2015 (0) AIJEL-HC 232783

GUJARAT HIGH COURT

Hon'ble Judges:Anant S.Dave and S.H.Vora JJ.

Bijal Jagabhai Bambhva, Bharvad Versus State Of Gujarat

CRIMINAL APPEAL No. 2657 of 2008 ; *J.Date :- JULY 07, 2015

- INDIAN PENAL CODE, 1860 Section - 489A , 489D , 120B
- EVIDENCE ACT, 1872 Section - 27
- CODE OF CRIMINAL PROCEDURE, 1973 Section - 215 , 264

Indian Penal Code, 1860 - S. 489A to 489D, 120B - Evidence Act, 1872 - S. 27 - Code of Criminal Procedure, 1973 - S. 215, 264 - fake/counterfeit currency notes - framing of charge - discovery of incriminating material - Trial Court convicted accused No. 1 to 3 - further acquitted accused No. 1 to 7 from the charges of offence punishable u/s 489A and 489D r/w S. 120B of IPC - also acquitted accused No. 8 from charges of offence punishable u/S. 489A, 489B, 489C and 489D read with S. 120B of IPC - appeal for enhancement of sentence imposed upon accused No. 1, 2 and 3 - further appeal against acquittal - held, merely on the basis of the statements of co-accused made before the police, which are inadmissible in evidence, charge could not be framed u/s 489A to 489D read with S. 120B of I.P.C. - on such statements of co- accused in absence of any iota of corroborative evidence, learned Sessions Judge ought not to have framed the charge against accused No. 4 to 6 - neither any prejudice has been caused nor has there been any failure of justice in non-framing of specific charge has resulted, at the end of trial to the accused persons - there was no iota of evidence directly, indirectly or remotely connecting the accused No. 4 to 6 - there was no evidence qua the said accused persons except the police statement of co-accused so as to frame charge against them for any of the offences - charges framed u/s 489B and 489C of IPC are not proved qua accused No. 2 - therefore, conviction and sentence imposed upon accused No. 2 set aside - this Court acquitted him from charges - as accused No. 1 and 3 have not challenged the conviction and already suffered conviction imposed upon them, therefore, no case found against accused No. 1 and 3 for enhancement - appeal dismissed qua accused No. 1 to 3 - appeal against acquittal also dismissed.

Imp.Para: [12] [13] [15] [16]

Cases Referred To :

1. M. Mammutti V. State Of Karnataka, AIR 1979 SC 1705

Cited in :

1. (Referred To) :- State Of Gujarat Vs. Bipinbhai Bhimjibhai Savani, 2016 JX(Guj) 325 : 2016 AIJEL_HC 234881

Equivalent Citation(s):
2016 (1) GLR 300 : 2015 CrLR(Guj) 616

JUDGMENT :-

S.H.VORA, J.

1 Since all these appeals are arising out of the common judgment and order rendered in Sessions Case No.9 of 2007 and Sessions Case No.69 of 2007, with the consent of the learned advocates appearing for the respective parties, they are taken up for final hearing together and disposed of by this common judgment and order so as to avoid repetition of facts and findings.

2 Criminal Appeal No.760 of 2012 has been preferred by the State of Gujarat for enhancement of sentence imposed upon accused No.1- Mr.Bhavesh @ Bhavin Rameshbhai Sojitra, accused No.2 - Mr.Bijal Jagabhai Bambhava Bharwad and accused No.3 - Mr.Vallabh Arjan Koli after finding them guilty for the offence punishable under Sections 489(B) and 489(C) of the Indian Penal Code (for short, 'I.P.C.'). The State has also preferred Criminal Appeal No.761 of 2012 against the order of acquittal of the accused Nos.1 to 7 from the charges of offence punishable under Sections 489(A) and 489(D) read with Section 120B of I.P.C. in Sessions Case No.9 of 2007 and further, acquitting accused - Mr.Virendra @ Viru Manilal Darji from the charges of offence punishable under Section 489(A), 489(B), 489(C) and 489(D) read with Section 120B of the I.P.C. in Sessions Case No.69 of 2007. Whereas, accused No.2 - Mr.Bijal Jagabhai Bambhava Bharwad has separately filed Criminal Appeal No.2657 of 2008 against the judgment and order dated 18.09.2008 passed by the learned Presiding Officer and Additional Sessions Judge, 10th Fast Track Court, Rajkot whereby, he was ordered to suffer sentence and fine for the offence punishable under Sections 489-B and 489-C of I.P.C.

3 Original accused No.1- Mr.Bhavesh @ Bhavin Rameshbhai Sojitra, accused No.2 - Mr.Bijal Jagabhai Bambhava Bharwad and accused No.3 - Mr.Vallabh Arjan Koli have been sentenced to undergo R.I. for 3 years with fine of Rs.1000/-, in default, to undergo further S.I. for 2 months for the offence punishable under Section 489(B) of I.P.C. and also imposed same sentence and fine for the offence punishable under Section 489(C) of I.P.C. All the sentences have been ordered to run concurrently. However, the learned Additional Sessions Judge recorded acquittal of accused Nos.1 to 3 of Sessions Case Nos.9 of 2007 for the offence punishable under Sections 489A and 489D and Section 120B of I.P.C. and accused Nos.4 to 7 of Sessions Case Nos.9 of 2007 as well as accused - Mr.Virendra @ Viru Manilal Darji of Sessions Case Nos.69 of 2007 acquitted

for the offence punishable under Sections 489A to 489D and Section 120B of I.P.C. whereas, accused Nos.1 to 3 were directed to undergo above-mentioned R.I. with fine under Section 489B and 489C of I.P.C. It is stated at bar that accused Nos.1 and 3 have suffered sentence imposed upon them and they have not preferred any appeal against conviction and sentence imposed upon them.

4 An F.I.R. being C.R.No.252 of 2006 came to be registered before Malaviyanagar police station, Rajkot for the offences punishable under Section 489(A) to 489(D) and Section 120B of I.P.C.

5 The facts leading to lodging of the said F.I.R. against accused No.1 and subsequently, arrest of accused Nos.2 to 7 of Sessions Case No.9 of 2007 and accused - Mr.Virendra @ Viru Manilal Darji of Sessions Case No.69 of 2007 can be stated thus:-

5.1. On 12.09.2006, Investigating Officer - Mr.M.N. Sarvaiya was on duty as Police Inspector in Malaviyanagar Police Station and when he was on patrolling with his staff, a secret information was received by Head Constable-Mr.Ramgar Gosai that one person in Swaminarayan Chawk, Nr.Khodiyar Hotel, had fake currency notes. On the basis of this information, as the person of the description and index was found out at the place as per secret information received by Mr.Ramgar Gosai, two panchas were called and upon personal search of such person i.e. accused No.1 herein, total 98 fake currency notes of denomination of Rs.500/- found from the pocket of his pant. The detailed recovery panchnama of the fake currency notes was drawn in the presence of panchas and the said 98 notes were sealed as per panchnama and the said accused No.1 came to be arrested. During investigation of the case, as further certain facts were found on the same day, Police Inspector - Mr.M.N. Sarvaiya, who is Investigating Officer of this case, came near Dargah of Jalalsha Pir, situated at Kuvadva Road. From the facts extracted or obtained from the statement of accused No.1, the Investigating Officer found a person, named, Mr.Bijal Bharvad and upon his personal search in presence of two panchas, the Investigating Officer found 200 currency notes of denomination of Rs.500/-. Accordingly, the said notes were seized and sealed as per recovery panchnama for the purpose of investigation. Said person - Mr.Bijal Bharvad, who is original accused No.2 came to be arrested. Upon interrogation of accused No.2 - Mr.Bijal Bharvad, the Investigating Officer came to orchard, situated near Aaji dam and a person named, Mr.Vallabh Koli i.e. accused No.3 herein was found and upon his personal search in the presence of two panchas, the Investigating Officer found 580 notes of denomination of Rs.500/- in 6 bundles from his bag made of cloth and accordingly, they were seized as per the detailed panchnama drawn by the Investigating Officer in the presence of two panchas and said accused No.3 - Mr.Vallabh Koli came to be arrested. During the further investigation of the case and on further receiving information from the accused persons already arrested, it is surfaced that two other persons, namely, Mr.Jivraj Dhulabhai Vala and Mr.Pravin Najabhai Waghela, Devipujak, residents of village: Nanimal, Palitana, District: Bhavnagar were involved in this offence and, therefore, the Investigating Officer directed Police Sub-Inspector - Mr.Gadhvi to inquire about them. Upon interrogation of the said two persons, it was found that both the said persons were involved in the offence and, therefore,

they were arrested in connection with this offence and arraigned as accused Nos.4 and 5. It is further the case of the prosecution that during interrogation of both the said accused persons i.e. accused Nos.4 and 5, it was known that the fake currency notes were obtained from person, namely, Mr.Pravin Jeram Chopada Patel, i.e. accused No.6 and, therefore, on that basis, said accused No.6 was looked for. As he was arrested in one case for the offence registered with Bavla police station vide C.R.No.91 of 2006 and in other cases and as the said person was in custody, the Investigating Officer received possession of said accused No.6 - Mr.Pravin Jeram Chopada Patel through transfer warrant and he came to be arrested in connection with the present offence/case. During the interrogation of said accused No.6 - Mr.Pravin Jeram Chopada Patel, it was found that accused No.6 got the above notes printed by computer through persons, namely, Mr.Dipak Koshti and Mr.Virendra @ Viru Manilal Darji, resident of Ahmedabad. As said Mr.Dipak Koshti of the present case/offence was in custody in connection with the offence registered with Bavla police station vide C.R.No.91 of 2006, his possession was received through transfer warrant and thereafter, he came to be arrested in connection with the present offence/case. It is further the case of the prosecution that during the interrogation of said Mr.Dipak Koshti, it was known that the computer and other equipments related to it, in which, accused No.7 - Mr.Dipak Manubhai Koshti Maratha and accused No.8 - Mr.Virendra @ Viru Manilal Darji printed those fake notes at the instance of accused No.6 - Mr.Pravin Jeram Chopada Patel have been seized by the Bavla police station in connection with the offence registered with C.R.No.91 of 2006. Thereafter, the muddamal i.e. fake currency notes recovered in the present case, were sent to F.S.L., Gandhinagar for its examination.

5.2. Upon investigation and as per material evidence against the above accused persons, two separate chargesheets were filed in the Court of the learned Judicial Magistrate First Class, Rajkot, who committed the case to the Court of Sessions, Rajkot as the said Court was competent to try the case. Ultimately, charge was framed and the accused persons pleaded not guilty and having sought trial, they were tried and only accused Nos.1 to 3 were found guilty and sentenced, as aforesaid.

5.3. Since the case touches to the economy of the nation on one hand and directly affects the person's liberty substantially, we think it fit to re-produce the charge framed by learned Sessions Judge-Mr.M.J. Thakkar in Sessions Case No.9 of 2007 and also charge framed by the learned Additional Sessions Judge, who delivered the judgment in Sessions Case No.9 of 2007 and Sessions Case No.69 of 2007, if freely translated in English, read as under:-

Charge In Sessions Case No.9 of 2007 I, Mr.M.J.Thakkar, Principal District and Sessions Judge, hereby frame charges against you, the above stated accused persons as under that, The complainant of this case and other staff members were in patrolling on 12/9/06 at 22.00 o'clock. In the meantime when they received a tipoff and as they went near to Khodiyar Hotel in Swaminarayan Chowk, you, the accused no.1 was present there having worn black pant and shirt and black cap and as you, the accused no.1 stated that you possess counterfeit currency notes having

denomination of Rs. 500/- and have come to get the same encashed, personal search of you, the accused no. 1 was carried out, wherein a bundle of currency notes having denomination of Rs. 500/- was found from the pocket of your pant. On seeing the same, no serial number was found on one note and it was stated that currency notes of total Rs. 49,000/- are counterfeit. As it was inquired regarding the same, he stated that the same was given to him by the accused no.2 - Bijal Jagabhai Bharvad, resident of The bachada village, Rajkot and it was told that the same has been brought from the accused no.3 at half of the rate. You the accused persons had given those counterfeit currency notes at half of the rate to encash the same in the market to circulate the same. Thus, total 98 counterfeit currency notes having denomination of Rs. 500/- amounting to Rs. 49,000/- were found from you, the accused no.1 and total 200 counterfeit currency notes having denomination of Rs. 500/- amounting to Rs. 1,00,000/- were found from you, the accused no.2 and counterfeit currency notes having denomination of Rs. 500/- amounting to Rs. 2,90,000/- were found from you, the accused no.3. Thus, you all the accused persons hatched a criminal conspiracy in collusion with one another and despite having knowledge that they were counterfeit currency notes, you used them as genuine currency notes and helped one another to circulate counterfeit currency notes in the market. Thus, you the accused persons have committed the above stated offence and you have committed offence of C.R no. 252/06 of 'Malaviya Nagar' Police Station of Rajkot under section 489(a) (b) (c) and (d) and 120 (b) of the IPC.

Thus, you the accused persons have committed the said offence at the above stated date, time and place under section 489(a) (b) (c) and (d) and 120 (b) of the IPC within the jurisdiction of this Court and this Court has the power the conduct trial of the same.

Therefore, I hereby order that trial of the above stated offence will be conducted against you, the accused persons in this Court.

This charge was framed in the open court today on 18/5/07 after making my signature and seal of the court underneath. Rajkot Sd/- illegible Date: 18/5/07 (M. J. Thakkar) Principal District and Sessions Judge, Rajkot. Charge In Sessions Case No.69 of 2007 I, D. K. Maisuriya, 11th Fast Track Judge, hereby frame the following charges against you, the above-mentioned accused persons that -

Before about one year, you, the accused Virendra @ Viru Manilal Darji went to the shop of Dipak Manubhai Goshthi and from there you and Dipak Manubhai Goshthi had gone to Vijay Guest House and Dipakbhai, the trader had come with you there, and you, the accused and Dipak Manubhai Goshthi had printed counterfeit currency notes of Rs. 5,00,000/-, of the denomination of Rs. 500/-. You had printed these counterfeit currency notes in the computer of Dipak Manubhai Goshthi. Thus, you have committed the offence of performing the process of counterfeiting currency notes knowingly and have thereby committed the offence punishable u/s 489 (a) (b) (c) (d) and 120 (b) of Indian Penal Code.

Hence, it is hereby ordered that trial be conducted against you, the accused persons before this Court for the offence punishable u/s 489 (a) (b) (c) (d) and 120 (b) of Indian Penal Code.

Thus, as you, the accused persons have committed these offences at the place, time and date shown above, in the area falling under the jurisdiction of this Court, this Court has the authority of conducting trial in this regard.

Hence, I hereby pass the order to conduct a trial in respect of the aforesaid offence against you, the accused persons in this Court.

Framed today on 30/11/07, in the Open Court after my signature was put and the seal of the Court was affixed.

Rajkot. Sd/- Illegible Date. 30-11-07. 30/11/07 (D. K. Maisuriya) 11th Fast Track Judge, Rajkot.

5.4. Amongst other witnesses and documentary evidence produced and proved before the learned trial Judge, the prosecution case mainly rested on the testimonies of P.W.No.9- Mr.Ghanshyamsinh Pratapsinh Chauhan, P.W.10-Mr.Pradipsinh Narendrasinh Rana, P.W.11-Mr.Ruprendrasinh Karansinh Jadeja, P.W.12-Mr.Ramgar Dolatgar Gosai, P.W.13- Mr.Pravinbhai Menandbhai Sonara, P.W.16-Mr.Nalinbhai Chimanbhai Makwana, P.W.18-Mr.Mukeshbhai Nandshankar Joshi and P.W.19-Mr.Mahavirsinh Navalsinh Sarvaiya and further, rested on three recovery panchnamas at Exh.55 (Pg.192) drawn in presence of P.W.1-Mr.Jigneshbhai Vinodbhai Acharya and P.W.2-Mr.Krushnasinh Laxmansinh Jadeja, recovery panchnama Exh.59 (201) drawn in presence of P.W.3- Mr.Vijay Gagjibhai Dodia and P.W.4-Mr.Bharatsinh Navalsinh Bhatti and recovery panchnama Exh.75 (Pg.227) drawn in presence of P.W.6-Mr.Bhupatbhai Dalpatram Bhatt and 7-Mr.Premjibhai Ratnabhai Makwana effecting from the personal search of accused Nos.1 to 3 respectively. Discovery panchnama Exh.111 drawn on 26.06.2006 i.e. three months prior to the incident in question by the Investigating Officer of the offence registered with Bavla police station vide C.R.No.91 of 2006 was placed on record on 15.11.2007 and F.S.L. report at Exh.169 dated 31.05.2007 was placed on record after framing of charge on 18.05.2007. This date has relevancy in this matter when we will consider the judicial conduct of learned Sessions Judge-Mr.M.J. Thakkar, who framed the charge qua accused Nos.4 to 6 in such a serious offence only on the basis of the statements of the co-accused exhibiting careless conduct unbecoming of a judicial officer.

6 In light of the evidence, oral as well as documentary, led before the learned trial Judge, various contentions have been raised. Learned A.P.P. Mr.H.K. Patel appearing for the State of Gujarat mainly contended that the learned trial Judge has not properly appreciated the evidence on record and committed grave error in acquitting the accused persons i.e. respondent Nos.4 to 8 of Criminal Appeal No.761 of 2008 for the offence punishable under Section 489(A) to 489(D) and Section 120B of I.P.C. and, therefore, the impugned judgment and order of acquittal requires to be interfered with. The learned A.P.P. contended that from the material and evidence on record, the specific role played

by each accused person is surfaced on record and, therefore, their involvement in the alleged commission of offence for which, they are charged, is also established beyond the reasonable doubt and, therefore, the learned trial Judge ought to have convicted the respondent Nos.4 to 8 of the charges leveled against them. It is vehemently urged by him that in view of the material evidence available on record, it is evident that the accused persons hatched criminal conspiracy to destroy nation's economy by circulating fake currency notes and, therefore, the learned trial Judge ought not to have shown any leniency towards the respondent Nos.4 to 8. The learned A.P.P., after relying upon oral deposition of P.W.19-Mr.Mahavirsinh Navalsinh Sarvaiya, recovery panchnamas drawn at his instance vide Exhs.55, 59 and 75, recovery panchnama of computer, hard-disk, printer etc. recovered in respect of the offence registered with Bavla Police Station vide C.R.No.91 of 2006 vide Exh.111, F.S.L. report at Exh.169 read with oral evidence of Expert P.W.18- Mr.Mukeshbhai Nandshankar Joshi, contended that respondents - original accused Nos.1 to 3 were caught with fake currency notes which were seized under the panchnama and however, the learned trial Judge has not properly appreciated the said oral as well as documentary evidence in its true perspective and, therefore, it has resulted into lesser imposition of punishment to the accused Nos.1 to 3. It is urged by him that the accused persons were caught with fake currency notes which were seized under various three panchnamas and then, during the course of further investigation, names of other accused persons were disclosed and they were also arrested. However, the said aspect has not been considered by the learned trial Judge and, therefore, the impugned judgment and order of acquittal may be quashed and set aside and punishment imposed upon the accused Nos.1 to 3 may be enhanced suitably since the offence has direct impact on the nation's economy. The learned A.P.P. further contended that the learned trial Judge has not properly appreciated the evidence of prosecution witness i.e. P.W.No.9- Mr.Ghanshyamsinh Pratapsinh Chauhan, P.W.10-Mr.Pradipsinh Narendrasinh Rana, P.W.11-Mr.Ruprendrasinh Karansinh Jadeja, P.W.12-Mr.Ramgar Dolatgar Gosai, P.W.13- Mr.Pravinbhai Menandbhai Sonara, P.W.14-Mr.Mansukhbhai Devshankarbhai Madhak, P.W.15-Mr.Dineshbhai Mulubhai Gadhvi, P.W.17-Mr.Rajeshkumar Ramjibhai Limbad, P.W.18- Mr.Mukeshbhai Nandshankar Joshi, P.W.19-Mr.Mahavirsinh Navalsinh Sarviya and P.W.20-Mr.Satishchandra Ganpatram Khandlaval. On all these oral submissions, it is urged that the appeals preferred at the instance of the State of Gujarat may be accepted and accused persons of both the sessions cases be suitably punished for the offence they have committed as per charge framed and the offence proved by the State beyond reasonable doubt on the strength of evidence placed on record.

7 Per contra, learned advocate Mr.D.C. Sejpal appearing for the appellant-original accused No.2 in Criminal Appeal No.2657 of 2008, learned advocate Ms.G.R. Vijyalaxmi appearing for opponent No.1 as well as learned advocate Mr.P.M. Lakhani appearing for opponent Nos.2 and 3 in Criminal Appeal Nos.760 and 761 of 2012 respectively, learned advocate Mr.Pratik Barot appearing for opponent Nos.4 to 6, learned advocate Ms.S.M. Ahuja appearing for opponent No.7 and learned advocate Mr.Aftab Hussain Ansari appearing for opponent No.8 in Criminal Appeal No.761 of 2012, after drawing our attention to the same set of evidence and material which was relied upon by learned A.P.P. Mr.H.K. Patel for the State, would contend that it is a case where, there is no iota of

evidence directly or remotely connecting the accused Nos.4 to 7 of Sessions Case No.9 of 2007 and accused-Mr.Virendra @ Viru Manilal Darji of Sessions Case No.69 of 2007 with the alleged offence. Learned advocates appearing for the respective accused persons would contend that burden to show that currency notes were fake and the accused persons had intention or knowledge to commit an offence was upon the prosecution and further, the prosecution did not prove the crucial ingredients i.e. mens rea which is must for bringing home the guilt of accused persons under the provisions of Sections 489A to 489D of I.P.C. The learned advocates appearing for the respective accused persons would contend that there is no iota of evidence for the offence of criminal conspiracy under Section 120B of I.P.C. The learned advocates appearing for the respective accused persons would contend that there are lot of discrepancies/lapses in the investigation in not following the procedural aspect while drawing recovery panchnamas vide Exhs.55,59 and 75. The learned advocates appearing for the respective accused persons would contend that the Investigating Officer - P.W.19 did not hand over the panchnamas and seized fake currency notes to the concerned police station and recovery panchnamas drawn by the said witness were not dictated by the panchas and the said fake currency notes ought to have been sent to the Reserve Bank of India or some other competent agency for its examination. The learned advocates appearing for the respective accused persons contend that the F.S.L. has examined only five notes and the report of F.S.L. is also silent in respect of the quality of paper, colour, thread, water mark, printing and other relevant aspects of the said fake currency notes. The learned advocates appearing for the respective accused persons would contend that there is no iota of evidence as to ownership of the house from where, computer, hard disk and printer etc. were recovered under discovery panchnama Exh.111 drawn in connection with the offence registered with Bavla Police Station vide C.R.No.91 of 2006. The learned advocates appearing for the respective accused persons would contend that the 'Lakh' seal affixed under the various recovery panchnamas, was not found by F.S.L. The learned advocates appearing for the respective accused persons would contend that the accused Nos.4 to 7 of Sessions Case No.9 of 2007 and accused-Mr.Virendra @ Viru Manilal Darji of Sessions Case No.69 of 2007 came to be arrested on the strength of statements of co-accused only and no further evidence was collected by the Investigating Agency and, therefore, lot of miscarriage of justice has been caused to the accused Nos.4 to 7 of Sessions Case No.9 of 2007 and accused-Mr.Virendra @ Viru Manilal Darji of Sessions Case No.69 of 2007, who remained in judicial custody for a period of about 1 year or so.

The learned advocates appearing for the respective accused persons would contend that P.W.19-Mr.Mahavirsinh Navalsinh Sarvaiya did not utter a word about drawing of recovery panchnamas Exhs.55,59 and 75 in his presence and, therefore, it is submitted that if everything is done by the police officer i.e. recording of complaint, search and seizure made by the same officer, would be an infirmity in the case which is bound to reflect on the credibility of the prosecution case and, therefore, the prosecution case must fail on this count also. Lastly, the learned advocates appearing for the respective accused persons would contend that no question in further statement with regard to currency notes being fake or counterfeit, put to any of the accused persons and also no incriminating

circumstances in respect of discovery panchnama Exh.111 drawn in another offence registered with Bavla police station vide C.R.No.91 of 2006 has been put to any of the accused persons but, on the contrary, the learned trial Judge put identical questions to all the accused persons of both the sessions cases recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short, the 'Code') and, therefore, grave injustice has been caused to the accused persons apart from non-framing of specific charge against the accused Nos.4 to 7 of Sessions Case No.9 of 2007 and accused-Mr.Virendra @ Viru Manilal Darji of Sessions Case No.69 of 2007.

8 We have heard the submissions made at bar extensively, examined oral as well as the documentary evidence placed before the learned trial judge for its consideration so as to prove the prosecution case and we have minutely examined findings of fact recorded by the learned trial Judge in coming to the conclusion as to conviction and acquittal of the accused persons for the offence in question, as aforesaid.

8.1. After conclusion of hearing by the learned advocates appearing for the respective parties and before the judgment is pronounced, learned advocate Ms.S.M. Ahuja appearing for accused No.7 places on record written submissions which are ordered to be taken on record and learned A.P.P. Mr.H.K. Patel, upon filing of such written submissions, stated that the State is not required to make any further submissions. It appears that the present accused No.7, who was facing trial in connection with the F.I.R. registered with Bavla police station vide C.R.No.91 of 2006 in Sessions Case No.161 of 2006, came to be acquitted on 16.07.2011.

9 Now, it is right time to appreciate the rival submissions made at bar. We are conscious of the fact that in the matter of appreciation of evidence in view of the provisions contained in the Code of Criminal Procedure, 1973 and the Evidence Act, merely because the panch-witnesses do not support the prosecution case, the prosecution case need not be thrown over board as unreliable. Turning hostile on the part of the panch-witnesses in the criminal trial is not uncommon and it is also not unknown to the Court. Therefore, if the testimonies of the police officers, as in the present case, otherwise found to be true, dependable and reliable, no Court can discard the same on the ground that the witnesses are police officers. The truthfulness and reliability of the Investigating Officers in the present case further needs to be closely examined because P.W.19-Mr.Mahavirsinh Navalsinh Sarvaiya has not only recorded the complaint but has also carried out personal search of the accused Nos.1 to 3 and seized the fake currency notes as per recovery panchnama Exhs.55, 59 and 75 respectively. Bearing in mind this aspect of the case, now, let us scrutinize the evidence as placed on record. Upon scrutiny of the material evidence relied upon by learned A.P.P. Mr.H.K. Patel for the State during the course of hearing, we found that the credibility of the prosecution case is certainly doubtful and because of serious irregularity, fault and lapses committed by the Investigating Agency, no finding of guilt of any of the accused persons can be recorded and, therefore, the prosecution case miserably fails and we have no option except to reject the appeals preferred at the instance of the State and to accept the appeal preferred by the convict-original accused No.2. The obvious reasons are as under:-

9.1. The secret information received by P.W.12-Head Constable - Mr.Ramgar Dolatgar Gosai is neither recorded anywhere nor transmitted to any other officers that one person wearing black pant-shirt, having cap on his head, had fake notes at the place, time on 12.09.2006.

9.2. P.W.19 - Investigating Officer - Mr.Mahavirsinh Navalsinh Sarvaiya, in terms, admitted that he has not reduced into writing the said secret information received from P.W.12 - Mr.Ramgar Dolatgar Gosai nor transmitted to the control room though having wireless facility available in the vehicle while on petrolling.

9.3. The said P.W.19 - Investigating Officer, in his cross- examination recorded below Exh.143 at page No.7, admits that recovery panchnamas were recorded by him and panchas through writer.

9.4. P.W.19 - Investigating Officer admits in his cross- examination recorded below Exh.143 at page No.7 that no search of the police staff or panch-witnesses was made before seizure/recovery of fake notes from accused Nos.1 to 3.

9.5. The said P.W.19 - Investigating Officer admits that he has not mentioned serial numbers of fake notes recovered from accused No.1 in the F.I.R. at Exh.144 itself.

9.6. The said P.W.19 - Investigating Officer admits that no muddamal or any incriminating material were recovered from accused Nos.4 - Mr.Pravin Najabhai Vaghela, accused No.5 - Mr.Jivraj Dhulabhai Vala, accused No.6 - Mr.Pravin Jeram Chopda Patel of Sessions Case No.9 of 2007 and accused - Virendra @ Viru Manilal Darji of Sessions Case Nos.69 of 2007.

9.7. The said P.W.19 - Investigating Officer admits that he has not made any report to the Reserve Bank of India or any other competent authority so as to verify whether the notes in question were counterfeit or not?

9.8. Surprisingly, P.W.19 - Investigating Officer was not shown recovery panchnama at Exhs.55, 59 and 75 so as to testify before the Court that he has drawn the panchnamas in presence of the panch-witnesses. This fact becomes relevant because of panch-witnesses of the said panchnamas at Exhs.55,59 and 75 turned hostile and the Court is called upon to accept the versions of police officers only. We fail to understand as to why, the learned prosecutor in-charge of the case, did not draw attention of the said P.W.19 - Investigating Officer to prove that under his supervision and direction, recovery panchnamas at Exhs.55,59 and 75 were drawn. The said aspect is relevant because the accused persons are charged for the offence of possessing fake currency notes and the learned trial Judge relied upon the said panchnamas while recording finding of guilt.

9.9. The prosecution case qua accused Nos.4 to 7 of Sessions Case Nos.9 of 2007 as well as accused - Mr.Virendra @ Viru Manilal Darji of Sessions Case Nos.69 of 2007 rests on statement made by the co-accused persons to P.W.19- Mr.Mahavirsinh Navalsinh Sarvaiya. Section 25 of the Indian Evidence Act provides "no confession made to a police officer shall be proved as against the person

accused of any offence". The terms of Section 25 of the Indian Evidence Act are imperative. The confession made to a police officer under no circumstances is admissible in evidence against the accused. In the case on hand, all the confessions connecting the other accused persons were made when the respective accused persons were in police custody. In the case on hand, Section 27 of the Indian Evidence Act has no applicability because nothing has been discovered in consequence of information received from the accused persons so as to believe recovery of fake currency notes from the possession of the said accused person Nos.1 to 3.

9.10. The prosecution witnesses, mainly the police officers, in terms, deposed that the fake currency notes, which were seized, were placed in one plastic jar and was sealed with 'Lakh' and such fact is recorded in the recovery panchnamas Exhs.55,59 and 75 and all the police personnel deposed in that line. Whereas, P.W.18 - Mr.Mukeshbhai Nandshankar Joshi, whose evidence is recorded below Exh.115, admits in cross- examination that the sample muddamal articles, which were sent to F.S.L., did not bear any 'Lakh'. The said witness further admits that he has examined 5 to 7 fake currency notes only. 9.11. The Investigating Officer of the present offence being C.R.No.252 of 2006 registered with Malaviyanagar police station, Rajkot relied upon F.S.L. Report Exh.169 which was prepared for the offence registered with Bavla police station vide C.R.No.91 of 2006 in respect of the fake currency notes recovered as per discovery panchnama Exh.111 drawn in the said offence. Admittedly, muddamal i.e. fake currency notes seized/recovered from the possession of the accused Nos.1 to 3 and F.S.L. Report Exh.169, indicate that the said currency notes recovered under recovery panchnamas vide Exhs.55,59 and 75 were not printed from the computer and printer seized as per panchnama Exh.72. Meaning thereby, the prosecution case rests on the F.S.L. Report Exh.169 prepared on the basis of the muddamal recovered as per panchnama Exh.111 drawn for the offence registered vide C.R.No.91 of 2006 with Bavla police station. Neither the panchas of discovery panchnama Exh.111 supported the prosecution case nor the prosecution brought on record the fact as to ownership of the house from where, the computer, printer etc. were recovered at the instance of the accused No.7 nor examined the owner of the house, namely, Mr.Kiranbhai to prove that incriminating muddamal as per panchnama Exh.111 was recovered at the instance of accused No.7 from the said house. The said discovery panchnama Exh.111 drawn with reference to the offence registered with Bavla police station vide C.R.No.91 of 2006 cannot be treated as valuable piece of evidence and such discovery panchnama can be treated as piece of corroborative evidence and, therefore, no reliance can be placed on such piece of evidence to hold accused Nos.1 to 3 guilty for the offence in question. In order to enable the Court to safely rely upon the evidence of recovery of incriminating fact/materials at the instance of the accused No.7, as contemplated under Section 27 of the Indian Evidence Act, it is necessary that the exact words attributed to the accused No.7 as statement made by him be brought on record and for this purpose, the panch- witnesses as well as the Investigating Officer are obliged to depose in their evidence an exact statement and not by merely stating that discovery panchnama of computer set, through which, the fake

currency notes were printed was drawn and accused No.7 was willing to take it out from a particular place. Admittedly, one of the panchas, namely, P.W.16-Mr.Nalinbhai Chimanbhai Makwana, turned hostile and the Investigating Officer in-charge of the offence registered with Bavla police station vide C.R.No.91 of 2006 has not deposed anything about statement that the disputed currency notes were printed through computer set discovered as per panchnama Exh.111. On the contrary, P.W.17-Mr.Rajeshkumar Ramjibhai Limbad-Investigating Officer, who was examined below Exh.113, in terms, states that accused No.7 desirous to show the place which he has kept on rent before 4 days of drawing of discovery panchnama Exh.111. In the said evidence, it is deposed by the said Investigating Officer to the effect that the accused No.7 stated that he is willing to produce the computer set through which, he printed the notes with reference to the offence registered with Bavla police station vide C.R.No.91 of 2006 and not with reference to the disputed notes of the present offence registered vide C.R.No.252 of 2006. Thus, it would not suggest that the accused No.7 indicated anything about printing of disputed notes in the computer set discovered as per panchnama Exh.111. Therefore, the learned trial Judge has committed serious error in placing reliance on this discovery panchnama Exh.111 which does not prove anything with reference to the present offence.

9.12. P.W.20 - Mr.Satishchandra Ganpatram Khandlaval, whose deposition recorded below Exh.168, was serving as Deputy Director at F.S.L., Ahmedabad at the relevant time and in his cross-examination at page-4, he admits that he has not verified the muddamal notes which were subject matter of F.S.L. Report Exh.169 forming part of materials collected with reference to the offence registered vide C.R.No.91 of 2006 with Bavla police station.

9.13. Apart from what has been discussed hereinabove, for the purpose of bringing home the guilt under Section 489B of I.P.C., the knowledge or reason to believe the currency notes to be forged or counterfeit has to be established by the prosecution. Similarly, for the purpose of bringing home the guilt under Section 489C of I.P.C., the knowledge or reason to believe and the intention to use the forged or counterfeit currency note as genuine or its possibility of being so used must be established against the accused. When pointedly we asked, learned A.P.P. Mr.H.K. Patel for the State was unable to lay his finger on such evidence or findings against the accused persons. In this connection, it is worthwhile to extract the observations made by the Hon'ble Apex Court in the case of Umashanker V/s. State of Chhattisgarh reported in 2001 CRI.L.J. 4696 wherein, in para 8, it is held as under:-

"8. A perusal of the provisions, extracted above, shows that mens rea of offences under Section 489-B and 489-C is, "knowing or having reason to believe the currency-notes or bank-notes are forged or counterfeit". Without the afore-mentioned 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 489-B of I.P.C. 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 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 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 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 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 of I.P.C. and acquit him of the said charges [See : M. Mammutti v. State of Karnataka : AIR 1979 SC 1705. 1979 Cri LJ 1383."

9.14. As noticed hereinabove, the conviction of the accused No.2 by the trial Court is under Sections 489B and 489C of I.P.C. which read as under:-

"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."

9.15. Further, upon perusal of the provisions, extracted above, shows that mens rea of the offences under Section 489B and 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 used as genuine forged or counterfeit currency notes or bank notes is not enough to constitute offence under Section 489B of I.P.C. and 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 489-C in the absence of the mens rea. No material is brought on record by the prosecution to show that the convicted-accused Nos.1 to 3 had requisite mens rea. Further, it is also not shown that any specific question with regard to the currency notes being fake or counterfeit, was put to any of the accused persons in their examination under Section 313 of the Code.

9.16. In criminal jurisprudence, the case of the prosecution would rest on its own strength and while dealing with the serious question of guilt or innocence of the persons charged with the crime, the onus of proving everything essential to the establishment of charge against the accused persons lies on the prosecution. There must be a clear proof of the corpus delicti and hypothesis of guilt should be consistent with all the facts proved. In the case on hand, the learned trial Judge influenced by three recovery panchnamas vide Exhs.55,59 and 75 whereby, the disputed notes were recovered from the possession of the accused Nos.1 to 3. Mere possession would not be sufficient to draw presumption that the notes are counterfeit. Upon our reanalysis of the entire evidence on record, learned A.P.P. Mr.H.K. Patel could not show that any of the accused Nos.1 to 3 had intention to use the said notes as genuine and further, the prosecution could not bring any transaction of the accused with any other person. In the impugned judgment, the learned trial Judge found that if those notes were used in the market, then, it would have destroyed the economy and further, if such notes were received by any innocent person then, such innocent person may become victim of the offence. These findings are nothing but based on assumption or surmises and without any evidence on record, the learned trial Judge could not draw such inferences when the prosecution failed to establish that the accused persons were intending to use the said currency notes as genuine and further, actually, any notes were used by any of the accused person. Therefore, the accused persons, more particularly, accused Nos.1 to 3, cannot be convicted under Sections 489B and 489C of I.P.C.

9.17. The above irregularities, lapses or fault appear in the investigation coupled with the fact that P.W.19- Mr.Mahavirsinh Navalsinh Sarvaiya, who is the complainant and also Investigating Officer, failed to discharge his duty in a legal manner and, therefore, the same would be the infirmity in the present case which reflects on the credibility of the prosecution case.

9.18. Learned A.P.P. Mr.H.K. Patel appearing for the State could not point out any material or evidence gathered by the Investigating Agency so as to sustain the charge of conspiracy alleged to have been hatched by the accused persons of both the Sessions Cases. Even for the sake of allegation, we have not found that there is any charge of conspiracy alleged in the evidence led before the learned trial Court or even in the police papers.

10 From the discussion made hereinabove, it is quite clear that the entire prosecution case rests on the discovery panchnama Exh.111 drawn by P.W.17 in respect of the offence registered with Bavla police station vide C.R.No.91 of 2006. Surprisingly and shockingly, F.S.L. Report Exh.169 read with oral evidence of Officer-P.W.18-Mr.Mukeshbhai Nandshankar Joshi discloses that the fake notes recovered as per recovery panchnama Exhs.55,59 and 75 were printed in the computer set discovered in pursuance to the panchnama Exh.111 drawn while investigating the offence registered vide C.R.No.91 of 2006 with Bavla police station whereas, P.W.17 - Investigating Officer of the said crime states before the Court that the accused No.7 produced the computer set wherein, fake notes concerning the offence being C.R.No.91 of 2006 were printed. Such serious contradictory evidence on record does not inspire any confidence in our

mind so as to believe the prosecution case as projected before the trial Court. The prosecution failed to prove recovery panchnama Exhs.55,59 and 75 and no reliance can be placed on such panchnamas because the fake notes, which are alleged to have been printed in the computer set recovered in pursuance to panchnama Exh.72, were not found fake by the F.S.L. as per Report Exh.122. In other words, the entire prosecution case rests on panchnama Exh.111 drawn with reference to offence registered vide C.R.No.91 of 2006 with Bavla police station. In that view of the matter, it takes us to consider serious lapses and its consequential effects resulted because of the failure on the part of the learned Sessions Judge in taking bare minimum care while framing charge. If the learned Sessions Judge would have shown minimum alertness, accused Nos.4 to 6 would not have been deprived of their liberty and would not have to remain behind the bar for a period of one year.

11 The gist of the charge as framed by the learned Principal District and Sessions Judge, Rajkot in Sessions Case No.9 of 2007 is required to be considered. The charge framed by learned Sessions Judge-Mr.M.J. Thakkar refers to how and in what manner, the fake currency notes were recovered from the accused Nos.1 to 3 at the place and time mentioned and it is vaguely stated that all the accused persons hatched criminal conspiracy in collusion with one another and with the knowledge that the said currency notes are counterfeit and further, all the accused persons used them as genuine currency notes and helped one another to circulate the said counterfeit currency notes in the market. The charge, as framed, on the face of it, does not disclose or state as to what role is played by accused Nos.4 to 7 of Sessions Case No.9 of 2007 or what material found from their possession or any other relevant material being put to notice of the said accused persons with reference to offence punishable under Sections 489A to 489D of I.P.C. Not only that, no specific charge under Section 120B of I.P.C. is framed against all or any of the accused persons except use of Sections 489A to 489D and also Section 120B of I.P.C. in the charge.

12 It is apparent that the accused Nos.2 to 7 came to be arrested for the offence on the basis of the statements made by the fellow accused and, more particularly, accused Nos.4 to 6 were put to trial without any evidence, direct or indirect. On the date when the charge was framed i.e. on 18.05.2007, the learned Sessions Judge has no occasion to refer to the F.S.L. Report at Exh.169 as it came on record only on 31.05.2007 and similarly, discovery panchnama Exh.111 dated 26.06.2006 was produced in the Record and Proceedings of Sessions Case No.69 of 2007 on 15.11.2007. As such, these two documents and also recovery panchnamas at Exhs.55,59 and 75 do not connect the accused Nos.4 to 6 in any manner with the offence. Therefore, merely on the basis of the statements of co-accused made before the police, which are inadmissible in evidence, charge could not be framed under Sections 489A to 489D read with Section 120B of I.P.C. In the present case, except statements of the co-accused persons made before the police, no other material was brought or was available in the police papers which could form substantive legal evidence on the basis whereof, a charge could be framed. Therefore, in the matter of criminal prosecution, on such statements of co- accused in absence of any iota of corroborative evidence, the learned Sessions Judge ought not to have framed the charge against the accused Nos.4 to 6.

13 As framing of charge directly affects person's liberty substantially, the Court has to apply its mind to the question whether or not, there is any ground for presuming the commission of offence by the accused. In other words, whether the material brought on record would reasonably connect the accused with the crime and no more is required to be inquired into. In a series of pronouncements of the Hon'ble Apex Court, it is held that an order framing a charge affects person's liberty substantially and, therefore, it is the duty of the Court to consider judiciously whether the material warrants the framing of the charge. The purpose of framing of charges is that the accused should be informed with certainty and accuracy of the charge brought against him. The essential part of law is not on any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. When we say so, we are conscious of the fact that we have provisions like Sections 215 and 264 in the Code. Upon analysis and reassessment of evidence, we are of the opinion that neither any prejudice has been caused nor has there been any failure of justice in non- framing of specific charge has resulted, at the end of trial to the accused persons. But, so far as accused Nos.4 to 7 of Sessions Case No.9 of 2007 and accused-Mr.Virendra @ Viru Manilal Darji of Sessions Case No.69 of 2007, who are acquitted from the charges of offence punishable under Sections 489A to 489D and Section 120B of I.P.C., we were required to look into this part of matter because in Criminal Appeal No.761 of 2012 and, more particularly, in ground 'H', the State of Gujarat has taken a ground that the learned trial Judge failed to appreciate that the names of accused Nos.4 to 7 of Sessions Case No.9 of 2007 and accused-Mr.Virendra @ Viru Manilal Darji of Sessions Case No.69 of 2007 shown by the Investigating Agency as accused and no evidence against them is coming forth in the course of trial to prove the guilt of the said accused persons. According to the State, in such eventuality, it is bounden duty of the learned trial Judge to inquire in detail into the matter and under what circumstances either any oral or any documentary evidence not coming forth in support of the prosecution case. It is contended by the State in the said ground that if the same has happened because of omission, commission or dereliction of duty on the part of the prosecution witnesses or the Investigating Agency or other officer concerned, the learned trial Judge is required to ensure that miscarriage of justice is avoided. Therefore, it is urged to reverse the acquittal order passed by the learned trial Judge and direct further inquiry into the matter and retrial as per the legal provisions applicable to the facts of the case to avoid miscarriage of justice and to do substantial justice.

14 We are not, in any manner, disagreement with such ground taken in the memo of appeal but, while considering such ground, we cannot overlook the provisions contained in Section 464 of the Code which reads as under:-

> "Section 464. Effect of omission to frame, or absence of, or error in, charge. (1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. (2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may - (a) in the case of an omission to frame a charge, order that a charge be framed and

that the trial be recommenced from the point immediately after the framing of the charge. (b) in the case of an error, omission or irregularity in the charge,direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

15 Upon reassessment and re-appreciation of evidence, on the basis of the material placed on record and on its face value, we do not see that any failure of justice has, in fact, been occasioned so as to direct a new trial to be held upon a charge framed in the manner required to be framed in view of Section 489A to 489D read with Section 120B of I.P.C. But, at the same time, we cannot shut our eyes to the fact as to carelessness and negligence on the part of the learned Judicial Officer, who is holding post of Sessions Judge and who behaved in a very casual and mechanical manner in the matter of framing charge inasmuch as, there was no iota of evidence directly, indirectly or remotely connecting the accused Nos.4 to 6 of Sessions Case Nos.9 of 2007 with the offence. It is an admitted fact that the said accused persons of Sessions Case No.9 of 2007 i.e. accused No.4-Mr.Pravinbhai Najabhai Waghela came to be arrested on 14.09.2006 and enlarged on bail on 14.08.2007, accused No.5-Mr.Jivaraj Dhulabhai Vala came to be arrested on 14.09.2006 and enlarged on bail on 15.05.2008, accused No.6-Mr.Pravin Jeram Chopada Patel came to be arrested on 03.10.2006 and enlarged on bail on 17.10.2007. If the learned Sessions Judge has applied his mind to the material placed along with the chargesheet, he would have definitely observed that there was no F.S.L. Report Exh.169 and panchnama Exh.111 of Bavla police station on the date when, the charge was framed and on the top of it, there was no evidence qua the said accused persons except the police statement of co-accused so as to frame charge against them for any of the offences. If at the relevant time, the learned Sessions Judge would have shown minimum vigilance or alertness, he would have discharged the said accused persons on the date of framing of charge i.e. 18.05.2007 and he could have protected the personal liberty of the said accused persons at that stage only. The mode and manner in which the charge is framed, discloses that the learned Sessions Judge has framed the charge without reading materials or without putting minimum efforts to find out whether the evidence produced before him, gives rise to suspicion of commission of any offence by the said accused persons. He was legally duty bound to discharge the accused persons but, it is only because of his carelessness and negligent judicial conduct, the said accused persons remained behind the bar without any evidence on record and thus, they deprived of their personal liberty for no fault. Therefore, we do not find that there is any failure of justice so as to order retrial of the case, as suggested by the learned A.P.P. appearing for the State but, we definitely suggest to the Hon'ble the Acting Chief Justice of the High Court of Gujarat to take suitable action qua the learned Sessions Judge for his casual and mechanical approach in such a serious matter and, more particularly, in the matter of framing charge, which resulted into deprivation of the personal liberty of the above accused persons for about one year. The said period can never be considered to be a small period in one's life, apart from social stigma and other personal pains and sufferings suffered by the accused persons and their family members. Therefore, we direct the Registrar General to place the copy of this judgment

before the Hon'ble the Acting Chief Justice and other Hon'ble Judges of this Court for taking suitable administrative/disciplinary action against learned Sessions Judge - Mr.M.J. Thakkar as may deem fit and proper.

16 For the forgoing reasons, we have no option but to hold that the charges framed under Sections 489B and 489C of I.P.C. are not proved qua accused No.2 and, therefore, we set aside conviction and sentence imposed upon the accused No.2 of Criminal Appeal No.2657 of 2008 and acquit him of the said charges. Since the appellant of Criminal Appeal No.2657 of 2008 is on bail, his bail bond shall stands cancelled and fine, if paid, be refunded to him. Since we have not believed the prosecution case against any of the accused persons and as accused Nos.1 and 3 have not challenged the conviction and already suffered conviction imposed upon them, we do not find any case against accused Nos.1 and 3 for enhancement and accordingly, the appeal filed by the State for enhancement is liable to be dismissed qua accused Nos.1 to 3 and is accordingly dismissed. Similarly, since we do not find any merits, perversity or compelling reasons to defer acquittal order of the accused persons with respect to the offences, as aforesaid, Criminal Appeal No.761 of 2012 preferred by the State also deserves to be dismissed and is accordingly dismissed.

17 While parting, the Registrar General is directed to comply with the directions issued in paragraph No.15 of this judgment immediately. Registry is also directed to place copy of this judgment before the Hon'ble the Acting Chief Justice for seeking orders to circulate copy of this judgment amongst all the Sessions Judges.

18 Registry to maintain copy of this judgment in each appeal.