses PWs 1 to 3, examined in the Court, have not supported the prosecution case and in these circumstances judgment of the learned Court below needs no interference.

17. When specific stand has been taken by the I.O. that PW-2, Thapa Ram, disclosed about the fact that accused persons purchased the cold drink by giving a counterfeit currency note to him which he found to be not genuine and he reached at police barrier, Bajaura after chasing the said vehicle. The dictionary meaning of "chasing" is to follow, whereas as per the deposition of I.O. Thapa Ram reached at police barrier at 1.30 p.m. and the vehicle in which the accused persons allegedly reached there at 1.45 p.m. It is not the case of the prosecution that Thapa Ram disclosed to the I.O. that the persons in vehicle No. DL 1CJ-1083 stopped on the way before reaching Bajaura barrier.

18. PW8 Thapa Ram did depose that accused Amit purchased cold drinks from his shop after giving a currency note of Rs. 500/- denomination and he deducted the cost of cold drink bottle and returned Rs. 450/- to him. Thereafter the said persons left the shop and proceeded towards Kullu. Later on, he minutely checked the note about its genuineness and authenticity. Thereafter he came to Bhuntar for purchasing articles to his shop and when he reached at police barrier, Bajaura, he saw that number of persons had gathered there and it was told that persons with fake currency have been nabbed. He handed over the said note to the police given by the accused, Amit. His version has been accepted by the prosecution as correct as he has not been declared hostile.

19. Version of PW-2 is quite contrary to the version given by the I.O. As per I.O.,

it was PW-2 Thapa Ram, who had given the Termination to the I.O. that three persons in car No. DL 1CJ -1083 are traveling toward Kullu, whereas PW-2, in his examination-in-chief deposed a different story according to which he at about 10 a.m. had reached at Bajaura, noticed some persons gathered there and were saying that same persons having fake currency notes were nabbed. The version of I.O. stands falsified from the deposition of PW-2 in the cross examination when he deposed that when he heard that some persons with fake currency notes were nabbed at Bajaura, then a suspicion raised in his mind that the currency note which was given to him might be fake. At that time, he had 14000-15,000 rupees with him. This fact totally demolishes the case of the prosecution. At the sake of repetition as true, then it is very difficult to accept the version of the I.O. which stands falsified from the deposition of PW-2 as well as omissions committed by him in not recording the statement of PW-2 Thapa Ram under Section 154 Cr.P.C. when he received the information at about 1.30 p.m. From his statement it is proved that he was having plenty of time to record statement of PW-2, but no such efforts were made by the I.O. in this case.

20. In the present case, as per deposition of I.O. two independent witnesses namely Kapil Dev and Paras Ram were also present there in whose presence PW-2 Thapa Ram had given the information and the vehicle No. DL 1 CJ-1083 was stopped in which the accused persons were allegedly traveling and on whose search counterfeit currency notes were recovered. However, one of them i.e. PW-1 Kapil Dev when appeared in the witness box has given a different version by stating that when he had gone to check post, Bajaura, the police party was counting the notes. This witness was cross examined at length, but except admitting his signatures on documents Ex. PW-1/A and Ex. PW-1/B he denied each and every suggestion. He categorically stated that no seal was handed over to him by the police. The second independent witness, namely Paras Ram, has not been examined, merely by giving statement that he has been won over by the accused persons. It is settled law that by giving such statement, the prosecution is not absolved of its duty to prove the guilt of the accused persons. When a witness is simply given up then an adverse inference has to be drawn against the prosecution that had he been examined, then he would have deposed against the prosecution. None of the independent witnesses cited and examined by the prosecution supported the case of the prosecution.

21. Independent witness PW-2, Thapa Ram, on whose complaint investigation started, has not supported the case of the prosecution. ASI Rajender Singh, in court, has stated that PW-2 Thapa Ram disclosed each and everything to ASI Brij Lal. The said Brij Lal has not been cited as a witness in the present case.

22. Now coming to the statements of official witnesses. The prosecution has examined PW-6 in order to corroborate the version of PW-10. His version regarding the fact that Thapa Ram gave a currency note of the denomination of Rs. 500/- to ASI Rajinder Singh and expressed his suspicion stands falsified from the deposition of PW-2 Thapa Ram. Interestingly, this witness deposed that the

currency note given by PW-2, Thapa Ram, was taken to the bank at Bajaura who opined that the said note is fake whereas I.O. remained silent about this aspect of the case. The deposition of PW-6 qua the fact that Thapa Ram had given a currency note of Rs. 500/- denomination to ASI Rajinder Singh has been falsified by his own statement when he, in cross examination, deposed that PW-2, Thapa Ram, disclosed each and every thing to ASI Brij Lal. Said Brij Lal has not been cited as witness in the present case. This fact creates doubt regarding his as well as of I.O. at the spot. Similarly, the non-association of Brij Lal in the investigation and not citing him as witness also eroded the credibility of the version given by the I.O. in this case. The material contradictions in the statements of PW-6 and PW-10 regarding the fact that the information was given to ASI Brij Lal or to PW-10 create a suspicion in the prosecution story.

23. It has been held in *K. Prakashan v. P.K. Surenderan*, (2008) 1 SCC 258 that when two views are possible, appellate Court should not reverse the judgment of acquittal merely because the other view was possible. When judgment of trial Court was neither perverse, nor suffered from any legal infirmity or non consideration/misappropriation of evidence on record, reversal thereof by High Court was not justified.

24. The Hon'ble Supreme Court in *T. Subramanian v. State of Tamil Nadu*, 2006(1) Apex Criminal 159 , (2006) 1 SCC 401, has held that where two views are reasonably possible from the very same evidence, prosecution cannot be said to have proved its case beyond reasonable doubt.

25. In view of the aforesaid decisions of the Hon'ble Supreme Court and discussion made above, we find no merit in this appeal and the same is accordingly dismissed.