

# KERALA HIGH COURT

A.P. Kuttan Panicker

Vs

State of Kerala

(Anna Chandy and P G Menon, JJ.)

03.08.1962

## JUDGMENT

**Anna Chandy, J.**

1. These criminal appeals and criminal revision petition arise from the judgment of the Sessions Judge of Trivandram in a counterfeit currency note case.
2. Of the nine accused persons tried by the learned Judge for the offences punishable under Sections 120-B, 489-A ' and 489-D I.P.C. accused 4, 5, 6 and 8 have been acquitted and the rest convicted. The first accused was convicted under Section 120-B I.P.C. alone and was sentenced to undergo rigorous imprisonment for two years. Accused 3, 3 and 9, were convicted under Sections-120-B, 489-A and 489-D and given a concurrent sentence of two years' rigorous imprisonment. Accused 7 is convicted under Sections 120-B and 489-D I.P.C. and given a concurrent sentence of rigorous imprisonment for two years. Along, with the appeals of the convicted persons the State's appeal against the acquittal of accused 4, 5, 6 and 8 and the revision petition asking for the enhancement of the sentence of the appellants have been heard by us.
3. The prosecution case is that these nine accused together with two others, who have turned approvers and one Krishnan, who is now no more, entered into a conspiracy to produce counterfeit two-rupees currency notes. They obtained the blocks necessary for printing the notes from one N.S. Nair who later committed suicide and also purchased a press and other necessary equipment but were unsuccessful in producing counterfeit notes as the blocks turned out to be defective. They later obtained another set of blocks and had given them to be mounted and corrected when the conspiracy came to light and they were arrested.
4. The main evidence in this case is provided by the two approvers (P.Ws. 1 and 2) and the prosecution case is best stated as sworn to by them.

5. P.W. 1 Ravindran is a native of Kadak-kavoor. He had passed his Matriculation and at the relevant time was a student of automobile engineering at the Central Motor School in Thampanoor, Trivandrum, staying in a hostel called the Majestic Home near the railway over-bridge at Thampanoor. One day towards the end of December 1959 P.W. 1 met Krishnan who was known to him before. Krishnan invited P.W. 1 to visit him at his house a couple of days later. Accordingly, P.W. 1 went to Krishnan's house at about 9 p.m. on 2nd January, 1960. He found Kuttan Panioker (accused 1) and Krishnan Panic-ker (accused 5) already there and talking with Krishnan. He joined them and soon the talk turned to the counterfeiting of currency. Krishnan said that he knew one N.S. Nair an expert in block making and who had been involved in a counterfeiting case recently. Krishnan volunteered to get the blocks made by N.S. Nair if his companions so desired. P.W. 1 in his turn offered to get the blocks made by an acquaintance of his, one Narayanan Asari (accused 9). They finally decided that Krishnan should approach N.S. Nair and try to obtain the necessary blocks. About a week later, Krishnan met P.W. 1 at the Majestic Home and asked him to go over to the house of accused 1 at Poovar two days later. On the appointed day, Krishnan together with accused 5 and another person, Bhanu Panicker (accused 6) came to the Majestic Home in Krishnan's car and after picking up P.W. 1 proceeded to Poovar. When they reached the first accused's house one Mohammed Sali (accused 3) was already there. Krishnan informed the others that he had approached N.S. Nair who agreed to make the necessary blocks for counterfeiting two-rupee notes. Krishnan further told them that N.S. Nair had asked him to get the blocks corrected and mounted by some one else. P.W. 1 suggested that the job should be got done by his friend accused 9. They then decided to buy a press to print the notes. Accused 1 suggested that the press should be purchased through Yesudasan (accused 3) a friend of his and the owner of the Vijaya Press. Accused 2 volunteered to invest the money for the press. After this discussion the accused dispersed. The next day, P.W. 1 went to Paravoor and talked to accused 9 about mounting the blocks to which the latter agreed. This information was conveyed by P.W. 1 to Krishnan at the Taj Mahal Hotel in Trivandrum which Krishnan often used to visit. At Krishnan's request P.W. 1 went again to Taj Hotel four days later. There he met Krishnan, accused 1, 2, 3, 5 and 6. Krishnan showed them four blocks of the two-rupee currency note which he handed over to P.W. 1 to get them mounted and corrected by accused 9. The talk turned to the availability of a house for carrying out the printing of notes. Accused 6 stated that he could not find a suitable house for the purpose. However, he undertook to arrange the house of one Gangadharan (accused 7) if no other house was available. Accused 3 stated that if found suitable, the house of Thankayyan Nadar (accused 4) at Anayara could be arranged for. P.W. 1, Krishnan and accused 1 and 3 went the same night to the house of accused 4 and after inspecting it decided that the house will serve the purpose they had in mind. The next day, P.W. 1 went to Paravoor and handed the blocks to accused 9 to be mounted. A few days later, he met Krishnan again at the Taj Hotel and informed him about giving the blocks to

accused 9. Krishnan in his turn informed him that a press had been purchased by accused 3 through P.W. 2. One day early in March P.W. 1 got back the mounted blocks from accused 9 and after handing them over to Krishnan at Trivandrum returned to his house at Kadakkavoor. Early in April on the 6th or 7th he was informed by accused 3 that Krishnan wanted to meet him. He met Krishnan the same day when he was informed that while printing proofs the blocks were damaged. Krishnan held P.W. 1 responsible for the trouble. P.W. 1 protested against that and hot words were exchanged between them. They parted; P.W. 1 agreed to bring accused 9 to meet Krishnan-. When P.W. 1 informed accused 9 about this, accused 9 disclaimed all responsibility, alleging that damage was caused because of the defects in the blocks. He also refused to go to Krishnan's house. After this P.W. 1 returned to his house at Kadakkavoor and had no more dealings with the other conspirators.

6. The thread of the narrative is taken up by P.W. a Augustine Thomas. He is the proprietor of the St. Thomas Type Foundry in Kunnukuzhi, Trivandrum. He was acquainted with accused 3 as the owner of the Vijaya Press and had business-dealings with him. One day, about the 13th January 1960, accused 3 met P.W. 2 and told him that he wanted to buy a treadle press to start a branch of his press at Kattakada. P.W. 2 who knew that Narayanan Nair (P.W. 6) had such a press for sale approached him and P.W. 6 promised to sell it for Rs. 750. A few days later P.W. 2 conveyed this information to accused 3 and both of them went to the house of P.W. 6 to inspect the press. After some bargaining the price was finally fixed at Rs. 550. On 12th January 1960 accused 1 and 3 came in first accused's car to the house of P.W. 2 and after picking him up went to P.W. 6. They paid the money and took delivery of the press. Though the price actually paid was only Rs. 550/- the sale deed was written for Rs. 1,500/-. They then dismantled the press and carried it in the car to Krishnan's house. P.W. 2 was told that he would be informed when the press was to be assembled and then sent away. One day early in March 1960 accused 1 and 3 took P.W. a to Krishnan's house. There they met accused 2. All of them together loaded the dismantled press into the first accused's car and went to the house of accused 7 at Aryanad where they met accused 5, 6 and 7. P.W. 2 and the others removed the press to the house and there P.W. 2 with the help of accused 3 assembled it. According to P.W. 2 it was at this time that his suspicions were roused as to the purpose the press was to serve. He protested but was prevailed upon to join the conspiracy. About a week later, accused 3 informed P.W. 2 that he should go to the house of accused 7 on the 5th of April to help in the printing of the notes. Accordingly P.W. 2 went to accused 7's house at about 8-30 p.m. on 5-4-1961. There he met accused 5, 6 and 7. Some time later accused 1 to 4 and Krishnan also reached the place. Krishnan had six blocks with him and accused 3 some paper and block printing ink. Accused 3 and P.W. 2 printed proofs from all the six blocks but the results were not satisfactory. Krishnan said that accused 9 and Ravandran (P.W. 1) were responsible for the defects in the blocks. Soon afterwards, entrusting the blocks to accused 7 the others left the place. Two months later in June-accused 2, 3 and 4

came in a car to the house of P.W. 2 and wanted him to help them to remove the press from the house of accused 7 to that of accused 4. P.W. 2 accompanied them to accused 7's house and from there removed the press to the house of accused 4 and a box containing-paper, ink, etc., to the shop of accused 2 at Chelae. On the first or second of November 1960, Krishnan took P.W. 2 to Paravoor to the house of accused 9. Krishnan accused the ninth accused of cheating him. He said that the blocks returned by accused 9 were not the ones Krishnan had sent to him. After an exchange of words, accused 9 handed over to Krishnan four blocks P.W. 2 and Krishnan then left for Trivandrum, Before they parted Krishnan stated that he was going to see Asari in Neyyattinkara to get the blocks corrected. Seven or eight days later, P.W. 3 accompanied by accused 3 and 4 went to Krishnan's house where they met Krishnan and accused 1, 2 and 5. Krishnan gave accused 3 a letter to Narayanan Asari of Neyyattm--kara (accused 8). P.W. 2 and accused 3 took the letter to accused 8 and got four blocks. These they took back to Krishnan. As the blocks were not corrected Krishnan gave them back to accused 3 to get that done. Krishnan then sent P.W. 2 away saying that he would be informed when the blocks were ready. The last contact P.W. 2 had with the other conspirators was on a day early in January 1961 when accused 1 and 4 came in a car to the house of P.W. 2 and wanted him to help them to remove the press from the house of accused 4 to a place in Pallithura as the wife of accused 4 was protesting against keeping the press in her house. P.W. 2 went there and assisted in dismantling the press, packing it in a gunny bag and loading it on to accused 1's car. Accused 1 and 4 left in the car for Pallithura while P.W. 2 returned home. After this incident P.W. 2 did not meet the others again till after his arrest.

7. The police got information regarding this crime on 4th March 1961 when they were investigating another counterfeit currency case. The information was received by P.W. 27 the Circle Inspector of Police, Neyyattinkara who was enquiring into the other case, from Bhuvanendran an accused in that case. P.W. 27 immediately prepared the First Information Report and with the help of P.W. 26 the Sub-Inspector of Police, Nemom began the investigation. They proceeded first to the house of accused 1 at Poovar and arrested him. They also searched his house but nothing incriminating was recovered. Accused 3 was also arrested the same day at his house at Kanjiramkulam. His house was searched and two letters one written by Krishnan and the other by accused 1 and the sale receipt for the press were recovered from there. Early next day, the Police arrived at the house of accused 8 at Neyyattinkara, "The accused's house as well as the press owned by him were searched. Some blocks were recovered from the house and three letters sent by accused 4 were recovered from the press. Both accused 4 and P.W. 2 were arrested on the same day and though their houses were searched nothing incriminating was found. On 5th March 1961 the police accompanied by accused 1 and 4 went to the house of a sister-in-law of accused 4 at Pallithura. From the compound of that house accused 1 and 4 dug up parts of a treadle press which had been buried in the ground. Accused 5 and 6 were arrested the next day

but a search of their house yielded nothing. Accused 2 was arrested on 7th March 1961 and his house and shop searched. The police recovered from his shop a promissory note made by accused 3 in favour of Krishnan and endorsed to accused 2 and a deal-wood box containing paper, ink and other printing materials. Accused 9 was arrested at his house in Paravoor on 13th March 1961 and a search of his house yielded some letters sent to him by Krishnan and accused 4. The next day accused 7 was arrested at Poovar and on searching his house the police recovered some blocks. The last to be apprehended was P.W. 1 who after being in hiding for over a month, surrendered before the Magistrate at Neyyattinkara on 13th April 1961.

8. All the accused denied participation in the conspiracy and have repudiated the searches and recoveries. Both accused 1 and accused 5 alleged that they were falsely implicated in the case due to enmity of P.W. 26, the Sub-Inspector towards them, the enmity, in the case of accused 5 alleged to be due to property disputes between him and the Inspector's family. Accused 2 alleges that the case was foisted on him by P.W. 27 the Circle Inspector due to his ill-feeling towards the accused who had sent a petition to the Government against him. Accused 3 admits that he bought a press from P.W. 6. However, according to him, the press was bought in December 1959 for his own purpose and he later sold it to Krishnan. He further stated that Krishnan finding that the press was defective forced him to sign a pro-note for Rs. 1,400 in his favour to cover the price of the press. All the other accused flatly deny having had anything to do with the crime.

9. As already noted, the main evidence against the accused is provided by the testimony of the two approvers. All the learned Counsel for the defence vehemently contended that the trial court was wrong in accepting the approvers' evidence. It is argued that these witnesses being self-proclaimed criminals cannot be relied upon. It would therefore be helpful to review the principles governing the appreciation of approvers' evidence before we proceed to analyse the testimony of P.Ws. 1 and 2.

10. As the law relating to approvers' evidence has been laid down in *Sarwan Singh v. State of Punjab* there is no need to refer to any earlier decision on the point. His Lordship Gajendragadkar, J" who spoke for the Court held that:

An approver is undoubtedly a competent witness under the Evidence Act, But the appreciation of his evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver.

Every person who is a competent witness is not a reliable witness and the test of reliability has to be satisfied by an approver all the more before the question of corroboration of his evidence is

considered by criminal courts.

Regarding the extent of corroboration His Lordship goes on to observe as follows:

Courts are naturally reluctant to act on the tainted evidence of an approver unless it is corroborated in material particulars by other independent evidence. But it would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

The position therefore is, that the Court may accept the evidence of an approver if he is found to be reliable and his testimony receives corroboration from independent sources. The corroboration, while it need not cover his entire story or all its material particulars, should be of such a nature as to afford the assurance that the main story disclosed by him can safely be accepted. In other words while it is not necessary to insist on complete corroboration, nevertheless it is well to bear in mind the fact that the witness having won pardon for his part in the crime on the undertaking to help obtain the conviction of his erstwhile collaborator, it is not at all unlikely that he may indulge in exaggeration or prevarication in an attempt to carry out his part of the bargain.

11. Turning to evidence of P.Ws. 1 and 2 we may say even at the outset that it does not come up to the standards stated above.

(The judgment then discussed the evidence of P.W. 1 - (paras 12 and 13) and proceeds.)

14. The timely emergence of P.W. 2 after the abrupt and sudden exit of P.W. 1 from the scene looks rather dramatic. He was arrested on the morning of 5th March 1961 and on the same day he was questioned by the Circle Inspector when he is alleged to have made a clean breast of it all. His confession however was recorded only 45 days later. If he had actually admitted anything to the Circle Inspector, there is no explanation why he was kept in the police custody for 15 days and subsequently in the Sub-Jail for another month before he made up his mind to confess before the Magistrate. Prolonged custody immediately preceding the making of the confession is sufficient to stamp the confession as involuntary unless it is properly explained Vide Nathu v. State of Uttar Pradesh. In answer to a specific question by the defence whether he would have disclosed the information that is contained in his confession if he was produced before the Magistrate soon after his arrest he said he would not. (The judgment then discusses the evidence

of P.W. 2 (paras 14 and 15) and proceeds),.

16. When we find that P.Ws. 1 and 2 are unreliable witnesses and that it is not possible to act on their evidence, the question of corroboration does not arise at all. All the same to make assurance doubly sure we shall advert to the evidence and circumstances relied upon by the prosecution by way of corroboration to the evidence of the approvers. It was argued by the learned Special Prosecutor that the evidence of P.Ws. 1 and 2 should be used for corroborating each other. Apart from the fact that the evidence of one approver cannot be used to corroborate the evidence of another there is the positive evidence in the case that both of them were in the same room in the sub-jail for about two or three days and there was every opportunity for collaboration and comparison of notes with a view to come out with a consistent and continuous narration of the events.

(The judgment then again discusses the evidence (paras 17 to 22) and proceeds).

23. We shall now advert to the evidence afforded by the various searches and recoveries. After an ineffective search in the house of accused 1 at Poovar during the night of 4th March 1961. P.W. 27 proceeded to the house of accused 3 and made a search. Ex. P-23 is the search list prepared by him and Exts. P-2, P-14 and P-24 letters are said to have been recovered from inside a table in a room in the house. The third accused asserted that he was not taken along when the Circle Inspector of Police went for effecting the search and attacks the search and recovery as spurious. The column in the search list with the heading "whether the house owner attended the search" is significantly left blank. The search list also does not show from where the documents were taken and who took them or produced them. The attestors P.W. 14 and another Prahakaran who is not examined are not residents of the locality and was taken by P.W. 27 from a distance of 3 miles when he proceeded to the house of accused 3. P.W. 14 admitted that throughout the search he was standing in the varandah outside and he saw the documents for the first time only when they were brought out to the varandah for the preparation of the mahazar. An unsuccessful attempt was made by the prosecution in re-examination to explain away these damaging admissions but they did not succeed in making the witness say that he saw the letters being recovered or produced by the accused from inside the house from the table. As the evidence of the attestor serves no useful purpose the only evidence in support of the search is that of P.W. 27 the Circle Inspector who effected the search. There is no harm in the police officer who makes the search being called as a witness at the trial but in this case in view of the unfair and suspicious feature in the investigation of the case it is neither safe nor desirable to act upon his uncorroborated testimony in respect of the search and recovery.

(The judgment then refers to the evidence in paras 24 to 28.)

29. Before we leave this part of the case we are compelled to make a few observations in general about the searches conducted in the case. It is strange that all the searches were conducted at night though some of them could more conveniently have been done during day time. Though there is nothing in law that prohibits searches in convenient they should be conducted during day time so as to avoid any complaint on the part of the accused that there was room for unfair practices like 'planting' articles. Again even in cases where there was no hurry to conduct searches' "they have been carried out without obtaining the necessary warrant. Where lack of time is not a con-[sideration search without warrant is not proper and the recovery would itself come under suspicion. Also in spite of the fact that respectable neighbours of the locality were available to witness the search invariably people from a distance were taken along to witness the search. Where respectable persons can be found in the neighbourhood and the police officer making the serach takes with him persons who come from a distant locality the door is left open for the charge that he was prompted by a desire to have such witnesses as would be easily persuaded to support any story which he might put forward.

Section 103 Criminal Procedure Code was enacted to ensure fair dealing and a feeling of confidence and security amongst the public in regard to this necessary invasion of a private right regarded as most sacred. In order to give effect to this object it is necessary that the persons selected should be unprejudiced and uninterested in the result of what they have to take part in Vide In re Rajabather .

30. It is now settled law that non-compliance with the provisions of Sections 103 and 165 of the Code will not vitiate the trial or make evidence of the search officer inadmissible in evidence as was held by this Court in Velayudhan v. State . However these salutary provisions are intended to be faithfully observed. It is one thing to say that noncompliance with the provisions of the Code will not vitiate a trial and entirely different to say that. these provisions may be ignored. If the provisions are contravened without proper justification mere is the possibility of the search and the recovery being viewed with suspicion and courts may refuse to act upon the solitary evidence of the investigating officer,

31. The learned Counsel for the accused characterised the investigation as unfair and referred to a series of circumstances. Though we do not think it necessary to go into all the instances, one or two of the more important points may be referred to. The non-examination of Bhuvanendrjn who gave the first information in the case is a serious omission. The learned Sessions Judge him self has observed that it would have been better if Bhuvanendran was examined so that the court would have known how much of his information was from his personal knowledge and how much was gathered otherwise. Being himself an accused in another counterfeit case he could very easily implicate his enemies. Unless he is in the box to be examined the information alleged

to have been conveyed by him to P.W. 27 is mere hearsay. He was cited in the charge-sheet as a witness and is seen to have been present in court on more occasions than one and no satisfactory explanation is offered for withholding his evidence. In the nature of this case we feel that he is a witness who is essential to the unfolding of the narrative on which the prosecution is based and as such a material witness. In the words of Sarkar, J., in *Narain v. State of Punjab* .

When he (a material witness) is deliberately unfairly kept back then a serious reflection is cast on the propriety of the trial itself and the validity of the conviction resulting from it may be open to challenge.

32. Similarly the failure to search the house of the ringleader, the deceased Krishnan who was accused 2 in the First Information Report is characterised as a deliberate attempt to fabricate evidence. This contention is also not without force. P.W. 4 the widow was only too willing to oblige the prosecution by giving evidence since they had obliged her. Krishnan her husband was friendly with the block-maker N. S. Nair and there is no knowing whether the house of Krishnan did not contain some blocks. If on search, blocks of other incriminating materials were found in the house of Krishnan after his death, then P. W. 1 the widow would have had to answer for their possession in which case she would not have been available for proving the letters alleged to have been written by her husband. As P. W. 4 was willing to oblige the police by supplying the missing links they did not take the trouble of getting the handwriting compared by an expert or making some admitted handwriting available to the court for comparison.

33. Attempts to introduce false or doubtful, evidence appear to be a special feature in the investigation of this case. No doubt counterfeiters are pests of society and any attempt at exterminating them with an iron hand will be commendable, but the theory of "the end justifying the means" is not to be followed by Police Officers in the collection of evidence even though it may be extremely difficult to get really clever criminals convicted by honest investigation, investigating Officers will do well to keep in mind the observations made by the Supreme Court in *R.P. Kapur v. State of Punjab AIR 1960 SC 366*.

Investigation into criminal offences must always be free from any objectionable features or infirmities which may lead to grievance of accuse" that investigation is carried on unfairly or with ulterior motive. The administration of criminal justice requires that every act done by the agency responsible for the investigation of crime must be fair, upright and free from any fault of any sort.

We are constrained to remark that the investigation in this case has not impressed us as fair or free from faults.

34. In view of the many suspicious feature in the investigation of the case and the want of legal evidence we are compelled to acquit all the accused. The evidence of the approvers is naturally tainted and the evidence adduced by way of cor roboration is even more tainted. The effect is but to doubly reinforce the taint. We feel that there is a substratum of truth in this case and that in all probability som of the accused before us are guilty. While realising our duty to disengage the truth from the falsehood we find it extremely difficult to do so in this case as the very foundations of the prosecution are shaken by the introduction of false evidence.

35. In the result the appeals by the accused are allowed and their convictions set aside. Their bail bonds are cancelled and they are set at liberty.

The appeal and the revision filed by the State are dismissed.