(2013) 10 GUJ CK 0168

In the Gujarat High Court

Case No : Criminal Appeal No''s. 517, 593 and 679 of 2012

Suleman Gafarbhai Tumbi APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0168

Hon'ble Judges : R.P. Dholaria, J;Akil Kureshi, J

Bench : Division Bench

Advocate : A.D. Shah in Criminal Appeal No. 593 of 2012 and Mr. Asifkhan I. Pathan in Criminal Appeal No. 517 of 2012, for the Appellant; H.L. Jani, APP in Criminal Appeal No. 593 of 2012, Mr. Shakil A. Qureshi for Opponent No. 1 and Ms. Kruti Shah for Opponent No. 2 in Criminal Appeal No. 679 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—These appeals arise out of a common judgment of the learned Additional Sessions Judge, Surat dated 28.03.2012 in Sessions Cases No. 292 of 2007 and 108 of 2008. In all four accused were tried under the said sessions cases. They were charged with offences punishable under Sections 489B, 489C read with Sections 34 and 114 of IPC as well as Section 120B read with Section 114 of IPC. By the impugned judgment, the learned Judge convicted accused Nos. 1 and 2 of Sessions Case No. 292 of 2007. Accused No. 3 of the said sessions case and the sole accused of Sessions Case No. 108 of 2008 (hereinafter to be referred to as ''the fourth accused'') came to be acquitted of all charges. Accused Nos. 1 and 2, who were convicted for the said offences, were sentenced to simple imprisonment of 10 years. They have been asked to pay fine of Rs. 10,000/- each. Accused No. 1, Suleman Gafarbhai Tumbi, has filed Criminal Appeal No. 593 of 2012 and challenged his conviction and sentence. Accused No. 2, Mohammad Nazir Haji Ismile Sanya, has filed Criminal Appeal No. 517 of 2012. The State has preferred Criminal Appeal No. 679 of 2012 challenging acquittal of accused Nos. 3 and 4th accused.

2. Briefly stated the prosecution version was that:

On 26.07.2007, Police Constable, Chetan Vasantrav Shimpi, received information from his informant that a person wearing specified description of clothes was likely to pass by Mahidharpura main road, Surat, carrying fake currency notes. On the basis of such tip off, the police party, alongwith the panch-witnesses, laid a trap at the said place. Shortly thereafter, they found a person with the matching description walking by. When intercepted, he was found to be carrying 30 notes of denomination of Rs. 500/-. Such notes were fake currency notes. The local FSL Officer was summoned. He opined that the notes were not genuine. Such notes were seized and sent for FSL report. The person happened to be accused No. 1 Suleman Tumbi. Further raid was carried out at the residence of accused No. 1 from where 24 more fake currency notes of Rs. 500/- were found, seized and sent for FSL report. This was at flat No. 206 of Siddiqui Square Flats, Surat. As per the information supplied by accused No. 1, flat No. 306 of Siddiqui Square Flat was also raided from where, 10 fake currency notes of Rs. 500/- were recovered. The case of the prosecution is that this flat No. 306 belonged to accused No. 2, Mohammad Sanya. On the premise that the said two accused had entered into a criminal conspiracy with accused No. 3 and 4th, accused for circulating such fake currency notes in the market the said accused were also arraigned.

3. Charge in Sessions Case No. 292 of 2007 was framed at Exh. 18 and at Exh. 7 in Sessions Case No. 108 of 2008. In Exh. 18 it was alleged that accused Nos. 2 and 3 had procured fake currency notes of Rs. 500/- from M.K. Market, Mumbai. Such currency notes were to be circulated in the market through accused No. 1. While attempting to circulate such notes on 26.07.2007, accused No. 1 was arrested at Mahidharpura main road with 30 fake currency notes of Rs. 500/-. From his residence, 24 more currency notes of the said denomination were found. 10 currency notes of Rs. 500/- were found from the residence of accused No. 2. All the accused had thus, committed offences punishable under Sections 489B and 489C read with Section 114 of IPC and Section 120B of IPC.

4. Against the fourth accused, charge framed at Exh. 7 in Sessions Case No. 108 of 2008 likewise alleged that in conspiracy with the other three accused, he also committed the offences punishable u/s 489B read with Section 120B and 114 of IPC. It was further alleged that this accused had given 10 fake currency notes of Rs. 500/- to his household servant for her husband''s treatment. When such notes were tendered, the cashier at the hospital and the trustees got suspicious. The accused, thereupon, retrieved the notes in question.

5. P.W. 1, Lalit Devjibhai Vagadiya, the first informant was examined at Exh. 31. He was, at the relevant time, discharging his duties as a Police Officer in D.C.B. Police Station, Surat. He deposed that, on 26.07.2007, unarmed Police Constable Chetan Simpi received secret information through his informer that, one person, Suleman by name (accused No. 1) is likely to pass by Mahidharpura main road carrying fake currency notes. He is of medium height and build, of fair

complexion and wears glasses. He would be wearing red coloured shirt with white stripes and white coloured striped pants. When such information was passed on by Chetan Simpi to PSI Shri K.S. Patel, Shri Patel informed the P.I., the other PSI and the police officials. The police party, therefore, set out to lay a trap. They took along two panch-witnesses. After drawing a preliminary panchnama between 10.30 to 10.35 in the morning; they, thereafter, travelled in the police vehicle up to some distance and thereafter, walked on foot and positioned themselves at different places. About half an hour later, at around 11.15, the person, wearing the clothes of the description received, came there. Police personnel, therefore, cordoned him. Upon checking from his pocket, 30 currency notes of Rs. 500/- of two different series were found. Perusal of the notes showed shade difference at some places. The currency notes, thus, did not appear to be genuine. FSL Officer was, therefore, summoned, who gave preliminary report that the notes were fake. Accused No. 1 was, therefore, arrested. The currency notes were seized and sealed. His FIR was registered which was produced at Exh. 32.

5.1 In the cross examination, he admitted that in the complaint he had not indicated as to when the secret information was received by Chetan Simpi or when PSI, Shri K.S. Patel informed him about receipt of such an information. Suggestion was put to this witness that, previously a mobile shop owner of the area was cheated when the purchaser of the mobile had paid him Rs. 35,000/- in fake currency notes and these, currency notes were being planted in the hands of accused No. 1. The witness denied any such suggestion.

6. Chetan Vasantrav Simpi, P.W. 13, Exh. 60 was the person, who had received the secret information about the possible movement of accused No. 1. He deposed that, on 26.07.2007, in the morning at about 9.00 O''clock, he had received secret information that accused Suleman, wearing red stripe shirt and white stripe pants, is likely to pass by Mahidharpura main road carrying duplicate notes. Upon receipt of such an information, he informed about it to the squad-in-charge Shri A.S. Patel, who, in turn, informed the P.I. Shri Vijay Jadeja, under whose guidance, a trap was laid. After waiting for about half an hour, a person of the above description appeared. He was intercepted. From his pant pocket, 30 notes of Rs. 500/- were found. FSL Officer was called who opined that the notes were duplicate. Further search of his house at flat No. 206 at Siddiqui Square Flats led to recovery of 24 more such notes. Such notes were found from underneath a pile of clothes kept in a wooden cupboard inside the bedroom of the flat. On the information supplied by this accused, search was carried out in flat No. 306 of the same complex from where 10 notes were seized from a cupboard kept in the bedroom of Nazir (accused No. 2).

In the cross examination by the advocate of accused No. 2, this witness agreed that such accused was not present when the flat was searched. One lady was present. He could not state whether any evidence was collected to show as to of whose ownership flat No. 306 was. He stated that after completing the search of flat No. 206, they had all gone to the police station and thereafter, returned to raid flat No. 306. They had gone to flat No. 206 at 5 O''clock in the evening and had left the police station to raid flat No. 306 at 10.00 O''clock.

7. Several other police witnesses, who were part of the said search party, have given similar versions. It is not necessary to duplicate their evidences. Such witnesses included Jitendra Mohanbhai, P.W. 14, Exh. 66, who was the Police Constable, Bhogilal Naginbhai, P.W. 15, Exh. 81, who was the ASI, R.L. Mawani, P.I., P.W. 16, Exh. 91 etc.

8. All panch-witnesses have turned hostile. We, therefore, have not made any detailed reference to their depositions. It would, however, be necessary to refer to the evidence of Shaikh Jamil, P.W. 19, Exh. 109. He was a hostile witness but not a panch-witness. He was the watchman of Siddiqui Square Apartment. He was examined to establish the ownership of accused No. 2 of flat No. 306 and also in order to prove the conspiracy theory. He did not support the prosecution. He deposed that he had no information about accused No. 2 residing in flat No. 306. In the cross examination by the prosecution, he was confronted with his police statement. From his cross examination, it appears that, as per the prosecution, he had stated before the police that when he was discharging his night duty at Siddiqui Square Apartment about 20-25 days before 07.08.2007, when his statement was recorded, at 10.30 at night, one Nakib Haji Aarif Nurani, (accused No. 3) had come in flat No. 306 of Mohammad, (accused No. 2) since he was related to him. After spending some time there, they had come down alongwith Suleman Tumbi, (accused No. 1) residing in flat No. 206.

9. Kundanbhai Jivrajbhai Gulania, P.W. 22, Exh. 124 was the Scientific Officer stationed at Surat at the relevant time. On 26.07.2007, he was called by the police to verify the genuineness of the currency notes found from accused No. 1. He deposed that on careful examination of three random currency notes it was revealed that the watermark of Gandhiji was indistinct. The watermark of RBI was also indistinct. Alignment of certain letters was improper. The serial numbers on the notes were smaller. On such basis, the notes prima facie appeared to be fake. He, thereupon, advised the Police Officer to send the notes for FSL analysis at Gandhinagar.

10. Mukesh Nankishore Joshi, P.W. 23, Exh. 127, was the Scientific Officer, FSL, Gandhinagar. He had carried out analysis of the seized currency notes. He produced his report at Exh. 131 certifying that all currency notes were fake. In the report as well as in his deposition before the Court, he highlighted the details of analysis and the reasons for his conclusions. He had found discrepancies in printing of the currency notes and had concluded that all the notes were fake.

11. Kanubhai Shyamalbhai Patel, Investigating Officer, P.W. 24 had examined at Exh. 139. He gave detailed account of the investigation carried out by him. He deposed that after arresting accused No. 1, his house was also raided, from where, 24 fake currency notes were found. House of accused No. 2 was also

raided, from where 10 fake currency notes were found.

12. This, in the nutshell, is the evidence on record. Learned advocate Mr. A.D. Shah for accused No. 1 submitted that there was no evidence to convict the accused for any of the charges. He submitted that mere possession of fake currency notes would not constitute an offence either under Sections 489C or 489B of IPC. It was not apparent to the naked eye that the notes were not genuine. The accused, therefore, had no knowledge or reason to believe that the notes were not genuine notes.

12.1 He submitted that all independent witnesses had turned hostile. The entire case, thus, rested on evidence of police witnesses, who were also not reliable.

12.2 He submitted that the statements of co-accused to establish the theory of conspiracy cannot be used even with the aid of Section 10 of the Indian Evidence Act. Learned Judge has committed a grave error in basing such reliance. He referred to the decisions of Supreme Court in case of M. Mammutti Vs. State of Karnataka, and in case of Umashanker Vs. State of Chhattisgarh, in this regard.

12.3 Counsel further contended that ingredients of Section 489B were not satisfied. Conviction for the said offence was, therefore, not proper.

13. Learned advocate, Mr. Asif Pathan, for accused No. 2 submitted that there was no evidence linking the said accused with the alleged offences. There was no evidence to establish that the said accused was either owner or occupant of flat No. 306 of Siddiqui Square Apartment. Any recovery of fake currency notes from such apartment cannot be linked to the said accused. He cannot be attributed with conscious possession of such fake currency notes. He pointed out that barring the evidence of hostile witness Shaikh Jamil, P.W. 19, there was no evidence whatsoever to link this accused with Flat No. 306.

14. Learned advocates Mr. Shakil Qureshi and Ms. Kruti Shah for the acquitted accused supported the judgment of the Trial Court to the extent it is in their favour and submitted that in absence of even an iota of evidence, the Trial Court committed no error in acquitting these accused persons.

15. Learned AGP Mr. H.L. Jani, however, opposed the conviction appeals and pressed for the State appeal stating that there was sufficient evidence to establish the conspiracy of trafficking in fake currency notes. Sizable number of fake currency notes were found from accused No. 1 as well as from his flat and that of accused No. 2. Theory of conspiracy has to be established through circumstances brought on record.

16. Having thus heard learned counsel for the parties and perused the evidence on record, we may re-appreciate the evidence to ascertain involvement of the accused concerned. Briefly recapitulating the evidence, it has come on record through several police witnesses that upon Chetan Simpi, P.W. 13, receiving secret information in the morning of 26.07.2007, the police party laid a trap at Mahidharpura main road, area of Surat City waiting for accused No. 1 to arrive.

The description of the clothes he would be wearing was also given. The information given to the police was that he would be carrying fake currency notes. At about 11.15 in the morning, the person, wearing the clothes of which description was already given, appeared. He was intercepted and on his person, 30 currency notes of Rs. 500/- denomination were found. These currency notes appeared to be fake. FSL Officer from Surat was summoned who, upon minute investigation of the notes, found that they seem to be fake. For confirmation, such notes were seized and sent for FSL analysis. House of accused No. 1 was, thereafter, raided, from where also 24 notes of Rs. 500/- were found hidden beneath the heap of clothes kept in a wooden cupboard inside the bedroom. Such notes were also found not genuine.

17. The FSL report confirmed that all the notes were fake. A detailed report was submitted and produced before the Court by the FSL Officer, Gandhinagar, P.W. 23, Mukesh Joshi.

18. Though it is true that the panch-witnesses, who had accompanied the police party in the trap, did not support the prosecution, nevertheless, several police witnesses had given consistent and reliable version of the incident of 26.07.2007. We have no reason to discard such evidence merely because they happened to be police officials. Quite apart from the currency notes recovered from the person of accused No. 1, such notes were also recovered from his residence. Insofar as the involvement of this accused, in possession of the fake currency notes is concerned, it is duly established. The fact, that these currency notes were fake, is not possible to dispute. The defence version, that the accused did not know that the currency notes were fake, also cannot be accepted. Firstly, he gave no explanation why he was carrying such large cash currency in his pocket. He was confronted with all the adverse materials against him while statement u/s 313 of Cr.P.C. was recorded. His stand was of total denial. Secondly, 24 more fake currency notes were found from his house. Such currency notes were not kept in a place where a person would normally keep them such as either in a wallet or in a cupboard or in a safe properly locked. Such currency notes were kept under a heap of clothes inside a cupboard thereby avoiding its easy detection in case of a raid.

19. What Section 489C of IPC requires is not mere possession of fake currency notes but the knowledge or reason to believe on part of the accused that such currency notes were fake. In that context, we have no hesitation in believing that the accused carried such currency notes with full knowledge that the same were fake. Any evidence of this nature is unlikely to be direct and must be gathered from facts and attendant circumstances brought on record.

20. With respect to the involvement of accused No. 2, however, we find that there was no evidence at all to link him with the possession of fake currency notes. We may recall his involvement was sought to be established preliminary on the basis of recovery of 10 fake notes of Rs. 500/- each from flat No. 306 of Siddiqui Square Apartment. For several reasons, he could not be linked to such

recovery. Firstly, admittedly he was not present when the premises were raided by the police. Secondly, no investigation was carried out to show as to who was the owner of the flat. Thirdly, nothing was brought on record to establish that accused No. 2 was the occupant of the flat either as a owner or as a tenant or any other capacity. Fourthly, mere recovery of currency notes from a flat even if occupied by the accused, in absence of anything more, may not be sufficient to establish his conscious possession of such currency notes. Lastly, we have grave doubt about the theory that such currency notes were recovered in the manner, in which, it was suggested. We may recall the flat of accused No. 1 was raided at about 5 O''clock in the evening. According to the police witnesses themselves, after the raid was completed, they went back to the police station and once again left to raid flat No. 306 at about 10 O''clock. There was, thus, a time gap of nearly five hours between the raid began in flat No. 206 and could have started in flat No. 306. Both flats were situated in the same complex. Nothing prevented the occupants of the said flat from removing any objectionable material from their flat once the raid in flat No. 206 had commenced. Surely the news of such raid would spread like wild fire. It is impossible to believe that the occupants of the apartment of the same flat in the same complex would not have known about it or even after coming to know of it, would have retained any objectionable material in their flat for nearly 5 hours. The prosecution version is that, accused Nos. 1 and 2 and other accused were in conspiracy and in link with each other in connection with this crime. This would all the more be a reason for accused No. 2 getting alerted and removing any material of incriminating nature.

21. Coming to the case of accused Nos. 3 and 4, there was not even iota of evidence to involve them in the said offence. In majority of the cases, proof of conspiracy is likely to be indirect. However, there has to be some basis and legal proof, even if of circumstantial nature to establish the theory of conspiracy. Learned advocate, Mr. A.D. Shah was perfectly justified in pointing out that any statement of a co-accused made after he was arrested by the police, would be totally inadmissible in evidence. What Section 10 of the Indian Evidence Act refers to is relevancy of the statement made by the co-accused of the things said or done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them. As held by the Supreme Court in case of State of Gujarat Vs. Mohammed Atik and others, , Section 10 of the Indian Evidence Act is founded on the principle of law of agency. Once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made "in reference to their common intention." In other words, a post-arrest statement made to a police officer, whether it is a confession or otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.

22. We may recall that with respect to the 4th accused, there was an attempt to bring some additional evidence in the form of alleged payment by the maid servant of the accused for the medical treatment of her husband through fake

currency notes. However, no such currency notes were recovered. The statement of the accountant of the hospital, who first doubted that the currency notes were fake, was never recorded before the Court.

23. The sole question that survives for our consideration, therefore, is whether the conviction of accused No. 1 for offence u/s 489B of IPC in addition to Section 489C was justified. We had left this discussion for the last, since this is likely to be slightly longish consideration. Sections 489B and 489C of IPC read as under:

489B. Using as genuine, forged or counterfeit currency-notes or bank notes.

Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Possession of forged or counterfeit currency notes or bank notes.

Whoever has in his possession any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a terms which may extend to seven years, or with fine, or with both.

24. If we analyze these sections, it would emerge that for an offence u/s 489C what is required to be established is the possession by the accused of any forged or counterfeit currency notes or bank notes and the knowledge or reason to believe that the same was forged or counterfeit and intending to use as genuine or that it may be used as genuine. Mere possession of a forged or counterfeit currency note is thus not sufficient to establish the charge u/s 489C. What is additionally required is that the person possessing such currency notes should have either knowledge or a reason to believe that the same was forged or counterfeit and the intention to use the same as genuine or that it may be used as genuine. In brief, possession of a counterfeit or a forged currency note without knowledge or reason to believe the same to be counterfeit would not be sufficient. On the other hand, what Section 489B provides is punishment for one who sells or buys or receives from any other person or otherwise traffics in or uses as genuine, any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be counterfeit. Ingredients of Section 489B, thus, are that a person should be selling, buying or receiving from any person or trafficking in or using as genuine, forged or counterfeit currency notes, with knowledge or reason to believe the same to be forged or counterfeit.

25. We have already held was in conscious possession of the said counterfeit currency notes found from his possession and from his house and that he had full knowledge that such notes were fake. By very nature of things, direct proof of

trafficking in such counterfeit currency notes is unlikely to be available in majority of cases. The same has to be culled out from facts and attendant circumstances brought on record. If large number of fake currency notes of high value are found from a person with his full knowledge that the currency notes were fake, it could be one of the major factors to hold that the currency notes were amassed for trafficking and for no other use. If the evidence on record suggests that the accused was found in possession of large amount of fake currency notes fully aware that the notes were fake, it may be one of the reasons to hold that he was trafficking in such counterfeit notes. In the present case the accused was himself travelling with as many as 30 fake currency notes of Rs. 500/- each. There was no explanation why he was carrying such sizeable cash on that day. Further search of his house revealed in a concealed condition 24 more such fake currency notes. Even if, therefore, as suggested by learned advocate Mr. A.D. Shah we ignore the assertion of the prosecution that it was information supplied by this accused which led the police party to search flat No. 306 from where 10 more fake currency notes were recovered, there are strong indications that accused was trafficking in such currency notes.

26. In the Indian Penal Code by Ratanlal & Dhirajlal in context of Section 489B it is observed as under:

To bring home an offence u/s. 489B, I.P.C. (a) the prosecution is 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. In order to sustain the conviction or 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 irresistibly to his intention to use the notes on the public. Such intention can be proved by a collateral circumstance that he had palmed off such notes before, or that he was in possession of such notes in such large a number, that his possession for any other purpose was inexplicable.

27. The word ''trafficking'' has not been defined under the IPC. In Webster''s Third New International Dictionary the term has been explained as: to carry on, to journey over, to make an exchange of.

28. The possession of the accused of such sizable amount of fake currency notes makes it totally inexplicable and his involvement in trafficking such fake currency notes can be seen to have been established through such evidence. Surely a person would not hold such sizeable fake currency notes with full knowledge merely for collection. Such notes, therefore, were necessarily meant for trafficking.

29. Let us now examine how different courts have viewed this situation. In case of Rayab Jusab Sama Vs. State of Gujarat, wherein Division Bench of this Court

has examined this issue under very similar factual background. It was a case where the accused was found having 250 fake currency notes on a public road in the city of Bhuj, concealed in a bag (Thela) beneath the cloth pieces. It was held that he was thus transporting currency notes. It was not a mere case of dormant possession, but, of active transportation of the currency notes, which would fall within the expression ''traffics'' in such currency notes. The Court observed as under:

10. The learned counsel for the appellant contended that the prosecution had failed to prove the offence u/s 489B of the Indian Penal Code even if it is held that the offence of possession the fake currency-notes u/s 489C is proved. This submission is wholly erroneous because the evidence clearly establishes that the appellant was found carrying 250 fake currency notes on a public road in the city of Bhuj concealed in a Thela beneath cloth pieces as alleged in the charge. He was, therefore, transporting the said currency notes at the time when he was apprehended with them. Therefore, this is not a case of mere dormant possession, but, it is a case of active transportation of the currency notes, which would fall within the expression ''traffics in such currency notes''. Section 489B of the Indian Penal Code clearly contemplates the cases where the counterfeit currency-notes are received from any other person as also the cases where a person traffics in such currency-notes knowing or having reason to believe the same to be forged or counterfeit. In our opinion, these ingredients of the offence u/s 489B are clearly established against the appellant. He was not only carrying 250 counterfeit currency-notes on 9.4.1996 but he had concealed 101 other such counterfeit currency-notes which he later discovered before the Panchas on 12.4.1996. It is, therefore, clearly established that the appellant was trafficking in these counterfeit currency-notes which he had received from some source. The appellant is, therefore, rightly held guilty of the offences under Sections 489B and 489C of the Indian Penal Code by the trial Court and we are in complete agreement with the reasoning adopted by the trial Court for reaching its conclusions on this count. We are not concerned in this appeal, as noted above, with the offences under the Passport Act for which the accused was acquitted.

30. In case of Md. Raja alias Raju etc. Vs. State of W.B., wherein the Calcutta High Court observed that an intention to use counterfeit currency note or that the same may be used may be genuine may be presumed in facts and circumstances of the case.

31. In case of Kurukshetra Sena and Others Vs. The State of Chhattisgarh, wherein learned Single Judge of Chhattisgarh High Court observed that in absence of any explanation by the accused that they were in possession of fake currency notes for other purpose, the only inference would be that they were in possession 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 the same may be used as genuine.

32. In case of K. Hasim v. State of T.N. reported, the Supreme Court observed that Section 489B relates to using as genuine forged or counterfeited currency notes or bank notes. The object of legislature in enacting this section is to stop the circulation of forged notes by punishing all persons who knowing or having reasons to believe the same to be forged do any act which lead to their circulation.

33. Under the circumstances, we have no hesitation in upholding the conviction of accused No. 1 for offences u/s 489C as well as 489B of IPC. Relating to the sentence however we notice that the accused had no previous criminal history. Section 489C prescribes punishments up to 7 years. Section 489B prescribes punishment of imprisonment for life or imprisonment which may extend to 10 years. In the facts and circumstances of the case we would substitute the existing sentence awarded by the Trial Court by rigorous imprisonment of 7 years. In the result, all the appeals are disposed of in following manner:

1. Criminal Appeal No. 593 of 2012 is allowed in part. Conviction of the accused for offence u/s 489B and 489C is confirmed. The sentence imposed by the Trial Court of simple imprisonment of 10 years is substituted by rigorous imprisonment of 07 years. Direction of payment of fine remains unchanged.

2. Criminal Appeal No. 517 of 2012 of accused No. 2 is allowed. His conviction and sentence rendered by the learned Judge in the impugned judgment is set aside. He may be released forthwith if not required in any other criminal case.

3. State Appeal No. 679 of 2012 is dismissed.

R & P to be transmitted to the Trial Court.

