

**IN THE COURT OF THE ASSISTANT SESSIONS JUDGE,
SONITPUR AT TEZPUR**

PRESENT : Sri M. Kalita,
Assistant Sessions Judge,
Sonitpur, Tezpur.

SESSIONS CASE NO. 185 OF 2010

GR Case No. 1625/06.

Under Section 489 (B), (C) of Indian Penal Code

State of Assam **Complainant**

-Versus -

1. Sri Nirmal Mazumdar,
Son of Sri Munindra Mazumdar,
Village- Bamparbatia Barhoichuburi,
PS – Tezpur.
Dist – Sonitpur, Assam

2. Sri Dipankar Dutta,
Son of Sri Upen Dutta,
Da-Parbatia,
PS – Tezpur.
Dist – Sonitpur, Assam

..... **Accused Persons**

ADVOCATES APPEARED:

For the State : Sri Mahendra Bora,
Additional Public Prosecutor

For the accused person : Smti Dulumoni Sinha,
Advocate

Date of evidence : **24- 05- 11, 19-01-11.
01-11-11, 02-04-12 &
06-09-12.**

Date of Argument : **03- 10 – 2012**

Date of Judgment : **16- 10 – 2012**

J U D G M E N T

1. Briefly, the prosecution case was that informants Sri Saruram Kotoki and Sapunjyoti Saikia, both are President and Secretary respectively of Dekargaon Rashutshab Udjapan Samity lodged the written FIR before Bebejia Police Out Post under Tezpur Police Station on 05-11-06 stating inter-alia that on 05-11-06 at about 3.15 a.m. when the Rash Utshab was going on in the premises of Dekargaon Usha Natya Mandir, the accused Nirmal Mazumdar along with his friend Dipankar Dutta and Jyotish Kalita were caught red handed while they were purchasing the goods from the temporary shop of the Usha Natya Mandir by using fake currency note. At that time some persons apprehended the accused Nirmal Mazumdar by suspecting his conduct and it was also come to light that the accused had used fake currency note and some fake currency also recovered from the pocket of Nirmal Mazumdar by some youths. So, accused Nirmal Mazumdar was apprehended and handed over to the police. So, the informant prayed before the police for taking necessary action.

2. After receiving the aforesaid written FIR, the I/C of Bebejia Police Out Post made a GD Entry on the basis of FIR and started to investigate the case after sending the FIR to Tezpur Police Station for registering a case. Accordingly, Officer-in-Charge of Tezpur PS registered a case bearing Tezpur Police Station Case No. 671/06. During the period of investigation, the Investigating Officer inspected the place of occurrence. During that period he

seized some fake currency from the possession of the accused Nirmal Mazumdar in presence of witnesses. Thereafter, the said currency were sent for expert opinion to the General Manager, Bank Note Press, Dewas, Madhya Pradesh. The Investigating Officer also collected the report from the Expert. He arrested both the accused Nirmal Mazumdar and Dipankar Dutta. And after completing the investigation, the Investigating Officer submitted the Charge sheet against both the accused persons u/s 489 (B) (C) of IPC. Hence, the prosecution case.

3. After appearance of the accused persons, the learned Judicial Magistrate committed the case to the learned Sessions Judge, Sonitpur, Tezpur. Then the case was made over to this Court accordingly, trial was taken up by this Court. Considering the materials available on case record and relevant documents of case diary, the charge was framed under Section 489 (C) of IPC against accused Nirmal Mazumdar and charge u/s 489 (B) of IPC was framed against both accused Nirmal Mazumdar and Dipankar Dutta. Then the contents of charges were read over and explained to both the accused to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as 9 (nine) PWs including the Investigating Officer to bring home the case. Then both the accused have been examined u/s 313 CrPC, wherein he have denied the prosecution case totally. No witness has been examined by defence. And after the close of trial, judgment is delivered.

5. Points for determination of the case:

- 1.** Whether the accused persons used the forged or counterfeit currency note as genuine while purchasing the goods at the time of occurrence?
- 2.** If so, whether the accused Nirmal Mazumdar possessed the counterfeit currency note at the time of occurrence ?made attempt to set the house of informant on fire?

Discussion, Decision and reasons for Decision:-

6. For proper appreciation of evidence of PWs, I like to discuss the evidence adduced by PWs first.

7. PW 1 Sri Atul Saikia has deposed that at the time of occurrence he was present at Rashutshab which as held at the premises of Dekargaon Usha Natya Mandir. At that time some people were assaulting one boy as the said boy possessed some counterfeit not. So, the boy was brought to the Office of the Rashutshab Udjapan Samity to save him and thereafter he was handed over to police and police seized some fake currency by disclosing that that were found from the possession of the accused. PW 1 signed on the seizurelist.

In the cross-examination, PW 1 has admitted that he did not know from whom the currency were recovered.

8. PW 2 Sri Saruram Kotoki, one of the informant has also deposed same fact in his deposition and PW 3 has also stated same fact in addition to the fact stated by the

PW 1. PW 3 only stated that he being the Secretary of Rashutshab Samity lodged the FIR against the accused and he has proved the FIR as Ext. 2.

9. PW 4 Sri Ranjit Deka, one of the shop keeper of the Rashutshab festival, has deposed that at the time of occurrence he was running a business of Panshop. Some fake currency was found in the other shopkeeper. While he searched in his cash box he found one 100 rupee fake currency note in the cash box. Then he handed over the same to Rashutshab Committee and after arrival of police, the police seized fake currency in his presence and he has proved the said seizure list as Ext.1 and the Fake currency note as Material Ext.2.

In the cross-examination PW 4 has stated that he did not know who had given the currency note to him.

10. PW 5 Sri Binod Deka has also stated same fact as that of PW 4. But in the cross-examination he has admitted that he did not know why the boy was apprehended. He also did not know who had given the note to him.

11. PW 6 Sri Tutu Borah has also stated the same fact as that of PW 4. PW 7 Smti Mainu Bora has only stated that she only heard about the occurrence regarding the recovery of fake currency.

12. PW 8 is the Investigating Officer has deposed that on 05-11-06 at about 3.15 a.m. he got one information from the Sapunjyoti Saikia regarding the recovery of fake currency then he made a GD Entry and inspected the place of occurrence. At the same time he also received one

written FIR and during the inspection of the place of occurrence he searched the accused Nirmal Mazumdar who was apprehended by the public and during search he found one fake note of 500/- denomination and 8 fake note of 100/- denomination. Then he arrested the accused and brought to the police Out Post and on the basis of the statement made by the accused Nirmal Mazumdar he arrested other accused Dipankar Dutta. He also seized the said fake notes in presence of witnesses and he has proved the said seizurelist as Ext.1.

In the cross-examination, PW 8 has stated that he inspected the place of occurrence on the basis of information received at 3.20 a.m. on 05-11-06. During the inspection he found large number of people present at the place of occurrence. Before conducting the search of the accused, he did not allow to search his body first. The copy of seizurelist was not given to the accused. The signature of the accused was not taken in the seizurelist. PW 8 has also denied the fact that no fake notes were found in the hand of the accused.

13. PW 9, the other Investigating Officer has deposed that he sent the fake notes to the General Manager, Bank note Press, Dewan for expert report and after getting the report and after going through the material collected by the other I.O., he submitted the chargesheet against the accused persons and he has proved the chargesheet as Ext.4.

In the cross-examination, PW 9 has stated that the Superintendent Of Police directed him to sent the fake notes to expert opinion. Though he received the report on 05-02-07 but he submitted the chargesheet on 30-03-07.

14. From the above discussion of evidence of above PWs, it is found that except Investigating Officer all other PWs have stated that some persons apprehended the accused Nirmal Mazumdar by alleging that he had possessed fake currency and used the same at Rashutshab. Then he was handed over to the police but on appreciation of their evidence it is found that all PWs have admitted that they did not know from whom the notes were recovered. They have also failed to state specifically that accused Nirmal Mazumdar had actually fake currency for purchasing the goods. PW 4 to PW 6 have stated that while their cash boxes were examined then found one 100/- note from the cash box then they handed over the note to the Puja Committee. So, except that fact one of them have stated that fake currency notes were actually recovered from the accused Nirmal Mazumdar. PW 8, the Investigating Officer has also admitted that he did not allow to search his body before conducting search in the body of accused Nirmal Mazumdar.

15. On perusal of the seizurelist (Ext.1), it is found that the Investigating Officer stated that the fake notes were recovered from the possession of the accused Nirmal Mazumdar but such fact has not been corroborated by the evidence of other PWs, who were the witnesses of the seizurelist because they have themselves admitted that they could not know from whom the fake notes were recovered. Moreover, on appreciation of evidence of Investigating Officer, it is found that seizure was not done on proper way. Hence, the evidence of I.O. has failed to prove that the fake currency were actually recovered from the possession of the accused Nirmal Mazumdar. On the

other hand, Nirmal Mazumdar has stated in his statement recorded u/s. 313 Cr.P.C. that no any fake currency were recovered from him by police. So, in view of specifically denial by the accused, the prosecution has failed to prove with substantiate material that the fake currency were actually recovered from the accused. Because, the fact of seizurelist has not been adequately corroborated by the evidence of PWs who signed in the seizurelist as witness.

16. On meticulous examination of materials on record including the opinion of the Expert (Ext.5), it is found that the notes which were sent for expert opinion were the fake notes as revealed by the Expert but the prosecution has failed to prove with substantiate material that the notes were actually used by the accused persons for purchasing goods at the time of occurrence. The prosecution has failed to prove the fact with the material of beyond reasonable doubt that the accused Nirmal Mazumdar possessed the fake currency at the time of occurrence. On the basis of such uncorroborative evidence with the evidence of I.O., it can not be held that the accused persons had used the fake currency for purchasing the goods and accused Nirmal Mazumdar had possessed the fake currency at the time of occurrence. The result of the above discussion that the prosecution has failed to prove the ingredients of offence u/s 489(B) and 489 (C) of IPC against both the accused persons with the material of beyond reasonable doubt for which the accused persons are entitled to acquittal on benefit of doubt.

O R D E R

17. As the prosecution has failed to prove the case beyond all reasonable doubt against the accused persons, so the accused persons are acquitted on benefit of doubt and set at liberty forthwith.

18. The bail bonds stand discharged immediately from the case.

19. The seized articles shall be destroyed in due course of time.

20. Given under my hand and seal of this Court on this day, the 16th day of September, 2012.

(M. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(M. Kalita)
Assistant Sessions
Judge,
Sonitpur Tezpur

Dictation taken and
transcribed by me :

(R.Hazarika),
steno.

A P P E N D I X

Prosecution witnesses :

PW 1 : Sri Atul Saikia.
 PW 2 : Sri Saruram Kotoki, informant,
 PW 3 : Sri Sapunjyoti Saikia, informant.
 PW 4 : Sri Ranjit Deka,
 PW 5 : Sri Binod Deka,
 PW 6 : Sri Tutu Borah,
 PW 7 : Smti Mainu Bora,
 PW 8 : Sri Lakhi Kt. Bora, I.O.,
 PW 9 : Sri Eeba Kt. Bora, I.O.

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: :

Exhibit 1 : seizurelist.
 Exhibit 2 : Ejahar.
 Exhibit 3 : Sketch map.
 Exhibit 4 : Chargesheet,
 Exhibit 5 : Report (Expert opinion)
 Exhibit 6 and 7 : Forwarding letter.

Material Exhibits: :

Mat. Ext. 1 : Note of 500 rupees.
 Mat. Ext. 2 : Notes of 100 rupees (8 Nos.)

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

(M. Kalita)
 Assistant Sessions Judge,
 Sonitpur : Tezpur.