Piyush Rastogi Vs. State

Piyush Rastogi Vs. State

SooperKanoon Citation : sooperkanoon.com/1096568

Court : Delhi

Decided On : Nov-06-2013

Judge : Siddharth Mridul

Appellant : Piyush Rastogi

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment pronounced on:

06. 11.2013 CRIMINAL APPEAL No.436/2009 PIYUSH RASTOGI ..... Appellant Through: Mr. Rajesh Anand, Advocate with Mr. Akhand Pratap Singh, Advocate versus STATE ..... Respondent Through: Mr. Mukesh Gupta, APP with Inspector Anand Lakra and Inspector Bhagwan Singh, PS Shastri Park Metro CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

JUDGMENT
SIDDHARTH MRIDUL, J.

1. The present appeal is directed against the judgment dated 12.05.2009 whereby the Appellant has been convicted in Sessions Case No.80/09 under Sections 489C and 489D of the Indian Penal Code, 1860 (IPC) for possessing and indulging in manufacture of counterfeit currency. By order of sentence dated 15.05.2009, for offence under Section 489C of IPC, the appellant is sentenced to

undergo rigorous imprisonment for seven years and a fine of Rs 1 lakh has also been imposed; in default of payment fine, the appellant is to undergo simple imprisonment for a period of six months. For offences under Section 489D IPC, the appellant is sentenced to undergo rigorous imprisonment for ten years and fine of Rs 2 lakh has been imposed; in default of payment of fine, the appellant has to undergo simple imprisonment for one year. Both the sentences are directed to run concurrently.

2. The prosecution case as unfolded in trial is as under:- (i) On 5.06.2003, at about 3:45 PM, the appellant while entering the Welcome Metro Station was checked at the entrance as part of routine checking. On arrival of his turn when ASI Rajinder Singh (PW-6) asked Ct. Lokender (PW-

10) to frisk the appellant, the latter objected to being frisked in the open on account of carrying on his person a huge amount of cash. Upon this ASI Rajinder Singh asked him to get his search done at a covered place. On hearing this, the appellant got frightened and turned back and started running out of the gate. The conduct of the appellant aroused suspicion and he was chased by ASI Rajinder Singh(PW-6) along with Ct. Lokender (PW-10), Ct Bharat Rattan (PW-5) and Ct. Brij Mohan (PW-9). CRL.A.436/2009 appellant was stopped near the parking lot and during his search he was found to be carrying in his right hand a saffron colored jute bag on which label of Karishma V.B Sarees was affixed. Inside the jute bag, in a polythene, four bundles of currency notes of Rs. 100/- each totaling up to Rs 40,000/- were found. All the notes appeared to be forged and the appellant could not furnish reasonable explanation for possessing the same. The said notes were sealed in a white cloth and the sealed pulanda was seized vide seizure memo proved as Ex PW-5/A and sent for forensic examination. The CFSL report (Ex PW-7/A) certified the currency notes in the sealed pulanda to be bogus. (ii) The rukka (Ex PW6A) was prepared by ASI Rajinder Singh (PW-6) and dispatched through Ct. Lokender (PW-10) which led to the registration of FIR No.1/2003(Ex PW-1/A) under Section 489C of the IPC. (iii) The investigation was thereafter, assigned to SI Bhagwan Singh (PW-11), the Investigating Officer (for short IO) who arrested the appellant vide arrest memo Ex PW-5/B and conducted his personal search through memo Ex PW-5/C. The IO prepared the site plan Ex

PW-6/DA at the instance of ASI Rajinder Singh (PW-6). (iv) It is further the case of the prosecution that the appellant made a disclosure statement proved as Ex PW-5/D and recorded under Section 27 of the Indian Evidence Act, 1857 admitting that he has been involved in the manufacturing of counterfeit currency. Pursuant to the said disclosure, the appellant got recovered fake currency notes worth Rs. 15,000/- (Ex P-13/1) from the table drawer in the computer room at his residence which was seized vide Ex PW5E. The appellant also got recovered from the computer room at his residence two CPUs, one Gold Star Monitor, one scanner, one Hp printer, one mouse, one keyboard, one UPS, blade and 110 sheets of printing paper. The said articles were seized vide seizure memo Ex PW-5/F. The seized currency notes and computers parts were sent up for forensic examination. The CFSL report (Ex PW-7/A) revealed that the notes of Rs 15,000/- were fake. The forensic report (Ex PW8/A) of computer hard discs disclosed presence of scanned images of Rs 100/- denomination currency notes. According to the prosecution, the police remand of the appellant was granted for one day during which the appellant demonstrated before the police the modus operandi employed by him for scanning and printing of fake currency and as a result thereof, two fake notes(Ex P-13/2 and P-13/3) was prepared by the appellant. Accordingly, a charge under Section 489D IPC was added against the appellant. (v) The prosecution in order to establish its case examined 11 witnesses. One witness was produced in defence. The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (for short Cr.P.C) in which he pleaded innocence and false implication. (vi) The Trial Court convicted the appellant primarily on the basis of the evidence led by the prosecution witnesses and the recoveries made pursuant to the disclosure statement of the appellant.

3. Before me, the Learned Counsel for the Appellant has challenged the impugned judgment on several counts which include shaky investigation, non-cogent testimonies of police witnesses and failure to establish recovery at the instance of the appellant. INVESTIGATION4 With respect to investigation, the Learned Counsel for the appellant urged that the contemporaneous documents such as rukka (Ex PW-6/A), FIR (Ex PW-1/A), arrest memo (Ex PW-5/ B), seizure memo (Ex PW-5/A), disclosure statement of the appellant (Ex PW-5/D) and personal search memo (Ex PW-5/C) were all ante-timed and planted by the police against

the appellant. In order to substantiate the said contention, it is submitted that a charge under Section 489D IPC could have only been added against the appellant once the recoveries were made pursuant to the disclosure statement given by the appellant. However, the charge under Section 489D finds mention on the rukka, FIR, disclosure statement, the arrest memo and the personal memo of the appellant which clearly demonstrate that the said documents were fabricated and manipulated by the police officials to falsely implicate the appellant.

5. The Learned Counsel for the appellant has also drawn my attention to Rule 22.4 of the Punjab Police Rules, 1934 to contend that the police officials have blatantly violated the said rules while preparing the case diary as the entries in the daily dairy are unnumbered. In this regard reliance has been placed on the decision of Ashok Kumar v. State 1979 CriLJ1477(Delhi High Court).

6. I am not inclined to accept the said contentions. I have minutely perused the documents pointed out by the appellant and find that the assertion made by the learned counsel with respect to the rukka (Ex PW6/A), FIR (Ex PW-1/A) and seizure memo (Ex PW-5/A) is factually incorrect in as much as only charge under Section 489C IPC and not Section 489D IPC has been mentioned on the said documents.

7. As far as the arrest memo (Ex PW-5/B) is concerned, I note that the appellant was arrested at about 5:45 PM near the parking of Welcome Metro Station. The arrest of the appellant was carried out by PW-11 SI Bhagwan Singh, the IO and he deposed accordingly before the court. PW-11 further stated that when he reached the place of occurrence he found that the appellant was in the custody of ASI Rajinder Singh (PW-6) who was handed over to PW-11. In his cross examination, PW-11 admitted that formal arrest memo of the appellant was prepared at 5:45 PM and a relative of the appellant namely Sanjay Rastogi was called at the request of the appellant whose signatures was obtained upon the arrest memo. PW-11 denied receiving any document pertaining to arrest of the appellant from PW-6. The arrest memo has been signed as witnesses by Ct. Lokender(PW-10), Ct. Bharat Rattan (PW-5), Ct. Brij Mohan (PW-9) who supported the prosecution version. I find that there is no suggestion or cross examination on behalf of the

appellant disputing the entries in the arrest memo. There is no material discrepancy in the statements of police witnesses regarding the arrest of the appellant.

8. Regarding personal search memo (Ex PW-5/C) and disclosure statement (Ex PW-5/D) of the appellant, suffice it is note that the testimonies of relevant police witnesses are consistent and all of them admit the preparation of the said documents.

9. It may be true that in the arrest memo or on top of the personal search memo or disclosure statement both Sections 489C and 489D IPC have been mentioned but that does not in any way negate the contents of the said documents or nullify the factum that the appellant was arrested from the spot and his personal search was carried out. Furthermore, it does not in any way create a dent on the testimonies of the police witnesses which are cogent and consistent on the aspect of arrest, personal search and recording of disclosure statement of the appellant.

10. I have also gone through Rule 22.4, Punjab Police Rules, 1934. It provides the procedure for maintenance of case dairies by the police official. However, on perusal the said rule appears directory in nature and violation of the said rule may lead to an inference that the investigation was defective but it cannot be extended to say that it vitiates the trial or blemishes the unswerving testimonies of police witnesses. It is further relevant that the PW-11, in his cross examination on the said rules admitted that it was not compulsory for the police officials to record in the case dairy every step taken by him during the conduction of the investigation and entry to this effect can be made at the conclusion of investigation. Nothing significant has been elicited in cross examination of PW-11 on the aspect of maintenance of the case diary. In any event, proceedings recorded in police case diaries are not substantive piece of evidence and are for the purpose of providing aid or assistance to the court at the time of conducting trial. The judgment in Ashok Kumar(supra) does not lend any assistance to the appellant as in that case, the court was concerned with the veracity of a dying declaration recorded by the police officials. Dying declaration is a substantive piece of evidence and therefore, before placing reliance on the same, the Courts have to be cautious to see that it

has been recorded in a proper manner not leaving any doubt or scope of manipulation being done by the concerned police officers. In the present case, the trial court has not placed reliance on any such document for convicting the appellant.

11. Even otherwise it is trite law that any defect in investigation or any irregularity or illegality committed by the Investigation Officer would not render the prosecution case untrustworthy or entitle the accused for acquittal. In this regard observations of three judge bench of the Supreme Court in Hema v. State, AIR 2013 SC1000, can be cited with profit:

10) It is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC567 the following discussion and conclusion are relevant which are as follows:

55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

11) In Dayal Singh v. State of Uttaranchal, (2012) 8 SCC263 while reiterating the principles rendered in C. Muniappan (supra), this Court held thus:

18. Merely because PW3and PW6have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground.

12. In Gajoo v. State of Uttarakhand, (2012) 9 SCC532 while reiterating the same principle again, this Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court. Since, the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:

20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 28083, paras 27-36)

27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P. this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab, held: (SCC p. 657, para

5) 5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so [pic].would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. 28. Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Bihar enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated

and justice would be denied to the complainant party. XXXX XXXX XXXX30 With the passage of time, the law also developed and the dictum of the court emphasised that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general. XXXX XXXX XXXX32 In State of Karnataka v. K. Yarappa Reddy this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows: (SCC p.

720) 19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case?. If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously?. It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the [pic].action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case. 33. In Ram Bali v. State of U.P. the judgment in Karnel Singh v. State of M.P.was reiterated and this Court had observed that: (Ram Bali case15, SCC p. 604, para

12) 12. In case of defective investigation the court has to be circumspect [while]. evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.

13) It is clear that merely because of some defect in the investigation, lapse on the part of the I.O., it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions etc., it is the obligation on the part of the Court to scrutinize the prosecution evidence de hors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth.

(Emphasis supplied) OCULAR TESTIMONIES OF POLICE WITNESSES12 In order to negate the charge of possession of counterfeit currency under Section 489C IPC, the Learned Counsel for the Appellant firstly urged there are glaring contradictions between the testimonies of various police witnesses regarding the apprehension of the appellant along with counterfeit currency and their testimonies suffer from serious infirmities. It is further submitted that theory of possession of the counterfeit currency by the appellant gets supports only from the evidence of the police witnesses and therefore, it is unsafe to act upon such testimonies which are inherently unreliable.

13. Per contra, Mr Mukesh Gupta, learned APP submitted that the prosecution witness which in the present case are police officials whose testimonies duly establish the recovery of fake currency notes from the possession of the appellant. It is further submitted that CFSL report (Ex PW7/A) establishes beyond doubt that notes recovered from the possession were counterfeit and bogus. The learned APP submitted that testimonies of police witnesses are coherent and the trial court has rightly relied on them for the purpose of convicting the appellant under Section 489C of IPC. It is further submitted that the circumstances in which the appellant was found in possession of the counterfeit currency leads to invocation of presumption under Section 114(a) of the Indian Evidence Act, 1872 and it was for the appellant to explain reasons behind such possession under Section 106 of the Evidence Act as the reasons would have been within his special knowledge. In this behalf, the learned APP has place reliance on the observations of the Chattisgarh High Court in Reman @ Raman v. State of Chattisgarh 2008 CriLJ4755 14. I have heard the rival contentions. In order to succeed for a charge under Section 489C of IPC, the prosecution must prove the following ingredients:- (i) That the currency-note or bank note in question was forged or counterfeit; (ii) That the accused sold

to, or bought or received from, some person, or trafficked in, or used as genuine, such currency-note or bank-note; (iii) That when he did so he knew or had reason to believe that it was forged or counterfeit.

15. I have read in detail the testimonies of the police witness who found the appellant in possession of counterfeit currency. I do not see any reason to disbelieve the testimony of PW-5 Ct. Bharat Rattan, PW-6 ASI Rajinder Singh, PW-9 Ct. Brij Mohan, PW-10 Ct. Lokender as regards recovery of counterfeit currency notes from the possession in the appellant. All of them have consistently stated that the appellant was caught red handed with fake currency near the parking of Welcome Metro station. No contradictions have emerged in their cross examination either. The appellant does not claim that there was any enmity, ill-will or rancor between him and any of these witnesses. Therefore, there could have been no reason for them to depose falsely against the appellant and fallaciously implicate him. Their testimony cannot be rejected merely because they happen to be police officers. In this behalf, the Supreme Court in Tahir v. State, (1996) 3 SCC338has observed that no infirmity attaches to the testimony of police officials merely because they belong to the police force. Similarly in Aner Raja Khima v. State of Surashtra, AIR 1956 SC217 the Supreme Court held that the presumption that a person acts honestly and legally applies as much in favour of police officer as of others. It is not proper and permissible to doubt the evidence of police officers. Judicial approach must not be to distrust and suspect their evidence on oath with good and sufficient ground thereof. Minor discrepancies are bound to occur in the testimonies of witness but in my considered opinion no material discrepancy which goes to the root of the core prosecution version has been pointed out on behalf of the appellant and therefore, I find that the testimonies of the police witnesses are cogent, reliable and trustworthy.

16. As regards intention of the appellant to use the counterfeit currency as genuine is concerned, it is well settled that knowledge and intention are state of mind which cannot be proved by direct evidence and the same has to be gathered from the attending circumstances. The appellant failed to furnish a feasible explanation for being in possession of counterfeit currency at the Metro station. According to the prosecution witnesses 400 notes worth Rs 40000/- were found from the appellant

which cannot be stated to be a small number. Further, the conduct of the appellant in trying to run away from the police officers to evade frisking is also a circumstance which is against the appellant. I also note that testimony of PW-7 Dr. S Ahmed who is Assistant Government Examiner when read along with his opinion Ex PW-7/A shows all the currency notes recovered from the appellant were found to be counterfeit. There is no evidence to rebut the opinion given by PW-7 and in fact this is not the case of the appellant that the currency notes alleged to have been recovered from his possession were genuine currency. This is also not the case of the appellant that though the currency notes was in his possession, he did not know and had no reasons to believe that the same were counterfeit currency. It is also not appellants case that these currency notes were given to him by someone and he had accepted the same without suspecting them to be counterfeit currency. The case presented on behalf of the appellant is that these currency notes were not at all recovered from his possession. Now, if a person is found in possession of counterfeit currency, instead of giving any explanation for such possession, chooses altogether deny the possession and such a defence is found to be false, the inevitable inference is that he had reasons to believe that the currency notes recovered from him were counterfeit currency and that precisely was the reason behind denying the recovery from him. The number of counterfeit currency notes found in possession of the appellant coupled with denial of possession and no attempt to explain as how the appellant came in to possession of such currency is sufficient ground to draw the inference with regard to the requisite knowledge and intention on the part of the appellant.

17. The next limb of argument addressed by the Counsel for the Appellant is that no public witnesses have been joined in investigation either at the stage of apprehending the appellant or before conducting his personal search or at the time of recording his disclosure statement. It is no doubt correct that there were no independent witnesses to substantiate the prosecution case, but this cannot be made the sole ground for throwing out the entire prosecution fetched reality. It is a harsh fact but the same cannot be disputed that the public does not want to get dragged in police and criminal case and wants to avoid them, because of long drawn trials and unnecessary harassment. The Court cannot be oblivious of this general state of affairs. Similar view was taken in Appa Bhai v. State of Gujarat,

AIR 1988 SC696 It is also relevant to note that PW-6 ASI Rajinder Singh categorically deposed that the public persons were requested to join the investigation but in vain. Hence, no adverse inference can be drawn on account of non-joining of public witnesses.

18. The next contention of the learned counsel for the appellant is that no identification marks were provided to the notes worth Rs 40,000/- (Ex PW13) seized vide seizure memo Ex PW-5/A as seven additional fake notes were found and identified by PW-6 ASI Rajinder Singh in the sealed pulanda which clearly points towards the fact that the said pulanda was tampered with. In order to establish safe custody and transit of the fake currency notes to the FSL laboratory, the prosecution examined PW-2 Ct Anil Kumar, PW3 HC Bala Sahai, PW-4 Ct. Yashpal and PW-6 ASI Rajinder Singh and PW11 SI Bhagwan Singh. I have gone through their testimonies. All the said witnesses have categorically deposed to the effect that sealed pulanda was not tampered with in their presence and currency notes recovered from the possession of the appellant were safely transported for forensic examination to CFSL, Hyderabad.

19. PW-6 ASI Rajinder Singh in cross examination denied engrafting any identification mark on the notes recovered from the possession of the appellant. He further stated that he had only recovered notes worth Rs 40,000/- from the appellant and he was not aware as to how 7 additional notes were present in the sealed pulanda. It may be true that 7 additional notes were discovered from the sealed pulanda containing notes seized from the possession of the appellant. However, the said fact does not create a doubt or invalidate the recovery of 400 fake notes from the possession of the appellant. The retrieval of fake currency notes from the appellants possession was a chance recovery. The appellant was caught unaware in possession of the fake currency and therefore, it is probable that while counting the fake currency, haste was adopted by PW-6 ASI Rajinder Singh. In such a situation, it cannot be said that fake currency was planted on the appellant only on the basis of the circumstance that additional notes were found in the sealed pulanda. In fact, the testimony of PW-6 regarding recovery of notes worth Rs 40,000/- from the possession of the appellant finds corroboration in the testimony of PW-5 Ct. Bharat Rattan, PW-9 Ct. Brij Mohan and PW-10 Ct

Lokender who have in harmony stated that the appellant was caught red handed with fake currency worth Rs 40,000/- at the Welcome metro station.

20. The learned counsel for the appellant next urged that the polythene bag on which Karishma V.B. Sarees Vijaya Brothers was printed in which the fake currency of Rs 40,000/- was kept by the appellant was not found in the case property though the same was seized by the police officials. I note that PW-9 Ct. Brij Mohan on his cross examination stated that the said bag was seized by ASI Rajinder Singh (PW-6) from the appellant but same could not be seen by him in the case property however, PW-6 ASI Rajinder Singh was not cross examined on the aspect of missing bag. The fact that the bag on which Karishma Sarees was printed was missing from the case property even if accepted on the basis of the testimony of PW-9 does not stain the prosecution version regarding the recovery of fake currency from the possession of the appellant. This at the most signifies certain glitches which happened at the instance of the investigating agency but does not in any manner shake the substratum of the prosecution case, and as noted above, irregularity by the investigating agency which does not go the root of the prosecution version cannot be made the sole ground to throw out their entire case.

21. It was lastly urged by the Counsel for the appellant, that PW-6 ASI Rajinder Singh acted as the complainant and the Investigating Officer at the same time which is the against the settled cannons of criminal jurisprudence that a complainant cannot investigate in his own cause and hence, the entire prosecution case stands vitiated. In this regard, it is strenuously pointed out that PW-5 Ct. Bharat Rattan has deposed in his examination in chief that PW-11 SI Bhagwan Singh was present at the spot at 2:00 PM when the operation of seizing the appellant with fake currency was carried out whereas the PW-6 ASI Rajinder Singh has deposed to the effect that the PW-11 SI Bhagwan Singh was handed over the investigation at about 6:30 PM when he arrived at the spot. PW-11 SI Bhagwan Singh has stated in his cross examination that he arrived at the spot at 5:35PM. In this premise it has been contended that there are material contradictions as to the presence of the IO on the spot in various versions proposed by the police witnesses.

22. PW-5 in his cross examination admitted the factum of presence of the IO PW-11 SI Bhagwan Singh, when the appellant was apprehended with fake currency. I note there is a discrepancy on the aspect of presence of PW-11 SI Bhagwan Singh at the spot but such a discrepancy does not affect the core prosecution case or materially cast a blemish on the fact that the appellant was found in possession of fake currency. It is relevant that neither PW-6 ASI Rajinder Singh nor PW-11 SI Bhagwan Singh was cross examined about the discrepancy appearing in the statement of PW-5 Ct. Bharat Rattan. I also note that the examination-in-chief of PW-5 Ct Bharat Rattan was recorded on 12.04.2006 whereas his cross examination was done on 04.11.2008 nearly two years after recording of his statement in chief. Human memory fades away with time and minor discrepancies are bound to occur in statement of witnesses due to lapse of time. In this regard the observations of the Supreme Court in State of Uttar Pradesh v. Naresh & Anr, (2011) 4 SCC324 are pertinent which are reproduced herein below:

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

[Ed.: As observed in Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC186 p. 192, para 9.]. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the

statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide State v. Saravanan [(2008) 17 SCC587: (2010) 4 SCC (Cri) 580 : AIR 2009 SC152 , Arumugam v. State [(2008) 15 SCC590: (2009) 3 SCC (Cri) 1130 : AIR 2009 SC331 , Mahendra Pratap Singh v. State of U.P.[(2009) 11 SCC334: (2009) 3 SCC (Cri) 1352]. and Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra [(2010) 13 SCC657: JT (2010) 12 SC287 .].

23. Even otherwise, on the aspect of Complainant and the Investigating Officer being one and the same, the Supreme Court in S Jeevanantham v. State, (2004) 5 SCC230 following the decision in State v. Jayapaul, 2004 CriLJ1819 held that, even if the Police Officer, who is the complainant, also conducts the investigation of the case, and it is not proved that any prejudice was caused to the accused on the account of adoption of such course the accused cannot be acquitted. In fact in S Jeevanantham (supra), the Supreme Court was posed with a situation where recovery of contraband was effected from the accused by a Police Officer, who sent the rukka and thus, became the complainant which is quite similar to the facts of the case at hand. The present case stands on an even better footing as it has been established by the testimony of other police witnesses namely PW-10 Ct Lokender, PW-9 Ct Brij Mohan and PW-6 ASI Rajinder Singh that recovery of counterfeit currency from the possession of the appellant was a chance recovery and initially PW-6, being the senior most officer posted at the Metro Station had to handle the situation till the investigation was taken over to PW-11 SI Bhagwan Singh after the rukka was dispatched by PW-6. No evidence has been led by the appellant that prejudice was caused to him on account of course adopted either by PW-6 or PW-11 and therefore, the contention raised on behalf of the appellant stands rejected.

24. In view of the above discussion, I am of the opinion that the prosecution has been able to establish beyond doubt that the appellant was found in culpable possession of counterfeit currency and hence, the judgment of the Trial Court with respect to charge under Section 489C of IPC warrants no interference. RECOVERIES PURSUANT TO DISCLOSURE STATEMENT25 As per the

prosecution, after arrest, the appellant made a disclosure statement (Ex PW-5/D) pursuant to which computer parts employed by the appellant in manufacturing of fake currency as well as counterfeit notes worth Rs 15,000/- were recovered from a table drawer by the police at his residence located at F8, Associates Apartment, IP Extension, New Delhi. The seizure memo of Rs15,000/- was marked Ex PW-5/E and details of the computer articles seized from the appellants house were proved as Ex PW5/F. The forensic report, Ex PW-8/A, pertaining to the examination of the computer parts revealed that CPUs were found containing stand images of Rs 100/- note apart from having software for ADOBE PHOTOSHOP, scanner software and printer software with the help of which print outs of Rs 100/- were taken.

26. The Learned Counsel for the appellant has challenged the recoveries made on the ground that the same have been planted against the appellant.

27. Per Contra, the Learned APP has contended that from the testimonies of PW-11 SI Bhagwan Singh, PW-10 Ct Lokender, PW-5 Ct Bharat Rattan and PW-9 Ct. Brij Mohan recoveries of computer articles from the house of the appellant has been established beyond doubt.

28. I have perused the testimonies of various police officials who were party to the seized articles from the house of the appellant. The said witnesses have deposed collectively about the factum of recovery of articles seized vide seizure memo proved as Ex PW-5/F from the house of the appellant. Nothing glaring or inconsistent has emerged from their cross examinations. It is worthwhile to note that the recovery was on the same night after the appellant was found in possession of counterfeit currency. It is highly improbable that within such a short span of time the police officials would be able to purchase the computers parts recovered from the premises of the appellant and plant it at his residence. Also nothing contradictory has been ascertained from the statements of police witnesses so as to discredit their testimony. As noted above, no allegations of spite have been leveled against the police witnesses and therefore, I find their testimony reliable and trustworthy.

29. The only question which requires to be examined is whether on the basis of evidence adduced and established by the prosecution, the charge under Section 489 D stood conclusively proved against the appellant. CHARGE UNDER SECTION489D OF IPC30 Section 489D of IPC deals with making or possessing instruments or materials for forgoing or counterfeiting currency notes or banknotes. The relevant section reads as under:

Section 489-D. Making or possessing instruments or materials for forgoing or counterfeiting currency notes or banknotes--- Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in possession, any machinery, instrument or material for the purpose of being used or knowing or having reason to believe that it is intended to be used, for forgoing or counterfeiting any currency note or banknote, it shall be punished with imprisonment.

31. As per the prosecution in order to secure conviction under Section 489 D, the appellant pursuant to an order of Magistrate gave demonstration pertaining to use of computer hardware and printer for producing counterfeit currency. According to the testimony of PW-11 SI Bhagwan Singh on 06.06.2003 when the appellant was produced before the Metropolitan Magistrate (MM), the said MM queried to him as to whether counterfeit currency notes were prepared by the appellant in his presence on which PW11 refused. PW-11 further deposed that before the MM he had applied for judicial custody of the appellant for 14 days but remand was granted only for one day. Thereafter, PW-11 returned back to the police station with the appellant and narrated the entire conversation which took place between him and the MM before the Station House Officer (SHO) Sh Harpal Singh. The SHO directed him to unseal the computer equipments seized and get counterfeit currency notes produced by the appellant. Ct. Brij Mohan (PW-9) accompanied PW-11 and received the case property from concerned MHC (M) HC Bala Sahay (PW-3) and subsequently unsealed the equipment, however, the pulanda containing notes of Rs 15,000/- was not unsealed. A currency note of Rs100/- was handed over to the appellant vide memo Ex PW-9/A and two white papers were given vide memo Ex PW-9/B. PW-11 stated that the appellant was directed to print fake currency notes as per the directions of the magistrate. The appellant

prepared two currency notes with the help of the equipment with the help of currency note and white papers supplied to him. The two fake currency notes prepared by the appellant along with the cuttings of the white paper were sealed and seized vide memo Ex PW-9/C. The de-sealed equipment was sealed again and deposited with MHC (M). The factum of unsealing and sealing again was duly entered in daily diary register. PW-11 identified the two fake currency notes prepared by the appellant before him marked as Ex P-13/2 and P-13/3.

32. In cross examination, PW-11 admitted that the concerned MM had not passed any written directions for getting a demonstration of preparation of fake currency notes by the appellant. He did not remember actual time when the fake currency notes were prepared by the appellant. He admitted that no written note was given to MHC (M) for handing over the computer and other parts of equipment used and no entry to that effect was either made in the register. PW-11 denied the suggestion that the currency notes were prepared on his own and not under the directions of the MM.

33. PW-9 Ct. Brij Mohan, before court, identified the fake currency note of Rs 100/- prepared by the appellant as well the cuttings of the white paper marked as Ex P15. In his searching cross examination, it has been revealed that he on the directions of PW-11 de-sealed the computer parts seized from the residence of the appellant. The computer was fixed by the appellant himself and two fake notes were prepared by him.

34. The learned Counsel for the appellant on preparation of the fake currency notes submitted that no fake notes were manufactured by the appellant in presence of the IO and as such there is nothing on record to suggest that directions were issued by the MM to procure a demonstration of fake currency notes.

35. On the contrary the learned APP submitted that there is no plausible reason to disbelieve and reject the testimony of police witnesses.

36. I asked the learned APP to place before me Ex P-13/2 and P-13/3 as the same could not be located in the lower court record. Despite repeated queries, no such

exhibits were shown to me or produced before me. The only explanation put forth by the learned APP was that the said exhibits were lying in the malkhana as the same were deposited along with the case property. No Xerox copy of the same is found in the records either. It is highly doubtful that the appellant in police custody would demonstrate preparation of fake currency notes without written order from the MM. In any event neither the original exhibit nor its Xerox copy has been produced before me. In the circumstances, I am of the view that the prosecution has failed to establish that such notes, if manufactured at all, was done by the appellant himself.

37. Coming to the charge under Section 489 D of IPC, it is pertinent to note that there is no evidence before me which could lead to an inference that aforesaid articles actually belonged to the appellant. No purchase receipt or any other evidence suggesting that the appellant had actually acquired the computer articles seized is on record. Merely because the computer articles employed in manufacture of currency notes were seized from the residence of the appellant does not conclusively establish that the same were procured or used for printing counterfeiting currency by the appellant himself.

38. Therefore, I conclude that prosecution has failed to establish the charge under Section 489D of IPC for want of sufficient evidence and the sentence imposed by the trial court on that count is set aside.

39. In view of the discussion above, the appeal is partly allowed. The conviction of the appellant on charge under Section 489D is set aside. His conviction under Section 489C is however maintained and the sentence imposed by the trial court under Section 489 C is upheld.

40. Appeal is disposed of accordingly. Copy of the judgment be sent to the concerned Jail Superintendent for information and necessary action. SIDDHARTH MRIDUL (JUDGE) NOVEMBER06 2013 dn