

Crl. A. No. 25 of 2016
Santa Maya Rai vs. State of Sikkim

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Appeal Jurisdiction)

SINGLE BENCH: BHASKAR RAJ PRADHAN, JUDGE.

Crl. A. No. 25 of 2016

Santa Maya Rai
W/o Shri Bir Kumar Rai
R/o Lingee, South Sikkim.

.... Appellant

versus

State of Sikkim

.... Respondent

Appeal under Section 374 (2) Cr.P.C. 1973.

Appearance:

Ms. Gita Bista, Legal Aid Counsel for the Appellant.

Mr. Thinlay Dorjee Bhutia, Additional Public Prosecutor
for the State-Respondent.

JUDGMENT

(10.05.2018)

Bhaskar Raj Pradhan, J

1. In the quest for truth there is a delicate balance which is required to be maintained by the Court to examine the criminality of the offender. A criminal mind is a mind of its own. What compels a criminal to commit the crime is a question for which one still searches for answers. How a criminal commits a criminal act is a matter of investigation

that is required to be cogently proved. Direct evidence may not always be available and sometimes the Courts have to examine circumstantial evidences. When a criminal commits a crime against unsuspecting rustic villagers the evidence produced may not be as perfect as we desire it to be. The task of the Court in such circumstances becomes heavier. As the Language of the Court is English and most of the rustic villagers would communicate in vernacular sometimes the correct statement may get lost in translation. The Court is then required to sift minutely through the evidence in search of the truth. Truth alone can render justice.

2. This is an appeal preferred by the Appellant, Santa Maya Rai, wife of Bir Kumar Rai, under Section 374 (2) Code of Criminal Procedure, 1973 (Cr.P.C.) against the judgment of conviction dated 05.08.2016 and order of sentence dated 09.08.2016 passed by the Learned Sessions Judge, East Sikkim at Gangtok (Learned Sessions Judge) in Sessions Trial Case No. 26 of 2014. The Learned Sessions Judge has acquitted Bir Kumar Rai who was Accused No.1 but found cogent evidence against the wife, the Appellant herein, for commission of offence under Section 489B and 489C of the Indian Penal Code, 1860 (IPC).

3. The Prosecution case is that on 23.04.2014 the Appellant along with her husband travelled from Gangtok towards

Dikchu in a vehicle bearing registration No. SK-01T/1171. On the way, they stopped at various places and used the counterfeit currency-notes of ₹500/- denomination to purchase small items and receive substantial change of genuine currency notes in return. It was alleged that the *modus operandi* of the Appellant and her husband was to make purchases and tender counterfeit currency-notes of ₹500/- denomination to the unsuspecting shopkeepers, who in turn returned genuine currency notes as change besides parting with property.

4. Criminal investigation would be initiated on the lodging of the First Information Report (FIR) (Exhibit-1) on 23.05.2014 on the basis of a written complaint from Narad Nepal (P.W.1) stating that a vehicle bearing No. SK 01T-1171 with two persons, the Appellant and B. K. Rai, were trying to cheat the local shopkeepers by giving counterfeit currency-note of ₹500/- denomination, buying small items, receiving original currency-notes as change and trying to flee away. It was also stated in the FIR that Narad Nepal (P.W.1) along with local Panchayat, P. P. Adhikari (P.W.7), followed them to lower Samdong at about 3 p.m., apprehended them and thereafter informed the local Makha police outpost pursuant to which the police nabbed them.

5. On the completion of the investigation two charges would be framed on 05.05.2015 which read as under:

“Firstly - That you on 23.05.2014, between 12.30 to 3.00 pm hrs. at Singtam, East Sikkim, under the jurisdiction of Singtam Police Station, East Sikkim, in common object with co-accused Bir Kumar Rai used counterfeit Indian Currency Notes as genuine, of the denomination of ₹500/-, knowing them to be counterfeit and you have thereby committed an offence under Section 489 ‘B’ read with Section 34 of the Indian Penal Code, 1860 and within the cognizance of this Court.

Secondly - That you on the same date, place and time herein above mentioned, in common object with the Co-accused Bir Kumar Rai, was found in possession of the 42 numbers of Counterfeit Indian Currency Notes of the denomination of ₹500/- knowing them to be counterfeit notes and intending the same to be used as genuine and you have thereby committed an offence punishable under Section 489 ‘C’ of the Indian Penal Code, 1860 read with Section 34 of the Indian Penal Code, 1860 and within the cognizance of this Court.”

6. Sixteen witnesses would be examined by the prosecution during trial. The defence would not examine any witness. On examination of the Appellant and her husband under Section 313 Cr.P.C the Learned Session Judge would hear the case finally and pronounce the impugned judgement on 05.08.2016 and order on sentence on 09.08.2016 convicting the Appellant and acquitting her husband.

7. The judgment sought to be assailed convicted the Appellant under Section 489B and 489C IPC and sentenced her to undergo rigorous imprisonment for a period of two years and to further pay a fine of ₹5000/- each for each of the said

offences and in default of payment of the said fine to undergo imprisonment for a further period of six months. The sentences were to run concurrently and the period of imprisonment already undergone by the Appellant during investigation and trial was required to be set off against the sentences. The fine if recovered was directed to be made over to seven prosecution witnesses @ ₹1000/- each for their loss and harassment and the remaining amount of the fine was required to be deposited in the State exchequer.

8. The Learned Sessions Judge after a thorough examination of the evidence produced by the prosecution and after a detailed hearing held:

“30. There is therefore, no reason to doubt that ₹500 currency notes (marked M.O.-IA and M.O.-IB) found in the possession of accused No.2 were counterfeit currency notes. The fact that accused persons stopped at numerous shops between Singtam and Samdong, and tendered counterfeit ₹500/- currency notes to collect the genuine currency notes from the unsuspecting shopkeepers goes to show the mens rea which she had. It is certain that accused No.2 had the required knowledge and reason to believe that ₹500/- currency notes used by her are counterfeit notes.”

9. Heard Ms. Gita Bista, Learned Counsel for the Appellant and Mr. Thinlay Dorjee, Learned Counsel for the State-Respondent. While Ms. Gita Bista would contend that the prosecution has failed to establish the required *mens rea* for the alleged offences, Mr. Thinlay Dorjee would contend that the *modus operandi* of the Appellant in using the currency-notes of

₹500/- denomination at every shop and buying articles of small value and getting substantial genuine currency-notes from the shopkeepers as change would itself establish the *mens rea* of the Appellant for the commission of the offences.

10. Ms. Gita Bista would further submit that the prosecution has failed to prove the seizure of the currency-notes of ₹500/- denomination and establish that the said currency-notes were used by the Appellant. Ms. Gita Bista would submit that although the prosecution witnesses deposes about purchase of various items by the Appellant using the counterfeit currency-notes of ₹500/- denomination the said items allegedly purchased by the Appellant have not been seized and produced before the Trial Court and as such the benefit of doubt must be given to the Appellant. Ms. Gita Bista would further submit that the prosecution has failed to establish how the Appellant came in possession of the counterfeit currency-notes even if it is assumed, without admitting so, that the Appellant was in possession. It is submitted that since no charge was framed under section 489A IPC against the Appellant it is quite evident that there is no evidence on record as to how the said counterfeit currency-notes came into possession of the Appellant.

11. Mr. Thinlay Dorjee Bhutia, on the other hand would submit that the seizures of the 42 numbers of counterfeit

currency-notes have been cogently proved by the prosecution. The seizure memo (exhibit-3) vide which 42 number of counterfeit currency-notes of ₹500/- denomination each has been proved by seizure witnesses-Narad Nepal (P.W.1) and Manoj Pradhan (P.W.8) and Dhruva Chettri (P.W.14) the Analyst-cum-Assistant Chemical Examiner to the Government of Sikkim at the Regional Forensic Science Laboratory (RFSL), Saramsa, Ranipool, East Sikkim who examined the 51 Indian currency-notes of ₹500/- denomination has clearly proved that the said currency-notes which were seized were counterfeit. Mr. Thinlay Dorjee Bhutia would thus submit that the ingredients of Section 489C of IPC for possession of forged or counterfeit currency-notes or bank notes have been proved by the prosecution. Mr. Thinlay Dorjee Bhutia would further submit, in so far as Section 489B IPC is concerned, the evidence produced by the prosecution has unquestionably proved that the Appellant had used the forged or counterfeit currency-notes as genuine knowing or having reason to believe the same to be forged or counterfeit and thus liable for punishment prescribed. He would submit that the evidence of Sachita Nanda Darjee (P.W.10), Ran Maya Rai (P.W.12) and Kailash Chettri (P.W.13) clearly establishes that the Appellant had used the counterfeit currency-notes of ₹500/- denomination at different shops at Ralap, purchased small items and duped the shop owners to accept the counterfeit

currency-notes of ₹500/- denomination and get change of genuine currency-notes in return. Similarly, he would submit that the evidence of Anu Rana (P.W.3) and Phul Maya Neopaney (P.W.6) would establish and prove a repetition of the same criminal act at Singbel as done at Ralap. Mr. Thinlay Dorjee Bhutia would rely upon the evidence of Tek Nath Sharma (P.W.11) and the evidence of Sujata Pradhan (P.W.4) and Chandrakala Adhikari (P.W.5) to prove similar *modus operandi* at Kokoley and Tumin respectively. He would submit that the evidence of Narad Nepal (P.W.1) and Manoj Pradhan (P.W.8) would establish the seizure of 9 counterfeit currency-notes of ₹500/- denomination used as genuine by the Appellant at the aforesaid adjacent villages of Ralap, Singbel, Kokolay and Tumin. Mr. Thinlay Dorjee Bhutia would further submit that the blunt denial of the Appellant to various questions put by the Trial Court without furnishing any explanation to the incriminating material would entitle the Court to draw an inference, including such adverse inference against the Appellant as may be permissible in accordance with law.

12. Narad Nepal (P.W.1) resident of Tumin is the first informant. He is also the witness to the seizure of 42 currency-notes of ₹500/- denomination from the Appellant vide seizure memo (exhibit-3) on 23.05.2014 and the seizure of 9 currency-notes of ₹500/- denomination at the Singtam police station

from Kailash Chettri (P.W.13) on the same date. Narad Nepal (P.W.1) identified the Appellant as the person who had been apprehended from Samdong on 23.05.2014 and from whom 42 counterfeit currency-notes of ₹500/- denomination had been seized at the Singtam police station in his presence and in the presence of Manoj Pradhan (P.W.8) the second seizure witness.

13. The deposition of Narad Nepal (P.W.1) from Tumin, Prem Prasad Adhikari (P.W.7), the Panchayat of 44 Tumin Gram Panchayat Unit and Churamani Bhattarai (P.W.2) a resident of Tumin and who works at the Tumin petrol pump corroborate each other in material particulars and proves the facts leading to the arrest of the Appellant and her husband on 23.05.2014 from Samdong the day on which the alleged criminal acts were committed by the Appellant and her husband. They identified the Appellant. The said three prosecution witnesses cogently establishes that on 23.05.2014 on being informed that the Appellant and her husband were using counterfeit currency-notes of ₹500/- denomination on unsuspecting shopkeepers were apprehended at Samdong and handed over to the police. They were the ones who followed the Appellant and her husband to Samdong from where they apprehended the Appellant's husband and the Appellant was apprehended by the villagers.

14. Manoj Pradhan (P.W.8) also identified the Appellant as the person who had been apprehended by the villagers at Samdong where he had gone chasing the Appellant and her husband after Sujata Pradhan (P.W.4) his wife informed him that the Appellant had also duped her by tendering a counterfeit currency-note of ₹500/- denomination and purchasing 3 packets of Mimi noodles from their shop and taking away ₹470/- as change from her. Manoj Pradhan (P.W.8) also witnessed the Appellant and her husband being taken to the Singtam police station and the search and seizure conducted on the Appellant where the police recovered 42 counterfeit currency-notes of ₹500/- denomination from the Appellant for which he along with Narad Nepal (P.W.1) stood as witness. Manoj Pradhan (P.W.8) and Narad Nepal (P.W.1) were also witness to the seizure of 9 currency-notes of ₹500/- denomination on 23.05.2014 from Kailash Chettri (P.W.13) when the shopkeepers who had been duped by the Appellant had come to the Singtam police station and deposited the said currency-notes.

15. The seizure memos (exhibit-3 and exhibit-4) both dated 23.05.2014 recorded the serial numbers of the currency-notes which were seized. Narad Nepal (P.W.1) could identify all the 51 currency-notes of ₹500/- denomination seized vide seizure memo (exhibit-3 and exhibit-4) by going through its serial

numbers and comparing it with the serial numbers noted in the said seizure memos.

16. Dhurba Chettri (P.W.14) the Analyst-cum-Assistant Chemical Examiner proved that he had examined all the said 51 currency-notes of ₹500/- denomination and found them to be counterfeit vide his opinion (exhibit-6). He has opined that poor quality of paper ink, defective watermarks, defective window security thread, absence of intaglio printing technology, defective micro printing, absence of optically variable ink, absence of scattered fluorescence fibres and absence of criss-cross markings on the said currency-notes of ₹500/- denomination as the reasons to come to the conclusion that the said notes were counterfeit.

17. Section 489B of the IPC provides:

“489-B. 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.]”*

18. Section 489B IPC makes the trafficking of forged or counterfeit currency-notes or bank-notes or the use as genuine, any forged or counterfeit currency-notes or bank-notes with the required *mens rea* i.e. criminal intent (*knowing*

or having reason to believe the same to be forged or counterfeit)
punishable.

19. In the present case the Learned Sessions Judge has found the Appellant guilty of use of the forged or counterfeit currency-notes as genuine knowing or having reason to believe the same to be forged or counterfeit. Thus the necessary ingredients of Section 489B IPC for the use of forged or counterfeit currency-notes or bank-notes are:-

- i. Proof of the currency-note or bank-note being forged or counterfeit.
- ii. The use of the said currency-note or bank-note as genuine knowing or having reason to believe the same to be forged or counterfeit.

20. Section 489C of the IPC provides:

“489-C. 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.”

21. Section 489C IPC makes possession of any forged or counterfeit currency-note or bank-note with the *mens rea* i.e. criminal intent (*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*) punishable. The necessary ingredients of Section 489C IPC for possession of forged or counterfeit currency-notes or bank-notes are:-

- i. Possession of forged or counterfeit currency-note or bank-note.
- ii. 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.

22. Sachita Nanda Darjee (P.W.10) has identified the Appellant in Court which identification is not contested. She is a resident of Ralap, East Sikkim and runs a provision shop. As per her deposition the Appellant came to the shop and purchased ten packets of Mimi noodles and offered a currency-note of ₹500/- denomination. Sachita Nanda Darjee (P.W.10) deducted the price of the Mimi noodles and returned ₹450/- to the Appellant as change. On realising that the currency-note of ₹500/- denomination was counterfeit from information received from other shopkeepers she went to the Makha police outpost first and thereafter to Singtam police station where she handed over the said currency-note of ₹500/- denomination. She identified the same currency-note in Court which was tendered by the Appellant to her as she has signed her name on it at the time of handing over the same to the Singtam police station. The evidence of Sachita Nanda Darjee (P.W.10) clearly proves that the Appellant had used the currency-note of ₹500/- denomination and duped her at Ralap. The said currency-note of ₹500/- denomination identified by her was seized by the police and sent for forensic examination to RFSL which proved that the said currency-note was counterfeit.

Dhurba Chettri (P.W.14) the Analyst-cum-Assistant Chemical Examiner has proved that the said currency-note of ₹500/- denomination was counterfeit. Thus the prosecution has been able to prove the possession and use of counterfeit currency-notes of ₹500/- denomination by the Appellant. Possession of counterfeit currency-note is an ingredient of Section 489C IPC. Use of counterfeit currency-note is an ingredient of Section 489B IPC. However, it is yet to be seen whether the Appellant had the required *mens rea* and whether the Appellant was aware that the said currency-notes were counterfeit and intended to use them knowing that they were counterfeit. The knowledge that the said currency-notes of ₹500/- denomination were counterfeit and the intention to use it as genuine would satisfy the second ingredient of the alleged offences.

23. The evidence of Sachita Nanda Darjee (P.W.10) as discussed above does establish the use of currency-note of ₹500/- denomination identified by her as she had signed on it at the time of the seizure. Sachita Nanda Darjee's (P.W.10) deposition cogently proves the use of the said currency-notes of ₹500/- denomination by the Appellant which was obviously part of the counterfeit currency-notes in her possession on 23.05.2014. Although Sachita Nanda Darjee (P.W.10) did not state the date of the incident in her deposition, the seizure memo (exhibit-4) dated 23.05.2014 through which the

particular currency-note of ₹500/- denomination which was tendered by the Appellant to Sachita Nanda Darjee (P.W.10) on the date of the incident was seized clearly establishes that the Appellant had in fact used the said currency-note of ₹500/- denomination on 23.05.2014 itself on the same day she was also found in possession of 42 counterfeit currency-notes.

24. In re: **Mohd. Farooque Yusuf Chaiwala vs. State of Maharashtra**¹ the Bombay High Court would hold:

“28. Thus, to bring home the charge of offences punishable under Sections 489B and 489C of the IPC the prosecution is required to establish, inter alia, that the accused knew (or had reason to believe) the notes in question to be counterfeit or forged. The prosecution is also required to establish that the accused intended to use the same as genuine. It is true that such knowledge or existence of reason to believe, can be proved by, or can be inferred, only from circumstantial evidence. In this case, the prosecution has not been able to point out the evidence or circumstances showing that each of the Appellants had knowledge that the notes were counterfeit or that each of them wanted to use the same as genuine. If there were any such circumstances appearing in the evidence of the prosecution, such circumstances should have been put to the Appellants during their examination under Section 313 of the Code. No such circumstances were put to any of the Appellants by the trial Court, presumably because the trial Court did not consider this aspect of the matter. In fact, the trial Court also did not put the report received from the India Security Press, Nasik to any of the Appellants in their examination under Section 313 of the Code. Such circumstances, namely viz. evidence showing that the notes in question were counterfeit and the evidence and circumstances suggesting that the accused knew the same should have been put to the Appellants. The Appellants were therefore not given

¹ 2011 SCC OnLine Bom. 521

an opportunity to offer any explanation about these aspects, which were held as 'proved' against them, by the trial Court."

25. In re: **Pannal Lal Gupta vs. State of Sikkim**² a Division Bench of this Court would hold:

"21. In view of the above circumstances, the possibility of the fake currency-notes' having been given, to him by the customers in the course of his business and he being a layman could not suspect the said currency-notes to be fake cannot be ruled out. It is hardly necessary to observe that mere possession of, forged note is not an offence. The offence is directed against trafficking in fake notes and what is essential is that apart from possessing the fake notes the appellant must know of its, falsity and having known uses them. The appellant must have known or at least must have had reason to believe that the notes were counterfeited. It is also the requirement of law that, the possession must be accompanied by intention to use that as genuine. Nothing has been brought on record by way of even collateral circumstances to show that the appellant had intention to use the fake notes as genuine. On the other hand, as already noted above, it cannot be said on the basis of the materials; on record that the appellant knew or had reason to believe that the currency-notes he was dealing with were counterfeited and issued such notes as genuine."

26. Ms. Geeta Bista would rely upon the pronouncement of the Supreme Court in re: **Umashanker v. State of Chhattisgarh**³ in which it was held:

"7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are,

² 2009 SCC OnLine Sikk 19

³ (2001) 9 SCC 642

in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. *A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is “knowing or having reason to believe the currency notes or banknotes 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 banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the 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 PW 2, PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, “presumed” such a mens rea. On the date of the incident the appellant was said to be an eighteen-year-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 Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C IPC and acquit him of the said charges (see: *M. Mammutti v. State of Karnataka*.”*

27. M. Hidayatullah, J. in re: **Ranjit D. Udeshi vs. State of Maharashtra**⁴ while dealing with the criminal prosecution under Section 292 IPC against one of the four partners of a firm which owned a book-stall in Bombay and was accused of

⁴ AIR 1965 SC 881

having been found in possession, for the purpose of sale, copies of an alleged obscene book called ‘*Lady Chatterley’s Lover*’, would hold:

“11. In criminal prosecution mens rea must necessarily be proved by circumstantial evidence alone unless the accused confesses.”

28. In re: ***Kailash Kumar Sanwatia vs. State of Bihar and Anr.***⁵ the Supreme Court would hold:

“9.....As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.”

29. In re: ***Devender Kumar Singla vs. Baldev Krishan Singla***⁶ the Supreme Court while examining a case of cheating and dishonestly inducing delivery of property would hold:

“8. As was observed by this Court in Shivanarayan Kabra v. State of Madras [AIR 1967 SC 986: 1967 Cri LJ 946] it is not necessary that a false pretence should be made in express words by the accused. It may be inferred from all the circumstances including the conduct of the accused in obtaining the property. In the true nature of things, it is not always possible to prove dishonest intention by any direct evidence. It can be proved by a number of circumstances from which a reasonable inference can be drawn.”

30. In re: ***Sooguru Subrahmanyam v. State of A.P.***⁷ referred to by Mr. Thinlay Dorjee Bhutia, the Supreme Court would hold:

“21. Now, we may deal with the submission that the prosecution has not been able to prove any motive for the

⁵ (2003) 7 SCC 399

⁶ (2005) 9 SCC 15

⁷ (2013) 4 SCC 244

commission of the crime because the suspicion on the part of the husband has not been established. We have already recorded an affirmative finding on that score. However, we may, in this context, profitably refer to the pronouncement in Nathuni Yadav v. State of Bihar [(1998) 9 SCC 238: 1998 SCC (Cri) 992] wherein a two-Judge Bench has laid down thus: (SCC p. 244, para 17)

“17. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in R. v. Palmer [Shorthand Report at p. 308 CCC May 1856] thus:

‘But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.’

Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant.”

31. In the light of the various pronouncement of the Supreme Court, the Bombay High Court, this Court as well as the compelling thoughts of Lord Chief Justice Champbell in R.v. Palmer on the requirement of establishing *mens rea* before saddling the Appellant with criminal liability under Section

489B and 489C IPC and “motive” it is vital to examine if, as submitted by Mr. Thinlay Dorjee, the Appellant’s repeated use of the counterfeit currency-notes itself establishes the criminal intent.

32. Ran Maya Rai (P.W.12) who runs a vegetable shop at Ralap did not identify the Appellant in Court. She does not remember the date and the month but she recollects that in the year 2014 one lady alighted from a blue coloured car driven by a male driver, purchased vegetables from her shop worth ₹100/-, tendered ₹500/- and was given ₹400/- as change by her. On the same day after the said lady left, some vehicles had stopped at Ralap and she heard that some persons were circulating counterfeit-currency notes at Samdong and were told to be careful. Since she had also received currency-note of ₹500/- denomination from the lady, she accompanied the other persons similarly duped to Singtam police station where she also deposited the same. There were 4 to 5 other persons who had reached Singtam police station who were all complaining about one lady and one male person coming to their shops in a car and tendering currency-note of ₹500/- denomination to purchase some articles from their shop. The deposition of Ran Maya Rai (P.W.12) that sometime in 2014 a lady tendered currency-note of ₹500/- denomination to her which she deposited with the Singtam police station

along with other shop-keepers is relevant and corroborates the evidence of Sachita Nanda Darjee (P.W.10) about the same.

33. Kailash Chettri's (P.W.13) sister Heema Chettri runs a grocery shop at Ralap. He is the person whose name is recorded as the person from whom the 9 currency-notes of ₹500/- denomination were seized in the seizure memo (exhibit-4). Kailash Chettri's (P.W.13) does not recollect the exact date but sometime in May, 2014 some shopkeepers of Ralap were reported to have received forged Indian currency-notes from some lady who had come to Ralap. Heema Chettri and other shopkeepers of Ralap had told him that the said lady had purchased small items such as Mimi noodles worth ₹50/- from the shops including that of his sister. He was informed that the said lady had tendered forged Indian currency-notes of ₹500/- denomination to purchase small items from the shops. The police from Makha police outpost visited Ralap and told them to bring the forged currency-note of ₹500/- denomination received from the said lady to Singtam police station. Accordingly he along with other shopkeepers went to Singtam police station and handed over the said currency-notes received by the shopkeepers to a police officer who seized the same duly preparing a seizure memo. The currency-note bearing serial number 7NV979471 was handed over by Kailash Chettri (P.W.13) to the police at the time of the seizure. The name '*Kailash Chettri*' found written on the said note was

written by him in his own handwriting while handing over the said currency-note to the police on the relevant day. As he did not compare the numbers of the other currency-notes marked MO I B (collectively) he could not say whether those were the same notes that was seized at Singtam police station. However, he could definitely identify the currency-note of ₹500/- denomination that was submitted by him at Singtam police station since he had written his name on it. Although, Heema Chettri was not examined the deposition of Kailash Chettri (P.W.13) about what he heard about one lady using forged Indian currency-notes of ₹500 denomination/- from her and other shopkeepers of Ralap; the police from Makha police outpost visiting Ralap and telling them to bring the forged currency-notes of ₹500/- denomination received from the said lady to Singtam police station; he along with other shopkeepers going to Singtam police station and handing over the said currency-notes received by the shopkeepers to a police officer who seized the same duly preparing the seizure memo has corroborative value to the other evidence produced by the prosecution. MO I B (2) identified and marked by Kailash Chettri's (P.W.13) as the said currency-note of ₹500/- denomination is also part of the seizure vide seizure memo (exhibit-4) which is dated 23.05.2014. Therefore, it is certain that the date of the incident narrated by Kailash Chettri's (P.W.13) is also 23.05.2014. The said seizure memo (exhibit-4)

records the serial numbers of the 9 counterfeit currency-notes of ₹500/- denomination seized from Kailash Chettri (P.W.13). Although there is some discrepancy as pointed out by Ms. Gita Bista on how the seizure of these 9 currency-notes was effected due to the fact that the said seizure memo (exhibit-4) records the name of Kailash Chettri (P.W.13) as the person from whom the 9 currency-notes of ₹500/- denomination were seized it is however clarified by Kailash Chettri (P.W.13) that the police from Makha police outpost who visited Ralap told him and other shopkeepers to bring the forged currency-notes of ₹500/- denomination tendered by the Appellant to Singtam police station and accordingly he along with other shopkeepers went to Singtam police station and handed over the counterfeit currency-notes received by the shopkeepers to a police officer who duly prepared a seizure memo. The fact that Kailash Chettri (P.W.13) also identified the currency-note of ₹500/- denomination bearing serial number 7NV979471 which had been seized by the Singtam police on 23.05.2014 at the Singtam police station in connection with the same case and which currency-note was examined by Dhurba Chettri (P.W.14) Analyst-cum-Assistant Chemical Examiner and found to be counterfeit convincingly proves that the Appellant had used counterfeit currency-notes of ₹500/- denomination in her possession to dupe other shopkeepers as well.

34. The deposition of Anu Rana (P.W.3) clearly establishes the identity of the Appellant as the person who came to her ration shop at Singbel on 23.05.2014 at around 12:30 p.m., tendered currency-note of ₹500/- denomination, purchased ten packets of Mimi noodles worth ₹50/- and took ₹450/- from her as change and drove towards Makha. However, she did not identify the said currency-note of ₹500/- denomination which according to her she along with other shopkeepers deposited at the Singtam police station.

35. Phul Maya Neopaney (P.W.6) is also a resident of Singbel and owns a vegetable shop. She also identified the Appellant. As per her deposition in May, 2014 at around 12.10 p.m. the Appellant had come to her shop and purchased tomatoes worth ₹10/- and cucumber worth ₹20/-. The Appellant tendered currency-notes of ₹500/- denomination and Phul Maya Neopaney (P.W.6) returned ₹470/- to the Appellant. After the Appellant left her shop Phul Maya Neopaney (P.W.6) came to know that the Appellant had used fake currency-notes in other shops as well. When she checked the currency-note of ₹500/- denomination tendered to her by the Appellant she found that it was counterfeit too. She also went with other villagers to Singtam police station and handed over the same to the police there and returned home. However, she also did not identify the said currency-note of ₹500/- denomination but was absolutely certain that she along with other shopkeepers

had deposited the said currency-note at the Singtam police station.

36. Tek Nath Sharma (P.W.11) a resident of Kokolay identified the Appellant in Court. His deposition has proved that on 23.05.2014 the Appellant had come to his shop after alighting from a taxi, purchased three dozen bananas worth ₹30/- per dozen and other eatables worth ₹10/-, tendered currency-note of ₹500/- denomination and was given a sum of ₹400/- by him as change. Tek Nath Sharma (P.W.11) also deposed that he had surrendered the said currency-note of ₹500/- denomination at the Singtam police station. However, he also did not identify the currency-notes of ₹500/- denomination which he had deposited.

37. Chandra Kala Adhikari (P.W.5) is the wife of Prem Prasad Adhikari (P.W.7) the Panchayat who runs a Provision shop at Tumin busty which is also near Singbel. She identified the Appellant in Court as the person she had seen on the date of the incident. She does not remember the exact date but in May, 2014 at around 1 to 2 p.m. the Appellant alighted from the car and came to her shop asked for Mimi noodles, purchased ten packets of Mimi noodles, tendered currency-note of ₹500/- denomination and took away ₹450/- as change given by her. On being asked by Prem Prasad Adhikari (P.W.7), her husband, whether two persons had visited their shop and

tendered currency-note of ₹500/- denomination, Chandra Kala Adhikari (P.W.5) confirmed the same after which Prem Prasad Adhikari (P.W.7) took away the said currency-note and went after the Accused persons. However, Prem Prasad Adhikari (P.W.7) did not elucidate further as to what he did with the said currency-note of ₹500/- denomination.

38. Sub Inspector (SI) Tshering Doma Bhutia (P.W.16) the Investigating Officer has deposed that the Appellant along with her husband were brought to Singtam police station by the local people and the police of Makha police outpost. This fact has been clearly proved by the prosecution with the evidence of the prosecution witnesses-Narad Nepal (P.W.1) Churamani Bhattarai (P.W.2) Prem Prasad Adhikari (P.W.7) and Manoj Pradhan (P.W.8). The Investigating Officer (P.W. 16) deposed that after the Appellant and her husband were brought to Singtam police station they were arrested by her and later she had seized 9 numbers of suspected fake currency-notes of ₹500/- denomination which the Appellant and her husband had tendered to different shopkeepers after purchasing some items from them through seizure memo (exhibit-4).

39. The rough sketch map (exhibit-8) prepared by the Investigating Officer reflects that Ralap, Singbel and Tumin are adjacent villages.

40. Anu Rana (P.W.3) of Singbel, Tek Nath Sharma (P.W.11) of Kokolay and Chandra Kala Adhikari (P.W.5) of Tumin although identified the Appellant as the person who had tendered the currency-notes of ₹500/- denomination at their respective shops could not identify the specific currency-notes in Court. Ms. Gita Bista would submit that this was a major discrepancy and therefore, the prosecution had failed to establish the *mens rea*. In every criminal case it is the prosecution who alleges the criminality and thus it is incumbent upon the prosecution to establish every ingredient of the offence alleged. While examining the evidence produced in the Court must necessarily seek assurance that the facts emanating from the evidence produced cogently proves the offence. Scientific precision cannot be expected of the evidence given by rustic villagers. There are bound to be minor discrepancies. Although some of the prosecution witnesses have not identified the specific currency-notes which were tendered by the Appellant at their respective shops at Singbel, Kokolay and Tumin it is unequivocally certain that the said currency-notes were definitely amongst the 9 currency-notes of ₹500/- denomination seized by the Singtam police on the date of the incident i.e. 23.05.2014 after the arrest of the Appellant and her husband when the villagers who had been duped by the Appellant i.e. Sachita Nanda Darjee (P.W.10) of Ralap, Ran Maya Rai (P.W.12) of Ralap, Kailash Chettri (P.W.13) of Ralap,

Anu Rana (P.W.3) of Singbel, Phul Maya Neopaney (P.W.6) of Singbel, Tek Nath Sharma (P.W.11) of Kokolay had gone and deposited the currency-notes of ₹500/- denomination tendered by the Appellant to the aforesaid prosecution witnesses of different adjacent villages on the same day i.e. 23.05.2014. The fact that each of the said 9 currency-notes of ₹500/- denomination were proved to be counterfeit is reassuring since if any one or more of the said 9 currency-notes were found genuine It may have been difficult to trace the particular currency-note to the particular shopkeeper to whom it was tendered. The names of 9 persons with the serial numbers of the currency-notes are recorded in seizure memo (exhibit-4) dated 23.05.2014. The prosecution witnesses named above are also amongst them. The evidence of the Investigating Officer (P.W.16), Kailash Chettri (P.W.13) and the said prosecution witnesses cogently assures this Court with absolute certainty that each of the said currency-notes tendered by the Appellant at various shops were amongst the said 9 currency-notes of ₹500/- denomination deposited by the prosecution witnesses named above at the Singtam police station on 23.05.2014. The 9 currency-notes of ₹500/- denomination were also sent for forensic examination and found to be counterfeit. The evidence of Dhurba Chettri (P.W.14) Analyst-cum-Assistant Chemical Examiner, along with his opinion (exhibit-6) clearly establishes

that the said 9-currency notes of Rs.500/- denomination were counterfeit.

41. The deposition of Narad Nepal (P.W.1), Prem Prasad Adhikari (P.W.7) and Churamani Bhattarai (P.W.2) have proved that the Appellant and her husband were apprehended at Samdong on 23.05.2015 after they had received information that two persons were using counterfeit currency-notes. The said prosecution witnesses also proved that after apprehending the Appellant and her husband they informed the Makha police outpost pursuant to which police personnel arrived and took them to Singtam police station where Narad Nepal (P.W.1) lodged the FIR and the investigation commenced. Thereafter, on 23.05.2014 itself at the Singtam police station the Appellant was searched and 42 currency-notes of ₹500/- denomination were recovered and seized from her. The police also seized 9 currency-notes of ₹500/- denomination from one Kailash Chettri (P.W.13). These 9 currency-notes of ₹500/- denomination were deposited by the shopkeepers who were duped by the Appellant on 23.05.2014. All the 51 currency-notes of ₹500/- denomination seized on 23.05.2014 were found to be counterfeit by Dhruba Chettri, (P.W.14) Analyst-cum-Assistant Chemical Examiner. Manoj Pradhan (P.W.8) identified the Appellant in Court as the person who was apprehended by the villagers on 23.05.2014 at around 1.00 p.m. from Samdong and taken to Singtam police station where

he along with Narad Nepal (P.W.1) stood as witness to the seizure of all the 51 currency-notes of ₹500/- denomination. Sujata Pradhan (P.W.4) of Tumin, wife of Manoj Pradhan (P.W.8) and who was also duped by the Appellant by tendering currency-note of ₹500/- denomination and purchasing ten Mimi noodles and taking ₹450/- as change also identified the Appellant in Court. Sachita Nanda Darjee (P.W.10) has not only identified the Appellant as the one who came to her provision shop at Ralap, purchased ten packets of Mimi noodles, tendered currency-note of ₹500/- denomination and took back ₹450/- as change but also identified the same currency-note of ₹500/- denomination tendered by the Appellant. Anu Rana (P.W.3) from Singbel also identified the Appellant as the person who came to her ration shop on 23.05.2014, tendered currency-note of ₹500/- denomination purchased ten packets of Mimi noodles and took ₹450/- as change from her. Similarly, Phul Maya Neopaney (P.W.6) from Singbel also identified the Appellant as the person who came to her shop sometime in May, 2014, purchased vegetables worth ₹30/-, tendered currency-note of ₹500/- denomination and took back ₹470/- as change. Tek Nath Sharma (P.W.11) of Kokolay identified the Appellant as the person who on 23.05.2014 had come to his shop, purchased three dozen bananas worth ₹30/- and other eatables worth ₹10/-, tendered currency-note of ₹500/- denomination and took back

₹400/- as change. Chandra Kala Adhikari (P.W.5) of Tumin busty also identified the Appellant as the one who in May, 2014 had come to her shop, purchased ten packets of Mimi noodles, tendered currency-note of ₹500/- denomination and took back ₹450/- as change.

42. The seizure witnesses Narad Nepal (P.W.1) has identified the Appellant in Court as the same person from whom the police seized 42 currency-notes of ₹500/- denomination on 23.05.2014. Narad Nepal (P.W.1), Churamani Bhattarai (P.W.2) and Prem Prasad Adhikari (P.W.7) who followed the Appellant and her husband on 23.05.2014 on being informed about them using counterfeit currency-notes and apprehending them at Samdong have also identified the Appellant as the same person. The shop owners and villagers viz. Anu Rana (P.W.3) and Phul Maya Neopaney (P.W.6) both from Singbel, Sujata Pradhan (P.W.4), Chandra Kala Adhikari (P.W.5) both from Tumin, Sachita Nanda Darjee (P.W.10) from Ralap and Tek Nath Sharma (P.W.11) from Kokolay also identified the Appellant as the one who had duped them by tendering counterfeit currency-note of ₹500/- denomination on the date of the incident.

43. The *modus operandi* of the Appellant is absolutely clear from the deposition of the prosecution witnesses. The Appellant had counterfeit currency-notes of ₹500/-

denomination in her possession, she had knowledge that the said currency-notes were counterfeit. The Appellant intended to use the said counterfeit currency-notes as genuine. The Appellant used the said counterfeit currency-notes as genuine at different shops knowing that the said notes were counterfeit. The prosecution has established *mens rea* a vital ingredient of both the offences under Section 489B and 489C IPC. All the ingredients of the said offences have been cogently established by the prosecution.

44. This Court is thus of the view that that impugned judgment dated 05.08.2016 and order of sentence dated 09.08.2016 call for no interference. The order on sentence dated 09.08.2016 passed by the Learned Sessions Judge stands confirmed. The Appeal is dismissed. The Appellant is on bail. The bail bonds are forfeited. The Appellant shall be arrested and produced before the Sessions Court, East Sikkim at Gangtok to serve out her sentence.

45. Urgent certified photocopy of this judgment, if applied for, be supplied to the Learned Counsels for the parties upon compliance of all formalities.

Sd/-
(Bhaskar Raj Pradhan)
Judge
10.05.2018

Approved for reporting: yes.
Internet: yes.

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