

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Appeal No. 98 of 2017**

Balmiki Chaudhary and another .... Appellants  
Vs.  
State of Uttarakhand ....Respondent

Present:

Ms. Meena Bisht, Advocate for the appellants.  
Mr. Pankaj Joshi, A.G.A. for the State.

with

**Criminal Appeal No. 99 of 2017**

Gariba Mahto .... Appellant  
Vs.  
State of Uttarakhand ....Respondent

Present:

Ms. Pushpa Joshi, Senior Advocate, assisted by Ms.  
Nipush Mola Joshi, Advocate for the appellant.  
Mr. Pankaj Joshi, A.G.A. for the State.

**JUDGMENT**

**Coram: Hon'ble Ravindra Maithani, J.**  
**Hon'ble Alok Mahra, J.**

**Per: Hon'ble Ravindra Maithani, J.**

Since both these appeals arise from common judgment and order, they are heard together and decided by this common judgment.

2. Both these appeals are preferred against the judgment and order dated 25.03.2017/29.03.2017, passed in Sessions Trial No.

12 of 2016, State Vs. Balmiki Chaudhari and others, by the court of Sessions Judge, Almora. By it, the appellant Gariba Mahto has been convicted under Sections 489B and sentenced to undergo imprisonment for life. The appellant Gariba Mahto has also been convicted under Section 420 IPC and sentenced to rigorous imprisonment for seven years and Rs. 5000/- as fine. In default of payment of fine, it is directed that the appellant Gariba Mahto shall further undergo simple imprisonment for three months. The appellant Gariba Kahto has been convicted under Section 489C IPC also, but he has not been sentenced thereunder.

3. The appellants Balmiki Chaudhari and Samar Mandal @ Sumor were convicted and sentence under Section 489C IPC and sentenced to undergo rigorous imprisonment for a period of seven years each.

4. Briefly stated, according to the prosecution case, on 03.08.2016, the appellant Gariba Mahto visited the shop of the PW1 Omnath Arya in Dwarahat. He purchased slippers for Rs.100/- and gave a Rs.1000/- currency note, took slippers and got Rs.900/- back. Subsequently, PW1 Omnath Arya became suspicious about the genuineness of Rs.1000/- currency note. He consulted the neighbour shopkeepers as well as PW5 Ashish Verma, the President of Vyapar Mandal. Then he came to know that, in fact, Rs.1000/- currency note, which was given to him by the appellant Gariba Mahto was counterfeit. He lodged a report Ex. A1 at Police Station Dwarahat. Based on which Case Crime No. 9 of 2016, under Section 420, 489B and 489C IPC was lodged against unknown persons (it may be noted that initially, the appellants were not known). Chik FIR is Ex. A15. According to the prosecution case, on 04.08.2016, police got an information that the persons, who were using counterfeit currency as

genuine were spotted somewhere near Bhumiya Temple. The police party tried to get independent witnesses and in that process, they secured the presence of PW5 Ashish Verma. Thereafter, PW2 SI, Darban Singh alongwith PW3 Jeewan Chandra Fulera, PW4 Kunwarpal Singh Dhami and PW5 Ashish Verma proceeded towards Malli Marai, Dwarahat. They took other police personnel with them and spotted three persons. PW5 Ashish Verma identified those persons as the persons who were using counterfeit currency notes in the Dwarahat market. They were intercepted and from the search of the appellant Balmiki Chaudhary, 50 counterfeit currency notes of Rs.1000/- each and other articles; from the possession of the appellant Gariba Mahto 50 counterfeit currency notes of Rs.1000/- alongwith other articles and from the possession of the appellants Samar Mandal @ Sumor, 100 counterfeit currency notes of Rs.1000/- alongwith other articles were recovered. A recovery memo Ex. A4 was prepared. The counterfeit currency notes were sent for forensic examination. The report was received, which revealed that the recovered currency notes were counterfeit.

5. After investigation, charge sheet was submitted against the appellants under Section 420, 489B and 489C IPC. On 16.12.2016, charge under Sections 420 read with 34, 489B read with 34, 489C read with 34 IPC were framed against the appellants. To which they denied and claimed trial.

6. In order to prove its case, prosecution examined eight witnesses, namely, PW1 Omnath Arya, PW2 SI Darban Singh, PW3 Constable Jeevan Chandra Fulera, PW4 SI Kunwarpal Singh Dhami,

PW5 Ashish Verma, PW6 SI Ashok Kumar Singh, PW7 Kundan Singh and PW8 Chandra Mohan Singh.

7. After prosecution evidence, the appellants were examined under Section 313 of the Code. According to them, witnesses have falsely deposed against them.

8. After hearing the parties, by the impugned judgment and order, the appellants have been convicted and sentenced, as stated hereinbefore. Aggrieved, the appellants have preferred these appeals.

9. Heard learned counsel for the parties and perused the record.

10. Learned counsel appearing for the appellant submits that entire prosecution case is false. She would submit that no Test Identification Parade was done. The FIR was unnamed. PW1 Omnath Arya had no occasion to identify the appellant Gariba Mahto in the court. She would refer to the statement of PW1 Omnath Arya and PW5 Ashish Verma to argue that, in fact, their statements are contradictory, with regard to the number of persons who visited the shop of the PW1 Omnath Arya on 03.08.2016, when allegedly the counterfeit currency notes were used. She would also raise the following points in her submissions:-

- (i) If the appellant Gariba Mahto had purchased slippers on 03.08.2016 from the shop of PW1 Omnath Arya, they would have been recovered from him when allegedly search was made from him on 04.08.2016, but it was not recovered. It doubts the prosecution case.

- (ii) The Forensic Science Laboratory report was not put to the appellant Gariba Mahto under Section 313 of the Code, therefore, the Forensic Science Laboratory report cannot be read into evidence and without it the prosecution fails to prove its case beyond reasonable doubt.

11. Learned counsel appearing for the appellants Balmiki Chaudhary and Samar Mandal @ Sumor submits that they are not named in the FIR; no TIP was done; FSL report was not put to these appellant in their examination under Section 313 of the Code; therefore, the prosecution failed to prove its case beyond reasonable doubt.

12. Learned State counsel submits that the appellant Gariba Mahto has approached the shop of PW1 Omnath Arya on 03.08.2016 and had purchased slippers for Rs.100/-. He gave Rs1000/- currency note and took Rs.900/- in return. It is argued that Rs.1000/- currency note was counterfeit, of which report was lodged by PW1 Omnath Arya and on 04.08.2015; all the appellants were arrested. It is argued that the statement of PW 5 Ashish Verma is much reliable. He is the President of Vyapar Mandal. He has also stated that on 03.08.2016, three persons had visited his shop to buy something, and those were the appellants.

13. Before the arguments are appreciated, it would apt to examine as to what the witnesses have stated.

14. PW1 Omnath Arya has proved the FIR Ex. A1. According to him, a person had purchased slippers from his shop on 03.08.2016 and gave Rs.1000/- currency note and he returned Rs.900/- along with the slippers. Subsequently, he suspected the genuineness of Rs.1000/- currency note. He consulted the neighbour shopkeepers and PW5 Ashish Verma, who told him that Rs.1000/- currency note was counterfeit. Thereafter, he gave a report Ex. A1 to the police. He also gave Rs.1000/- currency note to the police, of which, a recovery memo Ex. A2 was prepared. He proved the currency note as well.

15. PW2 SI Darban Singh investigated the case. He proved the chik FIR. According to him, after taking over the investigation, he proceeded to investigate the matter. He got an information that the persons who were using counterfeit currency notes are waiting for the vehicle therefore they searched for the independent witness. Thereafter, PW5 Ashish Verma, President of Vyapar Mandal agreed to join them. They all reached near Bhumiya Temple gate. PW5 Ashish Verma identified three persons as the persons, who were using counterfeit currency notes. They were apprehended. Thereafter, from their possession counterfeit currency notes total amounting to Rs. 2 Lakh were recovered and other articles were also recovered. He has proved all those articles, counterfeit currency notes etc. He proved the recovery memo Ex. A4, which was prepared at the spot. He has also proved those currency notes, as well, which, according to him, he has sealed.

16. PW3 Constable Jeevan Chandra Fulera, PW4 SI Kunwarpal Singh Dhami and PW5 Ashish Verma also joined PW2 SI

Darban Singh on the date, when recovery was made. They have corroborated the statement of PW2 Darban Singh.

17. PW6 SI Ashok Kumar took the investigation on 06.08.2016. He prepared the site plan Ex. A14. According to him, thereafter, he was transferred.

18. PW7 Kundan Singh has proved the chik FIR, Ex. A15.

19. PW8 Chandra Mohan Singh finally completed the investigation and submitted charge sheet Ex. A16.

20. Appellant Gariba Mahto was convicted under Sections 420, 489B and 489C IPC, but he has been sentenced under Sections 489B and 420 IPC and appellants Balmiki Chaudhari and Samar Mandal @ Sumor were convicted and sentenced under Section 489C IPC. These Sections are as follows:-

**“420. Cheating and dishonestly inducing delivery of property.-** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**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.

**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. On behalf of the appellants it is also argued that mere possession or use of counterfeit currency note is not sufficient to convict under Sections 489B and 489 C IPC. It is argued that *mens rea* also needs to be proved. The prosecution has to prove that the accused knew or he has reason to believe that currency notes are forged or counterfeit. It is argued that unless it is proved, conviction under Sections 489B and 489C IPC, cannot be had.

22. A bare perusal of Sections 489B and 489C IPC makes it clear that in order to establish these offences, it has to be proved that the accused knew or he had reasons to believe that the currency notes are forged or counterfeit. The mental state of the accused needs to be established.

23. In the Code, there is no presumption with regard to culpable mental state of an accused from whose possession counterfeit currency notes are recovered. The question that arises for consideration is, can there be any presumption? Under certain statutes, there are presumptions which are given under certain circumstances viz. Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 30 of the Protection of Children From Sexual Offences Act, 2012 make presumption with regard to mental state. These sections are as follows:-

**“Narcotic Drugs and Psychotropic Substances Act, 1985**

**35. Presumption of culpable mental state.-** (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.- In this section “culpable mental state” includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

**Protection of Children From Sexual Offences Act, 2012**

**30. Presumption of culpable mental state.-** (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Explanation.-In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.”

24. In the Indian Penal Code, there is no such presumption, with regard to the *mens rea* for offences under Sections 489B and 489 C IPC.

25. In the case of K. Hashim Vs. State of Tamil Nadu, (2005) 1 SCC 237, the Hon’ble Supreme Court discussed the provisions of Sections 489 B and 489 C IPC and held that **“these provisions make possession for using of forged and counterfeit notes or banknotes punishable. Possession and knowledge that the currency notes are counterfeited notes are necessary ingredients to constitute offence under Section 489 B and 489C IPC.”**

26. In the case of Umashanker Vs. State of Chattisgarh, (2001) 9 SCC 642, a student of 18 years, according to the prosecution, purchased one kilogram of mango costing Rs 5 and he paid a fake

currency note of Rs 100. From his possession 13 fake currency notes were also recovered. In that case, the trial court as well as the High Court presumed the *mens rea*, which was essential for attracting the provisions of Sections 489B and 489C IPC. The Hon'ble Supreme Court held that this presumption as drawn is not warranted under Section 4 of the Indian Evidence Act, 1872. In para 8 of the judgment, Hon'ble Supreme Court observed as hereunder:-

**“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 [(1979) 4 SCC 723 : 1980 SCC (Cri) 170 : AIR 1979 SC 1705]).”

27. On behalf of the State, it is argued that large amount of fake currency notes were recovered from these appellants; they have kept counterfeit currency notes and genuine currency notes separate; there conduct, it is argued is relevant; they visited the shop of PW5

Ashish Verma, but suspecting apprehension they moved. It is argued that these factors establish that the appellants did know or they had reasons to believe that they were in possession of counterfeit currency notes. It is argued that, in fact, mental state can be inferred by the action. In fact, the court below also presumed the *mens rea* factor, which is necessary for attracting the provisions of Section 489B and 489C IPC.

28. In the case of Umashanker (*supra*), from a student of 18 years, 14 fake currency notes were recovered. The Hon'ble Supreme Court did not presume that the student had knowledge that the currency notes were counterfeit.

29 In the instant case also, merely because from the possession of the appellants allegedly large number of currency notes were recovered, it cannot be said that they had reason to believe that the currency notes were counterfeit. There cannot be such presumption raised, unless statute provides for it. Therefore, this Court is of the view that, in fact, on this count alone, the conviction is bad in the eye of law.

30. According to PW1 Omnath Arya, the fake currency note was given to him on 03.08.2016. FIR was lodged on 04.08.2016. PW1 Omnath Arya says that when he went to give the report at Police Station, police had shown him multiple counterfeit currency notes (Para 10). It doubts the prosecution case also. The FIR was lodged at 11:41 a.m. on 04.08.2016, how the police would show multiple counterfeit currency notes to PW1 Omnath Arya at the police station

when he lodged the FIR? How the police got those counterfeit currency notes?

31. PW5 Ashish Verma tells that he was told by PW1 Omnath Arya that some persons had visited his shop and while purchasing the slippers, he was given a counterfeit currency note. According to PW5 Ashish Verma, he was also told by PW1 that those three persons were from Bihar not from Uttarakhand. This is not the statement of PW1 Omnath Arya. PW1 Omnath Arya has only stated that a person had visited his shop on 03.08.2016, not three or more persons. Where is the question of three persons visiting the shop of PW1 Omnath Arya as stated by PW 5 Ashish Verma?

32. What is important in the instant case is Test Identification Parade of the appellants was not done. Test Identification Parade is not, in fact, substantive evidence, but test identification guides the police in the investigation. What is tried to be proved in the court is that PW1 Omnath Arya did identify the appellant Gariba Mahto. The dock identification may also be relied upon. In the case of Sidhartha Vashisht alias Manu Sharma Vs. State (NCT of Delhi), (2010) 6 SCC 1, the Hon'ble Supreme Court discussed the law on this point and held in para 258 of the judgment that **“that it is dock identification which is a substantive piece of evidence. Therefore even where no TIP is conducted no prejudice can be caused to the case of the prosecution.”**

33. In the case of Sidhartha Vashisht (*supra*), the Hon'ble Supreme Court has referred the law, as laid down in the case of

Munshi Singh Gautam Vs. State of M.P.,(2005) 9 SCC 631 and observed as follows:-

“**256.** The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:

Munshi Singh Gautam v. State of M.P. [(2005) 9 SCC 631 : 2005 SCC (Cri) 1269] : (SCC pp. 642-45, paras 16-17 & 19)

“16. As was observed by this Court in *Matru v. State of U.P.* [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See *Santokh Singh v. Izhar Hussain* [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. **The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character.** The purpose of a prior test identification, therefore, is to test and

strengthen the trustworthiness of that evidence. **It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration.** The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See *Kanta Prashad v. Delhi Admn.* [AIR 1958 SC 350 : 1958 Cri LJ 698] , *Vaikuntam Chandrappa v. State of A.P.* [AIR 1960 SC 1340 : 1960 Cri LJ 1681] , *Budhsen v. State of U.P.* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] and *Rameshwar Singh v. State of J&K* [(1971) 2 SCC 715 : 1971 Cri LJ 638] .)

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(emphasis supplied)

34. What is important in the instant case is that PW1 Omnath Arya did not know any of the appellants. He merely writes an FIR that a person visited his shop on 03.08.2016, purchased slippers and delivered fake currency note. The FIR is quite in detail. In para 7 of his statement, PW1 Omnath Arya admits that whatever was told by police, accordingly he lodged the report. He also admits that no Test Identification Parade was done.

35. It may be believed that some persons could identify someone in the court, if he had seen him at some earlier occasion. But, if there are unknown persons, how could one name the other? In the instant case, the question is how PW1 Omnath Arya could tell as

to who is Gariba Mahto. He never knew the appellant Gariba Mahto. He was never introduced to him. Who told him as to who is Gariba Mahto? Admittedly, there was no Test Identification Parade was done? Therefore, this dock identification of the appellant Gariba Mahto is much in doubt.

36. In the instant case, the forensic science laboratory report has not been put to the appellants under Section 313 of the Code so as to give them an opportunity to explain it. In such a situation, the forensic science laboratory report cannot be read into evidence.

37. In view of the foregoing discussion, this Court is of the view that the prosecution has not been able to prove the charge against the appellants and all the appellants deserve to be acquitted of the charge leveled against them. Accordingly, the appeals deserve to be allowed.

38. Both the appeals are allowed. The impugned judgment and order is set aside.

39. The appellant Gariba Mahto is acquitted of the charge under Section 420, 489B and 489C IPC.

40. The appellants Balmiki Chaudhary and Samar Mandal @ Sumor are acquitted of the charge under Sections 489C IPC.

41. Appellants Balmiki Chaudhary and Samar Mandal @ Sumor are on bail on personal bonds. Their bonds are cancelled.

42. The appellant Gariba Mahto is in custody. Let he be released forthwith, if not wanted in any other case.

43. The appellants shall furnish a personal bond and two sureties by each one of them, each of the like amount to the satisfaction of the court concerned under Section 437 A of the Code within one month.

44. Let a copy of this judgment along with Lower Court Record be transmitted to the Court below for compliance.

(Alok Mahra, J.)

(Ravindra Maithani, J.)

07.01.2026

Jitendra