

CAUSE TITLE**Sessions Case No. 198 (K-G) of 2009**

- Informant** : Mr. N. K. Sanjay Thapa
Troops of Red Horns Division,
Boko Army Camp, Boko,
Kamrup (Assam)
- Accused** : 1. Sri Kesto Boro
S/o Late Katiram Boro
R/o Vill- Betakuchi
P.S. Chhaygaon
Dist- Kamrup, (Assam)
2. Sri Maheswar Rabha
S/O Late Sarabu Rabha
R/o Vill- Nisingpur
P.S. Boko
Dist.- Kamrup (Assam)
3. Sri Parama Das
S/o Late Gethu Das
R/o Vill- Barakhat
P.S. Chhaygaon
Dist- Kamrup, (Assam)
4. Sri Nalini Das
S/o Sri Keshab Das
R/o Vill- Bangshar
P.S. Sualkuchi
Dist- Kamrup, (Assam)

ADVOCATES

- For the Prosecution : Sri H. K. Deka
Public Prosecutor
- For the defence : Syed Ikram Rasul
Gitanjali Sarma
Thaneswar Sarma
Sahjahan

IN THE COURT OF THE SESSIONS JUDGE, KAMRUP, GUWAHATIPresent:- **Dr. (Mrs.) I. Shah****Sessions Case No. 198 (K-G) of 2009****State of Assam****-Vs-****Sri Kesto Boro****Sri Maheswar Rabha****Sri Parama Das****Sri Nalini Das****Charge U/S 366 of IPC**

Date of Evidence on : 29-07-2009, 01-09-2009,
16-12-2009, 09-02-2010,
25-03-2010, 21-03-2011,
06-05-2011 & 23-06-2-11

Date of Hearing : 23-08-2011

Date of judgment on : 07-09-2011

J U D G M E N T

The prosecution case is in brief is as follows :

On 30-10-2005 at about 10 A.M. Officer-in-Charge of Boko P.S. received a secret information that one member of banned ULFA organization has been moving around Bamunigaon. Accordingly, the O/S entered the information in general diary being Boko P.S. G.D. Entry No. 713 dated 30-10-2005 and he along with S.I. Ali, Dy. S.P. (P) S. J. Saikia, S/ N. Sarma and police constable moved to the place. A joint operation was carried out by troops of Red Horns Division and the police at 1500 hours (3 P.M) Kesto Boro was apprehended. Upon search being conducted 783 nos. 100 piece of currency

notes of 100 rupees denomination and 166 pieces of currency notes of 500 rupees denomination were found from the possession of the accused Kesto Boro. The notes appeared to be forged. The notes were seized. The accused Kesto Boro told the police his associate Parama Das engaged him to circulate the notes and he could lead the police to the house of Parama Das. Thereafter, he led the police to the house of Parama Das at Borhat, Chhaygaon. 139 pieces of currency notes of 100 rupees denomination and 582 pieces of currency notes of 500 rupees denomination and a printer machine (ESPON) were recovered from the house of Parama Das. All the notes were sent for examination to the Reserve bank of India. The Assistant General Manager, R.B.I. reported that the notes found to be Indian Currency Notes. FIR being lodged by N.K. Sanjoy Thapa of Troops of Red Horns Division, Boko, Officer-in-Charge, Boko P.S. registered Boko P.S. Case No. 203 of 2005 U/S 489(B) of I.P.C. and on completion of investigation submitted the charge-sheet U/S 489(A) & (B) of I.P.C. the Case was committed for trial.

Prima facie materials U/S 489(A) were found against the accused Parama Das, Kesto Boro, Maheswar Rabha and Nalin Das. Material U/S 489(C) were found against the accused Parama Das and Kesto Boro. Again prima facie case U/S 489(D) was also found against the accused Parama Das. Accordingly, charges against the accused persons were framed. They denied the charges levelled against them and claimed to be tried.

The prosecution in order to prove its case examined altogether 11 witnesses. The accused persons did not propose to adduce any evidence when they were asked to enter into their defence. The accused Parama Das in his statement recorded U/S 313 Cr.P.C. admitted that police came to his house along with accused Kesto Boro and arrested him. He

denied that any counterfeit currency notes or any incriminating article were recovered from his house or possession. Kesto Boro stated that police asked him to show the house of Parama Das. He also denied that any counterfeit note was recovered from his possession. Accused Nalin das and Maheswar Rabha denied the allegation levelled against them.

POINTS FOR DETERMINATION ARE :

1. *Whether the accused Parama Das and Kesto Boro were found in possession of large number of counterfeit Indian currency notes of 100 rupees denomination and 500 rupees denomination knowing the same to be forged and intending to use the same as genuine ?*
2. *Whether one Epson printer machine was found in possession of accused Parama Das which he kept for the purpose of counterfeiting currency notes ?*
3. *Whether the accused persons in furtherance of their common intention were involved in counterfeiting the Indian currency notes ?*

I have heard argument placed by the learned counsels for both sides and considered the entire evidence on record :

DECISION AND REASONS THEREFOR

P.W.-1 Laksheswar Das is the brother of the accused Parama Das. He stated that one day police visited the house of Parama and informed him that Parama and Kesto Boro are arrested in connection with a case of fake currency note. P.W.-1 is seizure witness. He admitted his signature on seizure list Ext.-1. But, denied his knowledge about the seizure of any article from the house of Parama Das. He was not cross-examined.

P.W.-2 Dharanidhar Das is neighbour of the accused Parama Das. He was called by the police to the house of

Parama. Police searched the house in his presence and obtained his signature on Ext.-1 i.e. seizure list. Police told him that some fake currency notes have seized from the possession of Parama. But, according to him he did not see any fake currency notes being seized from the possession of Parama. He was also not cross-examined.

According to P.W.-3 Nareswar Das, he saw police team in the residence of accused Parama Das. Police obtained his signature on Ext.-2. He was told by the police that his signature has been taken as proof of identity of Parama Das. He had no knowledge of seizure of any fake currency notes from the house of Parama Das, he stated.

P.W.-4 Kamala Kanta Das stated that police asked him to sign a paper and he had no knowledge why police obtained his signature.

P.W.-5 Krishna Kanta Das was called at Boko P.S. and his signature was obtained on Ext.-2 seizure list. Police told him that his signature was required in connection with recovery of fake currency note.

P.W.-6 Parikhit Das similarly admitted his signature on Ext.-3, seizure list but he stated that he does not remember why he put his signature.

P.W.-7 Prabin Chandra Das is his evidence stated that once when he went to police station he found S.I. Sharma counting some fake currency notes of 500 rupees denomination. S.I. Sharma asked him to sign the seizure list. Admitted his signature on seizure list but could not say wherefrom the notes were recovered. He identified the seized currency notes shown to him.

P.W.-8 Girish Ch. Sarma, Assistant Manager of R.B.I. exhibited the report submitted by Assistant General Manager Sri. B. L. Choudhury who examined fake counterfeit notes and that the currency notes are not genuine Indian currency notes. He in his cross-examination stated that he could not say the condition of the notes but he was present while Sri. B. L. Choudhury put his signature on the report.

P.W.-9 Mazibur Rahman, P.W.-10 Sadananda Sarma and P.W.-11 Ajmal Ali are the Investigating Officers.

P.W.-11 Ajmal Ali was then officer-in-Charge of Boko P.S. He stated that on receipt of secrete information about movement of member of banned organization he recorded the information in general diary being G.D. Entry No. 713 dated 30-10-2005. On 01-11-2005 on receipt of written ejahar lodged by Sanjoy Thapa he registered a case and endorsed Sadananda Sarma to investigate the case. P.W.-10 Sadananda Sarma accompanied by O/C Ajmal Ali, Dy. S.P. S.I. Saikia and staff proceeded to Bamunigaon. They apprehended the accused Kesto Boro and on search 783 pieces of currency notes of 100 rupees denomination and 166 pieces of currency noted of 500 rupees denomination were recovered from the possession. Accused Kesto Boro P.W.-10 stated that, P.W.-10 seized the said notes. Kesto Boro was arrested and his statement was recorded. Kesto Boro disclosed that Parama Das is involved in counterfeiting the notes and Parama requested him arrange customer and for which he promised to pay commission. P.W.-10 exhibited the statement of accused Kesto Boro. Kesto Boro led the police team to the house of Parama Das. Search of house of Parama was conducted and 239 numbers of currency notes of 100 rupees denomination were recovered and 582 pieces of currency notes of 500 rupees denomination were recovered and seized vide Ext.-2. One printer machine was also

recovered from the house and was seized vide Ext.-1. P.W.-10 exhibited the seized currency notes and printer machine. He further stated that during the investigation it was revealed that accused Maheswar Rabha and Nalin das are also involved in the process of counterfeiting the currency notes. Hence, they were also arrested. On completion of preliminary investigation, P.W.-10 handed over the case diary to P.W.-11.

In cross-examination, he stated that O/C Supervised the investigation but he did not record the statement of O/C and D.S.P. he admitted that the printing machine and the fake currency notes were recovered from back side of the hose of the accused Parama Das, from nearly the latrine. He denied all suggestions put to him by the defence.

P.W.-9 Mazibur Rahman, S.I. of Police sent the seized currency notes for examination and collected the report of expert from R.B.I. On completion of investigation he submitted the chare-sheet against the accused persons U/S 489(B) of I.P.C.

In cross-examination, he stated that he seized currency notes were sent on 17-03-2007 for examination. He collected the currency notes from Malkhana. He noted the numbers of currency notes in his forwarding report.

From the aforesaid evidence, it transpires that although the seizure witnesses testified their signatures on seizure list, they did not witness the recovery of counterfeit notes. P.W.-6 Parikhit Das and P.W.-7 Prabin Ch. Das are signatories in the seizure list in respect of seizure of counterfeit currency notes from the possession of the accused Kesto Boro. P.W.-6 stated that he put his signature as asked by Prabin Das but he does not remember why he was asked sign. P.W.-7 sated that when

he visited the police station he found S.I. Sharma counting some fake notes and said S.I. Sarma obtained his signature on the seizure list. Both witnesses did not see wherefrom the seized notes were recovered.

P.W.-1 Lakheswar Das, P.W.-2 Dharanidhar Das, P.W.-3 Nareswar Das have stated that police searched the house of the accused Parama Das. P.W.-1, P.W.-2 and P.W.-5 supporting the prosecution case stated police told them that their signature is required in connection with a case of fake currency notes. P.W.-1 and P.W.-2 have testified their signature on Ext.-1. The seizure list in respect of seizure of counterfeit notes from the house of accused Parama Das. P.W.-3, P.W.-4 and P.W.-5 have admitted their signature in respect of seizure printing machine.

From the evidence of P.W.-10 and P.W.-11 the accused Kesto Boro was apprehended at Bamunigaon with fake currency notes. P.W.-10 S.I. Sadananda Sarma interrogated the accused Kesto Boro. 783 piece of 100 rupees denomination and 166 piece of 500 denomination were recovered from the possession of Kesto Boro. On the basis of disclosure made by the accused Kesto Boro the house of Parama Das was searched and 239 piece of 100 rupees and 582 piece of 500 rupees denomination and a printing machine were recovered from the house compound of Parama Das.

From the Ext.-4, currency verification & Examination Report it appears that 787 pieces of 100 rupees denomination and 168 pieces of 500 rupees denomination against 233 piece of 100 rupees denomination and also 580 piece of 100 rupees denomination and again 3 piece of 100 rupees denomination were examined by the expert of R.B.I. in connection with Boko P.S. Case No. 203 of 2005 (corresponding to this case) and Boko P.S Case No. 20 of 2007.

The seizure list Ext.-1 & 2 shows that total 239 + 783 pieces of 100 rupees denomination and 582+ 166 pieces of Rs. 500 rupees denomination were seized vide the said seizure list. The numbers of currency notes noted in the seizure lists are not reflected in Ext.-4. The fake notes were seized on 30-10-2005 and were sent to R.B.I. on 17-03-2007 for examination along with seizure of currency notes of another case. There is not evidence how the notes were kept. Whether the serial numbers appearing in the seizure list and the notes forwarded to R.B.I. were same, there is no evidence. The expert who examined the notes has not given the serial numbers of the notes examined by him. Again there is delay of more than one and half year. Therefore, whether the notes seized and examined by the expert are same is not conclusively proved.

From the examination report Ext.-4 it appears that the notes were kept along with counterfeit notes seized in connection with some other case.

As regards seizure of printing machine, there is no evidence that the said machine can be used for counterfeiting currency notes.

Apart from aforesaid facts the recovery of counterfeit currency notes and the printing machine was not from the house of accused Parama Das. Its were found from the back side of house of accused Parama Das.

From the evidence of P.W.-10 it transpires that P.W.-11 the O/C of Boko P.S. and D.S.P. accompanied him at the time of detection of accused Kesto Boro. But P.W.-11 never stated that he was present at the time of search and seizure. The D.S.P. neither put his signature on seizure list nor he was cited as witness.

None of the independent witnesses supported that counterfeit currency notes were recovered from the possession of the accused persons. According to them, their signature were obtained by the police in the seizure list.

Although it is admitted that accused Kesto Boro was apprehended and he led the police to the house of Parama Das, the seizure of counterfeit notes from their possession is not cogently established. Even if it is presumed that currency notes with serial numbers mentioned in the seizure lists were seized as stated. The number of notes seized and number of notes examined by the expert are inconsistent. The serial numbers of notes mentioned in the seizure list are not reflected in report submitted by the expert. There was delay of more than one and half years in sending the notes for examination. Therefore, whether the notes were seized from the accused persons and the notes examined by the expert are same is not proved. There is not evidence against the accused Maheswar Rabha and Nalin Das.

In view of the above, I find that the prosecution has failed to prove its case beyond all reasonable doubt and hence, the accused are entitled to get benefit of doubt. Accordingly, the accused persons are acquitted and set at liberty forthwith. Destroy the seized articles in due course of law.

Given under my hand and seal of this court on this 7th day of September, 2011.

Sessions Judge,
Kamrup, Guwahati

Dictated & Corrected by me

Sessions Judge,
Kamrup, Guwahati

A P P E N D I X

1. Witnesses for the prosecution:

P.W.-1 Sri Lakheswar Das
P.W.-2 Sri Dharanidhar Das
P.W.-3 Sri Nareswar Das
P.W.-4 Sri kamala Kanta Das
P.W.-5 Sri Krishna Kanta Das
P.W.-6 Parikhit Das
P.W.-7 Prabin Ch. Das
P.W.-8 Girish Ch. Sarma
P.W.-9 Mazibur Rahman
P.W.-10 Sadananda Sarma
P.W.-11 Ajmal Ali

2. Exhibits for the prosecution:

Ext.-1 Seizure List
Ext.-2 Seizure List
Ext.-3 Seizure List
Ext.-4 Report of General Manager, R.I.B.
Ext.-5 Charge sheet
Ext.-6 Certified Copy of Boko P.S. G.D. Entry
No. 713 Dated 30-10-2005
Ext.-7 Statement of the accused Kesto Boro
Ext.-8 F.I.R.

Sessions Judge
Kamrup, Guwahati