

GAHC020000442017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRAPL/5/2017

THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, KOHIMA

VERSUS

THSAPONGSE SANGTAM AND 6 ORS
S/O SHRI. TSIMGHOSE, TRONGHAR VILLAGE, P.O CHARE,
TUENSANG, NAGALAND.

2) IMNAONEN
S/O SHRI. N. PANGER, KENOZOU COLONY, KOHIMA, NAGALAND

3) N. PANGNER JAMIR
S/O LT. NOKIN, KENOZOU COLONY, KOHIMA, NAGALAND

5) TAKASASHI
S/O BENDANGNUNSA, HOME GUARD, LOWER PWD KMA

6) TINU WATI
S/O, TEMJENMONGBA, MOANKDEMNA, MKG LOWER BAYUVI HILL
KMA.

7) IMKONG LONGKUMER
S/O IMSUMEREN LONGKUMER, UNGMA VILLAGE
MKG, RETD. ENGG. BADAMPUKHRI

8) IMOSANEN
S/O ANGUMYANGER, SUNGKOMEN WARD MKG, N/L

Advocate for the Petitioner : V. SUOKHRIE P.P

Advocate for the Respondent : TONGPOK PONGENER (R 1)
A.ZHIMOMI (R.2 & 3)
LIMAWAPANG (R.6)

BEFORE
HONBLE MR JUSTICE KARDAK ETE

Date : 13-12-2023

:: JUDGMENT AND ORDER ::
[CAV]

Heard Ms. V. Suokhrie, learned Public Prosecutor for the State. Also heard Mr. A. Zhimomi, learned counsel for respondent Nos. 2 and 3, Mr. Tongpok Pongener, learned counsel for the respondent no. 1 and Mr. Limawapang, learned counsel for the respondent No. 6.

2. This criminal appeal under Section 378 of the Cr.PC, 1973, filed by the State of Nagaland, is directed against the judgment and order dated 12.05.2016 passed by the Learned Sessions Judge -cum- Special Judge, of PC Act, Dimapur, Nagaland in R.C. No.2/05 under section 108/ 109/ 408/ 464/ 465/511/34 IPC read with Section 13(1) (a) (b) (d) P.C. Act, 1988 whereby all the respondents/accused persons have been acquitted from the charges by giving them benefit of doubt. Accused Takachila (R.4) (since expired) was deleted from the instant criminal appeal as per this Court's order dated 27-06-2017.

3. The case set up by the prosecution, in brief, is that the local media reported the news about the attempted bribery and manipulation of records under the establishment of Nagaland Public

Service Commission (N.P.S.C). The media report was taken cognizance by the State Government and considering seriousness of allegations, the State Government vide its letter No. CMN/18/P&AR 2005 dated 23.05.2005 directed the Vigilance and Anti Corruption Police Cell, Nagaland to take appropriate steps. Accordingly, the Vigilance and Anti Corruption Police Station, Nagaland registered a Suo Moto Case being VPS Crime No. RC.02/2005 on 27.05.2005 under section 34/108/120B/218/406/408/409/426/511 IPC read with section 13 (1) (a) (b) (d) of P.C. Act, 1988. A Special Investigation Team was constituted headed by Shri. J. I. Yaden the then S.P and investigated the case. During the course of investigation eight accused persons were arrested.

4. On completion of investigation, the I/O has filed the charge sheet against the following accused persons/ Respondents namely-1. Imnaonen- Under section 34/120B/409/511 IPC read with Section 13(1) (b) & (d) of P.C. Act, 1988, 2. Imosanen- under section 34/108/120B/511 IPC, 3. Thsapongse- under section 34/108/120B/408/511 IPC, read with section 13 (1) (a)(b) & (d) P.C. Act, 1988, 4. Tekasashi under section 34/408/120B/511 IPC, read with Section 13 (1)(a) (b) & (d) P.C. Act, 1988, 5. Imkong Longkumer under section 34/108/120 B/218/408/464/463 IPC, read with Section 13 (1) (a) (b) & (d) P.C. Act, 1988, 6. N. Panger Jamir – under section 34/108/120 B/511 IPC, 7. Tinuwati- under section 34/120 B/ 408 IPC read with Section 13 (1) (A) P.C. Act, 1988, and 8. Takachila- under section 218/ 408/ 464/465 IPC read with 13 (1) (a) (b) & (d) P.C. Act, 1988.

5. Upon filing the charge sheet by the I.O. of the case under

section 173 of Cr.PC, cognizance of the same was taken and relevant documents were furnished to the accused persons/respondents as required under section 207 of Cr.PC. and charges under sections 109/511/34 were framed against Thsapongse Sangtam, under section 409/511 against accused Imnaonen, under section 108/511/34 IPC against N. Panger Jamir, under section 218/408/464/465 IPC, against accused Takachila @K. Achila, under section 511/34 IPC read with section 13(1)(a)(b)(d) of PC Act, against Takasashi, against accused Imosanen under sections 109/511 IPC, against Imkonglong Kumer under section 109/511 IPC, against Tinuwati under section 34/120B/408 IPC read with section 13(1)(A) P.C. Act, 1988 and 8 and as charges framed were read over to the accused persons and the accused persons pleaded not guilty, hence the trial proceeded.

6. In the course of trial by order dated 20.05.14 case was transferred out as a matter of propriety but the same has been transmitted back to the Court of Sessions Judge -cum- Special Judge, PC Act, Dimapur, by this Court on 10.08.2015.

7. During the course of trial the prosecution in support of their case produced as many as 17 (seventeen) prosecution witnesses and relied upon several documents which were exhibited. The statements of accused persons u/s 313 of CrPC were also recorded and accused Imkong Longkumer himself along with one Temjennungsang deposed as DWs No. 1 and 2, other accused persons did not adduce any defence witness. Altogether 17 (seventeen) prosecution witnesses and two defence witnesses have been examined.

8. Upon consideration of evidence adduced on records, the

learned Trial Court acquitted all the accused persons/respondents by giving benefit of doubt vide judgment and order dated 12.05.2016. Hence this present appeal by the State.

9. Ms. V. Suokhrie, learned PP, submits that on the report of local media in the News about the attempted bribery and manipulation of records under the establishment of Nagaland Public Service Commission (NPSC), cognizance was taken by the State Government and considering the seriousness of allegations, the State Government vide its letter No.CMN/18/P&AR 2005 dated 23.05.2005 directed the Vigilance and Anti Corruption Police Cell, Nagaland to take appropriate steps. Accordingly, the Vigilance and Anti Corruption Police Station Nagaland registered a Suo Muto case as VPS Crime No.RC-02/2005 on 27.05.2005 U/S 108/109/408/464/511/34 IPC R/WS/13(1)(a)(b)(d) P.C. Act, 1988. A Special Investigation Team was constituted headed by Shri J.I.Yaden, the then S.P. and investigated the case.

10. Ms. V. Suokhrie, learned PP, submits that accused Imnaonen (R.2) who was working as L.D.A on contract basis under NPSC took Rs. 10 (ten) lakhs on 14.02.2005 to the house of Shri Kevi Liegise, the then Controller of Examination, NPSC in order to help the candidates who are appearing the NPSC Examination 2005. But Shri Kevi Liegise refused to received the money and the matter was reported to the NPSC authority on 15.02.2005, accordingly the NPSC after verification of the report summoned accused Imnaonen and examined him thoroughly and ascertained that he had attempted to bribe the Controller of Examination and found him unbecoming of a

public servant and has terminated his contract service and further he was debarred from appearing in the NPSC Examination who was also an aspiring candidate.

11. The learned PP submits that the deal between accused Imnaonen (R.2) and accused Imosanen (R.8) is that Imnaonen demanded Rs. 10 (ten) lakhs from accused Imosanen for back door help for selection in the NCS and allied Service Examination 2005. After negotiation they settled at Rs.6 (six) lakhs only. On 12.02.2005 Shri A. Wati Pongen, elder brother of accused Imosanen (R.8) and Smti. Achila Pongen, sister of Imosanen (R.8), handed over the money to accused Imnaonen (R.2). Later on in order to have some written record on agreement in a non-judicial stamp paper signed on 12.02.2005 between accused Imnaonen and A. Wati Pongen, elder brother of accused Imosanen, showing a loan receipt of Rs. 6 lakhs at the rate of 5% p.m. interest which was prepared after the case of attempted bribery was exposed. Accused Takasashi (R.5) was the contact person to arrange candidates for accused Imnaonen to pass NCS and Allied Services Examination 2005 and to get EAC on top position for the price of Rs. 7 lakhs.

12. The learned PP submits that the contact between accused Imnaonen (R.2) and accused Thsapongse (R.1) was made through accused Takasashi (R.5) who was a Constable, Home Guard and a tenant of accused Thsapongse. Accused Tekasashi arranged a meeting between accused Imnaonen and accused Thsapongse and accused Thsapongse (R.1) paid Rs. 7 lakhs to accused Imnaonen (R.2) at Capital Hotel Room No. 309 located near Old NST Bus Station

Kohima on 19-20 December 2004. Accused Imnaonen made an agreement to give question papers 2-3 days ahead of NPSC Examination. Accused Imnaonen (R.2) contacted accused Tinuwati (R.6) sometime in the month of November 2004 and asked him to arrange Rs. 5 lakhs for procurement of question papers 2-3 days ahead of NCS and Allied Service Examination 2005. Accused Tinuwati (R.6) bargained and the amount was settled at Rs. 1.50 lakhs however, accused Tinuwati could not arrange the money. Accused N.Panger (R.3), father of accused Imnaonen (R.2) approached accused Er. Imkong Longkumer (R.7) for loan during October 2004 for an amount of Rs. 5 lakhs. Accused Imkong Longkumer(R.7) paid Rs. 5 lakhs to accused Imaonen(R.2) at Kohima on 01.02.2004 by forging the signature of his father-in-law Shri Marlemba in the loan agreement at 5% p.m. interest by mortgaging a plot of land at Diphupar which would be forfeited in event of default of re-payment of the said loan amount vide an agreement made between accused Imnaonen as borrower and Shri Marlemba as lender on non-judicial paper and accused Imkong Longkumer also signed as a witness. On the next day the loan money was reportedly lost from the house of accused N.Panger (R.3) which was kept by accused Imnaonen (R.2) in his room and in lieu of repayment of a loan, accused Imnaonen (R.2) made a deal with accused Imkong Longkumer (R.7) to help his daughter Imlikokla, a candidate for NCS and Allied Service Examination 2005 by leaking the question papers 2-3 days before the exams. Accused N.Panger was aware that the loan agreement was only a cover to hide the illegal transaction between the parties.

13. The learned PP, while referring to the statements of the accused persons, submits that confessional statements of accused clearly reveals that they have made the confessional statement voluntarily.

14. Ms. V. Suokhrie, learned PP submits that accused Imnaonen, Mr. A. Wati Pongen and Achila Pongen have admitted that Ex.P-11(E) and agreement dated 12.02.2005 was actually not a loan but the amount paid for purchasing the question papers of NPSC and allied service 2005. The statement of accused Imnaonen was recorded on 28.06.2005. He was produced before the JMFC on two occasions by him. He was lodged at (S) P.S. Kohima at the time his confessional statements were recorded on 28 and 29 .06. 2005. The witness corrects himself that the accused was in judicial custody at that time. The accused persons were taken to the court of JMFC, Kohima for recording their confessional statement. The learned PP submits that PW-10 denied the suggestion that they have used force or pressure and questioned the accused for their co-operation or they would face arrest in their failure to do so. PW-15, Shri J.I. Yaden, IGP (VIG) the leading I.O. of the case deposed that the confessional statements were recorded in respect of all the accused persons while they were in judicial custody.

15. Ms. V. Suokhrie, learned PP submits that the seized documents contains the fact and figure disclosing reflection of what really transpired in relation to the transaction indulged by the accused persons to purchase question papers for NCS and allied services exams 2005. The confessional statements of all the accused persons were recorded while they were in judicial custody which were made

voluntarily before the Magistrate. The Trial Court ought to have appreciated the material evidences which shows the concert and connection between the accused persons charged with to procure question papers of NCS and allied Services Examamination 2005, 2-3 days before the exam. The exhibited documentary evidences and the depositions of PW-6 and PW-7 fully corroborated the confessional statements of accused persons and that the prosecution case is not based on circumstantial evidence but based on direct evidence and eyewitness i.e. PW-6 and PW-7.

16. Ms. V. Suokhrie, learned PP submits that the Trial Court ought to have appreciated the facts that the Magistrate is satisfied that the confession was voluntary though the confession was retracted when the accused persons were examined U/S 313. The evidence on records shows the payment of money as well as agreement executed with common intention to purchase question papers for NCS and allied services examination 2005 and the prosecution has proved the connection of the accused persons in the commission of offence beyond reasonable doubt. The retraction of confession does not dilute or reduce to wipe out the evidentiary value of a confessional statement. The retraction was an afterthought, however, the Trial Court without applying its judicious mind and with perversity ignored the conclusive evidences against the accused persons and concluded that the prosecution failed to bring home to prove the guilt of accused persons beyond all reasonable doubt and thereby acquitted all the accused persons by giving them the benefit of doubt as such there is a strong and compelling reasons for this Hon'ble Court to

interfere with the acquittal order. Hence, the judgment and Order dated 12.05.2016 passed by the Court below deserved to be quashed and set aside and convict the accused persons under appropriate section law.

17. In support of her submissions, the learned PP has relied on the following judgments of the Hon'ble Supreme Court:-

1) **State of T.N. vs. Kutty Alias Lakshmi Narasimhan** , reported in **(2001) 6SCC 550**.

2) **Periyasami vs. State**, reported in **(2014) 6 SCC 59**.

18. Mr. Tongpok Pongener, learned counsel for respondent no. 1 submits that the confessional statement recorded under Section 164 Cr.PC is non-est in the eye of law. It can be seen from the confessional statement that the Magistrate did not give the assurance that even if the appellant declines to confess he will not be sent back to police custody. Again it is established law that merely asking the accused whether he is voluntarily making the confession is not sufficient to determine the voluntary nature of the confession. It is established law that before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and

should assure himself that during the time of reflection, he is completely out of police influence.

19. The learned counsel submits that the accused was not informed of his right to consult a lawyer, therefore, it is sufficiently clear that the confessional statement was not recorded in a lawfully permissible manner and as such the same is not admissible in law as rightly held by the learned District & Sessions Judge-cum-Special Judge, PC Act, Dimapur vide Judgment dated 12.05.2016. Be that as it may, the confessional statement has been retracted as is evident from the records. Further, an accused cannot be convicted solely on the basis of his confessional statement.

20. The learned counsel submits that the recovery of diary containing the loan amount taken by Imnaonen (respondent No. 2) from the appellant does not prove anything in the absence of independent witnesses as rightly held by the learned District & Sessions Judge-cum-Special Judge, PC Act, Dimapur vide judgment dated 12.05.2016. Further it is well settled that loose papers without giving full details are dumb documents without any evidentiary value.

21. The learned counsel submits that in the absence of the main accused being convicted, the Respondent no. 1 cannot be convicted too. It is established that court cannot convict one accused and acquit other when there is similar evidence against them. He submits that there is no direct evidence against the Respondent no. 1 that he was involved in the offence alleged against him under section 108, 511 & 34 IPC. It is well settled that when there is no

direct evidence the circumstantial evidence so relied on must form a complete chain wherein each link in the chain points towards the guilt of the accused beyond all reasonable doubt. Therefore, the judgment dated 12.05.2016 learned District & Sessions Judge-cum-Special Judge, PC Act, Dimapur in RC No.2/05 is legally sound and rational which does not deserve to be interfered with.

22. In support of his submissions, Mr. Pongener, learned counsel has relied on the following judgments of the Hon'ble Supreme Court and High Court in the following cases:

- 1) **Gajibur Rahman Vs. State of Assam** reported in **2006(Suppl.) GLT 39 (DB).**
- 2) **Shivappa Vs. State of Karnataka** reported in **AIR 1995 SC 980.**
- 3) **Gendra Brahma Vs. State of Assam** reported in **(1981) CrLJ 430 (Gau)(DB)**
- 4) **Parveen @ Sonu Vs. State of Haryana** reported in **2021 SCC Online SC 1184.**
- 5) **CBI Vs. V. C. Shukla** reported in **(1998) 3 SCC 410.**
- 6) **Interlocutory Application Nos. 3 & 4 of 2017 in WP(Civil) No. 505/2015 Common Cause Vs. UOI**
- 7) **Javed Shaukat Ali Qureshi Vs. State of Gujarat** reported in **2023 SCC Online 1155.**
- 8) **Dhanraj @ Dhand Vs. State of Haryana** reported in **(2014) 6 SCC 745.**
- 9) **Anwar Ali Vs. State of Himachal Pradesh** reported in **(2020) 10 SCC 166.**
- 10) **Bhaiyamiyan alias Jardar Khan Vs. State of Maharashtra** reported in **(2011) 6 SCC 394.**
- 11) **Ramesh Bahubal Doshi Vs. State of Gujarat** reported in **(1996) 9 SCC 225.**

23. Mr. A. Zhimomi, learned counsel for respondent Nos. 2 and 3 submits that the evidence collated must be assessed in terms of the charges framed against each of the accused. In the Trial Court, no evidence whatsoever has been led to establish the charges framed.

That is to say, the evidence led, is of no probative value and/or does not establish the charges framed against the respondent Nos. 2 & 3.

24. The learned counsel submits that the case against the respondents is solely based on circumstantial evidence. The appellant/state has completely failed to meet the principles of prosecution on the basis of circumstantial evidence. The confessional statements of the respondents are relied upon by the prosecution/state. However, the confessional statements do not meet the requirements of Sections 164 of the CrPC. They are not voluntary.

25. Mr. A. Zhimomi, learned counsel submits that apart from the confessional statements being invalid, as well as retracted, there is no corroborative evidence whatsoever. The seizures are invalid and/or the articles allegedly seized have not been proved. The factum of demand and payment of illegal gratification has also not been proved. In the absence of these foundational facts, there is no corroborative evidence to support and/or give credence to the confessional statements. The grounds taken are against all respondents and general in nature. How and in what manner the order of acquittal is defective and/or unsustainable against each of the accused has not been specifically pleaded/mentioned in the appeal.

26. Mr. A. Zhimomi, learned counsel submits that the deposition of the prosecution witnesses in their entirety does not disclose a single shred of evidence as to how the respondent No. 2 having been entrusted with property and/or with dominion over property, committed criminal breach of trust, as contemplated under Sections

409 read with 405, IPC. The learned counsel submits that section 511, IPC, prescribed punishment for attempting to commit offences. There is no evidence whatsoever to bring home the charge under Section 409 of the IPC. Therefore, the charge under Section 511 of the IPC must also fail. Given the failure of the prosecution to establish and/or bring home the charge under Sections 409 and 511, IPC, the appeal against the respondent No. 2 must fail on this ground alone.

27. The learned counsel submits that the charges against the respondent No. 3 are intrinsically linked to the respondent No. 2. The respondent No. 3 is the father of the respondent No. 2. The charge against the respondent No. 3 is that of common intention, abetment and attempt to commit offences. The essence of the charges against the respondent No. 3 is that he abetted his son in the commission of illegal acts. Since the charges against the respondent No. 2 have not been established, the charges against the respondent No. 3 must also necessarily fail.

28. Mr. A Zhimomi, learned counsel submits that the propositions of the respondents and the evidence in support thereof, amply demonstrate that the appellant/State has failed to adduce any evidence to establish the charges framed against the respondent Nos. 2 and 3 and/or that, they are guilty of the commission of any offence/offences. The Judgment and Order of the learned Trial Court does not suffer from any infirmity. Therefore, the appeal is liable to be dismissed.

29. To bolster his submissions, Mr. A. Zhimomi, learned counsel has placed reliance on the following judgments of the Hon'ble Supreme

Court:

- 1) **Ghurey Lal Vs. State of Uttar Pradesh** reported in **(2008) 10 SCC 450.**
- 2) **Anwar Ali & Anr vs. State of Himachal Pradesh** reported in **(2020) 10 SCC 166.**
- 3) **Sadhupati Nageswara Rao Vs. State of Andhra Pradesh** reported in **(2012) 8 SCC 547**
- 4) **Shankaria Vs. State of Rajasthan** reported in **AIR 1978 SC 1248.**
- 5) **Aloke Nath Dutta & Ors Vs. State of West Bengal** reported in **(2007) 12 SCC 230.**
- 6) **Ranjit Singh Alias Jita and Ors Vs. State of Punjab** reported in **(2002) 8 SCC 73.**
- 7) **Central Bureau of Investigation Vs. V. C. Shukla and Ors** reported in **(1998) 3 SCC 410.**
- 8) **Raju@ Balachandran and Ors Vs. State of Tamil Nadu** reported in **(2012) 12 SCC 701.**
- 9) **Naresh Kumar @ Nitu Vs. State of Himachal Pradesh** reported in **(2017) 15 SCC 684.**
- 10) **Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan** reported in **(2013) 5 SCC 722.**

30. Mr. Limawapang , learned counsel for the respondent No. 6 submits that respondent/accused No. 6 is charged under Sections 34/511/109 of IPC. The grounds of challenge, in so far as it relates to the respondent/accused No. 6, is as under:-

Firstly, the learned Trial Court has committed error in brushing aside the confessional statement recorded in

accordance with Section 164 Cr.PC, by the Magistrate, and secondly, the learned Trial Court has passed the Judgment 12.05.2016 without appreciating the material evidence.

31. The learned counsel while adopting and subscribing to the submissions made by learned counsel, Mr. A. Zhimomi, appearing for and on behalf of respondents/accused Nos. 2, & 3, put forwarded additional submissions in respect of the above mentioned 2 (two) grounds as under:-

a. The confessional statement of respondent/accused No. 6, recorded by the Magistrate is not in conformity with Section 164 of Cr.PC,

b. In the cross examination, the learned Magistrate, who recorded the statement of the respondent/accused No. 6 under Section 164 of Cr.PC has stated as under:-

"It is correct to say that I have recorded the statement of accused Tinuwati u/s 164 Cr.PC. It is correct to say that the confessional statement of Tinuwati was recorded on 13.06.05 as well as 15.06.05. On 13.06.05 Tinuwati was produced and recorded at 2:20 p.m. I cannot remember how many hours of time were given to Tinuwati for cool reflection. I cannot say where Shri Tinuwati was kept for cool reflection. Was he with the police I could not ascertain? It is correct to say that I have not ascertained about the custody of Tinuwati and other accused prior to recording their confessional statement. Yes, it is the practice of the investigating agency to pray for recording

confessional statement. Yes, it is also a practice to provide sufficient cooling reflection at least 24 hours for the accused persons before recording their confessional statement. It is correct to say that confessional statement is purely a voluntary matter of an accused. Yes, it is correct to say that any accused persons giving once confessional statement from the custody of investigating agency cannot be voluntarily. It is correct to say that prior recording the confessional statement I have not ascertained whether the accuseds were produced from the police or judicial custody.

c. The PW-10, J. Meyionen, one of the Assisting I.O.s of the case in his cross-examination by the counsel for the respondent/accused No. 6, has stated as under:-

"It is correct to say that Ezxhibit 10(a) serial No. 4 does not contain anything in regards to transaction pertaining to NPSC examination. It is correct to say that there is no endorsement of Mr. Tinuwati also of other co-accused in exhibit 10(A). It is correct to say that I have not exhibited expert forensic report to show that exhibit 10(A) is the hand writing of accused Imna Onen. There is no other evidence to show that there was a deal made between Imna Onen and accused Tinuwati. I cannot say from whose custody accused Tinuwati was produced for recording his confessional statement. I also cannot remember who took accused Tinuwati before JMFC."

32. The learned counsel submits that it has been held by the

Hon'ble Apex Court in **Rabindra Kumar Pal vs. Republic of India**, reported in **(2011) 2 SCC 490**, that the requirements of Section 164 Cr.PC are to be followed strictly. He submits that manner in which the confessional statement of respondent/accused No. 6 has been recorded speaks for itself that the mandatory requirements under Section 164 Cr.PC has not been followed. Therefore, submits that the learned trial Court has rightly rejected the prayer of the learned Public Prosecutor to convict the respondent/accused No. 6, based on the confessional statements of the respondent/accused No. 6.

33. The learned counsel, on material evidence, submitted as under:-

The PW-10, J Meyionen, one of the Assisting I.O.s of the case in his cross-examination has stated as under:

"...Initially, on 02.06.05, I have raided the private building of accused N. Panger which was occupied by accused Imna Onen. A lot of incriminating documents were recovered during the search which are listed in seizure memo. This seizure memo contains steno note book, personal diaries, bank accounts, application forms, agreement signed in non-judicial papers; admit card form in a bunch. Ext. P/10 –P/13 are the seizure memos prepared by me which beard my signature. Ext. P/10(A) is the short hand book seized by me which contains recordings of the transaction made between Imna Onen and the following persons namely:-

1. *Imlikokla, 5 lakhs (paid)*
2. *Imosang, 10 lakhs (not yet paid)*

3. *Tsapongse Sangtam, 7 lakhs (paid)*
4. *Tinuwati 2 lakhs (not yet paid).."*

34. The learned counsel submits that the PW-10, J. Meyionen, in his cross-examination for the respondent/accused No. 6, had stated as under:-

"It is correct to say that, Exhibit 10(A) serial No. 4 does not contain anything in regards to transaction pertaining to NPSC examination. It is correct to say that there is no endorsement of Mr. Tinuwati also of other co-accused in exhibit 10(A). It is correct to say that I have not exhibited expert forensic report to show that exhibit 10(A0 is the hand writing of accused Imna Onen. There is no other evidence to show that there was a deal made between Imna Onen and accused Tinuwati. I cannot say from whose custody accsued Tinuwati was produced for recording his confessional statement. I also cannot remember who took accused Tinuwati before JMFC".

35. The learned counsel submits that the PW-11, Shuwoto Wotsa, one of the Assisting I.O.s of the case in his cross examination by the counsel for the respondent/accused No. 6, has stated as under:-

"It is correct to say that there is no documentary proof to show that accused Tinuwati had entered into a deal pertaining to question paper with the co-accused other then a note in the diary of co-accused. I cannot say whether the handwriting allegedly recorded in the diary of Imna Onen has been sent for expert opinion. I do not remember any FSL report is annexed

to the charge sheet in regards to the alleged writing in the diary. It is correct to say that I have not recorded the statement of the independent witnesses in regards to the alleged seal stated to be made between Tinuwati and Imna Onen. I deny that Tinuwati was in the custody of the Vigilance while he was sent for recording confessional statement. I cannot say as to who are the independent witnesses have given their statements. I do not know whether accused Tinuwati was in custody at the time of recording confessional statement."

36. The PW-16, J.I. Yaden, the I.O. of the case, in his cross-examination by the counsel for the respondent/accused No. 6 has stated as under:-

"It is correct to say except the statement of accused Imna Onen, there is no other Independent witness examined by the team to corroborate the statement of accused Imna Onen. It is correct to say that there is no written agreement about the alleged deal stated to be not materialized. It is correct to say that the sentence noted in the short hand book inscribing Tinuwati's name with remarks 'not paid yet' does not bear the signature of Tinuwati. It is correct to say that the sentence noted in the short hand book is not the hand writing of Tinuwati. It is correct to say that Tinuwati has been charge sheeted based on the statement made by the accused'.

37. The learned counsel submits that except for the short hand book seized from the accused Imna Onen, there is absolutely no

documentary evidence to prove the charge against the respondent/accused No. 6. Moreover, the short hand book was not sent for expert forensic examination to determine the author of the short hand book.

38. The learned counsel submits that it has been held by the Apex Court in **CBI vs. C. Shukla**, reported in **(1998) 3 SCC 140** that entries in books of account, regularly kept in the course of business are relevant, but such statement will not be sufficient to charge any person with liability, it has to show further by some independent evidence that the entries represent real and honest transactions and that the monies were paid accordance with those entries.

39. The learned counsel submits that it is also admitted by the I.O. (PW-16, J.I. Yaden), in his cross-examination that the respondent/accused No. 6 has been charge sheeted based on the statement made by the accused, Imnaonen. It is also admitted that no independent witnesses were examined to corroborate the statement of the co-accused, Imnaonen. Therefore, the statement of the co-accused cannot be taken as evidence so as to be made the foundation for conviction of the respondent/accused No. 6.

40. Mr. Limawapang, learned counsel submits that under the given facts and circumstances, the learned Trial Court has rightly rejected the prayer of the learned Public Prosecutor to convict the respondent/accused No. 6 in the absence of reliable corroborated material evidence and therefore, submits that there is no illegality in the Judgment and Order dated 12.05.2016 passed by the learned Trial Court which calls for the intervention of his Hon'ble High Court

and as such same is liable to be dismissed.

41. I have considered the rival submissions of the learned counsel for the parties and carefully examined the materials available on record.

42. On the scrutiny the State in this appeal has placed heavy thrust on the confessional statements of the accused persons urging for conviction while assailing the impugned judgement and order dated 12.05.2016 passed by the learned Trial Court

43. To appreciate, this Court would refer to the relevant materials and the Depositions of PWs.

44. It is alleged that accused Imnaonen/Respondent No. 2, who was working as LDA on contract basis under N.P.S.C took Rs. 10 Lakhs on 14.02.2005, to the house of Shri Kevi Legise, the then Controller of Examination, N.P.S.C in order to help the candidates who are appearing in the NPSC Examination 2005. But Shri Kevi Legise refused to receive the money and the matter was reported to the NPSC authority on 15.02.2005, accordingly the NPSC after verification of the veracity of the report summoned accused Imnaonen and examined him thoroughly and ascertained that he had attempted to bribe the Controller of Examination and found him unbecoming of a Public servant, hence his contract service under NPSC was terminated, further he was debarred from appearing the NPSC Exam who was also an aspiring candidate. PW-10, Shri I. Meyionen the then Addl. S.P. Vigilance, had deposed in examination in chief that on 14.02.2005 accused Imnanonen went to the house of Shri Kevi Legise in the morning with an amount of Rs. 10 Lakhs

and told him he has brought money for a particular candidate but Kevi Legise refused to accept the money saying that it is not good to indulge in such practices and advised him to return the money. The next day Kevi Legise reported the matter to NPSC authorities and subsequently Imnaonen was terminated from his service. PW-10 further had stated that he recorded the statement of accused Imnaonen to the effect that he was called by the then Controller of Examination Mr. Kevi Legise to arrange for candidates willing to pay money for being selected in the recruitment examination. He did not take action on this statement because the said Mr. Kevi Legise flatly denied making such approaches to the accused Imnaonen. PW-16 Shri J.I. Yaden the then IGP and Director of Vigilance and I/O of the case had deposed that accused Imnaonen disclosed that Kevi Legise had called him to his Office chamber on 19.11.2004 and asked him whether he can keep a secret. Shri Imnaonen had replied in affirmative that he can keep a secret. Accordingly Shri Kevi had asked him to arrange some candidates for back door appointment for the NCS and allied services and informed him that he got Rs. 10,00,000/- (Rupees ten lakhs) as per discussion from a candidate. According to Imnaonen, Kevi Legise had told him return the money as this was not the right time. On 15.02.2005 the matter was reported to NPSC authority by Shri Kevi Legise about the attempted bribe on Kevi, the then COE of NPSC. The NPSC authority asked him to sign the statement, as per the disclosure made by Mr. Imnaonen the NPSC terminated him from the service and also debarred him from appearing the NCS and allied services examination where he

was also a candidate for his involvement.

45. Prosecution projected that the deal between accused Imnaonen and accused Imosanen is that, accused Imnaonen demanded Rs. 10,00,000/- (Rupees ten lakhs) from accused Imnasanen for back door help for selection in the NCS and allied Services Examination 2005. After negotiation they settled at Rs. 6,00,000/- (Rupees six lakhs) only. On 12.02.2005 Shri A. Wati Pongen elder brother of accused Imosanen and accused Imosanen handed over the money to accused Imnaonen. Later on, in order to have some written record on agreement in a non-judicial stamp paper signed between the accused Imnaonen and A. Wati Pongen the elder brother of accused Imosanen vide dated 12-02-2005 showing a loan receipt of Rs. 6,00,000/- (Rupees six lakhs) only at the rate of Rs. 5% per month interest. PW-6 Smti. Temsuchila is the sister of accused Imosanen had deposed that she knew accused Imosanen who is her younger brother. Her brother accused Imosanen had applied for the post of EAC, DSP and other allied services. In the last part of 2004 till 2005 first part, accused Imnaonen who is working in the office of NPSC as LDA approached her to arrange Rs. 10 lakhs for her brother accused Imosanen to get passed in NPSC Examination and to get appointment in the post of EAC or DSP or other allied services and in due course she negotiated with accused Imnaonena and settled for Rs. 6 lakhs only and handed over the said amount in cash along with her elder brother to the accused Imosanen. Thereafter, they returned to their home and after few days her brother Imosanen was arrested by Vigilance thereafter. After this her brother accused Imosanen

could not appear in NPSC examination because he had been debarred from appearing. In the re-examination PW-6 further had deposed that her brother accused Imosanen and accused Imnaonen knew each other. Her brother accused Imosanen used to go to Kohima and meet accused Imnaonen. Being a close friend her brother accused Imosanen was in the knowledge that he will be getting EAC or any other allied post through NPSC. The main purpose of loan agreement is to secure the post of EAC or any allied post through NPSC. PW-7, Shri Nungpokwati is the elder brother of accused Imosanen. He had deposed that his brother accused Imosanen is a graduate who applied for the post of EAC, DSP or allied service. Accused Imnaonen demanded Rs. 10 lakhs for the post of EAC, DSP or allied services for his brother accused Imosanen. However, he had paid Rs. 6 lakhs in cash to accused Imnaonen and out of this money his brother was expecting to get some post through NPSC. PW-10 Shri I. Meionen the then Addl. SP Vigilance who is also the member of SIT testified in examination in chief that accused Imosanen has paid Rs. 6 lakhs in cash to accused Imnaonen and out of this money his brother was expecting to get the member of SIT testified that accused Imosanen has paid Rs. 6 lakhs on 12.02.2005 to accused Imanonen through his elder brother A. Wati Pongen for which the transaction record has already been exhibited. The transaction was for supply of question papers for NCS and allied services 2005 within 2 or 3 days before the examination. As per records Imnaonen has already returned Rs. 4 lakhs on 07-05-2005 to A. Wati Pongen after withdrawing the money, the previous day from

the account of Watisenla which was deposited on 08-03-2005. Watisenla happened to be a one time girlfriend of Imanonen. Since there was a complaint for the loss of Rs. 5 lakhs which was lodged by Imnaonen father N. Panger in order to avoid complication he had to resort to the use of his girlfriend's passbook. In the cross, PW-10 had stated that it is correct to state that the transaction of Rs. 6 lakhs was made on 12.02.2005 at the residence of Imnaonen at Kohima. During the transaction on 12.02.2005 accused Imnaonen and Imosanen, Mr. A. Wati Pongen and Achila Pongen were present. It is correct to state that a sum of Rs. 6 lakhs only was transacted between accused Imnaonena and accused Imosanen. PW-11 Shri Shiwoto Wotsa the then Addl. SP who is also member of SIT had stated that regarding the involvement of accused persons, it was found that accused Imnaonen contacted accused Imosanen and told him that he would give question papers of NCS and allied service examination 2-3 days before that examination if he would give Rs. 10 lakhs. They later bargained for Rs. 6 lakhs for the said purpose. The said money was handed over to accused Imnaonen on 12.02.2005 at the residence of accused Imnaonen by Shri Wati Pongen, brother of accused Imosanen. PW-13 Shri Imkongtoshi, the then Inspector of Vigilance who is also the member of SIT had deposed that on 06.08.2005 he had examined Shri Wati Ponger to ascertain the transaction of Rs. 6 lakhs between Wati Pongen brother of accused Imosanen and accused Imnaonen. On examination he stated that he had received information from his sister Achila Pongen who told him that accused Imnaonen had approached accused Imosanen to

arrange Rs. 10 lakhs for question papers for NCS and allied services examination. Therefore, A. Wati Pongen and Achila Pongen could arrange Rs. 6 lakhs and with this amount they went to the residence of accused Imanonen on 12.02.2005. On the same day they handed over Rs. 6 lakhs to accused Imnaonen in the denomination of Rs. 1000/- and Rs. 500/-. The main purpose of this transaction was to enable accused Imosanen to pass the NPSC examinations. PW-5 Smti. Watisenla who is a Lecturer in Pfutsero Arts College and who was a girlfriend of accused Imnaonen had deposed that she came to know Imnaonen in the last part of 2003 and slowly they established close relationship as boyfriend and girlfriend. In the first part of 2005, accused Imnaonen told her that he had misplaced his bank pass book and requested her that he will deposit some money in her savings bank account. Accordingly, she took her savings bank account and went along with accused Imnaonen to the bank and deposited Rs. 4 lakhs in her account. After depositing the said amount she had handed over her bank account book along with cheque book to accused Imnaonen. Since she was not at Kohima for the convenience sake she had signed 2-3 blank cheques and handed over to accused Imnaonen. After some time in the same year she came to know that accused Imnaonen was arrested by Vigilance in connection with NPSC scam and during the course of investigation the Vigilance Personnel had seized her savings bank account pass book from the possession of accused Imnaonen.

46. PW-16 Shri J.I. Yaden, IGP and Director of Vigilance is the I/O of the case and had deposed that accused Imosanen had disclosed that

he was a good friend of Imnaonen and had approached him for back door help to get appointment through NPSC in NCS and allied services, 2005. He further disclosed to the team members that Imnaonen had demanded Rs. 10,00,000/- (Rupees ten lakhs) and after bargaining the amount was settled to Rs. 6 lakhs. Imnaonen had informed that he was an agent of the Controller of examination and that the question papers will be given 2-3 days before the examination. On further investigation the team had found the agreement paper seized between Imnaonen and A. Wati for Rs. 6 lakhs with interest of @10% per month which was witnessed by A. Achila sister of Imosanen. It further transpired that accused Imnaonen had contacted A. Achila for arranging the amount which was initially for Rs. 10 lakhs and after bargaining they settled for Rs. 6 lakhs and the amount was handed over to Imnaonen by A. Wati and Achila at his residence.

47. The contact between accused Imnaonen and accused Thsapongse was made through accused Tekasashi who is a villager of Smti. Takachila, Deputy Secretary, NPSC and mother of accused Imnaonen. Accused Imnaonen assured accused Tekasashi that he will remember him if the deal materializes with anyone. Accused Tekasashi informed accused Thsapongse a candidate for the NCS and allied services examination 2005 that one of his villagers son who is working in the NPSC is asking Rs. 7 lakhs for the post of EAC and he introduced accused Imnaonen and accused Thsapongse in a hotel outside the NPSC Office. Accused Tekasashi arranged a meeting between accused Imnaonen and accused Thsapongse. Being

convinced accused Thsapongse arranged Rs. 7 lakhs and paid to accused Imnaonen. Accused Imnaonen made an agreement to give question papers 2-3 days ahead of NPSC exam. The transaction of Rs. 7 lakhs took place at Capital Hotel Room No. 309 located near Old NST Bus Station Kohima on 19-20th December 2004. PW-10 Shri I. Meyionen the then Addl. SP Vigilance who is also Asstt. I/O of the case testified in Examination in Chief that the next person who had an illegal transaction of Rs. 7 lakhs is accused Thsapongse Sangtam who was working as SDPO in the Social Welfare Department. It was through accused Tekasashi, Home Guard who was a tenant of Thsapongse in Para medical Colony Kohima that contact was made between accused Imnaonen and accused Thsapongse. It was Tekasashi who approached Thsapongse and told him that he could become DSP/EAC if few lakhs of money is arranged for the question papers. Subsequently, when Tekasashi was performing duty near NPSC Office that Thsapongse and Imnaonen met at one local hotel nearby. Thereafter, on 19.20.2004, accused Imnaonen and accused Thsapongse met in Room No. 309 of Capital Hotel Kohima at around 6.30 PM and made the transaction of Rs. 7 lakhs which was handed over to accused Imnaonen by accused Thsapongse. PW-11 Shri Shiwoto Wotsa, the then Addl. SP Vigilance had deposed that, in respect of accused Thsapongse Sangtam it was found that he came in contact with accused Imnaonen through accused Tekasashi Constable Home Guard who was the tenant of accused Thsapongse, accused Imnaonen told Thsapongse that if he is given Rs. 10 lakhs he would give question papers of NCS and allied services examinations

2-3 days before the examination. He bargained and settled the amount at Rs. 7 lakhs. PW-11 had further deposed that accused Tekasashi was a villager of Smti. Takachila the mother of accused Imnaonen and through the mother's side he knew Imnaonen. Accused Tekasashi was a tenant of accused Thsapongse Sangtam at Paramedical Colony Kohima. Accused Imnaonen had reportedly told accused Tekasashi to look for any person seeking back door help to pass NCS and allied services. If he could do so he would be given bonus for the contact. Accordingly, he told house-owner accused Thsapongse who was then applying for NPSC exams about the back door help for passing out NPSC examination. They met accused Imnaonen outside the Office of NPSC and got accused Thsapongse and accused Imnaonen. Thereafter, the contact was made directly between accused Imnaonen and accused Thsapongse. PW-13 Shri Imkongtoshi had deposed that during interrogation accused Imnaonen had stated that he made a deal with accused Thsapongse to arrange Rs. 7 lakhs only in order to pass NPSC examination through back door help. They have agreed on 19 or 20.12.2004 transaction was made between accused Imnaonen and accused Thsapongse in the Capital Hotel Kohima in room no. 309 accused Thsapongse paid Rs. 7 lakhs to accused Imnaonen. PW-16 Shri J.I. Yade, IGP and Director of Vigilance who is the I/O had deposed that accused Imnaonen had also contacted accused Thsapongse Sangtam through accused Tekasashi who was staying in the rented house of Thsapongse somewhere at Para medical. Accused Tekasashi who is a villager of Takachila the then Deputy Secretary NPSC had come in

contact with accused Imnaonen during his Official duty at the Treasury. Accused Imnaonen had told accused Tekasashi that if he can arrange some candidates for passing the NCS and allied services examination 2005 he would take care of him. Accused Tekasashi informed accused Thsapongse about the discussion and after a week accused Tsapongse met accused Imnaonen in one hotel outside the NPSC Office, Kohima. Accused Imnaonen demanded Rs. 10,00,000/- and accused Tsapongse bargained as the same was too high and the demand was settled at Rs. 7,00,000/ _ that accued Imnaonen will give question papers of NCS and allied services exam 2005, 2-3 days before the commencement of examination. The transaction of the amount took place at Capital Hotel, Kohima on 19/12/2004 in room no. 309 in the evening between accused Tsapongse and accused Imnaonen. PW-16 further testified that accused Tekasashi was serving as home guard constable and he was the contact person between accused Imnaonen and accused Thsapongse. Tekasashi was serving in the Home Guard Department. He is from Longkhum Village and he knew Imnaonen as his mother Smti. Takachila hails from the same village.

48. Accused Imnaonen contacted accused Tinuwati sometime in the month of November 2004 and asked him to arrange Rs. 5 Lakhs for procurement of question papers 2-3 days ahead of NCS and allied services examination 2005. Accused Tinuwati bargained and the amount was settled at Rs. 1. 50 lakh. However, accused Tinuwati could not pay and the deal could not be materialised. PW-10 Shri. Meyionen, the then Addl. S. P. Vigilance and SIT member had

deposed that accused Tinuwati who was working as LDA in Social Welfare department, initial contact with accused Imnaonen made through his wife and their negotiation for the question papers was started with Rs. 5 Lakhs and finally settled at Rs. 1.50 lakh. Though the deal was finalized between accused Imnaonen and accused Tinuwati, it could not be materialized since accused Tinuwati could not arrange the money, PW-11 Shri. Shiwato Wotsa the then Addl. S.P. Vigilance and SIT member testified in examination in chief that in respect of accused Tinuwati, accused Imnaonen asked an amount of Rs. 5 Lakhs for the question papers of NCS and allied services exam which will be given 2-3 days before the examinations. They settled the amount at Rs. 5. 50 lakh. However, accused Tinuwati could not give the money and the deal could not be made. PW-16 Shri J.I. Yaden I/O of the case testified that accused Tinuwati was also a candidate for NCS and allied services examination. On his own he was acquainted with Imnaonen as casual acquaintance only. Accused Imnaonen made another deal with accused Tinuwati for Rs. 1.50 lakh which could not be materialized because of his inability to arrange the said money. Initially accused Imnaonen had asked Rs. 5 lakhs and after bargaining he settled the amount to Rs. 1.50 lakh, this amount was for giving the question papers of NCS and allied services examinations in which accused Tinuwati was also a candidate. Accused Tinuwati could not arrange the amount and the deal could not be materialized

49. Accused N. Panger father of accused Imnaonen approached accused Er. Imkong Longkumer for loan during October

2004 for an amount of Rs. 5 lakhs. Then accused Imkong Longkumer approached his father-in-law Shri Marlemba to lend the said amount to accused N. Panger and accused Imkong Longkumer obtained the loan amount of Rs. 5 lakhs from his father-in-law and paid to accused Imnaonen at Kohima on 02.12.2004. Loan agreement was made between accused Imnaonen as borrower and Shri. Marlemba as lender on non-judicial paper. Accused Imkong Longkumer had signed the agreement by forging the signature of his father-in-law Shri. Marlemba and also signed as a witness. The loan was made with an interest of 5 % per month by mortgaging a plot of land at Diphupar which would be forfeited in lieu of default of payment of the said loan. On the next day, the loan money was reportedly lost from the house of accused N. Panger which was kept by accused Imnaonen in his room. In lieu of repayment of loan, accused Imnaonen made a deal with accused Imkong Longkumer to help his daughter Imlikokla a candidate for NCS and allied services exam 2005 by leaking the question paper 2 -3 days before the exams. PW10 Shri. I. Meyionen had deposed that the accused Imkong Longkumer has paid Rs. 5 lakhs on 02.12.2004 through his wife Toshikala for their daughter Imlikokla who was also a candidate for 2005 NCS and allied services examination. The said amount was taken as a loan from Marlemba the father-in-law of accused Imkong Longkumer who has also signed as a witness. In fact, it was Imkong Longkumer who has forged the signature of his father-in-law. The money was collected by accused Imnaonen as borrower. Though the money was transacted as a loan, it was actually meant to supply question papers 2-3 days before the

said NPSC exam. PW-10 further testified that the money which was taken over from the residence of accused Imkong Longkumer on 2nd December 2004 was reportedly lost the next evening from Imnaonen's room. Later on the matter was reported to the North P.S. Kohima by accused N. Panger Jamir. The initial contact was made through accused N. Panger Jamir with accused Imkong Longkumer for the so called loan. Since accused N. Panger Jamir was reportedly busy in one wedding party, he called up accused Imnaonen to collect the money. This clearly indicates that he was all alone doing such activities in concerns with his son accused Imnaonen. PW-11 Shri. Shiwoto Wotsa had deposed that accused Imkong Longkumer has arranged the money through accused N. Panger the father of accused Imnaonen. The money amounting to Rs. 5 lakhs was collected by accused Imnaonen at the residence of accused Imkong located above Directorate of Industries and Commerce, Kohima on 02.12.2004. PW-11 further testified that accused N. Panger had asked loan from accused Imkong who was is old school friend. Accused Imkong had purportedly arranged a loan of Rs. 5 lakhs from his father-in-law Marlemba for accused N. Panger. The loan agreement was found prepared in the name of Marlemba as lender and accused Imnaonen as loanee at the rate of 5 % per month interest but it was reportedly lost and accused Imnaonen had made the deal with accused Imkong to give question papers of NCS and allid service exam 2-3 days before the exam for his daughter Imlikokla who had applied for the said exam. This deal was made in the payment of Rs. 5 lakhs but was unsuccessful. As per the loan agreement accused Imkong had signed

against the name of Marlemba by forging his signature and he also signed in the agreement as witness. PW-1 Shri. J.I Yaden testified in examination-in-chief that accused Imkong Longkumer was a friend of accused N. Panger father of accused Imnaonen. Accordingly to his disclosure, accused N. Panger had approached him for loan. Accordingly accused Imkong had arranged a loan of Rs. 5,00,000/- accused N. Panger. On 02.12.2005 accused N. Panger asked his son accused Imnaonen to collect the amount of Rs. 5,00,000/- was handed over by Toshikala wife of accused Imkong to accused Imnaonen in presence of accused Imkong Longkumer and loan agreement was made for Rs. 5,00,000/- at the rate of 5% interest between Marlemba as the lender and accused Imnaonen as the borrower with accused Imkong as a witness. The said agreement was set for expert opinion to ascertain the genuineness of Marlemba's signature and the report has returned that the signature of Marlemba was forged by accused Imkong Longkumer PW-16 identified the result of expert opinion which he has submitted along with the charge sheet. PW-16 J.I. Yaden further deposed that the next day after the money was delivered it was reportedly lost. In this connection, accused Imnaonen and accused Imkong Longkumer were examined and they revealed to the team members that accused Imnaonen had approached accused Imkong Longkumer that in lieu of the lost money he would supply NCS and allied examination question papers 2-3 days before the exam as accused Imkong's daughter Imlikokla was also a candidate for the said examinations. Accused Imnaonen approached accused Imkong with this proposal and accused Imkong agreed.

Accused Imkong has given his confessional statement before the Magistrate in this contest. PW-16 also further testified that after the money was lost accused N. Panger had lodged a complaint in the North Police Station, Kohima. Accused N. Panger was the person responsible directly or indirectly for making contacts between accused Imnaonen and accused Imkong. PW-8 Shri Nakrenmatang deposed that on 02.12.2004 he went to accused Imnaonen house and when he reached there he told him he is going to buy a new vehicle and he told him to accompany him to test the new vehicle. On the same day after reaching A.R. Camp, Kohima accused Imnaonen told him that he is going to collect money from some persons at P.R. Hill, Kohima. On reaching the Office of Directorate of Industries, he showed him one person who was standing before them. Accused Imnaonen went to the person and they went together and after 30 minutes he came back with the polythene bag containing money and he told him that he received 10 lakhs and the money was shared between him and other person Rs. 5 lakhs each. He further told him that the money was received in lieu of giving form. PW-17 Shri Marlemba who is the father-in-law of accused Imkong Longkumer deposed that accused Imkong Longkumer is his son-in-law. It is a fact that he has made a loan amounting Rs. 5 lakhs on interest to his son-in-law. His son-in-law telephoned him requesting him to lend an amount of Rs.5,00,000/- on interest which is being required for treatment of a cancer patient with an interest of 5%.

50. Accused Takachila was serving as Deputy Secretary in the office of NPSC. During the course of investigation, mark tabulation

register and answer script of Tsuktimar in law papers part I and part II were seized. In mark tabulation register it has been detected that marks obtained by Smti Lejao Konyak candidate of Welfare Inspector/Supervisor under Social Welfare Department has been overwritten and manipulated from 250 to 259. In the answer script of Tsuktimar in law part I and part II the marks obtained by him is 250 but it has been manipulated to 259. The manipulation of marks was suspected to have been done by accused Takachila. PW-10 Shri Meyionen had deposed that accused Achila is also accused of tempering with the answer script of her son Tsuktimar EAC in one of the departmental examinations conducted by NPSC. The actual mark secured by him was 89 whereas it has been found corrected to 95 which has been attributed to her work. Again she is also accused of tampering with marks secured by one Lejao Konyak during interview for Supervisor in the Social Welfare Department. The actual mark secured by her was 250 whereas accused Achila has tampered with the entries and enhanced it to 259, Lejao Konyak had an affair with Bendangchuba son of accused Achila and they had an illegitimate son. PW-11 Shri Shiwoto Wotsa testified that the marks obtained by Smti. Lejao Konyak was 250 but the numeral zero was tempered to 9 and shown as 259. In respect of Tsuktimar the mark obtained was 89 but tempered to 95. PW-12 Shri. Nzanbemo Lotha had deposed that he had seized one tabulation register and one answer script of Tsuktimar and the two documents were seized from the NPSC office on 10.06.2005 as per the direction of I/O. PW-12 exhibited seizure memo prepared by him as Exhibit P-14 and his signature as Exhibit P-

15(A). Exhibit P-16 is the tabulation register and Exhibit P-7 is the answer script of Tsuktimar. PW-14 Shri Kyurangse Sangtam, Additional S.P. deposed that he has taken part for collection of documents from the NPSC office. As directed by I/O on 30.07.2005 he went to the NPSC office Kohima and seized inquiry report related to temperament of mark sheet in respect of Smti. Lejeo Konyak and prepare seizure memo. PW-14 exhibited the seizure memo as Exhibit P-18 prepared by him and exhibited his signature as Exhibited his signature as Exhibit P-18(2) and also exhibited the enquiry report as Exhibit P-19 which has been seized by him. PW-15 Shri Viliehu Rutsa Deputy S.P. testified that on 30.07.2005 he accompanied his senior Officer Shir Kyurangse Sangta, and proceeded to NPSC Office, Kohima and Shri Kyurangse Sangta, seized the enquiry report with regard to temper of mark sheet in respect of Lejeo Konyak for the post of Supervisor, Social Welfare Department. PW-15 further testified that the tempered mark sheet is related to NPSC examination for the post of Supervisor. He had signed in the seizure memo as a seizure witness and he exhibited his signature as Exhibit P-18 (1). PW-15 also identified the seizure and enquiry report in Exhibit P-18 and Exhibit P-19. PW-16 Shri J.I. Yaden I/O of the case had deposed that accused Takachila was serving as Deputy Secretary, NPSC and she is the mother of accused Imnaonen. The NPSC had conducted departmental examination law paper I and II however as the same was scrutinized it was observed there was over writing in the marks obtained from 89 to 95. Accused Takachila was asked to identify the answer script and she has identified the same belonging to her son Tsuktimar who was

an E.A.C. But she denied any knowledge of the same. PW-1 Shri Zavekholu, Assistant Superintendent, NPSC testified that General English and General Studies appears to be the hand writing of C. Lotha who was working at that time as Under Secretary and the remaining entries of History I and II in total marks appears to be the handwritings of accused Takachila, Dy Secretary. The Vigilance investigating team had shown me the tabulation register in which I could identify the handwritings of two officers. That as per the testimony of PW-16, the handwriting expert could not give his opinion with regard to question documents of temperament of marks in answer script of Tsuktimar and marks Tabulation register in respect of Lejao Konyak. So there is no proving from the side of handwriting expert.

51. The accused persons appears to have confessed and admitted their involvement in the case in respect of the NPSC examinations for NCS and allied services, 2005.

52. The then learned Judicial Magistrate First Class, Smti. Nino Iralu, PW-9, had recorded the confessional statements of the accused persons and had deposed that she had recorded the confessional statements of accused Tinuwati, Imnaonen, Imkong Longkumer and Thsapongse Sangtam. The accused persons admitted their guilt by confessing that they had transacted the money between them for getting appointment through NPSC. Pw-9 further testified that before recording the confessional statements she has given accused persons sufficient time to refresh their mind for cool reflection and explained them in the language they understand that their confessional

statement will be used against them if so confessed, and the accused persons voluntarily confessed the offence. Pw-9 exhibited the confessional statements recorded by her as exhibit P-1 to P-8 which bears her signature.

53. PW-10 had deposed that he had seized lot of incriminating documents from the house occupied by accused Imnaonen. The seized documents are NPSC application forms and admit card form in a bunch, steno notebook, personal diaries, bank accounts application forms and agreement signed in non-judicial papers. He prepared seizure memos which he has exhibited the seizure memos as Exhibit P-10 to P-13 and also identified his signature. Pw-10 further testified that Exhibit P-10 (A) is the short hand book seized by him which contain recordings of transaction made between accused Imnaonen and the following persons namely (1) Imlikokla- 5 Lakhs paid (2) Imosanen -10 Lakhs not yet paid (3) Thsapongse -7 Lakhs paid (4) Tinuwati - 2 Lakhs not yet paid and the rest are names and address of other persons. Exhibit P-10 (B) is the loan agreement for Rs.6 Lakhs between Imnaonen and A.Wati Pongen elder brother of accused Imosanen, Exhibit P-10 (C) is the same agreement produced by A.Achila pongen elder sister of accused Imosanen during her examination. Exhibit P-11(A) is the agreement between accused Imnaonen and Marlemba which was witnessed by accused Imkong Longkumer for a loan of Rs.5 Lakhs, Exhibit P-11(B) is the pass book of accused Imnaonen Jamir P/B No.13770 Vijaya Bank Kohima, Exhibit P- 11(C) is the pass book of Watisenla Imsong Bank Account No.11731 of Vijaya Bank, Kohima with cheque book SL.No.

1952262195250 which is exhibited as Exhibit P-11(D), Exhibit P-11(E) is the agreement between accused Imnaonen and Achila Pongen in a plain paper for a loan of Rs. 5 Lakhs signed on 03-01-05, Exhibit P-12(A) is the NPSC admit card (plain) seized from Imnaonen possession and Exhibit P-13(A) is the blank NPSC application form seized from Imnaonen's room. These exhibits have been seized from the possession of accused Imnaonen.

54. PW-11 had deposed that during investigation a house search was conducted at the residence of accused N. Panger on 02-06-05 and a relevant document that is an order for termination of service of accused Imnaonen, LDA issued by Secretary NPSC and an order for debarring accused Imnaonen and accused Imosanen from appearing NCS and allied services examinations for violation of NPSC examination conduct rules were found and seized. Pw-11 exhibited the seizure memo prepared by him as Exhibit P-14 which bears his signature. He also exhibited termination order of accused Imnaonen in original as Exhibit P-14 (A) and order debarring accused Imnaonen and accused Imosanen from appearing NPSC exam as Exhibit P-14(B).

55. PW-16 had deposed that basing on evidence collected during investigation seized documents, confessional statements of accused persons and circumstantial evidences gathered during investigation and also taking into consideration of expert opinion and material evidences, the charge sheet has been filed against the accused persons. Pw-16 exhibited the charge sheet as Exhibit P-24 and his signature as Exhibit P-24(1). also further identified the following

exhibited exhibits:-

- a) Exhibits P-10 (A) short hand note book.
- b) Exhibit P-17 answer script of Tsuktimar.
- c) Exhibit P-16 mark Tabulation register in respect of Lejao Konyak.
- d) Exhibit P-14 (A) and accused Imnaonen and Imosanen from appearing NPSC exams.

56. Accused Imkong Longkumer had adduce two defence witnesses including himself and one Temjennunsang. He had deposed that the loan agreement was made between accused Imnaonen and his father-in-law Shri Marlemba where he had signed on behalf of Shri Marlemba.

57. It transpires that the seizure memo dated 10.06.2005 which was effected by another Assistant Investigating Officer, PW-12 has no witnesses to the seizure. PW-12 in his examination had stated that the seizure of 10.06.05 (Ex. P-15) was made at the behest of his superiors and not as a result of investigation by him. He stated that it is correct that he has absolutely no idea as to whether the articles seized by him on 10.06.05 are of any evidentiary value, incriminating or otherwise. He stated that it is correct that the articles in question were seized from Kevi Liegise, controller of examination NPSC and the seizure was made in the Vigilance P.S. and not from the office of the NPSC. When he seized these articles, he did not make any identifying marks on them. He further stated that it is correct that apart from making any identifying mark on the seized articles he did not get any independent witness to attest the seizure. Besides the seizure of 10.06.2005 he had made other seizure also but he had not present the same as evidence.

58. The seizure memo dated 30.07.2005, Exhibit P-18 relates to seizures made from the Office of the NPSC. The witnesses of this seizure have not been examined as prosecution witness. There exists another seizure memo dated 20.06.2005 showing seizures from the Office of the NPSC. However, there are no witnesses to this seizure memo and it has not been exhibited. The Officer, PW-10 effecting the seizures states that, the search was conducted in a populated area. However, apart from the deficiencies in the number of witnesses the prosecution did not even examine the sole witness to the seizure memos dated 02.06.2005, Exhibit P-10, 11, 12 and 13. The prosecution has failed to establish the foundational facts i.e., particularly the seizure in question Exhibit P-10 (A).

59. On scrutiny, this court finds that the seizure memos as a whole have not been proved and cannot be relied upon which would mean that the corroborative evidence the appellant relied on is no evidence in the eye of law. The resultant effect of the circumstances referred to above is that no evidence direct and/ or corroborative has been lead by the prosecution to prove foundational facts to establish the charges against the respondents/accused persons.

60. The principal ground of challenge in this case by the State Appellant is the confessional statements and its consideration by the Learned Trial Court which requires to be examined in terms of Section 164 of the CrPC. The core/basic essence of recording a confessional statement under Section 164 of the CrPC is that it must be voluntary. The confessional statement of respondent No 2 was recorded by learned Judicial Magistrate, First Class, Kohima, PW-9, on 28.06.2005

and 29.06.2005. On scrutiny of the evidence it reveals that the accused/respondent No. 2, Imnaonen, was in police custody when he was produced before the learned Judicial Magistrate, First Class, Kohima for recording his confessional statement on the aforesaid two dates. The deposition of PW-9, who recorded the confessional statement establishes that she did not ascertain as to whether the respondent no. 2 was produced from police custody or judicial custody for the recording of his confessional statement. PW-9 had stated that she did not ascertained whether accused Imnaonen was produced from judicial custody or police custody since the case originates from Vigilance the accused Imnaonen was produced in her court for recording his statement, he can be said to have produced from police custody. She stated that she was not aware that on 28.06.2005 and 29.06.2005 the accused Imnaonen was produced in her court for recording his confessional statement. She further stated that she gave the accused Imnaonen about an hour or so for reflection and for the purpose she took the accused in the room of the prosecuting Inspector. Likewise, same process was followed for all other accused persons.

61. The Assistant Investigating Officer, PW-10 in his cross examination had stated that the accused respondent No. 2 was produced before the learned Judicial Magistrate First Class, Kohima on two occasions by him. He stated that the accused was lodged at (S) P.S. Kohima at the time his confessional statement was recorded on 28 and 29.06.2005, though he corrected himself that the accused was in judicial custody at that time. It also reveals from the

deposition of PW-15, the Investigating Officer of the case, in his cross examination where he stated that he was aware that when the confessional statements of the accused were recorded they were in police custody.

62. The respondent No. 2 in his examination under Section 313 of CrPC had stated that he was forced by the police to make the confession. All the other respondents have denied paying any sum to the respondent No. 2 for securing question papers in relation to the NPSC examinations, 2005. All the respondents have retracted the confessional statements.

63. The CrPC envisions two forms of custody viz., police custody and judicial/jail custody. Police custody is the period when an accused is under the complete control and influence of the police. This custody refers to the detention of the accused in the lock up of the police station, where he/she is under the complete control and influence of the police officers, including the investigating officer of the case for which he/she has been arrested. Judicial/jail custody is when an accused is in jail under the orders of the Court. Therefore, for a confession to be voluntary, an accused must be completely free from any sort of police influence whatsoever. In the case at hand, the police influence was appears to be pervasive.

64. It needs no reiteration that in the recording of the confessional statement, the Court concerned must ascertain whether the accused has been produced from police custody or judicial custody. The accused must be allowed sufficient time for reflection, depending on the facts and circumstances of the case. The respondent No. 2 was

produced on both dates i.e., 28.06.2005 and 29.06.2005 from police custody. He was hardly given any time to reflect before making the confession. PW-9 states that about one hour was allowed to him and he was placed in the room of "the Prosecuting Inspector". The police influence over the respondent no. 2 in the making of his confessional statement cannot be ruled out. Thus, the requirement of the confession being voluntary under Section 164 of the CRPC has not been made out. The confessional statements of the respondents/accused persons, in my view are, thus, not a valid confession in the eye of law and cannot be relied upon. Even otherwise, treating the said confession as a retracted confession, the prosecution must establish with corroborative evidence. The corroborative evidence is the seized articles mentioned in Exhibits P-10, 11, 12,13 and 14. These exhibits, five seizure memos dated 02.06.2005 Exhibits P-10, 11 12, 13 and 14, the seizure memo dated 10.06.2005 Exhibits P-15, the seizure memo dated 30.07.2005, Exhibits P-18 the seizure memo dated 20.06.2005 have not been proved in accordance with law. Also, the evidence of PW-10 clearly establishes that the articles mentioned in Exhibit P-10 including the diary and the short hand book have not been subjected to any authenticating process to establish the genuineness/ownership/authorship of the documents.

65. On close scrutiny of the testimonies, it would show that payment as deposed was a loan with an agreement to gain 10% or 5% interest and no evidence to show that question papers were provided by accused Imnaonen to anyone. Recovery of diary and

other entries of names has to be corroborated to other evidence which is missing in present case. It has been held by the Hon'ble Supreme Court that recovery of diary and entries in the course of business are relevant, but such statement will not be sufficient to charge any person with liability, it has to show further by some independent evidence that the entries represent real and honest transaction and that the monies were paid in accordance with those entries. Entries in books are not independent evidence of transaction to which entries relates.

66. It is well settled that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability of the act must have been done by the accused.

67. The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of Hon'ble Supreme Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstance so proved must

form a chain of events from which the only resistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. The Hon'ble Supreme Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been held that when the important link goes, the chain of circumstance gets snapped and the other circumstances are not, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Courts has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof, for sometimes unconsciously it may happen to be a short step between moral certainty an legal proof. It has been held that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions'. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established: that those circumstances should be a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other

than that of guilt of the accused and inconsistent with their innocence.

68. The learned Trial court on the seized dairy, correctly held with a finding as regard to the articles seized which are allegedly incriminating, having regard to the principles laid down by the Hon'ble Supreme Court in CBI –vrs- V.C. Shukla, (*supra*). In that case, the Hon'ble Supreme Court was dealing with Hawala scam and the diaries seized in connection with the said case. Dealing with the relevance of the diaries seized under the Evidence Act, the Hon'ble Supreme Court held that it is necessary to have independent evidence as to the trustworthiness of entries in the diaries to fasten liability which is reproduce herein under:.

“34. The rationale behind admissibility of parties' books of account as evidence is that the regularity of habit, the difficulty of the falsification and the fair certainty of ultimate detection give them in a sufficient degree a probability of trustworthiness upon (Wigmore on evidence, 1546). Since however, an element of self interest partisanship of the entrant to make the person – behind shoes back and without shoes knowledge the entry is made – liable cannot be ruled out additional safe guard of insistence upon the other independent evidence to fasten him with such liability, has been provided for in section 34 by incorporating the words “ such statements shall not alone be sufficient to charge any person with liability”

“39. A conspectus of the above decisions makes it evident that event correct and authentic entries in the books of account cannot

without independent evidence of their trustworthiness; fix a liability upon a person.”

69. On scrutiny of the seized exhibits, prosecution merely exhibited the seizure memos and the seized articles, including diaries and tabulation registered without adducing reliable corroborate evidence to establish their trustworthiness. Seizure list found in Imnaonen house includes as many as Nagaland Diary Book 2003 and 2005. One question paper bearing SL. No. 132062, Order No. NPSC/C/6/05 dt 19.03.05 Letter to NPSC, Pass Book of Vijay bank against A/C No. 11731 of Watisenla, unused No. 195230 to 195250, One test booklet Sl. No. 314805, Two poket size Address belonging to Onen Jamir, Bank deposit of Rs. 50,000/- Floppy 5 Nos, 3 Nos Press Release draft, NPSC Candidate A/C and Open letter to NPSC by V. Angami. Amenla Aier, Xerox copy of Watisenla documents along with 3 nos of photo, NPSC Application form with photo in r/o B. Tiasenla NPSC Application Form (Blank) one Test booklet NPSC/PE/02 OF Onen Jamir. Also documents found in accused N. Pangner house includes 1998 Nagaland Secretariat Ministerial Service Examination Class III non gazette General Studies 1 Question paper. NPSC termination order dated 03.03.2005 in respect of Imnaonen, Notice dated 19.03.2005 debarring accused Imanaonen and Imnasanen Jamir to appear NPSC. PW2 an employee of NPSC also deposed to the effect that many people worked and involved in PSC at the time of examination and therefore failure to corroborate the signature from expert opinion gives doubts in a situation where many employees were involved, the prosecution therefore failed to establish their case in relation to the

seized articles. PW-11 deposed that house search was conducted on 02.06.2005 and PW-10 as deposed that, in the house search of accused N. Pangner, Takachila and Imnaonen, short hand book, Vijaya Bank Pass book alongwith cheque book, blank application Form NPSC, loan agreement signed in non judicial paper and in the said note book contain particular entry like Imlikola 5 lakhs paid, Imosang 10 lakhs not paid. Tsapongse Sangtam 7 lakh paid and Tinuwati Rs. 2 lakhs not paid which were seized and exhibited. But such entries as held in CBI –vrs- Shukla (supra) cannot be relied upon in absent of reliable independent evidence. PW-12 deposed that as directed by the I.O of the case he collected Tsukdir answer script and tabulation register from NPSC Office as the same were exhibit as P-16 and 17. PW-14 further deposed that on 30.07.2005 he went to NPSC Office and seized inquiry report and mark sheet in respect of Smti Lejia Konyak and the same are Exbt-P-18 and 19 being enquiry report seized by him. Thus, the PWs deposition statement itself conveys that documents as seized in the house search of the accused person residence of N. Panger as reflected above do not show anything to draw inference to say that NPSC documents were under the control of the accused persons namely Takachila @ Achila, Imnaonen or N. Panger, PWs recorded above deposed to have sized document from NPSC Office it does not gives any materials to show that accused as public servant serving under NPSC or government department at that relevant point of time were neither entrusted with property and the same trust being breach or misused or otherwise as such was proved in present case. So also as observed herein and above the

circumstances case as projected by the prosecution base on circumstantial evidence in absence of reliable corroborated independent evidence when nothing in materials was forthcoming to conclude that the accused persons as a public servant has been prove beyond all reasonable doubt for indulging corrupt practice to accept illegal gratification in the absence of any witness or recovery of money alleged to have been paid. This court is conscious that allegations in the present case is serious in nature, however, just because there was strong suspicion cannot replace legal proof. Thus, having considered the evidence, I am of the view that prosecution in the absence of reliable worth corroborated evidence, has failed to establish guilt of the accused persons beyond all reasonable doubt in all charges so framed.

70. Reverting back to the confessional statement of the accused persons recorded under section 164 Cr.P.C., PW-9, the learned JMFC Kohima, had deposed as under: (which are noted and considered by the learned trial court) I am Addl. District & Sessions Judge, FTC-II, Kohima, presently. I was posted to Kohima as Magistrate First Class from 1996 to 2006. In the year 2005, I had recorded the confessional statements of some accused persons in 2-3 occasions. I have recorded the statements of accused Tinuwati, Imna Onen, Temsuchila, Imo Sanen, A Wati Pongen, Imkong Longkumer and Tsapangse Sangtam. The accused persons admitted their guilt by confessing that they had transacted the money between them for getting appointment through NPSC. Before recording the confessional statements, I had given them sufficient time to refresh their mind for

cool reflection and I have explained to them in the language they understand that your confessional statements, I had given them sufficient time to refresh their mind for cool reflection and I have explained to them in the language they understand that your confessional statement will be used against them if so confessed, and the accused persons voluntarily confessed the offence. While recording the confessional statements no police personnel were present in my court room. I along with the accused persons were present. Ext. P/1 to P/8 are the confessional statements of the accused persons recorded by me which bears my signatures. The confessional statements of the accused persons are voluntarily made by the accused persons admitting the commission of offences and this being the judicial confession are the strong evidence against the accused persons. In cross-examination she had stated that I recorded the statement of Imna Onen on 28.06.2005 and sitting outside the court room. When I called his name he was brought by my peon recording the statement of not only Imna Onen but other accused persons too. I have said in my examination in chief that when accused Imna Onen was examined there were any police personnel outside the court room. I did not ascertain whether the accused Imna Onen was produced from judicial custody or police custody since the case originated from Vigilance the accused Imna Onen was produced in my court for recording his statement. He can be said to have been produced from police custody. I am not aware that on 28.06.2005 as well as 29.06.2005, the accused Imna Onen was produced in my court for recording his confessional statement. I do not agree to the

suggestion that my signature in the confessional statement of accused Imna Onen can be read as 24.06.2005. I agree to the suggestion that the figure 8 written by the accused and figure 8 written by me are no resemblance what so ever. On the 2nd day the accused himself on 29.06.2005 had come to me for further statement which he could not complete the other day. Though the accused was in custody, I do not ascertain as to who produced him on the 2nd day. I am not aware that the accused Imna Onen was also produced before the ADC (J) Kohima for recording his confessional statement. I gave the accused Imna Onen about an hour or so for cool reflection and for purpose I take the accused in the room of the Prosecuting Inspector. In further cross-examination , she stated that I generally sit in the chamber by 10 in the morning and the accused person is produced in my Court depending on the convenience of the Jail authority/police officer. As per record 2 statements of accused persons were recorded on 15.06.2005, however, I do not remember whose statement was first recorded. On 15.06.2005 the two accused persons namely Tinuwati and Tsapangse might have been produced between 10.30 to 1.00. I confirmed that as per record, it is recorded 11.30. I have recorded the confessional statement in the court room. I deny the suggestion that statements of the accused in respect of Tsapangse Sangtam were recorded in my chamber. I have seen the names of the I/O as per the names reflected in the charge sheet. I do know some of them, however I did ascertain whether they were present or not. On the question whether giving 30 minutes to the accused amounts to cool reflection, she stated that she generally give

about an hour time for cool reflection. On further cross-examination, she had stated I cannot say whether the accused Imkong was in judicial custody at the time of the recording his confessional statement. Accused Imkong has appeared before me on two occasions but due to some complaint in his health he was sent back on the 1st day without recording his statement. On subsequent date I have recorded his confessional statement. At the time of recording his statement he was not led or escorted by anybody. I cannot say but whether the accused was in judicial custody or in police custody at the time of the recording his statement. In further cross-examination, she stated that it is correct to say, that I have recorded the statement of accused Tinuwati u/s 164 Cr.P.C. it is correct to say that the confessional statement of Tinuwati was recorded on 13.06.2005 as well as 15.06.2005. Tinuwati was produced and recorded at 2.20 pm I cannot remember how many hours given to Tinuwati for cool reflection I cannot say where Shri Tinuwati was kept for cool reflection. Was he with the police I could not ascertain it is correct to say that I have not ascertained about the custody of Tinuwati and other accused prior to recording their confessional statement. Yes, it is the practice of the investigation agency to pray for recording confessional statement. It is correct to say that I have not ascertained about the custody of Tinuwati and other accused prior to recording their confessional statement. Yes, it is the practice of the investigating agency to pray for recording confessional statement. Yes, it is also a practice to provide sufficient cooling reflection at least 24 hours for the accused persons before recording their confessional

statement. It is correct to say that confessional statement is purely a voluntary matter of an accused. Yes, it is correct to say that any accused persons giving once confessional statement from the custody of investigating agency cannot be voluntarily. It is correct to say that any accused persons giving once confessional statement from the custody of investigating agency cannot be voluntarily. It is correct to say that prior recording the confessional statement I have not ascertained whether the accused were produced by the police or judicial custody. In cross-examination she had stated that it is correct to say that I have recorded the confessional statement of accused Imo Sanen under sec. 164 Cr.P.C. I recorded the confessional statement on 08.06.2005. It is correct to say that I recorded the confessional in my court room. It is correct to say that I.O of the case prayed before me for recording the confessional statement of the accused. I do not remember in whose custody the accused was at the time of producing before me. It is correct to say that I do not remember who brought the accused to the Court but he was brought inside my court room by my office peon on my instruction. I agree to the suggestion that accused might not have made the confessional statement voluntarily if he was in the custody of the Investigating agency and produced to the court for confessional statement. It is correct to say that there was no other person in the court room at the time of confessional statement. It is correct to say that I have explained to the accused both in English and "nagamese" so that he could understand what he was not bound to make the confessional statement and if he makes it might be against him. I is correct to say

that the accused was brought before me in the first office hour and I have given him about 20 to 30 minutes for cool reflection. During the period of cool reflection I have put the accused outside my court room but I did not know where he spent that time. I agree that 20 to 30 minutes time is good enough for cool reflection. It is correct to say that I have recorded the confessional statement of the accused in my own hand writing entirely. It is correct to say I did not ascertain whether there were any police personnel outside or nearby my court room. I agree that I have complied to the provisions of section 164 Cr.P.C. while making the confessional statement. It is correct that the entire hand writing in the confessional statement is mine. I think that foot not memorandum in the confessional statement satisfies the provision of law.

71. On consideration of the above deposition of the learned JMFC, I fully agree with the finding of the learned Trial court that the learned JMFC evidently did not make any such searching enquiry to ascertain how long the accused had been in police custody and the sort of treatment he had been receiving from the police. It is settled proposition that before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of the accused. A confessing accused need to be given sufficient time to have proper reflection on the warnings given to him so that such an accused person does not make any confession under any kind of influence whatsoever.

72. The Hon'ble Supreme Court has held that the whole object of questioning to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having reference to the charge against the accused person as mention in section 24 of the Indian Evidence Act. There can be no doubt that, when an accused person is produced before the Magistrate by the investigating officer, it is utmost importance that the mind of the accused person should be completely free from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case.

73. The Hon'ble Supreme Court has held that the requirement of section 164 Cr.P.C. are to be followed strictly and observed that following principles emerges with regard to section 164 Cr.P.C.that-
(i) The provision of section 164 Cr.P.C. must be complied with not only in form, but in essence. (II) Before, proceeding to record the confession statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution. (iii) A Magistrate should ask the accused as to why he wants to make a

statement which surely shall go against his interest in the trial. (iv) The maker should be granted sufficient time for reflection. (v) He should be assured of protection from any sort of apprehended torture or confession not given voluntarily is unreliable, more so, when such a confession is retracted the conviction cannot be based on such retracted judicial confession. (vii) Non-compliance with section 164 Cr.P.C. goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy or credence, (viii) During the time of reflection, the accused should be completely out of police influence. The judicial Officer, who is entrusted with the duty of recording confession, must apply his mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him. (ix) At the time of recording the statement of the accused, no police or police Officials shall be present in the open court. (x) confession of a co accused is a weak type of evidence (xi) usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement.

74. In the present case, PW-14, had deposed that she remember taking accused Imnaonen to record his statement on 28 and 29th 06.2005 in the court of JMFC, Kohima, He was lodged at (S) P.S. Kohima at the time of recording confessional statement on 28 and 29.06.2005. PW-14 had deposed that he had taken accused Tsapongse from vigilance Office to the Court of JMFC for recording confessional statement. Record reveals that accused Imnasanen was recorded on 08.06.2005 and accused Achila and A. Pangner

confessional statement before JMFC was recorded on 09.06.2005. Accused Tsapongse Sangtam on 15.06.2005, for accused Tinuwati on 13.06.2005, accused Imnaonen on 28.06.2005 and accused Imkong Lungkumer was recorded on 30.06.2005. PW-9 had deposed that she did not ascertained whether there were any police personnel outside the court room. She did not ascertain whether the accused Imna Onen was produced from judicial custody or police custody since the case originated from Vigilance the accused Imna Onen was produced in my court for recording his statement. And in her cross examination, she has stated that it is correct to say that the accused was brought before her in the first office hour and she had given him about 20 to 30 minutes for cool reflection. During the period of cool reflection she had put the accused outside her court room but she did not know where he spent that time. She stated that 20 to 30 minutes time is good enough for cool reflection.

75. It is evident from the deposition of PW-9, that accused were produce from police custody, and on the day of production after given only 20 to 30 minutes or so JMFC recorded the confessional statement of the accused persons in contrary to application of section 164 of Cr.P.C. as when accused is produced for recording confessional statement, Court has to apprise to the accused about the prayer made by the I.O of the case and has to be given sufficient time for proper reflection by the accused and the same is found absent in present case as learned JMFC after giving only 20 to 30 minutes or so and on the same day of the accused production recorded the confessional statement of the accused persons. Thus, conviction

cannot be based on such confessional statements.

76. The accused persons in their statements recorded u/s 313 of Cr.P.C. have retracted the same as accused Tsapongse Sangtam denied any transaction and stated that he was threatened by the investigation and compelled to make such statement, accused Imosanen also stated to have made confessional statement recorded while he was under vigilance custody and was coerced to made statement. Accused Tinuwati denied to have made any agreement for payment of Rs. 2 lakhs, accused Imkong longkumer defend the same as loan transaction only and in absent of his father-in-law he was asked to signed on loan agreement in the name of his father-in-law, accused Imnaonen denied to have collected any money nor shown to have secured question papers in advance and denied any agreement but was force by vigilance to admit. Accused N. Panger admitted to have taken loan and the same has been said to have been returned having no connection to NPSC, accused Takachila @ Achila in connection to marks tempered in respect of Tsukimar whose marks was corrected from 89 to 95 who was selected EAC post stated that the same was seized from NPSC Office and the same documents bears the signature of controller of Examination and also in that particular examination her son failed as only those candidates who secured above 100 marks were only selected for that year 1999 and her son secure below the mark. Accused Takachila @ Achila stated that the tabulation was in the custody of NPSC, and the same was maintained by one Officer C. Lotha under Secretary, now retired, and accused stated that the question candidates did not pass that

particular exam and the concern retired Officer C. Lotha was not produce by the prosecution to proof the case nor the result declared by NPSC in respect of Tsuktimar and Lejea Konyak were produce by the prosecution. Accused Takasashi denied to know any transaction taken place between Imnaonen and accused Thsapongse and accused Imnasanen stated to have no idea about demand of Rs.10 lakhs and payment of Rs.6 lakhs being made to accused Imnaonen but he was coerced to make confessional statement while he was in custody under vigilance. Thus, considering the defence statements as recorded under section 313 Cr.P.C and the procedure adopted by the prosecution while recording the confessional statement while accused were in the custody of the investigation agency which reflects inducement and threats, this court is of the view that accused persons are not liable to be convicted on the basis of confessional statements as recorded under section 164 Cr.P.C. as the same failed the test of law and the prosecution miserably failed to prove the guilt of the accused persons beyond all reasonable doubt.

77. In the case of **State of Tamil Nadu vs. Kutty @ Lakshmi Narasimhan**, reported in **(2001) 6 SCC 550**, the Hon'ble Supreme Court at para 12 and 13 held as under:

“12. Learned Judges of the High Court declined to act on the said confession mainly for two reasons. First is that the confession was retracted by the maker thereof and second is that the recovery of articles was made prior to the confession. We may state at the outset itself that both reasons are too insufficient for over-ruling the confession.

13. It is not the law that once a confession was retracted the court should presume that the confession is tainted. As a matter of practical knowledge we can say that non-retracted confession is a rarity in criminal cases. To retract from confession is the right of the confessor and all the accused against whom confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted from it. The court

has a duty to evaluate the evidence concerning the confession by looking at all aspects. The twin test of a confession is to ascertain whether it was voluntary and true. Once those tests are found to be positive the next endeavour is to see whether there is any other reason which stands in the way of acting on it. Even for that, retraction of the confession is not the ground to throw the confession overboard.”

In the above case, it was declined to act on the confession merely on retraction by the maker and recovery of the articles was made prior to the confession, on which Hon'ble Supreme court held it to be insufficient for overruling the confession. Thus, the decision doesn't support the case of the State Appellant in the present case.

78. In the case of **Periyasami vs. State of Tamil Nadu**, reported in **(2014) 6 SCC 59**, the Hon'ble Supreme Court at para 22 and 24 held as under:

“22. In Yakub Abdul Razak Memon, after referring to several judgments of this Court on the evidentiary value of confession particularly judgment of this Court in Nalini, this Court summed up the position of law on the evidentiary value of confession. The relevant conclusions could be quoted

"180. To sum up, it can easily be inferred that the position of law on the evidentiary value of confession is as under:-

180.1. If the confessional statement is properly recorded satisfying the mandatory provision of Section 15 of TADA and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base conviction on the maker of the confession.

180.2. Whether such confession requires corroboration or not, is a matter for the court to consider on the basis of the facts of each case.

180.3. With regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

180.4. The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.” (emphasis in original)

It is clear, therefore, that a confessional statement recorded under Section 15 of the TADA, if found to be voluntarily made and is truthful and properly recorded, can

form the basis of conviction.

23.

24. *We must now come to the retraction. It is argued however that A1- Senthilkumar has retracted his confession and, hence, it has no evidentiary value. It cannot be relied upon. It is not possible to accept this submission. Retraction does not always dilute or reduce or wipe out the evidentiary value of a confessional statement. Quite often retraction is an*

afterthought. It could be the result of legal advice or pressure exerted by those whose involvement may be likely to be disclosed or confirmed by the confessional statement of the accused. Therefore, in each case, the court will have to examine whether the confession was voluntary and true and whether the retraction was an afterthought. In Kalawati v. State of Himachal [AIR 1953 SC 131], this Court stated that the amount of credibility to be attached to a retracted confession would depend upon the facts and circumstances of each case. Again in State of Tamil Nadu v. Kutty [AIR 2001 SC 2778], this Court stated that a retracted confession may form legal basis for conviction if the court is satisfied that the confession was true and was voluntarily made. Following these judgments in Yakub Abdul Razak Memon, this Court held that where the original confession was truthful and voluntary, the court can rely upon such confession to convict the accused in spite of a subsequent retraction and its denial in statement under Section 313 of the Code. The law is thus crystallized. A retracted confessional statement is therefore not always worthless. We have no hesitation in reiterating that A1-Senthilkumar's confessional statement was recorded after following the correct procedure; that it was voluntary and truthful; that A1-Senthilkumar was not forced or compelled to give his statement and that the retraction of the said statement is clearly an afterthought and should be ignored.

In the above case, it has been held that if the confessional statement is properly recorded satisfying the mandatory provision of law and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base conviction on the maker of the confession. In the case in hand, this court finds the confession not voluntary and also not recorded following the mandatory requirement of law, the above case law, relied, doesn't come to the aid of the State appellant in given facts of the present case.

79. In the case of **Shankaria vs. State of Rajasthan**, reported in **AIR 1978 SC 1248**, in para 22 and 37, the Hon'ble Supreme Court has held that:

"22. This confession was retracted by the appellant when he was examined at the trial under [Section 313](#) Cr. P.C. on June 14, 1975. It is well settled that a confession, if

voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under [Section 164](#) Cr. P.C., the Court must apply a double test :

(1) Whether the confession was perfectly voluntary ?

(2) If so, whether it is true and trustworthy ?

Satisfaction of the first test is a sine quo non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in [Section 24](#) Evidence Act, it must be excluded and rejected brevi manu. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession, may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.

37. *It is true that the interval between the preliminary examination of the appellant and the recording of his confessional statement was about 15 minutes. But there is no statutory provision in [Section 164](#) Cr. P.C or elsewhere, or even an executive direction issued by the High Court that there should be 'an interval of 24 hours or more between the preliminary questioning of the accused and the recording of his confession. The condition precedent for recording a confession by the Magistrate in the ;course of Police investigation is provided in [Section 164\(2\)](#) Cr.P.C. which mandates the Magistrate not to record any confession, unless upon questioning the accused person making it, he has reason to believe that it is being made voluntarily.*

80. In the case of **Ranjit Singh vs. State of Punjab**, reported in **(2002) 8 SCC 73**, the Hon'ble Supreme Court has held which is reproduce herein under:

10. According to the deposition of PW 3 in cross-examination, the accused were in police custody 18-20 days prior to recording of their confessional statements. PW 3 has deposed that he gave the requisite warning to the accused that they were not bound to make the confessional statement and if they make it will be used as evidence against them, but despite the warning they were prepared and willing to make the statement.

After recording the introductory statement in this behalf in question-answer form he still considered it proper to give them some time for rethinking and for this purpose they were allowed to sit in a separate room for some time and were brought to him after about half an hour and expressed their desire to make statement and thereafter the confessional statements were recorded.

11. Before adverting to the facts said to have been narrated by the accused as recorded in the two confessional statements, it deserves to be noticed that in case the recording officer of the confessional statement on administering the statutory warning to the accused forms a belief that the accused should be granted some time to think over the matter, it becomes obligatory on him to grant reasonable time for the purpose to the accused. In other words, the cooling time that is granted has to be reasonable. What time should be granted would of course depend upon the facts and circumstances of each case. At the same time, however, when the time to think over is granted that cannot be a mere farce for the sake of granting time. In a given case, depending on facts, the recording officer without granting any time may straight away proceed to record the confessional statement but if he thinks it appropriate to grant time, it cannot be a mechanical exercise for completing a formality.⁴

12. In [Sarwan Singh Rattan Singh v. State of Punjab AIR 1957 SC 637](#) where a Magistrate granted about half an hour to the accused to think over and soon thereafter recorded the confessional statement, this Court reiterated that when an accused is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard-and-fast rule as to the time which should be allowed to an accused person in any given case.

13. This Court further held: (AIR p. 644, para 10)

“However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. In our opinion, in the circumstances of this case it is impossible to accept the view that enough time was given to the accused to think over the matter.”

20. In the facts and circumstances of the present case the grant of half an hour to the accused to think over before recording their confessional statements cannot be held to be a reasonable period. We do not think that it is safe to base conviction on such confessional statements. Further, on the facts of the present case, conviction cannot be maintained on the sole testimony of two police officials. It may also be noticed that although PW 6 Chander Bhan, Armourer, was examined by the prosecution to prove that the weapons were in working condition, no effort was made to prove that the

ammunition or the empties matched the weapons.

81. In the case of Central Bureau of Investigation vs. V.C. Shukla and Others, reported in **(1998) 3 SCC 410**, the Hon'ble Supreme Court has held which is reproduce herein under:

37. The rationale behind admissibility of parties' books of account as evidence is that the regularity of habit, the difficulty of falsification and the fair certainty of ultimate detection give them in a sufficient degree a probability of trustworthiness (Wigmore on Evidence § 1546). Since, however, an element of self interest and partisanship of the entrant to make a person - behind whose back and without whose knowledge the entry is made - liable cannot be ruled out the additional safeguard of insistence upon other independent evidence to fasten him with such liability, has been provided for in [Section 34](#) by incorporating the words such statements shall not alone be sufficient to charge any person with liability.

42. In Beni Vs. Bisan Dayal [A. I. R 1925 Nagpur 445] it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal Vs. Ram Rakha [A. I. R. 1953 Pepsu 113] the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in [Section 34](#) of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts.

44. A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person.

82. In the case of Anwar Ali and another vs. State of Himachal Pradesh, reported in **(2020) 10 SCC 166**, The Hon'ble Supreme Court has held as follows:

“It is also required to be noted and it is not in dispute that this is a case of circumstantial evidence. As held by this Court in catena of decisions that in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability

the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence”.

83. In the case of Alok Nath Dutta and others vs. State of West Bengal, reported in (2007) 12 SCC 230, wherein the Hon’ble Supreme Court held as follows:

105. In a case, where confession is made in the presence of a Magistrate conforming the requirements of [Section 164](#), if it is retracted at a later stage, the court in our opinion, should probe deeper into the matter. Despite procedural safeguards contained in the said provision, in our opinion, the learned Magistrate should satisfy himself that whether the confession was of voluntary nature. It has to be appreciated that there can be times where despite such procedural safeguards, confessions are made for unknown reasons and in fact made out of fear of police.

106. Judicial confession must be recorded in strict compliance of the provisions of [Section 164](#) of the Code of Criminal Procedure. While doing so, the court shall not go by the black letter of law as contained in the aforementioned provision; but must make further probe so as to satisfy itself that the confession is truly voluntary and had not been by reason of any inducement, threat or torture.

84. In the case of Shivappa vs. State of Karnataka, reported in AIR 1995 SC 980, the Hon’ble Supreme Court has held as under:

“6.From the plain language of [Section 164](#) CrPC and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under [Section 164](#) CrPC, it is manifest that the said provisions emphasis an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under [Section 164](#) CrPC. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of [Section 164](#) CrPC and the rules framed by the High Court is imperative and its non- compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry

must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution, warning specifically provided for in the first part of sub-section (2) of [Section 164](#) namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.

7. The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of [Section 164](#) CrPC and the rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with."

85. In the case of **Parveen @ Sonu vs. State of Haryana**, reported in **(2021) SCC OnLine SC 1184**, the Hon'ble Supreme Court at para 12 held as under:

"It is fairly well settled, to prove the charge of conspiracy, within the ambit of [Section 120-B](#), it is necessary to establish that there was an agreement between the parties for

doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under [Section 120-B](#) of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused.”.

86. In the case of **Javed Shaukat Ali Qureshi vs. State of Gujarat**, reported in **2023 SCC OnLine SC 1155**, the Hon'ble Supreme Court at para 15 held as under:

“15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.”

87. In the case of **Dhanraj @ Dhand vs. State of Haryana**, reported in **(2014) 6 SCC 745**, the Hon'ble Supreme Court has held as under:

“We would refer to the decision of this Court in [Munish Mubar v. State of Haryana](#) reported in (2012) 10 SCC 464 wherein Dr. Chauhan J. has very aptly and succinctly stated the following:

“28. The circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit us to arrive at any other inference but one indicating the guilt of the accused.”

A court has to examine the entire evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from the evidence is the guilt of the accused. If more than one inference can be drawn then the accused must have the benefit of doubt as it is not the court's job to assume and only when guilt beyond reasonable doubt is proved then it is fair to record conviction.”

88. In the case of **Bhaiyamiyan @ Jardar Khan vs. State of Maharashtra**, reported in **(2011) 6 SCC 394**, the Hon'ble Supreme Court has held as under:

“At the very outset we must remark that the High Court's interference in an appeal against acquittal is somewhat circumscribed and if the view taken by the Trial Court was possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been in Trial Court, it might have taken a different view. In other words, if two views are possible and the Trial Court has taken one, the

High Court should not interfere in the judgment of the trial Court.”

89. In the case of **Ramesh Babulal Doshi vs. State of Gujarat**, reported in **(1996) 9 SCC 225**, the Hon’ble Supreme Court has held as under:

“7. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions”

90. Reverting back to the case in hand , on careful scrutiny of the evidence on record and finding of the learned Trial Court, I am of the considered opinion that the prosecution has miserably failed to establish the guilt of the accused persons /respondents beyond reasonable doubt. The confessional statements recorded under section 164 of Cr.P.C. is not voluntary as same has not been recorded by following the mandatory requirement of law and no corroboration had been laid by the prosecution. Thus, there is no infirmity in the judgement and order dated 12.05.2016 passed by the Learned Sessions Judge -cum- Special Judge, PC Act, Dimapur, Nagaland in R.C. No.2/05 under section 108/ 109/ 408/ 464/ 465/511/34 IPC read with Section 13(1) (a) (b) (d) P.C. Act, 1988 whereby all the respondents/accused persons have been acquitted from the charges as aforesaid by giving them benefit of doubt.

91. In view of the above discussion and law laid down by the Hon’ble Supreme Court, I find no infirmity in the judgement and

order dated 12.05.2016 passed by the Learned Sessions Judge -cum- Special Judge, PC Act, Dimapur, Nagaland in R.C. No.2/05 under section 108/ 109/ 408/ 464/ 465/511/34 IPC read with Section 13(1) (a) (b) (d) P.C. Act, 1988 whereby all the respondents/accused persons have been acquitted from the charges as aforesaid by giving them benefit of doubt.

92. Consequently, the judgement and order dated 12.05.2016 passed by the Learned Sessions Judge -cum- Special Judge, PC Act, Dimapur, Nagaland in R.C. No.2/05 is hereby affirmed.

93. In the result, the present Criminal appeal is dismissed.

LCR be sent back.

Sd/-
JUDGE

Comparing Assistant