

The State Vs. C. Ronald and ors.

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Court : Kolkata

Decided On : Oct-01-2004

Reported in : (2005)1CALLT296(HC)

Judge : Amitava Lala and ;Girish Chandra Gupta, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 154; ;[Evidence Act, 1872](#) - Sections 3 and 27; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 201, 489B and 489C

Appeal No. : C.R.A. No. 031 of 2002

Appellant : The State

Respondent : C. Ronald and ors.

Advocate for Def. : M.N. Nag, ;Tulsilal and ;Parekh, Adv.

Advocate for Pet/Ap. : A.K. Ray, Adv.

Judgement :

Girish Chandra Gupta, J.

1. This criminal appeal arises out of an order of acquittal passed by the learned Sessions Judge. Andaman and Nicobar Islands at Port Blair granting benefit of doubt to the accused persons. The prosecution story is as follows:

1.1. On 26.11.1997 Sub-Inspector Abdul Salam received a secret information that in the evening of 25.11.1997 C. Ronald participated in a gambling in the house of one Manicaam at Bathu Basti. Some hundred rupee notes, sought to be used by him at the gambling were not accepted by the co-gamblers on the ground that they were fake, whereafter Ronald left the place. Upon receipt of the Information the S.I. Salam left the Police Station in search of C. Ronald who was caught at about 13.05 hours. Upon his body being searched four fake currency notes of Rs. 100 denomination bearing the same serial numbers namely IPQ-204124 were recovered from his chest pocket in the presence of two witnesses namely Thangaraj and Ramzan Ali. The notes were taken into custody, a panchnama was prepared and Ronald was arrested. The accused, the S.I. and the witnesses signed the panchnama. An FIR was thereafter lodged by the S.I., Salam. Inspector R.B. Yadav of the CID Department at Port Blair was entrusted with the investigation of the case at 14.15 hours by the Deputy Superintendent of Police. The FIR was made available to him. During interrogation Ronald disclosed the name of M.P. Arun. At about 14.30 hours, constable Rajesh was deputed by Inspector Yadav for the purpose of bringing Arun. Arun came along at about 14.55 hours. Arun disclosed the name of Anil Kumar. Again constable Rajesh was deputed for the purpose of bringing Anil Kumar and he was brought in the Police Station at about 15.30 hours.

1.2. At about 16.00 hours Arun made a statement to the police which was recorded under Section 27 of the Evidence Act disclosing that he borrowed from Anil Kumar a sum of Rs. 12,000/- on 25.11.1997 which were all in Rs. 100/- denomination. In the evening around 8/8.30 P.M. on 25.11.1997 he lent a sum of Rs. 5,000/- from out of Rs. 12,000/- to Ronald. On 26.11.1997 Ronald informed Arun in the morning that the notes which he gave were not accepted by the gamblers on the ground that they were fake. Ronald returned to Arun 4 notes which the gamblers had refused to accept. During lunch break when Arun came back to his house from the office, he learnt that Ronald had been arrested for keeping fake currency whereupon Arun moved with the total sum of Rs. 7,400/- which was given to him by Anil to his latrine. He tore notes into small pieces threw it in the pan and flushed the same with buckets of water. He further said that by opening the septic tank the torn pieces could be recovered.

1.3. At about 16.10 hours Anil made a statement to the police which was also recorded under Section 27 of the Evidence Act. Anil in his statement disclosed that in repayment of a loan, one Kuttan of Santosh Jewellery gave him Rs. 49,000/- by currency notes of Rs. 100 denomination about 7 or 8 days prior to 25.11.1997. On 25.11.1997 he lent a sum of Rs. 12,000/- to Arun from out of the aforesaid sum and the balance sum of Rs. 37,000/- was lying with him in his Steel Almirah inside his bedroom which he could hand over to the police if he were taken to that place.

1.4. Ronald had already made a statement which was recorded under Section 27 of the Evidence Act at about 14.30 hours stating that around 8/8.30 in the night on 25.11.1997 he borrowed Rs. 5,000/- from Arun which were all in Rs. 100 denomination. He went to the place where gambling was regular held. He threw 4 notes on the table which the gamblers refused to accept on the ground that they were fake. He accordingly took back the 4 notes and replaced the same with genuine currency amounting to Rs. 400/- and came back to his house. 42 notes of Rs. 100 denominations, given to him by Arun, which he had wrapped in a red handkerchief and kept the same concealed inside a shoe, which was lying on a rack along with other shoes and chappals at his house, which he could show if he were taken to that place.

1.5. Pursuant to the aforesaid statements made by the accused persons 42 notes were recovered from the house of Ronald, wrapped in a red handkerchief from inside a shoe which were seized by Inspector Yadav at 14.45 hours in the presence of the same witnesses namely Thangaraj and Ramzan Ali. Each of the 42 notes bore the same serial numbers namely 9NP 892890.

1.6. At 16.35 hours 370 notes were seized from the second shelf of the Steel Almirah lying in the bedroom of Anil. A seizure list was prepared disclosing the serial numbers which the notes contained, which was signed by the accused, the Inspector and the said two witnesses.

1.7. At about 17.00 hours on 27.11.1997 with the help of three sweeper the septic tank of Arun's ancestral house was opened. From the first hole of the septic tank torn pieces of 51 currency notes were recovered. A seizure list/panchnama was prepared which was signed by the accused, the Inspector and the said sweepers.

Some photographs of the torn pieces of notes are also stated to have been exposed.

1.8. Some more recoveries of fake currency notes were also made, which will be discussed in detail at a later stage, with which the accused persons are not concerned. The currency notes recovered from the accused persons separately packed according to their serial numbers were sent by the S.P. to the Central Forensic Science Institute, Calcutta for examination under the cover of a letter dated 20.2.1998. The Central Forensic Science Institute opined that each one of the 437 currency notes sent to them for examination was fake. The torn pieces of the notes were however not examined by them.

1.9. Each one of the accused persons was charged under Sections 489B and 489C of the Indian Penal Code Arun was in addition charged under Section 201 of the Indian Penal Code for causing the evidence of the offence to disappear. It may be convenient to set out the provisions of Sections 489B and 489C which are as follows:

'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 term which may extend to seven years, or with fine, or with both,'

1.10. The accused persons pleaded not guilty. Accordingly they were tried jointly.

2. The learned Sessions Judge recorded a definite finding that the currency notes were counterfeit but at the same time held that the prosecution had not been able to prove its case and he acquitted the accused persons giving them benefit of doubt. He entertained a doubt as to whether the notes, which were before him were the ones which had been seized from the possession of Ronald and Anil. The fact that the witnesses particularly the seizure witnesses turned hostile was also a disquieting factor. He thought that the investigating agency did not take its task seriously. The reasons which weighed with him in his own words are as follows:

(a) '.....prosecution has given no mark of identification on each or every currency notes alleged to be fake ones at the time of ownership.....'

(b) '.....to be on the safer side, the recovering police officer should have obtained signatures of the witnesses as well as of the accused persons at least, so that the recovered article can be linked with their subsequent identification of their signatures by the respective parties.'

(c) 'From the manner in which the witnesses viz. Thanga Raj and Ramzan Ali deposed, it is found that they have all through denied about their knowledge of any search or recovery of any currency notes, but they could not deny their signatures on the papers in relation to the said search and recovery and thereby it could at least be presumed that prior to their appearance before this Court as witnesses. Thanga Raj and Ramjan Ali had access to the said currency notes with their respective signatures thereon.'

(d) '.....PW1 has stated that he put his signatures on some papers at the spot in front of the Guest House No. 2 he subsequently stated in course of cross examination by the prosecution that he put his signature on some blank papers at the police station and the said paper did not bear any signature before the signature of this witness was obtained thereon. After a long pause with negative answers to the suggestions given by the learned Public Prosecutor, this witness practically became of no help to the prosecution, which in its turn also did not take the advantage of placing the currency notes before this witness for identification of the same though all the bundles containing currency notes were brought out from

the big brown paper packet containing seal of the CFSL, Calcutta in open Court. So in the entire oral evidence of PW1 Thanga Raj the alleged witness to the seizure on 3 counts, nothing is available to show that he was ever any witness to the search, recovery and seizure of fake currency notes from the possession of accused Ronald or accused R. Anil Kumar.'

(e) '.....The most unfortunate matter in this case remains to be noted that most of the alleged fake currency notes numbering 418 to 436 identified in this case, were alleged to have been recovered in presence of PW1 Thanga Raj and PW14 Ramzan Ali and also in presence of accused Ronald and accused R. Anil Kumar. But none of these currency notes bear any endorsement in the style of signature of these 2 witnesses or either of them, or of the accused persons from whose possession or on whose production those currency notes were recovered and it cannot be ascertained that these were the currency notes which were actually recovered from those accused persons' possession.

(f) 'We have compared the evidence of PW2 and PW15 with those of PW1 and PW14 and it is found the prosecution allegation of possession of currency notes on the part of the accused persons having knowledge of the same as fake currency notes and to use them was not properly proved since the seizure witnesses almost turned their face from the prosecution story and completely denied about their presence or knowledge in respect of search recovery and seizure of the currency notes on different occasions as stated by PW2 and PW15.'

(g) '.....in the present case the matter has been handled so carelessly that linking of the currency notes which are Mat. Exts. I to VII in the present case, to the materials which were recovered from the alleged places and possession of the accused could not be possible since the identity of those article being alleged to be fake currency notes and the present Mat. Exts. 1 to VII cannot be merged together as the same article, since the PW2 and PW15 have admitted that they have not made arrangement for getting the endorsement of Identity with those recovered articles so that it can be identified here as being the same currency notes. Further it is found from the type of handling of the case by PW15 when he called three illiterate sweepers from PBMC not only to clean and bring out the torn

pieces of currency notes from the septic tank of accused M.P. Arun, but he did such an inefficient approach to select these illiterate sweepers as witnesses to the alleged disclosure statement by M.P. Arun before going to the said septic tank in his house and also in getting the signatures of these sweepers in the seizure list as seizure witnesses,'

(h) 'The P.W15 never took the entire matter seriously to handle the case with full care since the materials of offence in this case, as alleged, were nothing but some deceiving article to the general public and it is also some material which would hit at the root of economic stability of the country. I fail to understand why these two police officers PWs2 and 15 did not handle the matter carefully by making arrangement in such a way so that the Mat. Ext. I to Mat. Ext. VII could be linked with the materials so recovered from the accused Ronald and also from accused R. Anil Kumar at least.'

(i) 'I also cannot spare the witnesses Mr. Thangaraj and Mr. Ramjan All as they went on denying all the prosecution suggestions though, out of them Thangaraj at least recognised his signatures and the respective papers produced by the prosecution and the fact that he made the signatures on the spot in front of the Guest House No. 2 at Haddo. I do not know whether these witnesses gave any false evidence before the Court or not, but at least It is presumed that though they identified their respective signatures on different papers which were subsequently proved as some seizure lists and also some papers wrappers, they have avoided to disclose their knowledge about the said signatures properly and if they did it. then the story would have been otherwise and the society as a whole could have been saved from gradual deterioration in respect of influx of circulation of fake currency notes as it is so reported nowadays.'

3. Mr. Ray learned senior advocate appearing for the State-appellant made the following submissions:

(a) Evidence of PW11 Forensic Expert was that the currency notes were fake.

(b) The learned Sessions Judge after coming to a finding that 'this Court has got no hesitation to hold that those questioned documents or currency notes No. Q1 to

Q436 were not genuine,' indulged In a fanciful thinking that the currency notes produced before the Court and found by him to be spurious might not be the ones which were recovered from the accused persons because signature of the accused persons was not taken on the currency notes themselves. But he did not take notice of the fact that the signature of the accused persons and the seizure witnesses were taken on the wrappers in which the currency notes seized by the police were kept and the same were duly proved in accordance with law. This doubt was all the more fanciful because there was no suggestion by any one that the notes produced before the Court were not the ones which seized from the accused persons.

(c) The learned Sessions Judge did not give any weight to the statements recorded under Section 27 of the Evidence Act and the recovery and discovery of fact made pursuant thereto.

(d) The learned Sessions Judge failed to separate the grain from the chaff.

(e) The statement made on oath by Ramzan All under Section 164 Code of Criminal Procedure was not taken into consideration at all.

(f) There was enough evidence on the record to show that the prosecution had satisfactorily proved its case.

4. Mr. Nag learned advocate appearing for the accused Anil made the following submissions:

(a) Ramzan All did not admit his statement made under Section 164 Code of Criminal Procedure Ramzan could have been confronted with the statements made under Section 164 Code of Criminal Procedure for the purpose of discrediting him under Section 145 of the Evidence Act.

(b) A statement under Section 164 Code of Criminal Procedure can never be treated as a substantive piece of evidence. In support of his submission he relied on a judgment in the case of Bhubani v. The King, reported in AIR 1949 Paris Commune 257 Head Note B. He also relied on a judgment in the case of Sarika v. Emperor, reported in AIR 1935 Patna 19 for the proposition that evidence given in

a former proceeding cannot be used as substantive evidence against another person.

(c) The statement made by Ramzan under Section 164 Code of Criminal Procedure cannot be looked into.

(d) The defence was not required to give any suggestion that the currency notes produced before the Court were not the same which were seized from the accused persons.

(e) Inspector Yadav in his evidence in chief stated that 370 seized currency notes were wrapped together in a single paper wrapper and the same was sealed. He further stated that on the surface of the wrapper he made endorsement in his own hand. Whereas in cross examination he has stated that the recovered currency notes in 10 separate bundles were all wrapped together in single paper wrapper. He admitted in cross examination that the piece of paper wrapper was not shown to him in course of his examination.

(f) In the absence of identification of the currency notes there is no evidence to show that the same notes, produced before the Court, were recovered from the accused persons.

(g) The confessional statement made under Section 27 of the Evidence Act cannot be used against the accused. Even if it is assumed that some recovery of notes was made it does not go to establish that the currency notes recovered were fake. In order to bring home a charge under Section 489B and 489C the prosecution has to show that the accused had knowledge that the currency notes were fake. In support of his submission he relied on a judgment in the case of *Mammutti v. State of Karnataka*, reported in : 1979 CriLJ1383 .

(h) Finally he submitted that the Appellate Court should not substitute its views if the view taken by the trial Court is a reasonable view on the basis of materials before the Court. In support of his submission he relied on a Judgment in the case of *Shingara Singh v. State of Haryana*, reported in : 2004 CriLJ828 .

5. Mr. Tulsilal appearing for the accused Ronald made the following submissions:

(a) Ronald is alleged to have taken loan of Rs. 5000/- on 25.11.1997 on 8.30 P.M.; he is alleged to have returned 4 currency notes to Arun and 4 currency notes are alleged to have been recovered from his person on 26.11.1997. The recovery is alleged to have been made at 13.05 hours on 26.11.1997. The FIR is alleged to have been lodged at 14.10 hours yet FIR No. is indicated on the wrapper allegedly prepared at 13.05 hours. He drew attention of this Court to Exhibit 1 which is the seizure lit. Exhibit 8 which is the FIR and Exhibit 17/1 the paper wrapper and contended that the entire story is a cooked up affair and should thoroughly disbelieved.

(b) He developed his arguments further by showing that Exhibit 2. a seizure list, appearing to have been made at 14.15 hours does not contain the case Number. He submitted that a specific question in cross examination on behalf of Ronald was put to this effect to Inspector Yadav to which his answer was as follows:

'It is a fact that Exhibit 2/2 does not mention the reference of case for which the search and seizure was done. Not a fact that no FIR was still drawn before creation of this Exhibit. 2/2.'

(c) PW11 the Forensic Expert had admitted that he was not present at the time when the paper wrappers sent by the S.P., Andaman were opened by Mr. Saxena. On that basis he contended that there is really no evidence before this Court to show that the notes seized from the accused persons are actually before the Court.

(d) He further contended that Head Constable S.R. Yadav, P.W.12 in his evidence stated that six sealed paper packets were received by him whereas Forensic Expert, Sri S.C. Gupta, PW11 stated that 8 Exhibits were received by him and above all the evidence of Inspector Yadav was that the recovery of currency notes were in 10 separate bundles. He questioned, 'which witness is this Court going to believe?'

(e) S.R. Yadav, PW12 deposed that on 4.3.1998 he handed over the sealed paper packets containing currency notes to Inspector Yadav for sending the same to Calcutta whereas Exhibit 13 would go to show that the currency notes had already

been sent on 20.2.1998. In this regard he also referred to the evidence of Inspector Yadav wherein he stated that on 20.2.1998 he had sent the currency notes under sealed cover to the CFSL, Calcutta along with forwarding note. He again submitted, 'How can these witnesses be believed?'

(f) Finally, he submitted that the statement of Ramzan Ali recorded under Section 164 Code of Criminal Procedure was not put to the accused persons during their examination under Section 313 Code of Criminal Procedure. Therefore, the statement under Section 164 Code of Criminal Procedure cannot be relied upon for any purpose. Reliance for this proposition was placed on the case of *Kaur Sain v. The State of Punjab*, reported in : 1974 CriLJ358 .

6. Mr. Parekh, learned advocate appearing for the accused Arun submitted that (a) no recovery of fake currency notes or torn pieces of fake currency notes was made from the septic tank. Therefore, any statement allegedly made by Arun under Section 27 of the Evidence Act is inadmissible.

6.1. He further submitted that any statement by Anil seeking to rope in Arun or any statement made by Ronald seeking to rope in Arun is unworthy of credit. In support of the submission he relied on Illustration (b) of Section 14 of the Evidence Act which provides as follows:

'The Court may presume-that an accomplice is unworthy of credit, unless he is corroborated in material particulars.'

7. Mr. Ray in reply sought to distinguish the cases relied upon by the learned advocates appearing for the respondents accused persons and submitted that the same had no application to the facts of the case. He concluded by saying that the Judgment under appeal was clearly wrong and should be reversed and the accused persons should be punished in accordance with law.

8. Let us now examine and tabulate the evidence in support of the case of the prosecution.

(A) The relevant portion of the information received from the accused persons while they were in custody, and recorded under Section 27 of the Evidence Act

which led to recovery of the currency notes are as follows:

(i) Ronald's statement being Ext. 4 series can be reproduced as follows:

'I took out 42 Nos. Finance Officer hundred rupee currency notes, wrapped it with a red colour handkerchief, kept concealed inside a shoe and placed it on a rack along with other shoes and chappals. If I be taken to my house. I can show those 42 Nos. of hundred rupee currency notes.'

(ii) Arun's statement being Exhibit 19 series can be reproduced as follows:

'I came to know that police have arrested C. Ronald for keeping fake currency notes in his possession. On hearing this, I moved with the total Rs. 7400/- which was given to me by Anil Kumar. R/o, Anarkali Basti. to my latrine, where I torn all the notes into small-small pieces and flushed out by blowing two to three buckets of water due to which they were flushed out to the septic tank. If I be taken to my house, I can show you the septic tank, where it torn the notes and flushed out. And you can take them out with the help of sweepers.'

(iii) Anil's statement being Exhibit 5 series can be reproduced as follows:

'The remaining Rs. 37,000/- are even now at my house. I have kept the money concealed, beneath the clothes, in the second shelf of the steel Almirah inside my bedroom. If I be taken to my house. I can hand you over those 37,000/- fake currency notes.'

(B) Inspector Yadav, PW15 has deposed as regards discovery of the fact consequent to information received from the accused persons as follows:

(1) 'Accused C. Ronald then led us to a room inside his house in which there was a shoe rack and led us upto that rack, whereon a pair of black shoes were kept and from inside the right leg shoe, accused brought out a red coloured handkerchief and unfolded the same and some currency notes were found therein. Then those currency notes were handed over to me and I counted the same. I found those were all 100 rupee currency notes numbering 42 and all the currency notes were having the same serial numbers as 9NP-892890. Both the witnesses

were also present and in their presence I seized all those currency notes and the red coloured handkerchief by preparing a seizure list.....
.....These are the 42 currency notes which were handed over to me by Ronald in his house as stated and seized by me (identified the bundle of currency notes which were already marked as Mat. Ext. II).'

(ii) Accused Anil Kumar stopped our vehicle in Anarkali bustee and after getting down from the vehicle, led us to his house by going ahead of us and took us to his bedroom inside his house and opened the door leaves of the almirah and thereafter he brought out Rs. 37,000/- in hundred rupee currency notes kept in different bundles of different number of pieces of notes from under the cloth kept on the third rack from the bottom of the almirah. The total currency notes were 370 in numbers as it is found by way of counting. Out of the said total number of currency notes, 51 pieces were found to carry the same number as 8EQ-412890, 58 other pieces were found to carry the same number as 8EQ 107124, 49 pieces were found to carry the number as 3BS 811077, 31 pieces to carry the number as 9QM 793221, 35 pieces carry the number as 9NP 124404. 17 pieces carry the number as IPQ 204124, 6 pieces carry the number as 9NP 892890, 44 pieces were found to carry the number as 3BS 816229, 34 pieces were found to carry the number as IPQ 216229 and 45 pieces were found to carry the number as 9QM 716229. All those currency notes were of hundred rupee denomination. Thereafter, I seized all those recovered currency notes in presence of the witnesses and by preparing a seizure list thereto in my own handwriting and signature and I also obtained the signature of the witnesses and also of the accused persons on whose production those were seized. This is the said seizure list prepared and signed by me. (Marked the S.L. as Ext. 3/2 and his signature as Ext. 3/3).....Those currency notes from Q 282 to Q 330, Q 331 to Q 381, Q 382 to Q 415 and Q 107 to 207 were those currency notes which were seized by me as per production of Anil Kumar from his concealment in his house (identified a part of Mat. Ext. III collectively).....These currency notes of 100 denomination bearing the serial number of the CFSL, number Q47 to Q 61, Q82 to Q96 and Q97 to Q125 were also recovered from

under the cloth in the rack of the almirah in the bedroom of accused Anil Kumar as per his production and all these currency notes bear the same serial number as 3BS 816229 (identified still another part of Mat. Ext. III collectively). The currency notes bearing marking as Q118 is not attached to the series of currency notes from Q97 to Q125. but this currency notes has been attached to the bundle containing currency notes with the markings as Q47 to Q66, in between the currency notes bearing No. Q47 and Q48. These currency notes bearing CFSL No. Q47 to Q61 and then Q62 to Q81 were also recovered from under the cloth in the almirah kept in the bedroom of Anil Kumar as per his production and these currency notes bear the same serial number as 9NP 124404 and earlier by mistake I stated Q47 to Q61 currency notes are in the same serial number as 3BS 816229 (identifies still another part of Mat. Ext. III collectively). These three bundles containing 100 rupee currency notes bearing No. Q238 to Q258 and Q259 to Q281 and Q209 to Q237 also were recovered from under the clothe in the rack of the almirah in the bed room of accused Anil Kumar on his production and among these currency notes the currency notes bearing number Q209 to Q264 bear the same serial number as 8EQ 107124 and the currency notes bearing serial number as Q265 to Q281 bear the same serial number as JBQ 204124 (Identifies the rest portion of the currency notes bearing Mat. Ext. III collectively).....During search in the house of accused Anil Kumar, referred above. I also found genuine currency notes in a separate rack of the said almirah which was described by accused Anil Kumar as the amount of this salary received earlier and kept there.'

(iii) Our vehicle was stopped by M.P. Arun in front of a house. The three sweepers also reached there in their vehicle and thereafter we got down from our vehicles and proceeded on our foot being led by M.P. Arun. Accused led us to a septic tank on the back side of his house and pointed to the same by stating to me that by opening the said septic tank the torn currency notes would be recovered. Accordingly, the sweepers of the PBMC opened the septic tank and recovered 51 torn pieces of currency notes. I got the entire photographs taken through the photographer accompanying us. Thereafter, the soiled currency notes were cleaned by the sweepers with water and put in a plastic bag and thereafter the said plastic bag was handed over to me which I seized by preparing a seizure list

on the spot in my own handwriting and obtained LTIs of the three sweepers as witnesses and also obtained the signature of accused MP Arun on the seizure list and a copy of the seizure list was handed over the accused again on an endorsement of receipt on the body of the seizure list. This is the said seizure list prepared and signed by me. (Marked the SL as Ext. 20 and his signature as Ext. 20/1}. These are the said torn pieces of said currency notes which were recovered from the septic tank as stated above (marked Mat. Ext. Exhibit collectively).

(iv) In cross examination on behalf of Ronald, Yadav deposed as follows:

'The house of Ronald which we visited for the search, was a single storey one and the said house is partially RCC built and particularly timber built and there was tin shed overhead. There was only one door on the front side of that house and it used to open towards the South. It is fact there was a three-storied RCC house by the side of the house of C. Ronald.....
.....I cannot say the number of rooms in the house of Ronald since we were taken only to the extent of the room in which shoe rack was kept. I heard some female folk of the house to talk in the inner portion of the said house, but I cannot say, who are the other occupants of the house then. It is fact that I did not take signature of any member of the house of Ronald in the seizure list. Ronald took loan of Rs. 5.000/- from M.P. Arun at about 8/8.30 P.M. on 25.11.1997.'

(v) In cross examination on behalf of Arun, Yadav deposed inter alia as follows:

'At about 1400 hours on 27.11.1997 I had been to the PBMC and met the Sanitary Inspector there and orally requested him to provide the services of sweepers and the sweepers subsequently reported to me at CCS at 1530 hours. I made the requisition for the sweepers to the PBMC feeling their requirement for the recovery of the flushed out torn currency notes from the septic tank of the MP Arun as per his disclosure statement thereto made on 26.11.1997. I have not mentioned the time of such disclosure statement of M.P. Arun though the same was made on 26.11.1997. The disclosure statement was repeated by MP Arun on 27.11.1997 at 1600 hours after arrival of three sweepers. The actual disclosure statement was made on 27.11.1997 and not on 26.11.1997.'(C) Police Constable Rajesh PW5 deposed with regard to the summoning of the accused persons on 26.11.1997 at

the Police Station as follows:

'On 26.11.1997 I was posted at CCS at Port Blair and on that day at about 2.30 P.M. Inspector R.B. Yadav of CID Branch directed me to all and bring one Arun posted as Police Wireless Operator a resident of Bunivadabad. I used to know him. Accordingly I went to his house and told him about the call by Inspector and Arun then came to CCS along with me on my scooter. At the CCS I took him to Inspector Yadav. Arun is present on dock (Identified). Thereafter Inspector told me to bring out Anil Kumar, an employee of Port Management Board and a resident of Anarkali Bastte. I also used to know him. I also went to his house on my scooter and asked him to accompany me as Inspector Yadav had called him and he also came to CCS along with me on my scooter and at CCS I took him to the Inspector. Anil Kumar is also present on dock (Identified).'

(D) Head Constable S.R. Yadav P.W.12 has deposed that on 26.11.1997 he received six packets containing currency notes pertaining to Crime No. 255 of 1997 which he stored in Malkhana after making necessary entries in the register and that the same were made over by him to Inspector Yadav on 4.3.1998 for transmitting the same to Calcutta.

(E) Sweeper Laxman PW13 in his evidence with regard to opening of the septic tank situate at the ancestral house of the accused Arun has deposed inter alia as follows:

'We were asked to accompany the CID personnel and accordingly we did so. The said septic tank was very close to the Ayyappa Temple. Besides the CID officials, and ourselves no other person was present there. For opening that septic tank the permission of the owner of that septic tank was not obtained by the CID officials, nor any person claiming the ownership of that septic tank was present there. The work of cleaning of the said septic tank was started by us around 5 PM and the entire operation of the cleaning of the same continued for about 3 hours.....
.....During cleaning operation we recovered some paper pieces from the said septic tank and those were wet. Subsequently, we handed over those paper pieces to the CID officials.

After we handed over the paper pieces to the CID officials, they packed the same in a big paper packet in our presence, but I do not recollect in which material of paper, either plastic or plain paper, the said paper packet was prepared.'

(F) Sub-Inspector A. Salam. PW2 has deposed with regard to recovery of 4 fake currency notes from the person of Ronald in the presence of witnesses as follows:

'(1) When we were reaching near to his house I found said Ronald to come out from his house on a scooter and I recognized him as I used to know him from earlier. I stopped him on the road. At the same time I also stopped two other scooters passing by that road to be present there as witnesses. Those two other scooterists were Mr. Ramzan Ali and Mr. Thangaraj as per their disclosures.....In course of search I recovered four 100-rupee currency notes from the left side chest pocket of his shirt which Ronald was wearing then. The said notes appeared to be fake with bare eyes observation and the four notes were found having the same serial number as IPU 204124.....In the seizure list the said four currency notes recovered from Ronald I mentioned the serial number as JPQ 204 J24 as the starting letter of the series number appeared to be J and also the fourth figure of the numerical also appeared to be J. But subsequently on from the serial numbers from genuine currency notes I could realize that the said letter appeared as 'J' was actually T. and when I realised this mistake. I gave statement to that respect to the I.O., of this case.'

(ii) In cross examination Salam also deposed as follows:

'On reaching the Chief Engineer's office, I met a peon of that office and I inquired from him where C. Ronald used to sit in that office and from that peon I came to know that a few time back said Ronald went out of the office for taking lunch, but I did not inquire from the peon to which section or office he belonged. I recognised him as a peon as he was wearing white pair of dress.

Not a fact that I never had been to the office of the Chief Engineer, APWD.

C. Ronald was stopped by me by the road side when he was coming from his house on a scooter, at a place which was about 60/70 meters away from the Guest House No. 2. the house of Ronald is below along the road by the side of the main gate of Guest House No. 2. Guest House No. 2 is about 80 to 90 meters away from the main road from Haddo to Delanipur.....
.....I got the currency note number wrongly stated in FIR corrected during my examination by the I.O. and recording my statement under Section 161 Code of Criminal Procedure, but if that number of currency note number is recorded as IPQ 241124, then again it is not correct, since the correct number JPQ 204124.'

(G) Sub-Inspector Pillai, PW3 who accompanied Sub-Inspector A. Salam on 26.11.1997 when he proceeded to investigate into the matter consequent to the secret information has deposed inter alia as follows:

'SHO S.I. A. Salam began searching of the person of Ronald at that place at 1305 hours, in presence of said two scooterists viz. Thangaraj and Ramzan Ali, and during search four currency notes of 100-rupee denomination were recovered from the left chest pocket of the shirt worn by Ronald and during checking and scrutiny of the currency notes it was found that all the currency notes were bearing the same serial number as JPQ 204 J24. SHO S.I. Salam showed the currency notes to all of us including those two witnesses. Thereafter SHO S.I. Salam seized all those four currency notes by preparing a seizure list by himself on a piece of paper and obtained the signatures of Ronald and the two witnesses viz. Thangaraj and Ramzan Ali on the said seizure list. Ronald is present on dock (identified).'

(H) The seizure witness, Thangaraj, PW1 deposed inter alia as follows:

'I am a resident of Lilipur in Port Blair. I work as a Fireman in the Naval Ship Yard at Port Blair. One day towards the ending part of 1997 the date and month of which I do not recollect, around 1 P.M. I was returning to the place of my duty from my residence. While I was passing by the front of No. 2, Guest House at Haddo, I noticed a crowd In front of the Guest House on the road. I also went there. Among the crowd I also found the police personnel present there. I found the SHO of CCS to be present there. There the SHO asked me to put my signature on a paper. I

was told by the police officer that the said paper was in relation to some inquiry. I was asked to proceed to the police station from that place. I do not actually recollect, but perhaps I signed in 3 or 4 places in papers.'

(I) Ramzan Ali, the other seizure witness P.W14 deposed inter alia as follows:

'I am an M.A. in Economics. Besides Mr. Salam, I do not know the names of other police personnel, then present in the CCS. On my inquiry from Mr. Salam, I was told that I was asked to put my signature in a petty case but, I did not try to know specifically in what type of case it was. These are my signatures on each of these papers consisting of five different papers. (Marked the signature of this witness as Ext. 1/5, Ext. 2/1, Ext. 3/1, Ext. 4/1 and Ext. 5/1 respectively. This sealed paper packet cover contains my signature here (marked his signature as Ext. 6/1).....These are my signatures on these two papers among this bunch (the documents marked as Mat. Exts. VIII collectively, were produced before the witness consisting of 8 sheets, out of which the witness identifies his signatures on two sheets, which be marked as Ext. 17 collectively). I do not recollect whether there were already any handwriting on these two sheets on which I identified my signatures on Ext. 17 series at the time of putting my signature thereon.....Some time In the same year of 1997 after I put my signatures at the CCS. I made statement before the learned Magistrate at Port Blair Court. Learned Magistrate made some questions to me and I answered to those questions. The learned Magistrate asked me whether I know Hindi and I answered in affirmative and when he asked about my particulars including my father's name and my residence, I gave the same as Kuber Ali, and Anarkali bustee and when he asked me whether I would make statement voluntarily, I also answered in affirmative, when the learned Magistrate asked me whether there was any police personnel in the chamber. I answered in negative.

I do not recollect at present what I had stated before the learned Magistrate during my making statement before him. (The recorded statement by the learned Magistrate is brought out from the sealed cover and is handed over to the witness for going through the main portion of the statement regarding the incidence and he

went through it). I put my signature under the said statement after completion of recording of my statement by the learned Magistrate and thereafter the contents of the recorded statement was read over to me and then I put my signature thereunder. These are my signatures on different pages of the said statement. (Marked his signatures as Ext. 18 collectively). I do not recollect whether the statement recorded by the learned Magistrate bearing my signature as Ext. 18 series, is correct or false. (Before making this answer the witness took about 15 minutes' time besides always trying to avoid answering directly by stating 'Hum Ko Yad Nahin'. It is fact that if the learned Magistrate has given any certificate under my recorded statement that the contents of the recorded statement were read over to me in Hindi and on being satisfied about the correctness of the contents I put my signature thereunder, it is a true certificate.'

8.1. Ramzan in his statement made on oath before the learned Magistrate under Section 164 of Code of Criminal Procedure stated as follows:

'On 26.11.1997 at 1 P.M. opposite to Hadoo Guest House No. 2 S.I. Salam asked me to act as witness in the seizure of false currency notes recovered from accused Ronald who was standing there while I was passing by that side. S.I. Salam showed me four false currency notes taking from the pocket of that accused of same numbers. He asked me and another Tamil people named Raju to come to P.S. We reached P.S. and there Yadav Sahab prepared seizure list of four fake notes in presence of Ronald. On interrogation he disclosed in our presence that his friend has given him Rs. 5,000/- and the remaining notes are in his house. Both of us accompanied them to the house of Ronald and recovered Rs. 42,00/- of same number. The same was also seized under the seizure list prepared in the P.S. by Sri Yadav. I and Raju acted as witness to this seizure list. Thereafter, on further interrogation accused C. Ronald disclosed that M.P. Arun gave him the said fake notes. Then, Arun told that one Anil gave him Rs. 12,000/-. Anil told that he had Rs. 50,000/- out of which he has paid Rs. 12,000/- and the remaining 37,000/- was in his almirah. We both the witnesses accompanied Sri Yadav and recovered Rs. 37,000/- from the almirah in the house of Anil. He further disclosed that another Rs. 1,000/- he gave to Santosh Jewellery. Rs. 37,000/- was sealed and seized and seizure list was prepared there. We both signed that

seizure list, I do not like to say any other thing.'

(J) Forensic Expert. PW11 Sri S.C. Gupta deposed inter alia as follows:

'The documents of this case were received in my office on 9.3.1998 through S.P., CID Andaman and Nicobar Islands, Letter No. CID/1506/98 dated 20.2.1998. This is the said letter in original consisting of four sheets which our office received from the S.P., CID, Andaman and Nicobar Police (marked the same as Ext. 13). These documents were received under eight exhibits. Accordingly, I have marked them in 'Q' series, i.e., Q1 to Q4 under Ext. 1 (four currency notes), Q5 to Q46 under Ext. 2 (in 42 currency notes), torn pieces of the notes were treated as Ext. 3. Q47 to Q218, Q218/1 and Q219 to Q415 under Ext. 4 (in 317 currency notes), Q416 to Q425 under Ext. 5 (on 10 currency notes), Q426 to Q428 under Ext. 6 (on 3 currency notes), Q429 under Ext. 7 (on one currency note) and Q430 to Q436 under Ext. 8 (on 7 currency notes). After carefully and thoroughly examining the above currency notes, and comparing vis-a-vis the genuine Indian Currency Notes of the same denomination and of similar design in pattern, I came to a conclusion, which I got typed as my opinion dated 14.5.1998 in three sheets. These are the said three typewritten report prepared under my dictation by my Steno and it consists of three sheets or three pages and it bears my signatures on all the pages including at the bottom of the last page. (Marked the report as a whole as Ext. 14 and his signature as Ext. 14/1 collectively). One Mr. A.S. Gupta, Assistant Government Examiner of questioned documents also put his signatures on all the pages of the same report i.e. on Ext. 14, as he also examined the questioned documents independently and these are those signatures of Mr. A.S. Gupta, as I know his signature (marked the signatures as Ext. 14/2 collectively). After examination I came to the conclusion by cumulatively considering the various observations and incongruities in the questioned currency notes, detailed in the report, that they are spurious in nature. I have not expressed any opinion regarding the genuineness of torn pieces of the currency notes under Ext. 3.

8.2. in cross examination on behalf of Anil, PW11 deposed inter alia as follows:

'It is fact that I was not present when Mr. Saxena opened those paper wrappers. It is not a fact that the opinion I have given in respect of the currency notes is not

correct. Not a fact that our office never received any letter along with currency notes which I have referred in my examination in chief from the S.P., CID A&N; Police.'

9. Before we endeavour to evaluate the evidence on record, noted above, we deem it proper to ascertain at the very outset the evidentiary value of the statements made by the accused persons which were recorded under Section 27 of the Evidence Act which furnished information to the investigating agency for discovering certain facts of this case. Section 27 of the Evidence Act provides as follows:

'Section 27.-Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not. as relates distinctly to the fact thereby discovered, may be proved.'

9.1. Construing the aforesaid section a Division Bench of the Madras High Court in the case of Queen Empress v. Coomer Sahib, reported in ILR 12 Mad 153 opined as follows:

'The general rule applicable to confessions made by prisoners whilst in the custody of a police officer is contained in Section 26 of the Indian Evidence Act, and the proviso contained in Section 27 refers to an exception to that rule. The material words are 'so much of such information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered may be proved.' The reasonable construction is that in addition to the fact discovered, so much of the Information as was the immediate cause of its discovery is legal evidence.

The statement made by the prisoner in this case, viz. that he had deposited the clothes produced with the witnesses who delivered them up on demand was the proximate cause of their discovery and was admissible evidence. If he had proceeded further and stated that they were clothes which he stole on the day mentioned in the charge from the complainant, that statement would not be

evidence for it would be only introductory to a further act on his part, viz., that of leaving the cloths with the witnesses, and on that ground it would not be the immediate cause of, or the necessary preliminary to, the fact discovered. The test is: 'was the fact discovered by reason of the information, and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact.' This appears to us substantially the principle on which the cases reported in *Adu Sikdar v. Queen Empress*, *Empress of India v. Pancham* and *Registrar v. Jora Hasji* (11 Bom HCR 242) were decided.'

9.2. Reference in this regard can also be made to a Division Bench judgment of this Court in the case of the *Legal Remembrance v. Chema Nashya*, reported in ILR 25 Cal 413 where the Division Bench laid down the law as regards the quantum of the information which is admissible under Section 27 of the Evidence Act. The opinion expressed by the Division Bench is as follows:

'It is of course correct to say that, as a general rule, a confession made to a police officer is not admissible in evidence. But Section 27 of the Evidence Act provides that when any fact is deposed to as discovered in consequence of information rejected from an accused persons, in the custody of a police officer, so much of such information (whether it amounts to a confession or not) as relates distinctly to a fact thereby discovered, may be proved. Consequently, the Magistrate was not in error in recording so much of the accused's statement to the police as led to the discovery of the stolen property in this case. It is perfectly well proved that the accused did make such a statement, that he did take the search-party to two secret places, that he did indicate that there the stolen property was buried, and that when these places were dug up, the stolen property was then found. The conclusion is irresistible, the guilty knowledge of the accused is clearly established, and no further proof of his dishonesty was necessary.'

9.3. The ratio of the aforesaid two Judgments of two Division Benches applied to the case in hand would establish satisfactorily guilty knowledge of both Ronald and Anil.

10. We shall now consider the evidentiary value to be attached to the statement made on oath under Section 164, Code of Criminal Procedure by the witness

namely, PW14, Ramzan Ali, the relevant text whereof has been set out in subparagraph (I) of paragraph 8 above.

10.1. The cases cited by the learned counsel appearing for the accused persons with regard to the evidentiary value of a statement recorded under Section 164 Code of Criminal Procedure may be noticed first. Mr. Nag cited a judgment of the Privy Council in the case of *Bhubani Sahe v. The King*, reported in for the proposition that a statement under Section 164 Code of Criminal Procedure can never be used as substantive evidence of the fact stated but it can be used to support or challenge the evidence given in Court by the person who made the statement.

10.2. It would appear that in the case before Their Lordships a confession of the co-accused was recorded under Section 164 Code of Criminal Procedure. He had subsequently turned to be the approver. However, in Court 'his evidence was that he knew nothing about the murder, and he denied all the facts to which he had deposed before the committing Magistrate. He affirmed that his evidence before the committing Magistrate was the result of beating and tutoring by the police, and he denied that he had made any statement at all before a Magistrate under Section 164 Code of Criminal Procedure. Thereupon the Sessions Judge brought the evidence of the approver given before the committing Magistrate upon record under Section 288, Code of Criminal Procedure, the effect being to make the evidence given before the committing Magistrate evidence in the case for all purposes. Both the learned Sessions Judge and the learned Judges of High Court in appeal, preferred the evidence given by the approver before the committing Magistrate to his evidence given in the Sessions Court.'

10.4. Another case cited by Mr. Nag on this point was a Division Bench judgment in the case of *Sanika Munda v. Emperor*, reported in AIR 1935 Patna 19 for the proposition that a statement under Section 164 cannot be used as a substantive piece of evidence. What had happened in that case was that the witness Phulo who had given on an earlier occasion a statement under Section 164 Code of Criminal Procedure before the committing Magistrate went back on it before the Court and 'said that her previous statement recorded under Section 164 Code of

Criminal Procedure, was untrue, and had been induced by threats of assaults made by the police Sub-Inspector.'

10.5. In the case of Ram-Laxman v. State of U.P., reported in 1991 Cr LJ 2790 'witnesses were declared hostile and cross examination by the prosecution. Only their statements made before the Magistrate under Section 164 Code of Criminal Procedure were put to them. They had stated they had given these statements on the asking of the police. It was not their voluntary statements.'

10.6. On our own we can cite a judgment of the Privy Council in the case of Briz Bhushan Singh v. The King-Emperor, reported in 50 CWN 348. In that case the witnesses had made statements under Section 164 which were not supported by them when they came to give evidence before the Court. Yet the trial Court and the High Court used those statements as substantive pieces of evidence and Their Lordships opined as follows:

'In reaching this conclusion, however, the Chief Court used statements made by the Ayah Haliman and the Chauffeur Mahavir under Section 164 of the Code of Criminal Procedure as substantive evidence of the truth of the facts stated. It is true that in their Judgment the learned Judges say: 'we may add that the statements under Section 164 cannot be and have not been used as substantive pieces of evidence but only for such purposes as the law permits.' A perusal, however, of the whole of the judgment makes it apparent, in Their Lordships' view, that the statements were used as substantive evidence and it was for these reasons that the appeal to his majesty in council was admitted. The learned Judges discussed in great detail the statements made by Haliman and Mahavir under Section 164 and gave reasons for accepting the facts, or most of the facts, deposed to in those statements, in preference to the evidence given by the witnesses in Court, which in no way helped the prosecution. This was an improper use of such statements. A statement under Section 164 can be used to cross examine the person who made it, and the result may be to show that the evidence of the witness is false. But that does not establish that what he stated out of Court under Section 164 is true.'

10.7. From the Judgments cited at the bar as also the judgment cited by us it would appear that in all those cases the witnesses had gone back on their statement, recorded under Section 164 Code of Criminal Procedure. Yet in some of the cases those statements were used as a substantive piece of evidence which is clearly not permissible.

10.8. We, however, have before us a slightly different case. Ramzan Ali came to give evidence. He had earlier made a statement under Section 164 on oath before a Judicial Magistrate, he kept on saying 'Hum Ko Yad Nehi' when the statement recorded under Section 164 Code of Criminal Procedure was, made over to him in the box. However, after reading the statement and the certificate given by the Judicial Magistrate at the foot of the statement recorded under Section 164, Code of Criminal Procedure for 15 minutes he made this significant deposition: 'It is fact that if the learned Magistrate has given any certificate under my recorded statement that the contents of the recorded statement were read over to me in Hindi and on being satisfied about the correctness of the contents I put my signature thereunder, it is a true certificate.'

10.9. He has not disowned his statement. Fuller part of his deposition in this regard has been noticed by us in sub-paragraph (I) of paragraph 8 above. Nor has he indicated that the statement was not voluntary. On the contrary he has said that it was made voluntarily by him before the Judicial Magistrate. He has also identified his signatures and he has affirmed the correctness of the certificate given by the learned Magistrate. It is in this perspective that we have to examine the evidentiary value of this statement.

10.11. Section 80 of the Evidence Act provides as follows:

'Section 80.-Whenever any document is produced before any Court, purporting to be a record or memorandum of evidence, or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law. and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume-

That the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence statement or confession was duly taken.'

10.12. A Special Bench of this Court in the case of P.P. Upadhaya v. The King-Emperor, reported in 33 CWN 1121 applying Section 80 of the Evidence Act to the evidence of a witness in an earlier proceeding to which the appellant before Their Lordships' was not a party, held that deposition taken in an earlier proceeding could be tendered in evidence without formal proof. The truth of such deposition is, however, a different matter. If such a document is tendered on the basis of Section 80 of the Evidence Act, without more, then one can say that contemporaneously with the incident or shortly thereafter such a statement was made by so and so. Applying the same to our present case even without looking into the deposition of Ramzan Ali Court was entitled to mark the statement of Ramzan Ali recorded under Section 164 Code of Criminal Procedure by a Judicial Magistrate as an exhibit and proceed on the basis that such a statement was in fact made. Whether the statement is correct is however a different matter and for that adequate proof could have been insisted upon. Thus was the view taken by Their Lordships' in the said Special Bench judgment as would appear from the relevant portion extracted hereinbelow:

'As regards exhibit 13 being the evidence of Sethirani, I am not prepared to say having regard to the provisions of Section 80 of the Indian Evidence Act that the document, which purported to be a recorded or memorandum of the evidence of Sethirani in the Benaras case, would not be admitted in evidence without formal proof. Section 80 of the Evidence Act does not deal with the question of admissibility of the documents referred to therein, but simply dispenses with the necessity of their formal proof by raising the presumption that everything in connection with them had been legally and correctly done, i.e., (i) that the documents purporting to be record of evidence or statements or confessions are genuine; (ii) that the statements as to the circumstances under which they were taken, made by the officer who affixed his signature are true and (iii) that the evidence, statement or confession was duly taken. Assuming that the identity of the deponent Sethirani was established on the evidence of Rajkumari, the

evidence was admissible. In the circumstances of the present case, however, the effect of the evidence of Sethirani against the petitioner was so slight that the jury ought to have been properly-cautioned.....
.....In my opinion, the question arising on the evidence of Sethirani, whether Padam Prosad knew that Raikumari was under 18, should not have been left to the jury in the words which the learned Judge saw fit to use and that it would have been advisable if the jury had been told that it was a matter for them to find out on the entire evidence on record whether there was any justification for the theory that Padam Prasad knew that Rajkumari was under 18, seeing that the prosecution did not adduce any substantive evidence on the point.'

10.13. Reference can now be made to Section 160 of the Evidence Act which provides as follows:

'Section 160.-A witness may also testify to facts mentioned in any such document as is mentioned in Section 159, although he has no specific recollection of the facts themselves, if he is sure that facts were correctly recorded in the document.'

10.14. Construing Section 160 of the Evidence Act the Apex Court in the case of Kanti Prosad v. Purushottam, reported in : [1969]3SCR400 held that if the requisite condition laid down in Section 160 of the Evidence Act are satisfied from the record the lack of an express declaration that the facts were correctly recorded would not make the evidence inadmissible and the statement made or report prepared by the witness would be part of his oral evidence sanctioned by oath. We shall now read paragraphs 11, 12 and 18 of the aforesaid judgment:

'In cross examination questions were directed to establishing that the reports were not exact reports. He stated that he was taking down all the speeches of Shambhu Maharaj who was speaking at medium pace and he wrote whatever Shambhu Maharaj spoke. He further stated that he was writing down from memory immediately after the words were spoken by Shambhu Maharaj. He admitted that 'it is true that every word spoken by Shambhu Maharaj was not taken down by me in my report but what I have taken down was in fact spoken by him.' He, however, added that 'it is not true that what I have written out in Ex. 'J' was not written down

at Motiday village.

On this evidence it seems to us that it is quite clear that both the Conditions required by Section 160 have been complied with. While the speech was delivered on February 18, 1967, he was giving his evidence on November 7, 1967. It is implicit that he had no specific recollection of the speeches, and the second condition is also satisfied because he made notes and then made out the report from his notes. It may be that the counsel would have been well advised to have read out Ex. 'J' rather than produce it as an exhibit, but this is apparently done in some Indian Courts to save time and it is now too late in the day to condemn such practice, specially as it is a difference without any substance. It is true that the report is, strictly speaking, not substantive evidence as such, and the document can only be used as a part of the oral evidence sanctified by the oath.

Blacker. J., In *Sodhi Pindi Das v. Emperor*, AIR 1938 Lah 629 held, relying on *Jagan Nath v. Emperor*, AIR 1932 Lah 7 that it is essential that the witness must state orally before the Court that although he had no specific recollection of the facts themselves, he was sure that the facts were correctly recorded in the document. We are unable to agree with this interpretation. As we have already stated, if the requisite conditions can be satisfied from the record, the lack of an express declaration by witness does not make the evidence inadmissible.'

10.15. We already have quoted above the relevant part of the deposition of Ramzan Ali which goes to show that he has deposed that the certificate appended by the learned Magistrate is correct. The certificate is that the statements were made voluntarily by Ramzan and those statements according to him were true and correct. Therefore, entire statement made by him under Section 164 Code of Criminal Procedure was provided and cross examination was declined on behalf of each of the accused persons. Declining to cross examination a witness only goes to show that the accused persons believed that the correctness of what he deposed could not be disputed. If any authority is needed reference can be made to a Judgment of this Court in the case of *A.E.G. Carapiet v. A.Y. Derderian*, reported in : AIR1961 Cal359 (Division Bench) wherein relying on a judgment of the House of Lords in the case of *Brown v. Dunn*, it was held that 'The law is clear

on the subject. Wherever the opponent has declined to avoid himself of the opportunity to put his essential and material case in cross examination, it must follow that he believed that the testimony given could not be disputed at all.'

10.16. Reference in this regard can also be made to the relevant portions of the judgment of the House of Lords which was extracted by the Division Bench in its judgment:

'On this point the most important and decisive authority is *Brown v. Dunn*, reported in (1893)6 R 67. It is a decision of the House of Lords where Lord Herschell, L.C., Lord Halsbury. Lord Morris and Lord Bower) were all unanimous on this particular point. Lord Chancellor Herschell, at page 70 of the report observed:

'Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact, by some questions put in cross examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box. to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses.'

10.17. Lord Halsbury, the other member of the House of Lords, at page 76 of the same report said:

'My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor, as to the mode in which a trial should be conducted. To my mind nothing would be more absolutely unjust than not to cross examination witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of

explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.'

10.18. In fact Lord Halsbury described the situation as a 'perfect outrage' at page 77 of the said report. After quoting the evidence the learned Lord said:

'My Lords, it seems to me that it would be a perfect outrage and violation of the proper conduct of a case at Nisi Prais if, after the learned counsel had declined to cross examine the witness upon that evidence, it is not to be taken as a fact that that witness did complain of the plaintiff's proceedings, that he did receive advice, that he went round to Mr. Duna as a solicitor, and that he did sign that retainer, the whole case on the other side being that the retainer was a mere counterfeit proceeding and not a genuine retainer at all.'

10.19. The same view is expressed in the 13th Edition of Odger On Pleading and Practice at page 261 and the 9th Edition of Phipson on Evidence at page 497-98.'

10.20. We are however not oblivious of the fact that Section 160 of the Evidence Act refers to a writing made by the witness himself at the time of the transaction concerning which he is questioned. The statement of Ramzan in question may not be a piece of his writing in that sense. But we are firmly of the view that the result will not be materially different even if the statement is treated as an ordinary piece of documentary evidence. The original has been produced, therefore the requirement of Sections 61 and 62 of the Evidence Act has been complied with. Signature has been proved under Section 67 of the Evidence Act by the maker of the statement himself. What remained to be proved was the correctness of the contents of the statement. This was also proved by the maker thereof when he deposed that he voluntarily made that statement before the Judicial Magistrate and that the certificate given by the learned Magistrate was true. The certificate recited that the statement was voluntarily made by Ramzan and the statement according to him was true and correct.

20.21. Mr. Lal appreciating his difficulty submitted before us that the statement under Section 164 Code of Criminal Procedure was not put to the accused persons under Section 313 of Code of Criminal Procedure. Reliance has been placed on Judgment of the Apex Court in the case of Kaur Sain v. The State of Punjab, reported in : 1974 CriLJ358 . We are not impressed by this submission. What is required to be put to the accused persons in a examination under Section 313 is a material fact intended to be used against him and not the piece of evidence by which it is proved. Reference in this regard can be made to the case of Hate Singh v. The State, reported in : AIR 1953 SC468 which was followed in the case of Sharad Birdichand v. State of Maharashtra, reported in : 1984 CriLJ1738 . Even in the case cited by Mr. Lal it was held that the circumstances thought to be sufficient to sustain the conviction must have been put to the accused persons. In that case the alleged statement of the accused himself was sought to be relied upon as an unqualified admission for sustaining the conviction. Their Lordships held that the statement being a circumstances should have been put to the accused in his examination under Section 342 (old).

10.22. The statement under Section 164 Code of Criminal Procedure of the witness Ramzan Ali is only a piece of evidence to show that in his presence the initial seizure of 4 notes was made; thereafter in his presence statements under Section 27 of the Evidence Act were made by Anil and Ronald in his presence 'Ronald stated to have received the currency from Arun and Arun stated to have received the same from Anil and in his presence further recovery was made, from the house of Ronald and Anil. These circumstances were put to Ronald by Q6 to 10, 26, 28 to 32 and to Anil by Q3 to 10.

10.23. At this stage we want to make it clear that the safeguard provided in law under Section 313 Code of Criminal Procedure is essentially aimed at protecting the innocent and can never be stretched to such an extent so that a guilty person finds an easy way out. It can never be used as a device to trip the unwary. We are fortified in our view by the opinion expressed by the Apex Court in the case of Tara Singh v. The State, reported in : [1951]2SCR729 wherein Their Lordships held that 'The whole object of the Section (Section 342 of the 1893 Act) is to afford the accused a fair and proper opportunity of explaining circumstances which appear

against him'. However, Their Lordships hastened to add 'I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fail within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned.'

10.24. Viewed from this angle one shall vainly look for an explanation in answer to any question put to the accused persons in examination under Section 313 Code of Criminal Procedure. They (Ronald and Anil) kept on denying every circumstances including recovery of currency notes from their possession which is a pointer to show that they were not minded to take benefit of the Section for obvious reasons. It was not suggested by the counsel that any prejudice was caused to any of the accused persons for omission to put the statement of Ramzan Ali recorded under Section 164 Code of Criminal Procedure in examination under Section 313 or for that matter for omission to put any other circumstance to them in their examination under Section 313 Code of Criminal Procedure.

11. We shall now have a look at the necessary ingredients for proving a charge under Sections 489B and/or 489C. The text of these two Sections have already been quoted above (see paragraph 1 above). Construing Section 489B of the Indian Penal Code a Division Bench of the Lahore Court in the case of Bikha Ram v. The King-Emperor, reported in AIR 1926 Lahore 72 opined that the object of Section 489B was to stop traffic in forged notes and therefore anyone knowingly purchasing and selling forged notes is guilty under Section 489B of the Indian Penal Code. To be precise Their Lordships held as follows:

'It appears however that the object of the legislature in enacting this section was to stop the circulation of forged notes by punishing all persons who knowing or having reason to believe them to be forged, do any act which would lead to their circulation. Judged by this test the sale of a forged note as a forged note is as reprehensible as a sale of a forged note as a genuine one. A person, who purchases for value a forged note knowing it to be forged, is ordinarily expected to

make money out of the transaction by circulating the note, as a genuine one. It is possible that a perfectly honest man, such as a mere collector of curios who does not intend to put the instrument into circulation, may come within the ambit of the section, but such exceptional cases cannot furnish any argument for modifying the plain meaning of the enactment. We consider that the petitioner, who knowingly sold a forged note to a person who also knew it to be forged, is guilty under Section 489B of the Indian Penal Code.'

11.1. In order to prove a charge under Section 489C of Indian Penal Code, as would appear from a bare reading of the section the necessary Ingredients appear to be as follows:

(a) Possession of forged or counterfeit currency notes.

(b) Possession should be with knowledge that the currency notes were forged or counterfeit or the possessor should have reason to believe the same to be forged or counterfeit.

(c) The possession should be with the intention to use the same as genuine or that it may be used as genuine.

Law as regards proof of knowledge:

11.2. In the case of M. Mammutti v. State of Karnataka, reported in : 1979 CriLJ1383 Their Lordships held that 'Mr. Nettar submitted that once the appellant is found in possession of counterfeit notes. he must be presumed to know that the notes are counterfeit. If the notes were of such a nature that a mere look at them would convince anybody that it was counterfeit such a presumption could reasonably be drawn.'

11.3. Knowing or having reason to believe that the currency note is forged or counterfeit unless the note on the face of it appears to be fake is a necessary pre-condition which was held by the Apex Court in the case Uma Shankar v. State of Chattisgarh, reported in : 2001 CriLJ4696 as follows:

'A perusal of the provisions, extracted above, shows that mens rea offences under Section 489B and Section 489C is 'knowing or having reason to believe the currency notes or bank notes are forged or counterfeit'. Without the aforementioned mens rea selling buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or bank notes is not enough to constitute offence under Section 489B of Indian Penal Code. So also possessing or even intending to use any forged or counterfeit currency notes or bank notes is not sufficient to make out a case under Section 489C in the absence of mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of PW2, PW4 and PW7 that they were able to make out that currency note alleged to have been given to PW4, was fake 'presumed' such a mens rea. On the date of the incident the appellant was said to be 18 years old student. On the facts of this case the presumption drawn by the trial Court is not warranted under Section 4 of the Evidence Act. Further it is also not shown that any specific question with regard to the currency notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Code of Criminal Procedure. On these facts we have no option but to hold that the charges framed under Sections 489B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Section 489B and 489C of Indian Penal Code and acquit him of the said charges (see: M, Mammutti v. State of Karnataka, : 1979 CriLJ1383).'

11.4. In order to prove knowledge facts showing existence of knowledge are relevant under Section 14 of the Evidence Act.

11.5. Further in order to prove knowledge conduct of the accused may furnish unmistakable evidence which is illustrated by statutory illustration (e) to Section 8 of the Evidence Act which reads as follows:

'(e) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance

favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.'

11.6. From the aforesaid Illustration one can deduce 'that the fact that the accused persons concealed the evidence are relevant' to show the conduct of the accused which is consistent only with his guilt.

Law as regards proof of intention;

11.7. In the case of Public Prosecutor v. Rowthula, reported in AIR 1939 Mad. 96 it was held that unexplained possession of counterfeit notes is a sufficient ground for drawing the inference that the intention was to use them as genuine or that they may be used as genuine. The learned Judge opined as follows:

'The facts established by the prosecution in this case are that as many as 38 counterfeit currency notes were in the possession of the accused, 30 of them on his person and the remaining eight in a box in his house, underneath some books, wrapped in a piece of paper. The large number of the notes is an important indication. The learned trial Judge himself quotes the following passage from Dr. Gour's Commentary with approval, namely that 'such intention relating as it does to future conduct, could only be proved by collateral circumstances, such as that the accused had palmed off such notes before, or that he was in possession of such and similar notes in such large numbers that his possession for any other purpose is inexplicable.' In other words, the number of counterfeit notes found in a man's possession and the circumstances in which they were so found may be themselves constitute a sufficient ground for drawing the inference that the intention was to use them as genuine or that they may be used as genuine.'

11.8. This judgment was followed by the Andhra Pradesh High Court in the case of Satya Narayan, reported in : AIR 1961 AP213 .

11.9. A Division Bench of the Mysore High Court in the case of Ameerjan, reported in AIR 1951 Mysore 34 held that the fact that the accused kept the counterfeit notes concealed could lead to a presumption that he intended to use the same as

genuine. The opinion expressed was as follows:

'It was further contended for the appellant that there was no proof in this case that the accused was intending to use the notes as genuine or that they may be used as genuine. If the intention of the accused was to destroy them he would have either torn them up or burnt them or otherwise disposed of them and not kept them fairly carefully in a pit specially dug for the purpose and covered with a stone. We have, therefore, no doubt in holding that it has been established in this case that the accused had in his possession these counterfeit currency notes Intending to use the same as genuine or that they may be used as genuine within the meaning of Section 489C, Penal Code. The assessors were also unanimously of the view that the accused was guilty of an offence under the section.'

11.10. A converse case came up before the Judicial Commissioner. Tripura in the case of Hameed Alt v. State of Tripura, reported in AIR 1961 where the possessor tried to get rid of it and as a matter of fact did resort to that and it was held that they cannot be held guilty under Section 489B or Section 489C. The Judicial Commissioner held as follows:

'The notes came into the possession of the two accused, even according to the prosecution case, in the normal course of business. When they felt a doubt about the notes, the natural inclination of such rustic folk will be to get rid of those notes. This was what they sought to do in the present case. Such attempt to get rid of the notes cannot be said to amount to trafficking in. forged notes having reason to believe them to be forged notes.

I can understand if under the Currency Laws in existence there was any duty cast on a person who came into possession of suspicious notes to bring them immediately to the notice of the authorities. The learned Government advocate was not able to show me any such law or rule. When therefore a person in the usual course of business gets a currency note which he finds to be suspicious and tries to get rid of the note as the accused have done in the present case, I am not prepared to say that they would be guilty either under Section 489B or Section 489C.

We have also the further reason that the two accused in this case are uneducated rustic folk. Educated, sophisticated and rich persons could be expected to forego the value of the notes about which they feel suspicion and to bring the matter to the notice of the authorities. Few such notes come into the possession of persons like the accused and they have to carry on their daily existence with what little come in their way by dint of hard labour. When such persons try to get rid of the notes of the kind which come into their possession it would be utter travesty of justice to find them guilty under the two sections and punish them so severely.'

11.11. It would thus appear that the view taken by various High Courts of the country is that possession of fake currency in huge quantity, kept concealed deliberately, is indicative of the fact that the possessor intended to use the same as genuine or that it may be used as genuine. Contrary intention, if any, has to be proved by the possessor himself. Reference in this regard can also be made to statutory illustration (a) appended to Section 106 of the Evidence Act.

'(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.'

12. Let us now summarise and evaluate the evidence which is there on the record:

(a) 4 fake currency notes bearing the same serial number were recovered by PW2 from Ronald on 26.11.1997 which is corroborated by Ext. 1 series and the FIR being Ext. 8 series.

(b) Statement of Ronald under Section 27 of the Evidence Act being Ext. 4 series led to the discovery of the fact that to his knowledge 42 fake currency notes bearing the same serial number were lying in his house concealed in a black shoe.

(c) These 42 fake currency notes kept concealed wrapped in a red handkerchief inside a shoe in the house of Ronald were recovered from Ronald. The red handkerchief is Ext. 6 and 16 series.

(d) Statement of Anil under Section 27 of Evidence Act which is Ext. 5 series led to the discovery of the fact to his knowledge 370 fake currency notes were lying

concealed in the almirah In his bedroom.

(e) Those 370 pieces of fake currency notes which consisted of more notes than one containing the same serial number were recovered from the possession of Anil from an almirah In his bedroom.

(f) Statement of Arun under Section 27 of Evidence Act which Ext. 19 series led to the discovery of the fact that to his knowledge 52 torn fake currency notes were concealed In the septic tank in his ancestral house.

(g) PW2 in his deposition has deposed that the notes seized under Ext. 1 series appeared to be fake to the bare eye itself. There is no cross examination on this aspect of the matter.

(h) The four notes bore the same serial number. There is no cross examination on this aspect either.

(i) PW15 in his evidence has stated that 'During search in the house of accused Anil Kumar, referred above, I also found genuine currency notes in a separate rack of the said almirah which was described by accused Anil Kumar as the amount of this salary received earlier and kept there.' There is no cross examination on this point.

(j) Each one of these notes found from the possession of Ronald and Anil is spurious according to the evidence of PW11.

(k) More than one currency note of Rs. 100 denomination bearing same serial numbers were found in the possession of both Ronald and Anil.

(1) The fact that both Ronald and Anil led the search party to two secret places; that they indicated that the fake currency notes were lying inside the shoe and the almirah and when these places were searched the fake currency notes were found, as deposed by the PW15 whose evidence remained unshaken in cross examination (see paragraph 8B above), are ample proof for the conclusion that the guilty knowledge of both Anil and Ronald was clearly established. Reference In this regard can be made to the Division Bench Judgment of this Court in the case

of L.R. v. Chema (supra) wherein the law laid down was as follows:

'It is perfectly well proved that the accused did make such a statement, that he did take the search-party to two secret places, that he did indicate that there the stolen property was buried, and that when these places were dug up. the stolen property was then found. The conclusion is irresistible, the guilty knowledge of the accused is clearly established, and no further proof of his dishonesty was necessary.'

There is another off-quoted Judgment of the Privy Council in the case of Pulukuri Kottaya v. Emperor, reported in AIR 1947 Privy Council 67 wherein the Privy Council laid down the law as follows:

'On normal principles of construction Their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the Section. In Their Lordships' view it is fallacious to treat the 'fact discovered' within the Section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information' as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the Informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.'

(m) The four currency notes seized under Ext. 1 series from Ronald were discernible to be fake to the naked eye according to the evidence of PW2. Therefore, the ratio of the judgment in the case of Mamutti, reported in : 1979 CriLJ1383 became applicable and knowledge can be imputed on this ground also.

(n) PW15 has deposed that genuine notes were kept separately by Anil in the same almirah which according to him he received on account of his salary. This is

another pointer to show knowledge of Anil that the 370 notes were fake.

We are thus fully convinced that both the accused Anil and Ronald had in their possession counterfeit currency notes knowing the same to be counterfeit.

(o) The finding of the learned Sessions Judge that 'the prosecution allegation of possession of currency notes on the part of the accused persons having knowledge of the same as fake currency notes and to use them was not properly proved' was wrong because he did not consider this material part of the evidence which were already on the record.

(p) With regard to the intention on the part of the accused persons to use the fake notes as genuine or that it may be used as genuine we are of the view that the fact that the accused Anil and Ronald had very cautiously kept the fake notes concealed from the public view or at least from view of the insiders of the house is a circumstances which goes to show that they intended to use the same as genuine or that it might be used as genuine. It is here that the statutory illustration (a) appended to Section 106 of the Evidence Act. noticed above, may Justifiably be pressed into service. If the accused persons kept themselves possessed of fake currency notes knowing the same to be fake with any other intention It was for them to prove it. Because such other intention was only known to them, which they did not do.

13. Therefore, case of the prosecution against Ronald and Anil is fully proved. However, the same may not be true about Arun. There is evidence to show that he knew that the 74 currency notes were fake but he got rid of the same by tearing them and by destroying them and by flushing them In the pan of teacher latrine. If he is no longer in possession then the question of making use or intending to use or intending that it might be used cannot legitimately arise. Therefore, case against Arun does not stand under Section 489C of the Indian Penal Code. Relying on the statement under Section 164, Code of Criminal Procedure, made by Ramzan Ali, which we already have shown to be admissible and fully proved, it can be said that the charge of trafficking in fake notes under Section 489B has been proved because he had given the sum of Rs. 5000/- to Ronald. There is evidence of PW15 in cross examination on behalf of Ronald that 'Ronald took loan of Rs.

5000/- from M.P. Arun.....' (see paragraph 8B above). But it will not be prudent to rely on this part of the evidence of PW15 because this statement could not have been true to his knowledge. Simpliciter on the basis of the statement under Section 164 Code of Criminal Procedure we do not want to make a finding.

14. Let us now examine the validity of the reasons which weighed with the learned Sessions Judge in coming to a conclusion that there is no proof that the spurious notes before the Court were actually recovered from the accused C. Ronald and Anil Kumar.

14.1. The currency notes seized from the possession of C. Ronald and Anil Kumar amongst others were sent to the forensic laboratory and the PW11 has deposed that the currency notes were all spurious. The evidence given by PW11 has remained unshaken and there is no dispute as regards the correctness thereof. As a matter of fact, the learned Sessions Judge has unequivocally held that 'on the basis of the evidence of PW11 this Court has got no hesitation to hold that those questioned documents or currency notes No. Q1 to Q436 were not genuine and this witness found those of spurious in nature.'

14.2. The learned Sessions Judge however entertained a doubt as to whether the questioned documents were the notes actually recovered from the accused persons. He has disclosed his mind in the following words:

'.....The most unfortunate matter in this case remains to be noted that most of the alleged fake currency notes numbering 418 to 436 identified in this case, were alleged to have been recovered in presence of PW1 Thangaraj and PW14 Ramzan Ali and also in presence of accused Ronald and accused R. Anil Kumar. But none of these currency notes bear any endorsement in the style of signature of these 2 witnesses or either of them, or of the accused persons from whose possession or on whose production those currency notes were recovered and it cannot be ascertained that these were the currency notes which were actually recovered from those accused persons' possession.:

14.3. His finding has been subjected to adverse criticism by the learned senior advocate appearing for the State-appellant which we already have noted in

paragraph 3(b) above.

14.4. It is well-settled that 'in assessing evidence imaginary possibilities have no role to play'. If any authority is needed reference can be made to the case of *Kishore v. State of H.P.* reported in : 1990 CriLJ2289 .

14.5. The learned advocate appearing for the accused persons drew attention of the Court to the following part of the deposition of the PW11 for the purpose, of contending that there was no evidence before the Court that the currency notes recovered from the possession of C. Ronald and Anil Kumar or any of teacher accused persons were the same which were sent and received by the forensic laboratory at Calcutta. Sri S.C. Gupta. PW11 in cross examination deposed that 'It is fact that I was not present when Mr. Saxena opened those paper wrappers. It is not a fact that the opinion I have given in respect of the currency notes is not correct. Not a fact that our office never received any letter along with currency notes which I have referred to in my examination-in-chief from the S.P. CID, A&N; Police.'

14.6. This is the basis on which it was urged by learned counsel for Anil and Ronald that the notes examined by the forensic laboratory and produced before the Court as questioned documents may not be the same which were recovered from the possession of Anil and Ronald. It was further submitted by Mr. Nag that it was not required of the defence to give any suggestion to that effect. Mr. Tulsilal tried to rely upon the discrepancies here and there for the purpose of raising a doubt as to whether the notes exhibited before the Court were the same which were recovered from the accused Anil and Ronald. The submissions made by Mr. Nag have been recorded in paragraph 4 above and those made by Mr. Tulsilal have been recorded in paragraph 6 above.

14.7. This Court is firmly of the view that the doubt entertained by the learned Sessions Judge is ill-founded. This Court regards the finding of the learned Sessions Judge as wrong for the following reasons:

(a) The learned counsel appearing for the accused persons in particular Mr. Nag based his argument in this regard only on that portion of Mr. Gupta's deposition,

which we already have extracted above, that the wrapper sent by the investigating agency from Andaman was not opened in his presence and therefore he could not say what did the wrapper contain. It would appear that Mr. Gupta has denied the suggestion that the notes referred to by him in his examination-in-chief were not received by his office. He has also deposed in cross examination for Anil that Sri S.K. Saxena, the head of the office opened the paper wrapper containing the currency notes. It can at once be pointed out that there is a presumption under Section 114(e) that the official acts have been regularly performed which was obviously not brought to the notice of the learned Sessions Judge the cloud as regards the identity of the notes was created in his mind. Section 114(e) of the Evidence Act provides that the Court may presume that the official acts have been regularly performed. Section 4 of the Evidence Act provides that 'whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof it.' Obviously the attention of the learned Sessions Judge was not drawn to this position in law. Mere fact that the wrapper was not opened in the presence of PW11 cannot throw over board the entire exercise. Reference in this regard can be made to the case of *Some Lal and Ors. v. The State of U.P.*, reported in : 1978 CriLJ1122 where the Supreme Court held as follows:

'Once the prosecution had shown that regular entries were made in public document, namely, the general diary regarding the registration of the case and the forwarding of the special report to the higher authorities and of the return of the person who had taken the special report to, the Police Station the legal presumption would be that official acts must have been duly performed. Of course, it would have been better if the prosecution would have completed the link in the chain by examining Babu Ram and showing the exact time when the FIR was received by the Magistrate or by the S.P. but even if it did not do so that was not sufficient to put the prosecution out of Court.'

(b) On the top of that there is intrinsic on the record which is inconsistent with any such theory. There are three several seizure lists containing serial number of the currency notes seized by the police. These seizure lists are Exhibit 1 series, Exhibit 2 series and Exhibit 3 series. It is nobody's case that the notes bearing the

serial number which were seized, particulars whereof appear from the seizure lists themselves, were not the ones produced before the Court and examined by the PW11.

(c) On 26.11.1997 four currency notes were seized from Ronald by PW2. His evidence was that all the four currency notes of Rs. 100 denomination contained the same serial number. The seizure list prepared by him was marked Ext. 1/1. the Ext 1/1 goes to show that the four currency notes contained one serial number as JPQ-204J24. PW2 in his evidence has stated he was mistaken in recording the serial number by reason of similarity between the English letter and the numerical appearing on the currency notes, Ext. 13 goes to show that the serial number which the said four notes contained was 1PQ 204124.

(d) On 26.11.1997, 42 currency notes all bearing serial number 9NP-892890 of Rs. 100 denomination were seized from inside a black shoe, wrapped in a red handkerchief, lying on a rack in the house of Ronald. Seizure list prepared by PW15 was marked Ex. 2/2. The red handkerchief was also seized and wrapped in a paper which is Ext. 6 and 16 series.

(e) On 26.11.1997, 370 currency notes of Rs. 100 denomination were recovered from an almirah kept in the bedroom of Anil. The particulars of the serial number appearing in the 370 notes were as follows:

1. 8EQ-412890 ----- 51* 100= 5,100.002. 8EQ-107124 ----- 58*
100= 5,800.003. 3BS-811077 ----- 49* 100= 4,900.004. 9QM-793221
----- 31* 100= 3,100.005. 9NP-124404 ----- 35* 100= 3,500.006.
1PQ-204124 ----- 17* 100= 1,700.007. 9NP-892890 ----- 6 * 100=
600.008. 3BS-816229 ----- 44* 100= 4,400.009. 1PQ-216229 -----
34* 100= 3,400.0010. 9QM-716229 ----- 45* 100= 4,500.00Total:
37,000.00The seizure list prepared by PW15 was marked Ext. 3/2.

(f) 10 currency notes of Rs. 100 denomination were seized from C.A. Ranjit on 28.11.1997 vide Ext. 10/2; 3 currency notes of Rs. 100 denomination appearing to be fake had been received at the collection counter on 26.11.1997 of the Port Blair Municipal Council which were forwarded to the Police by Ext. 21; 1 currency note

of Rs. 100 denomination was detected on 16.12.1997 at the cash counter of State Bank of India which was sent to the police vide Ext. 22 and 7 currency notes of Rs. 100 denomination were detected on 18.12.1997 at the counter of Syndicate Bank which were deposited with the police vide Ext. 11.

(g) The investigating agency thus seized $(4+42+370+10+3+1+7)=437$ currency notes of Rs. 100 denomination. These 437 notes were sent to the Forensic Laboratory by Ext. 13.

(h) It would appear from Ext. 13 that the Superintendent of Police. A&N; Islands has treated the 4 currency notes recovered from Ronald as Ext. 1. The PW11 marked them Q1 to 4; further 42 currency notes recovered from Ronald were treated in Ext. 13 as Ext. II which were marked by PW11 as Q5 to 46; 370 currency notes recovered from Anil were treated as Ext. IV In Ext. 13 which have been marked by PW11 as Q47 to 218, 218/1 and Q219-415; the 10 currency notes recovered from Ranjit and treated as Ext. V in Ext 13 have been marked' by PW11 as Q416 to 425; the 3 currency notes sent by the Municipality were treated as Ext. VI in Ext. 13; the one currency note received from State Bank was treated as Ext. VII in Ext. 13 and the 7 currency notes recovered from Syndicate Bank were treated as Ext. VIII in Ext. 13 which have been marked by PW11 as Q414 to Q436, Q1 to 436 and Q218/1 make up the total of 4376 notes sent vide Ext. 13.

(i) The particulars as regards the serial numbers of 437 notes sent by the S.P. appear in the second page of Ext. 13. These particulars compared with particulars of the notes seized from the accused persons reflected in the seizure lists being Exts. 1, 2 and 3 series leave no manner of doubt that all those notes were sent by Ext. 13 for forensic test. The notes recovered from Ronald and Anil have been marked by PW11 as Q1 to 415 and Q218/1 and the rest 21 notes were marked Q416 to 436 and they have been tendered in evidence as material Exhibit No. I to VII by PW11.

(j) The learned Sessions Judge expressed doubt on the basis of follows:

'.....The most unfortunate matter in this case remains to be noted that most of the alleged fake currency notes numbering 418 to 436 identified in this

case, were alleged to have been recovered in presence of PW1. Thangaraj and PW14 Ramzan Ali and also In presence of accused Ronald and accused R. Anil Kumar. But none of these currency notes bear any endorsement in the style of signature of these witnesses or either of them, or of the accused persons from whose possession or on whose production those currency notes were recovered and it cannot be ascertained that these were the currency notes which were actually recovered from those accused persons' possession.'

14.9. The true position would appear from the deposition of PW11 that the notes marked Q418 to 436 were part of the notes recovered from Ranjit, State Bank, Syndicate Bank and the Municipality with which neither the accused persons nor the witnesses Ramzan or Thangaraj had anything to do. The notes recovered from the accused persons (Ronald and Anil) were marked Q1 to 415 and 0218/1. The learned Sessions Judge fell into a grievous error and misdirected himself. No part of Q418 to 436 was recovered from Ronald and Anil. The whole basis of the doubt entertained by the learned Sessions Judge has thus disappeared and proved wrong.

(k) The PW11 in cross examination for Ronald deposed 'It is fact that besides the currency notes sent with the forwarding letter of the S.P. being Ext. 13, I cannot say about the truthfulness or falsity of other descriptions made in the said letter by the S.P.' Therefore, the identity of the notes sent for examination is not even in dispute. The identity of the notes seized is to be found in the seizure lists being Ext. 1, 2 and 3 series. The particulars appearing in those seizure list tally with the particulars appearing In Ext. 13. It is thus evident that the notes seized were sent and they have been found to be spurious by PW11. His written opinion is Ext. 14.

15. The learned Sessions Judge has commented adversely stating that the Police Officers handled the matter carelessly because they did not make arrangement to link material exhibit 1 to exhibit 7 (the currency notes) with the material recovered from Ronald and Anil.

15.1. Again the learned Sessions Judge fell into an error in thinking that Material Exhibits I to VII were seized from the accused Ronald and Anil. Only the Material Exhibits I, II and III were recovered from Ronald and Anil which would be absolute

clear from the deposition of PW11, relevant portions whereof are as follows:

'These are the four bearing our endorsement as Q1 to Q4 and all the four currency notes are bearing the same number as JPQ 204124 and these four currency notes were endorsed as Ext. 1 by the S.P., CID, A&N; Police (marked the same as Mat. Ext. I collectively).

These are the 42 Rs. 100 currency notes which were sent to our office by the S.P., CID, A&N; Police marking as Ext. II and I marked them as Q5 to Q46 and these currency notes bear same serial numbers as 9NP 892890 (marked these currency notes as Mat. Ext. collectively).

These are the 370 Rs. 100 currency notes which were sent by S.P., CID, A&N; Police to me with his exhibit number IV and I marked those currency notes as Q47 to Q218, Q218/1 and Q219 to Q415 and these bunches of notes bear five group of numbers as 9NP 124404. 3BS 816229. 9QM 716229. 9NP 892890. 3BS 811077. These bunches of notes also include another common number as 8EQ 412890 (marked the currency notes bearing Q47 to 415. which come within the Exhibit IV marked by the S.P., CID, A&N; Police, as Mat. Ext. III collectively).

These ten currency notes were sent to me by S.P., CID, A&N; Police, with his mark as Exhibit V. and these were numbered by me as Q416 to Q425 and these group of ten currency notes bear three serial numbers as 8EQ 107124. 3BS 811077 and 3BS 816229 (marked these group of ten currency notes Mat. Ext. collectively).

These three Rs. 100 currency notes were sent to our office under his Exhibit number VI by S.P., CID. A&N; Police and those were marked by me as Q426, Q427 and Q428 and all the three currency notes bear three different serial numbers as 9QM 716229. 8EQ 107124 and 3BS 816229 (marked these three bunch of currency notes as Mat. Ext. V collectively).

This one currency note bearing number 3BS 811077 forwarded to me by the S.P., CID, A&N; Police with his mark as Exhibit VII was marked by me as Q429 (marked as Mat. Ext. VI).

These seven number of Rs. 100 currency notes forwarded to me by the S.P., CID, A&N; Police with his marking as Ext. VIII. were endorsed to me by my numbers Q430 to Q436 and these currency notes bear four different serial numbers as 3BS 811077, 9QM 793221, ZPQ 204124 and 3BS 816229 (marked these currency notes as Mat. Ext. VII collectively).'

16. The learned Sessions Judge also commented upon the efficiency of the Inspector Yadav, PW15. because he chose illiterate sweepers for the purpose of cleaning the septic tank. We wonder where are literate sweepers to be found who shall open a septic tank and shall fish out torn pieces of currency notes from human excreta for the investigating agency? The learned Sessions Judge has been uncharitable in passing the remarks against the investigating agency to say the least.

16.1. In any event faulty investigation is no ground for acquittal of the accused persons. Reference in the regard can be made to the Judgment in the case of State of U.P. v. Jagdeo and Ors., reported in : 2003 CriLJ844 wherein Their Lordships opined on this aspect as follows:

'Coming to the aspect of the investigation being allegedly faulty, we would like to say that we do not agree with the view taken by the High Court. We would rather like to say that assuming the investigation was faulty, for that reason alone the accused persons cannot be let off or acquitted. For the fault of the prosecution the perpetrators of such a ghastly crime cannot be allowed to go scot-free.'

17. Lastly, the learned Sessions Judge has expressed his helplessness because Ramzan All and Thangaraj 'avoided to disclose their knowledge about the said signatures properly and if they did it, then the story would have been otherwise and the society as a whole could have been saved from gradual deterioration in respect of influx of circulation of fake currency notes as it is so reported nowadays.'

17.1. When he came to a finding that the witnesses namely Thangaraj and Ramzan All were deliberately avoiding to disclose their knowledge he should have at least taken into consideration that part of the evidence which these two hostile

witnesses gave and which support the prosecution case. That was the law laid down by the Apex Court in the case of Ramesh Prasad Mishra, : 1996 CriLJ4002 .

18. Let us now examine the submissions made by Mr. Nag appearing on behalf of Anil, which we have noted above. His submission with regard to admissibility of the statement of Ramzan recorded under Section 164 of the Code of Criminal Procedure has already been dealt with by us in paragraph 10 above. No further dilation is required.

18.1. His submission that the defence was not required to give suggestion that the notes produced before the Court were not the ones recovered from the accused is patently contrary to the Carpet's case (supra). Moreover, we already have shown, from material on record, in paragraphs 14 and 1 above, that the controversy with regard to the identity of the notes is without any merit whatsoever.

18.2. The omission on the part of the prosecution to produce the single page wrapper is merely a fraction of the evidence and shall be compared with the bulk of evidence at a later stage. Similarly his submissions recorded under sub-paragraphs (g) has amply been dealt with by us in paragraph 9 above. His submission (h) shall be considered at a later stage.

19. Let us now examine the submissions of Mr. Lal who appeared on behalf of Ronald. The discrepancies pointed out by him and recorded by us under sub-paragraphs (a) and (b) of paragraph 5 above are not such which go to the root of the matter. The law in this regard was laid down by the Apex Court in the case of Krishna Pillai v. State of Kerala, reported in : AIR 1981 SC1237 wherein Their Lordships opined as follows:

'It is no doubt true that the prosecution evidence does suffer from inconsistencies here and discrepancies there but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies, etc., go to the root of the matter or. pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the incongruities obtaining in the evidence. International he latter, however, no such benefit may be available to it. That is a salutary method of appreciation of evidence in criminal

cases which does not appear to have been followed by the learned Sessions Judge; and that is the reason why he landed himself into wrong conclusions, as has been pointed out by the High Court.'

19.1. His submission recorded in sub-paragraphs (c) recorded in paragraph 5 above has been dealt with by us in paragraphs 14 and 15 above and no repetition is called for. Submission (f) has been dealt with in paragraph 10 above.

19.2. His submissions recorded in sub-paragraph (d) of paragraph 5 above are without any merit, as we shall presently demonstrate.

19.3. In cross examination on behalf of Anil, PW15 deposed that 'The recovered currency notes in 10 separate bundles were all wrapped together in single paper wrapper.' It would appear from seizure list being Ext. 3/2, prepared after seizure of 370 currency notes, that the said 370 currency notes were placed in 10 separate bundles.

19.4. With regard to the evidence of S.C. Gupta, PW11 that 8 exhibits were received by him one has to refer to Ext. 13, which will show that the 437 seized notes including torn pieces of notes, were shown separately in 8 exhibits. The doubt expressed as regards correctness of the whole evidence on the basis of deposition of PW12. 'On 26.11.1997.....Inspector R.B. Yadav handed over to me six sealed paper packets containing some currency notes in relation to Crime No. 255/97 of CCS for keeping those in Malkhana', does not appear to be well founded. R.B. Yadav has stated that the notes recovered from Anil in 10 bundles were wrapped in a single paper. How were they packed while keeping them in sealed packets is a query which the counsel did not pursue in cross examination. And in the absence thereof there is no scope for any doubt. One can refer to the Carapiet's case (supra)

19.5. His submission recorded by us in sub-paragraph (e) of paragraph 5 above is also not significant. Before PW12 came to give evidence PW11 had already been examined. He produced the original letter of the S.P., dated 20.2.1998 received by his office on 9.3.1998 which was marked Exhibit 13. Yet the point now sought to be raised was not pursued in cross examination when PW12 was in the box. This

is squarely against the requirement of law laid down in Carapiet's case (supra).

20. We need not advert to the submissions of Mr. Parekh because we already have indicated in paragraph 13 above that charge under Section 489C against Arun cannot stand and for that under Section 489B the evidence is rather slender.

21. With regard to the question as to the reversal of the finding of acquittal by the Appellate Court urged by Mr. Nag it can at once be pointed out that even in the Judgment in the case of Singara Singh v. State of Haryana, reported in : 2004 CriLJ828 . Their Lordships held that 'it is well settled that in an appeal against acquittal the High Court is entitled to reappraise the entire evidence on record but having done so if it finds that the view taken by the trial Court is a possible reasonable view of the evidence on record it will not substitute its opinion for that of the trial Court. Only in cases where the High Court finds that the findings recorded by the trial Court are unreasonable or perverse or that the Court has committed a serious error of law. or where the trial Court had recorded its findings in ignorance of relevant material on record or by taking into consideration evidence which is not admissible, the High Court may be Justified in reversing the order of acquittal.'

21.1. We have already demonstrated that the view taken by the learned Sessions Judge is not a possible view on the state of evidence. On the contrary, we have amply demonstrated above that the learned Sessions Judge excluded from consideration the evidence which was there. He fell into grievous error in appreciation of the evidence and misdirected himself; entertained a doubt for which there was no foundation and expressed his helplessness because the witnesses particularly the seizure witnesses turned hostile and refused to tell the Court the truth. Attempt on his part was lacking to marshal the evidence; to remove the grain from chaff; to take the help of that part of the evidence of the hostile witnesses which the case of the prosecution. He commented upon insincerity of the investigating agency but did not put to use the material which was before him. We feel no hesitation in holding that the learned Sessions Judge was wrong and therefore we have reappraised the evidence and come to the conclusion indicated above.

22. Last but not the least is the question of granting benefit of doubt which the learned Sessions Judge did. The principle for granting benefit of doubt was discussed in the case of Kishore v. State of Himachal Pradesh, reported in : 1990 CriLJ2289 wherein Their Lordships opined as follows:

'In assessing the evidence to find these principles, it is necessary to distinguish between facts which may be called primary or basic facts on one hand and inference of facts to be drawn from them, on the other. In regard to the proof of basic or primary facts, the Court had to Judge the evidence in the ordinary way and in appreciation of the evidence in proof of those basic facts or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The Court has to consider the evidence and decide whether the evidence proves a particular fact or not, Whether that fact leads to the inference of the guilt of the accused or not is another aspect and in dealing with this aspect of the problem, the doctrine of benefit would apply and an inference of guilt can be drawn only If the proved facts are inconsistent with the innocence of the accused and are consistent only with his guilt. There is a long distance between may be true and must be true. The prosecution has to travel all the way to establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accused and those circumstances should be conclusive nature and tendency and they should be such as to exclude all hypothesis but the one proposed to be proved by the prosecution. In other words, there must be a chain of evidence so far consistent and complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and It must be such as to show that in all probability the act must have been done by the accused and the accused alone.'

22.1. The learned Sessions Judge in one sentence held that 'the prosecution allegation of currency notes on the part of the accused persons having knowledge of the same as fake currency notes and to use them was not properly proved' without indicating as to why did he think that the knowledge of the accused persons that the notes were fake and the intention on their part to use them as genuine was not proved. He has not even tried to summarise the basic facts which were proved by legal evidence. There was no attempt on his part to Judge whether the proved facts were consistent with the innocence of the accused

persons. Is the fact that Ronald kept spurious currency notes wrapped in a red handkerchief inside a shoe kept with other shoes on a rack in his house bearing the same serial number consistent with his innocence? Or for that matter is the fact that Anil kept concealed 370 fake currency notes in an almirah in his bedroom taking care to keep the genuine notes separately in the same almirah consistent with innocence. There are other pieces of evidence which we have discussed hereinabove and need not repeat. We are convinced that the proof adduced by the appellant is only consistent with the guilt of the respondents No. 1 and 2. This is why the absence of a single page wrapper does not appear to us to be material.

22.2. Lastly, we can remind ourselves of the view expressed in the case *Finance Officer Jenison v. Daker*, reported in 1972(1) All ER 997 that 'The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.'

22.3. It is on record that fake currency notes are in wide circulation in Andaman. As a matter of fact evidence has been led to show that the bank has complained, common people have complained which are Exts. 21, 22 and 11. Witnesses have been examined on that account namely PW7 and 9. Yet reluctance on the part of Court to act shall only result in loss of hope for those who seek its protection.

23. For the aforesaid reasons the appeal partly succeeds. The appeal as against the respondents No. 1 and 2 is allowed and the appeal against the respondent No. 3 is dismissed. The respondents No. 1 and 2 are both sentenced to suffer rigorous imprisonment of 7 years. However, the period for which they were in custody, during investigation and/or trial of the case shall be excluded from the substantive sentence of imprisonment. They are also sentenced to pay fine at the rate of Rs. 10,000/- each, in default of payment the defaulter/defaulters shall undergo further rigorous Imprisonment of six months. The Chief Judicial Magistrate, Andaman, at Port Blair, is directed to ensure the attendance of the convicted accused persons, to undergo the sentence imposed.

A. Lala. J. (in concurrence)-First of all I should be thankful to Brother Justice G.C. Gupta for his effort to render justice even by way of verifying the fake notes personally upon being produced by the Registry recently.

25. However, in concurrence with such judgment I want to add few lines hereunder. Weakness of the evidence of the prosecution cannot be the sole ground of acquittal unless it is so weak that other than giving benefit of doubt no other conclusion can be arrived at. If the weakness of the prosecution case is accepted as sole ground of passing an order of acquittal the rigour of the criminal justice will be shaken. As sometimes we become polite we become rude too depending upon the circumstances. Such rudeness is required for the purpose of streamlining the social conscience. Subject matter of use of fake currency notes is not an ordinary crime which could be taken up lightly.

26. Coming back to the evidence I say that law of evidence is to be seen keeping eyes open towards the principles laid down in A.E.G. Carapeit's case reported in : AIR1961 Cal359 . There are two phases of discussion as regards the analysis of evidence. First phase is that wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is not merely a technical rule of evidence. It is a rule of essential Justice. The second phase is that it serves to prevent surprise at trial and miscarriage of Justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross examination is being made comes to give and lead evidence by producing witnesses. In the criminal justice system there is hardly any scope of lead the evidence by the accused. Court may call upon witness. But utmost necessity on the part of the accused would be to put his essential and material case in cross examination. The learned counsels, appearing on behalf of the accused, merely relied upon the weakness of the prosecution's evidence. The learned Sessions Judge also thought it fit to consider the case in that way and arrived at a perverse finding.

27. This case is falling under Sections 489B and 489C of the Indian Penal Code. The essential Ingredients of the proof of such sections are as follows:

(Common in both the Sections)

1. That the note in question was forged or counterfeit;

(Section 489B)

2. That the accused sold to or bought or received from some person or trafficked in or used as genuine such note;
3. That when he did so he knew or had reason to believe the same to be forged or counterfeit;

(Section 489C)

4. That the accused was in possession of it;
5. That at the time of its possession he knew it to be forged or had reason to believe it to be so;
6. That he intended to use it as genuine or that it might be used as genuine;

28. There is no doubt and dispute that either all the ingredients or many of the ingredients seem to be proved as against the accused persons viz. Mr. C. Ronald and Mr. R. Anil Kumar. There is no need to discuss afresh at the time of concurrence. But so far the case of Mr. M.P. Arun is concerned, as there is no proof of recovery of torn fake currency notes from his custody and no scientific examination was held as regards torn pieces of currency notes on the part of the prosecution admittedly, there is no foundation of the case against him. Therefore, his case cannot be equated with the fact of mere discrepancy on the part of the prosecution. As such the order of acquittal passed by the trial Court seems to be a possible reasonable view of the evidence on record. Thus, interference by the High Court is not justifiable following the principles laid down in : 2004 CriLJ828 (Shingara Singh v. State of Haryana and Anr. with another matter). Thereby the order of acquittal, which has been passed by the learned Sessions Judge, should not be interfered with. But the cases of others should be guided by the laid down principles in : 2000 CriLJ44 (State of H.P. v. Lekh Raj and Anr.). Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction,

regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. Supreme Court further held in : 2000 CriLJ4640 (Narayan Chetanram Chaudhary and Anr. v. State of Maharashtra) that only the omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differs from person to person. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.

29. Since this Court found that the learned Sessions Judge had given credit to the minor discrepancies equating with the contradictions in such serious matter of using fake notes in spite of making observations about social impact, we have no manner of doubt in arriving at a conclusion that the order of acquittal as against Mr. C. Ronald and Mr. R. Anil Kumar has to be declared as perverse accordingly so declared and manner of punishment as indicated by Brother Justice Gupta minus the period of having been in jail prior to grant of bail is appropriate.