

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. No. 760 of 2010

Reserved on: 30th July 2014

Decision on: 21st August 2014

SHAKUN GROVER

..... Appellant

Through: Ms. Nitya Ramakrishnan,
Mr. Pranav Proothi, Mr. Sarim
Naved, Ms. Ria Singh
Sawhney, Ms. Soumya Jha and
Mr. Snehasish Mukherjee,
Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Narender Mann, Spl. PP
with
Mr. Manoj Pant, Advocate.

WITH

CRL.A. No. 767 of 2010

CHANDERKANT VERMA

..... Appellant

Through: Mr. Ajay Burman, Mr. Aditya
Swarup Agarwal, Mr. Harsit
Khurana, and Mr. Amritesh
Raj, Advocates.

versus

**STATE THR. CENTRAL BUREAU
OF INVESTIGATION**

..... Respondent

Through: Mr. Narender Mann, Spl. PP
with Mr. Manoj Pant,
Advocate.

AND

CRL.A. No. 819 of 2010

SURYA PRATAP SINGH Appellant
Through: Mr. Saket Singh, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. P.K. Sharma, Standing
Counsel for CBI.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

21.08.2014

Introduction

1. These three appeals are directed against the impugned judgment dated 29th May 2010 passed by the learned Special Judge, CBI in CC No. 76 of 2007 convicting the Appellants Chander Kant Verma (A-1), Shakun Grover (A-2) and Surya Pratap Singh (A-3) for the offences under Section 120-B IPC read with Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 ('PC Act') and additionally convicting A-1 and A-2 for the offences under Section 15 read with Section 13(1)(d) of the PC Act, Section 467 read with Section 120-B IPC and Section 471 read with Section 120-B IPC. A-1 and A-2 were further convicted under Sections 417/511 IPC.

2. The appeals are also directed against the order on sentence dated 2nd June 2010 whereby:

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(i) All the three Appellants were sentenced to rigorous imprisonment ('RI') for two years along with a fine of Rs.2,000 each and in default to undergo RI for three months for the offence under Section 120-B IPC read with Section 13(2) read with Section 13(1)(d) of the PC Act.

(ii) A-1 and A-2 were sentenced to RI for one year along with a fine of Rs.2,000 each and in default to undergo RI for three months for the offence under Section 15 read with Section 13(1)(d) of the PC Act.

(iii) A-1 and A-2 were sentenced to RI for two years along with a fine of Rs.2,000 each and in default to undergo RI for three months for each of the offences under Section 467 read with Section 120-B IPC and Section 471 read with Section 120-B IPC.

(iv) A-1 and A-2 were sentenced to RI for six months along with a fine of Rs.2,000 each and in default to undergo RI for three months for the offences under Sections 417/511 IPC.

The sentences were directed to run concurrently.

3. At the time of admission of the appeals, the sentences awarded to the Appellants were directed to remain suspended till the final disposal of the appeals.

Genesis of the case

4. The case of the prosecution was that by a letter dated 7th February 2005, the Additional Secretary of the Indian Council of Agricultural

Research ('ICAR'), Government of India, requested the Director, Central Bureau of Investigation ('CBI') to conduct an investigation into a complaint concerning irregularities in the recruitment to posts in the Agricultural Research Services ('ARS') conducted by the Agricultural Scientists Recruitment Board ('ASRB') which was also conducting the National Eligibility Test ('NET'). It was pointed out that the ASRB awards certificates to the successful candidates of the NET. The Central Vigilance Commission ('CVC') forwarded to the ASRB an office memorandum ('OM') dated 20th February 2003 alleging irregularities in the NET Examination held in 2001 and the issuance of fake certificates. It was pointed out that ASRB had already carried out a preliminary investigation into the case by this time. A detailed background note was enclosed with the letter. Considering that several private persons and parties were involved, the ASRB decided to entrust the investigation to the CBI.

Internal Enquiry by A.S. Bhatia

5. Earlier in time to the above note, the Chairman, ASRB had appointed Mr. A.S. Bhatia, Under Secretary (Engineering) in ICAR (PW-9) to enquire into the case of one candidate, Surya Pratap Singh (A-3), in whose name a NET Certificate was prepared for being issued despite his not taking the NET.

6. In his investigation report dated 4th June 2003, PW-9 first adverted to the procedure involved in the issuance of NET certificates. The applications for the combined examinations of ARS/NET (in this case

held in 2001) are segregated centre-wise with the help of Group-D employees. Once the results are declared (May 2002 in this case), the list of successful candidates is made available to the concerned dealing hands who with the help of a Group-D employee or a contractual help segregate the application of successful candidates from the respective bundles of a particular centre. The applications of successful candidates are then placed in individual folders. The details of each candidate i.e. their names, roll numbers, discipline and centre are written on the folder containing the application of each successful candidate. After the above exercise is completed, the certificates submitted by the successful candidates are scrutinised and wherever there is any deficiency, the same is noted on the folder and the candidate concerned is informed of the deficiency with a stipulation that he or she should produce the relevant certificate within a specific period. Thereafter the scrutiny sheet is duly filled up by the dealing assistant and on that basis the NET certificate is prepared checked and signed by the Section Officer (SO). It is finally signed by the Controller of Examinations (COE) and issued to the candidate.

7. During the course of his enquiry, PW-9 on 4th March 2003 requested the COE, Mr. Vikram Singh (PW-4) to supply him with the following information:

“(i) Name of the concerned section dealing with the case and names and designation of the dealing hands and Section Officer.

(ii) The number of examinations held during last 5 years.

(iii) The names of the Controllers of Examinations who handled similar cases during last 5 years (up to 2002).

(iv) The names of the S.Os/Tech. Officers dealing with the conduct/result of Examination during last 5 years (up to 2002).”

8. In response thereto on 5th March 2003, PW-4 wrote to PW-9 giving the following details:

“With reference to the above mentioned note of US (Engg.), the requisite information (itemwise) is given as under:

(i) ARS-II Section is dealing with the case under investigation. The receipt was marked to Shri Babu Lal, Assistant, ARS-II Section. But, the case has been processed by Smt. Jaya Gupta, Hindi Translator in ARS-I Section, proposing for signatures of Controller of examinations on the NET Certificate. Smt. Shakun Grover, Section Officer, ARS-II Section scrutinized and submitted the case to Controller of Examinations.

(ii) The following ARS/SRF/NET Examinations have been held during the last five years:

ARS/SRF/NET	-	2001
ARS/SRF/NET	-	1999
ARS/SRF/NET	-	1998
ARS/SRF/NET	-	1997
ARS/SRF/NET	-	1996

(iii) The following Controllers of Examination have handled similar cases during the last five years upto 2002:

Shri P. Bapaiah	-	2001
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Shri P. Bapaiah	-	1999
Shri B.N. Rao	-	1998
Shri B.N. Rao	-	1997

(iv) ARS-I/ARS-II and Conf. Cell are associated with the conduct and compilation of the result of ARS/SRF/NET Examinations. Shri Vinod Kumar, Technical Officer has worked earlier in ARS-II Section. Thereafter Smt. Shakun Grover has been working. Shri Vinod Kumar subsequently was working in Confidential Section. Presently Shri N.K. Jindal, Section Officer, is working in Confidential Section.”

9. PW-9 recorded the statements of A-1, A-2 and A-3 and deceased Ms. Jaya Gupta. Written responses were given by all of them. A statement was also given by a peon, Ram Bhool Singh, who stated that the applications and forms of all the successful candidates of the Varanasi centre were handed over to A-1, on his request.

10. In his report PW-9 found that there was a lapse on the part of following persons:

(i) A-1, Upper Divisional Clerk (‘UDC’), who was “primarily responsible as he did not check the result sheet before preparing the folder. Once the folder was opened he also sent a letter to the candidate for sending degree certificates. Sending such a letter to a person who did not qualify is meaningless.”

(ii) Ms. Jaya Gupta, Technical Assistant. It was observed that her role was confined to checking/preparing the certificate and she gave

remarks in the scrutiny sheet at columns 12 and 13. PW-9 concluded that Ms. Jaya Gupta was, therefore, not responsible for the lapse.

(iii) A-2, SO, ARS-II Section, who “did not check the result sheet although the folder was seen/examined by her thrice.” It was observed that even at the time of assigning the job of writing the certificate by hand to Ms. Gupta by A-2, she could have checked the result sheet but did not do so.

The COE's statement to the CBI

11. At the above stage of the inquiry, PW-4 did not state anything about the conduct of A-2. However, at the stage of handing over the case to the CBI, PW-4 gave his statement on 7th April 2006 which was more than three years after the incident. He stated to Inspector N.K. Sangwan (PW-12), that

“On 27th February 2003, a case of one candidate Surya Pratap Singh was detected where the candidate did not even appear in the NET Examination 2001, but it was proposed by the then ARS-II Section (now examination-II Section) to issue the NET Certificate to Surya Pratap Singh. The Section Officer, Smt. Shakun Grover, personally came to the office of Controller of Examination and asked me to sign the file and NET certificate immediately as the candidate was waiting for the certificate in her section. When I started perusing the file and consulting result of NET certificates, Smt. Grover observed that they had already checked the result and completed all formalities and hence the COE need not bother now. Still, I continued consulting the result of the NET examination. She emphasized that if the Controller was still interested in wasting his time he may do so. I politely advised her that she should help the COE

in understanding the work as he is new to the ASRB and he is learning the work relating to ARS/NET Examination. I further advised her to wait for some time and file will be sent in the Section shortly. Thereafter, I went to the then Chairman, ASRB, Dr. A.G. Sawant and narrated the whole story to him. The Chairman advised me to submit the relevant file to him so that he could order inquiry into the case.”

12. The statement of Babu Lal, Assistant (PW-7) in the ASRB was also recorded to explain the procedure followed in preparing the scrutiny report for issuance of certificates to the successful candidates. The Inquiry Officer, A.S. Bhatia (PW-9) was examined by the CBI who claimed that PW-7 worked as per the directions of A-1 and did not know how the certificates were prepared.

Statements of the accused under Section 313 Cr PC

13. In his statement under Section 313 Cr PC, A-1 stated that the sanction had been granted mechanically; that there was failure to examine the attendance register of R-III Section; he further stated that the folders used to be prepared with the help of Group IV employees. In this case, Ram Bhool Singh had taken out the application forms of the successful candidates and put them in blank folders for A-1's scrutiny. He further stated that before the folders could be scrutinised, he had been transferred to R-III Section. Thereafter the folder pertaining to A-3 had been given to Babu Lal and then given to Ms. Jaya Gupta. He denied his writing on the memorandum dated 22nd January 2003 purportedly issued to A-3. The same has not been

substantiated during the investigation. He pointed out that he had marked his attendance in R-III Section after his transfer from ARS-II Section. PW-9 had failed to examine the attendance registers of Section R-III and therefore had come to the wrong conclusion. He maintained that “I had put roll number and name of the candidate etc., on the folder, but on the cyclostyled form I had written name of the candidate at point Q-4 and roll number and centre at point Q-5 only. The other writings on cyclostyled form do not belong to me and are not in my hand. The entire writing thereafter is in the hand of Smt. Jaya Gupta, who was the dealing assistant at the time of preparation of the NET Certificate, except at point Q-10.” When asked if he wanted to say anything, A-1 reiterated that the entire case was based on the incorrect inquiry report of PW-9. He also pointed out that in his cross-examination he had already produced the attendance register of Section R-III which had not been seized by the CBI. He had obtained the same under the Right to Information Act, 2005.

14. In her statement under Section 313 Cr PC, A-2 denied that she had taken the file to PW-4 and insisted on his signing the certificate. When probed regarding PW-4 consulting the result of NET, she stated that “the NET certificates used to be prepared by dealing assistants and I only used to only initiate it. The job of verification and checking about the successful candidates was of the dealing assistants who used to check the same from the list of successful candidates provided to them.” When asked if she wanted to state anything, she maintained she had been wrongly implicated in this case. In his defence, A-1

examined Gian Chand (DW-1), Section Officer, ASRB who spoke about the attendance register for R-III Section for the period between 24th December 2002 and 31st December 2002. He also produced copies of the said attendance register (Ex.DW1/A).

15. In his statement under Section 313 Cr PC, A-3 denied having ever visited ASRB. He denied any knowledge of A-2 taking the file to PW-4 and insisting on his certificate. In response to the specific query about his appearing in the examination NET 2001, A-3 stated that “it is correct that I have not appeared in the examination.” He stated that he had received only one memo Ex.PW-7/A for providing documents and the said memorandum had not stated whether he was a successful candidate. He admitted to have sent the documents by post. When asked if he wanted to state anything, he maintained that he had sent documents along with affidavit dated 12th February 2003, seeking condonation of delay. Since the memorandum was not related to his being a successful candidate in NET Examination 2001, there was no case made out against him.

The judgment of the trial Court

16. Referring to the evidence of PW-4, PW-5 and PW-7 the trial Court concluded that their cross-examination did not discredit the evidentiary value of their testimonies. The three witnesses corroborated each other and the documentary evidence also supported their testimonies.

17. The trial Court held that the sanction order was validly passed. There was evidence on record to prove the conspiracy amongst the accused persons. As far as A-2 was concerned she had failed on more than one occasion to perform her duty of checking the NET result (Ex P1). The conduct of A-3 further strengthened the fact of existence of conspiracy. There was evidence to show that A-1 was a part of conspiracy notwithstanding his transfer. The conduct of A-3 in sending the attested copies of the certificates despite knowing that he had not sat for the examination further completed the factum of conspiracy amongst the three. In the circumstances, the trial Court convicted the three accused and sentenced them for the offences they were charged with in the manner indicated hereinabove.

The case of A-1

18. The Court would first like to consider the case of A-1. The Court finds that in order to substantiate his defence that he was transferred out of the ARS-II Section to the R-III Section, he relied on a copy of the office order dated 18th December 2002 transferring him to R-III Section. The said order was on record and was also submitted to PW-9, the Inquiry Officer. In response to a specific query raised by PW-9, PW-4 in his communication dated 5th March 2003 stated that the folder of A-3 had been processed by Mrs. Jaya Gupta and that A-2 had scrutinized and submitted the case to the COE. PW-4 did not mention that A-1 had been involved in the process. In his inquiry report, PW-9 observed that he had checked the attendance register and

confirmed that A-1 had worked in the ARS-II Section up to 22nd February 2003 notwithstanding the orders dated 18th December 2002.

19. During the trial, the attendance registers of the ARS-II and that of the R-III Section were marked exhibits through Pratap Singh (PW-5). He confirmed that the signatures of A-1 appeared in attendance register (Ex.PW5/C (D-19) of ARS-II Section till 23rd December 2002 and thereafter he was transferred to R-III Section. The attendance register of R-III Section (Ex.PW-5/DA) showed that A-1 was marking his attendance there from 24th December 2002 onwards. PW-7 has also confirmed the above position. He categorically stated that the memorandum dated 22nd January 2003 (Ex.PW7/A) was issued from the ARS-II Section and that on that date A-1 was not in that section. He has also confirmed that the attendance register of ARS-II Section (Ex.PW5/C) showed that A-1 had been transferred to R-III Section on 24th December 2002. The above evidence showed that A-1 was not working in the ARS-II Section from 24th December 2002 onwards. A-1 was certainly not in the ARS -II section when the memorandum was issued to A-3.

20. As far as the writings of A-1 were concerned, a folder was opened in the name of A-3 (Ex.PW-9/A). On the cover his roll number, centre, subject and name were written against the corresponding columns. There are three questioned writings on the folder. The first is Q-1 which bears the letters 'P.D.C.' and which translates as 'Provisional Degree Certificate'. This indicated that the said document

of the candidate was not in the folder. The second questioned writing, Q-2, comprised the roll number, centre and subject. The third, Q-3 is the name of A-3. The Handwriting Expert, R.Chandra, (PW-11) has confirmed that the three questioned writings, i.e., Q-1, Q-2 and Q-3 were that of A-1. However, he also stated in his report (Ex.PW-11/A) that the questioned writings in the memorandum dated 22nd January 2003 (Ex.PW-7/A) i.e., Q-15 to Q-18 and also the questioned writings in the scrutiny sheet, other than the name, roll number and centre (Q-4 and Q-5) were not in the handwriting of A-1. He stated that he had not given any opinion on Q-15 to Q-18.

21. The mere fact that the letters were written on the cover of the folder by A-1 does not link him to the conspiracy. If one looks at the sequence followed in preparing the folder it would appear that the dealing assistants first give the peon concerned the list of successful candidates asking him to pull out the applications of the successful candidates. The peon then takes out the applications of the successful candidates as per the list and places them in folders. The dealing assistant, by looking at the application, fills up the details on the folder and on the scrutiny sheet against the corresponding columns. It is not known why Ram Bhool Singh himself was not examined as a prosecution witness although it is not in doubt that he was the person who took out the application of A-3 and placed it in the folder handed over to A-1. It is, therefore, not clear whether A-1 actually instructed Ram Bhool Singh to take out the application form of A-3.

22. Another feature is that the details in the scrutiny form (other than the name, roll number and centre) were filled up Mrs. Jaya Gupta. This was confirmed in the inquiry report of PW-9. An obvious error was committed by PW-9 in his inquiry report when he observed that A-1 continued to be involved in the work of ARS-II Section even after his transfer. The evidence on record contradicts such a conclusion. The attendance registers of both the sections show that A-1 was not attending ARS-II Section after 23rd December 2002. He was certainly not in the ARS-II Section when the memorandum dated 22nd January 2003 was issued to A-3. The evidence on record does not show that A-1 was involved either directly or indirectly in the actual preparation of the NET certificate in the name of A-3. There is no evidence whatsoever to show that there was any conspiracy between A-1 and A-2 or between them and A-3 to prepare and issue the NET certificate in the name of A-3.

23. The additional ground urged by Mr. Ajay Burman, learned counsel for A-1, concerns the validity of the sanction order. Para 3 of the sanction order mentions that despite A-1 having been transferred out of ARS-II Section from 23rd December 2002 “still he processed the said false case by preparing the aforesaid memo after his transfer from ARS-II Section.” The above line appears to be repetition of the draft sanction order placed before the Competent Authority. Mr. Burman is justified in his criticism that there was no application of mind by Mr. Sanjay Gupta, (PW-1) to the materials placed before him. PW-1 stated that he did not remember whether he had seen the register of ARS-II

Section. Later in his cross-examination he admitted that A-1 “was transferred from ARS-II on 22nd December 2002. It is correct that accused was not posted in ARS-II section in January 2003.” He stated that “I did not ask for the attendance record.....” It does appear that the sanction order as regards A-1 was issued mechanically by PW-1 without properly applying his mind to the materials on record.

24. The Court concludes that A-1 has substantiated his defence that he was not involved in the actual scrutiny of the application form and preparation of the NET certificate in the name of A-3. The evidence produced by the prosecution does not show that A-1 was involved in placing the NET certificate for signature of A-2 and thereafter for the signature of PW-4. There is no evidence to prove the charge of conspiracy against A-1, A-2 and A-3. For all of the above reasons, the Court is unable to concur with either the reasoning or the conclusion arrived at by the trial Court in respect of A-1 and grants him the benefit of doubt. A-1 is acquitted of the offences with which he was charged.

The case of A-2

25. Turning to the case of A-2, Shakun Grover, the evidence of PW-11 confirms that she put her initials on the NET certificate which was prepared in the name of A-3 and placed it before PW-4 for his signature. Her specimen signature and writings were marked S1 to S-45. Her admitted writings and signatures were marked as A-3 to A-32. Turning to the questioned writings, Q6 is the roll number on the NET

certificate, Q7 is the writing in Hindi of the name of the candidate, Q8 is the writing of the name of the candidate, the name of his father and the subject in English, Q9 are the writings of the certificate of the date and the initials at the column 'prepared by'. Q10 is the signature of A-2 on the scrutiny sheet.

26. The report of the handwriting expert (Ex.PW-11/C) confirmed that the questioned writings and signatures Q6 to Q10, S1 to S45 and A3 to A32 were written by one and the same person. Therefore, it stood proved that the details on the NET certificate were indeed filled by A-2 and she also signed the scrutiny sheet which was placed before her for signature by Ms. Jaya Gupta, who wrote “original NET certificate put up for sign pl.”

27. However, barring the evidence of PW-4, there is nothing to show that there was any meeting or understanding between A-1, A-2 and A-3 pursuant to which A-2 had prepared the said NET certificates in the name of A-3. This then requires the evidence of PW-4 to be examined carefully. In the first instance, when PW-9 conducted the enquiry, he asked PW-4 by his letter dated 4th March 2003 the names and designations of the dealing hands and the Section Officer involved. In his reply dated 5th March 2003, PW-4 gave the name of the dealing assistant as Babu Lal (PW-7) who received the file. PW-4 informed that the case had been processed by Ms. Jaya Gupta and that A-2 as SO had scrutinized and submitted the case to the COE.

28. At the above stage of enquiry, PW-4 made no mention of the fact that A-2 had brought the file to his room and insisted on his signing it. On her part, in the written explanation given to PW-9, A-2 maintained that “a daily wages Clerk has done it, and after his degree certificate I gave some folders to Mrs. Jaya Gupta, Hindi Assistant for doing the needful. She prepared his NET certificate and put up, and it reached with C.E., ASRI.” In her further note, she explained as under:

“As the folder of the candidate was inadvertently prepared, the NET certificate is also prepared by mistake without referring to list of qualified candidates. Admittedly this was a lapse on the part of the dealing assistant who checked and made the candidate eligible and the Section Officer who passed on the same to Controller of Examinations for signature without verifying the status of candidate from the list.”

29. In the report of the investigation, PW-9 spoke of the role of A-2, as under:

“In this case certificate from the private agency was not received as the candidate’s name was not included in the list of successful candidates. However, the job of writing the certificate by hand was assigned to Ms. Gupta by the S.O. She could have checked the result sheet at that point also as to why the name was not written in the certificates sent by outside agency. She did not do so and assigned the job of writing the name and discipline to Ms. Gupta.”

30. Ms. Jaya Gupta died and did not face any proceedings much less the trial. As far as A-2 was concerned she apparently was cautioned to be careful in future. What is certain however is that at no point during

the disciplinary proceedings did PW-4 speak about A-2 coming to his room with the file herself and insisting on his signature. It is only during the course of investigation by the CBI that PW-4 stated for the first time on 7th April 2006 that A-2 "personally came to my office and asked to sign the file and NET certificate immediately as the candidate was waiting for the certificate in her section."

31. In his examination-in-chief PW-4, *inter alia*, stated:

"I have seen the note sheet with the signatures of Smt. Jaya Gupta, now Ex.PW4/A, **and it was brought to me by Smt. Jaya Gupta personally.** Her signatures are at point A. The signatures of Smt. Shakun Grover are at point B (Q-10). **Again said the file was brought to me by Smt. Shakun Grover.** She told me that the candidate was waiting in the section and asked me to sign the NET certificate, Ex.PW4/B." (emphasis supplied)

32. Thereafter, PW-4 maintained what he had told to the CBI during the investigation. He stated that:

"I took the file to the Chairman, Dr. A.G. Sawant, and showed the file to him. The Chairman told me to submit the file to him in writing so that he could hold enquiry into that. A preliminary enquiry was conducted by Sh. A.S. Bhatia, Under Secretary."

33. In his cross-examination PW-4 stated that when A-2 herself told him that the candidate was waiting in the section, he did not ask her to detain the candidate or to call the police. There was no record of A-3 being found anywhere in the premises. He stated that he had given the complaint in writing to the Chairman, ASRB. However, the said

writing was not on the judicial file. PW-4 then stated that he had brought in writing to the notice of his senior in February 2003 that A-2 had brought a file to him for signatures and that when he started consulting the NET result, she asked him as to what he was doing. This purported note written by PW-4 to his senior was also not on the judicial file.

34. The question that arises is whether it is safe to conclude from the evidence of PW-4 that:

- (a) there was conspiracy between A-1, A-2 and A-3 or even A-2 and A-3 pursuant to which NET certificate was prepared;
- (b) the NET certificate in the name of A-3 was prepared by A-2 by misusing her official position with a view to benefiting A-3.

35. There is no satisfactory explanation to the obvious question as to why PW-4, who was the only person in the know of what transpired in his room on 27th February 2003, did not utter a word about the conduct of A-2 at the stage of initial inquiry by PW-9. If he did then certainly it was not adverted to by PW-9 in his report and in that event it should have elicited a protest from PW-4. The report submitted by PW-9 makes no mention of A-2 having taken personal interest in ensuring that NET certificate prepared in the name of A-3 be signed by PW-4.

36. It was rightly pointed out by Ms. Nitya Ramakrishnan, learned counsel for A-2, that there is also no satisfactory explanation for the

judicial record not containing the report in writing purportedly submitted by PW-4 to the Chairman, ASRB or note in writing supposedly submitted by him in February 2003 to his senior. What the judicial record reveals is that PW-4 spoke about the events that took place in his room on 27th February 2003 for the first time, three years later, to the CBI. When under Section 313 Cr PC A-2 was confronted with the above evidence of PW-4, she denied it.

37. The Supreme Court in ***Kali Ram v. State Of Himachal Pradesh AIR 1973 SC 2773*** observed “if a witness professes to know about a gravely incriminating circumstance against a person accused of the offence of murder and the witness kept silent for over two months regarding the said incriminating circumstance against the accused, his statement relating to the incriminating circumstance, in the absence of any cogent reason, was bound to lose most of its value.” In ***Ram Kumar Pandey v. The State of Madhya Pradesh 1975 AIR 1026***, it was observed that the omission of certain facts within the knowledge of the witness would be detrimental to the prosecution case and “affecting the probabilities of the case..... under Section 11 of the Evidence Act.”

38. In the absence of satisfactory answers to the questions regarding the silence of PW-4, for over three years, about the events that transpired in his room, the Court is of the view that it would be unsafe to base the conviction of A-2 on his sole testimony.

39. Mr. Narender Mann, learned Special Public Prosecutor, referred repeatedly to the fact that the handwriting expert confirmed that the questioned signature on the scrutiny sheet as well as the questioned writings on the NET certificate including her signature were in the writing of A-2. However, there was no confirmation that any writing on the memo dated 22nd January 2003 was hers.

40. It was then submitted by Mr. Mann that if indeed A-2 had seen the said memo and the affidavit of A-3 enclosing the certificates in the file, she would have noticed that it was sent by a candidate who did not write the exam. While the evidence of PW-9 was that there was no record in the ASRB of the despatch of such a memo, the mere fact that the affidavit and certificate sent by A-3 may have been in the file need not have led to A-2 to suspect that this was a case for which no NET certificate ought to be issued. As is apparent from the report of PW-9, the scrutiny was done by Ms. Jaya Gupta who in turn placed the file before A-2 for her signature. While it is true that A-2 ought to have checked the file herself, her explanation that the certificate was prepared inadvertently appears plausible. This also appears to have weighed with PW-9 when he submitted his enquiry report.

41. In *Bodhraj alias Bodha v. State of Jammu and Kashmir* (2002) 8 SCC 45 the Supreme Court observed that “the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other persons.” In the present case the Court is not

satisfied that the cumulative effect of the circumstances is incompatible with the innocence of A-2 or that they prove her guilt beyond reasonable doubt. Consequently, the Court grants the benefit of doubt to A-2 as well and acquits her of the offences with which she was charged.

The case of A-3

42. Finally turning to the case of A-3, the Court finds that the one incriminating circumstance pointed out against him by the prosecution is that he submitted an affidavit enclosing certificates of his post graduate ('PG') exam in response to the memo dated 22nd January 2003 and that he did this despite knowing that he had not written the NET exam.

43. Mr. Saket Singh, learned counsel for A-3, referred to the memo dated 22nd January 2003 and submitted that there was nothing to indicate that A-3 had in fact qualified in the exam and was, therefore, required to send the PG certificates. A perusal of the said memo bears out this submission. The explanation offered by A-3 that he had sent the certificates since they were asked for, and nothing more, appears to be a plausible one.

44. Although PW-4 stated that A-2 indicated to him that A-3 was waiting in the premises for his certificate, the presence of A-3 in the premises on 27th February 2003, the date on which the certificate was purportedly placed before PW-4 for signature, has not been proved.

The fact remains that the NET certificate in the name of A-3 was not signed by PW-4. As a result, A-3 was not sent the certificate.

45. Barring the solitary circumstance of A-3 sending his PG certificates with his affidavit, there is no evidence to show that A-3 was part of any conspiracy with either A-1 or A-2 as a result of which the NET certificate in his name was prepared. The Court is of the opinion that the said solitary circumstance, when viewed in the above light, is insufficient to conclude that A-3 was part of any conspiracy. In the result, A-3 is also entitled to the benefit of doubt and he is hereby acquitted for the offences with which he was charged.

Conclusion

46. The impugned judgment dated 29th May 2010 of the trial Court convicting the Appellants and the order on sentence dated 2nd June 2010 sentencing them are set aside. The appeals are allowed but in the facts and circumstances with no order as to costs. In terms of Section 437A Cr PC, the bail bonds and surety bonds submitted by the Appellants shall continue for a further period of three months. The trial Court record be sent back forthwith.

S. MURALIDHAR, J

AUGUST 21, 2014

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