

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 30 of 2011

Against the judgment of conviction and order of sentence dated 21.12.2010 passed by the learned Special Judge, Vigilance-II, Patna in connection with Special Case No. 74 of 1986 arising out of Vigilance Police Station Case No. 29 of 1986

=====

Gopal Krishna, Son of Late Bhola Ishar, Resident of Village Mai, Police Station Muffasil (Munger), District - Munger

.... Appellant

Versus

The State of Bihar through Vigilance

.... Respondent

WITH

=====

Criminal Appeal (SJ) No. 45 of 2011

=====

1. Shankar Paswan, S/O Bangali Paswan, Resident of Village - Makuna, Ward No. - 15, P.S. - Lakhisarai, District - Lakhisarai
2. Nepal Jha @ Kapileshwar Jha @ Photowala @ Rajendra Jha, Son of Rajendra Jha, Usha Kiran Studio, Lakhisarai, Village - Khutha, P.S. - Barahiya, District - Munger

.... Appellants

Versus

1. The State of Bihar through A.D.J. Vigilance, Old Secretariat, Patna

.... Respondent

WITH

=====

Criminal Appeal (SJ) No. 53 of 2011

=====

Sheo Nandan Singh @ Shiv Nandan Singh, Son of Banarsi Singh, Resident of Village - Singh Chak, P.S. - Chandan Mananpur, District - Lakhisarai, at present Residing at Banka, P.S. - Banka, District - Banka

.... Appellant

Versus

The State of Bihar through Vigilance, Bihar, Patna

.... Respondent

WITH

=====

Criminal Appeal (SJ) No. 91 of 2011

=====

Ram Prit Rai, Son of Late Baldeo Rai, Resident of Village – Narepur West, P.S. – Bachchwara, District Begusarai



..... Appellant
Versus
The State of Bihar through Vigilance
..... Respondent
WITH

=====

Criminal Appeal (SJ) No. 93 of 2011

=====

Surendra Prasad, S/o Bengali Prasad, R/o. Vill. Gaura, P.S. – Hilsa, Dist. Nalanda
..... Appellant

Versus
The State of Bihar through Cabinet Vigilance Bureau
..... Respondent
WITH

=====

Criminal Appeal (SJ) No. 96 of 2011

=====

Narendra Kumar Sharma, Son of Late Brij Mohan Sharma, Resident of Mohalla
Sonari near Mauni Baba Dham, Police Station – Sonari, District Jamshedpur,
Jharkhand

..... Appellant
Versus
The State of Bihar through Vigilance
..... Respondent

=====

Appearance :
(In CR. APP (SJ) No. 30 of 2011)
For the Appellant : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. P.P.N. Sahi, Advocate
Mr. Prem Sheela Pandey, Advocate
Mr. B. K. Tiwary, Advocate
For the Respondent : Mr. Ramakant Sharma, (L.O. I/C), Sr. Advocate
Mr. Rajesh Kumar Sharma, Advocate
(In CR. APP (SJ) No. 45 of 2011)
For the Appellants : Mr. Arun Kumar, Advocate
Mr. Bipin Kumar, Advocate
For the Respondent : Mr. Ramakant Sharma, (L.O. I/C), Sr. Advocate
Mr. Rajesh Kumar Sharma, Advocate
(In CR. APP (SJ) No. 53 of 2011)
For the Appellant : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Pankaj Kumar Sinha, Advocate
Mr. Rajiv Kumar Singh, Advocate
For the Respondent : Mr. Ramakant Sharma, (L.O. I/C), Sr. Advocate



Mr. Rajesh Kumar Sharma, Advocate

(In CR. APP (SJ) No. 91 of 2011)

For the Appellant : Mr. Abhinav Shrivastava, Advocate

For the Respondent : Mr. Ramakant Sharma, (L.O. I/C), Sr. Advocate

Mr. Rajesh Kumar Sharma, Advocate

(In CR. APP (SJ) No. 93 of 2011)

For the Appellant : Mr. Gajanan Mishra, Advocate

For the Respondent : Mr. Ramakant Sharma, (L.O. I/C), Sr. Advocate

Mr. Rajesh Kumar Sharma, Advocate

(In CR. APP (SJ) No. 96 of 2011)

For the Appellant : Mr. Gouranga Chatterjee, Advocate

For the Respondent : Mr. Ramakant Sharma, (L.O. I/C), Sr. Advocate

Mr. Rajesh Kumar Sharma, Advocate

=====

CORAM: HONOURABLE SHRI JUSTICE BIRENDRA KUMAR

C.A.V. JUDGMENT

Date: 02-08-2017

All the above named appellants along with co-accused Sachidanand Sinha, who was acquitted for lack of evidence, faced trial in connection with Special Case No. 74 of 1986 arising out of Vigilance P.S. Case No. 29 of 1986 (Ext. 1) for offences under Sections 120B, 420, 468 and 471 of the Indian Penal Code.

2. Appellants Ramprit Rai, Narendra Kumar Sharma, Shiv Nandan Singh and Gopal Krishna were further charged for offence under Section 5(2) of the Prevention of Corruption Act as well as under Sections 409 and 477A of the Indian Penal Code.

3. The learned trial Judge sentenced all the above named appellants, for offence under Section 120B of the Indian Penal Code, to



undergo rigorous imprisonment for two years, for offence under Section 420 of the Indian Penal Code to undergo rigorous imprisonment for two years, for offence under Section 468 of the Indian Penal Code to undergo rigorous imprisonment for two years and for offence under Section 471 of the Indian Penal Code to undergo rigorous imprisonment for three years.

4. The appellants Ramprit Rai, Narendra Kumar Sharma, Shiv Nandan Singh and Gopal Krishna were sentenced to undergo rigorous imprisonment for one year for offence under Section 5(2) of the Prevention of Corruption Act, to undergo rigorous imprisonment for three years for offence under Section 409 of the Indian Penal Code and to undergo rigorous imprisonment for two years for offence under Section 477A of the Indian Penal Code.

5. Appellants Nepal Jha and Shankar Paswan have further been convicted under Section 467 of the Indian Penal Code and have been directed to undergo rigorous imprisonment for three years. The sentences have been ordered to run concurrently.

6. The aforesaid conviction and sentences, vide judgment dated 21st December, 2010 passed by learned Special Judge, Vigilance-II, Patna, are under challenge in the aforesaid appeals.

7. I.A. No. 140 of 2017 has been filed in Cr. Appeal (SJ) No. 96 of 2011 whereby the learned counsel for the appellant informed that



they have learnt that appellant had died a few years back. However, no relative of the appellant could be contacted.

8. A report was called for from the Superintendent of Police concerned of the district who reported that no whereabouts of the appellant is known at the referred address.

9. Heard learned counsel for the other appellants as well as the respondents.

10. A conjoint reading of the evidence of P.W. 1 Arun Kumar Singh Vinit as well as his written report to the officer-in-charge of vigilance police station vide Ext. 1 on the basis whereof Patna Vigilance P.S. Case No. 29 of 1986 was registered would reveal that the prosecution case is that one Shideshwar Mahto, Up-Pramukh and one Ramdeo Singh jointly filed written complaint of financial embezzlement of public money by the accused persons in collusion with each other in different schemes of the government relating to digging of well on private land of the marginalized family of the society.

11. It is worth to point out here that neither the aforesaid complainants have been examined in this case nor their complaint petition has been brought on the record.

12. Further prosecution case is that the informant conducted a preliminary inquiry about the aforesaid complaints and prepared a preliminary inquiry report vide his admission in paragraph 34 of the



deposition. He further admitted that there is mention about the estimated cost of the schemes in the preliminary inquiry report. He had recorded statement of the contractors of the scheme vide his admission in paragraph 35 and 36 of his deposition. The witness further admitted in paragraph 41 of his deposition that he had not physically verified whether the work of digging of well was executed at the spot or not. He had submitted preliminary inquiry report simply on the statement of the witnesses and the contractors.

13. Copy of the preliminary inquiry report has not been brought on the record which is basis of the case. In the written report on the basis whereof FIR was registered it is alleged that appellant Narendra Kumar Sharma was posted as Block Development Officer, Lakhisarai. He along with his subordinates employees and officers during period of his posting thereat under a criminal conspiracy, misusing his position created forged documents and embezzled public money to the tune of Rs.50,000/- (rupees fifty thousand). Thereafter, there is description of the schemes. First scheme was scheme no. 11 of 84-85. In this scheme appellant Shankar Paswan had filed an application for digging a well on his land in village Makuna bearing plot no. 25 under khata no. 28. The application was filed on 08.12.1984. Thereafter, appellant Narendra Kumar Sharma called for physical verification report from Panchayat Supervisor co-accused Sachidanand Prasad Sinha (already acquitted) to



report whether there is any well already there or not. Side by side appellant Shiv Nandan Singh who was Junior Engineer was asked to prepare an estimate of the cost of digging the well. On 09.12.1984 acquitted accused Sachidanand Sinha recommended for digging of the well on the land of appellant Shankar Paswan and appellant Shiv Nandan Singh submitted estimate of digging of the well as well as draft of the agreement to be executed with the beneficiary. Appellant Narendra Kumar Sharma accepted the proposal provisionally on 15.12.1984 and finally accepted the same on 05.01.1985 only after administrative approval dated 18.12.1984 of the Sub-Divisional Officer, Lakhisarai. Thereafter appellant Shankar Paswan was appointed as contractor. Appellant Shankar Paswan was allowed advance of Rs.14,000/- (rupees fourteen thousand) in different installment for digging of said well. After digging of the well measurement book no. 01 of 84-85 vide Ext. 4 would reveal that Junior Engineer Shiv Nandan Sinha (appellant) estimated expense as Rs.15,678/- (rupees fifteen thousand six hundred seventy eight) vide his measurement report dated 06.07.1985. Thereafter his superior Assistant Engineer Ramprit Rai (appellant) re-verified the same and found it correct to the extent of Rs.12,184/- (rupees twelve thousand one hundred eighty four) and recommended for payment on 11.05.1985. The allegation is that Rs.1,816/- (rupees one thousand eight hundred sixteen) was excess paid to the contractor. Further complaint is that no



well was dug at the proposed place. Further allegation is that no report was received as to of which category of farmer the applicant belongs. Whether there is need for a well thereat for the purpose of drinking water and agriculture and whether the applicant had land as claimed? Further allegation is that of dereliction of duty on the part of appellant Narendra Kumar Sharma in not visiting the spot before final acceptance of the bill.

14. Before looking into the allegations of defalcation of other schemes, it would be apt to refer here paragraph 7 of the evidence of P.W. 2 Awadh Kishore Prasad Sinha a retired Assistant wherein he has disclosed the procedure for sanction and approval of the scheme, though the prosecution has not brought on the record a copy of the scheme to substantiate the alleged and deliberate deviation from the scheme for extraneous purpose.

According to this witness, when some farmer wants to have a water system on his field then he files an application before the Block Development Officer, thereafter the Block Development Officer sends those applications for verification to the Halka Karamchari and Jan Sevak. After physical verification, the application is forwarded and in the light of report received on physical verification, the Block Development Officer passes necessary order and only after approval of the scheme, the advances are paid according to the progress of the work. After completion of the work, the Junior Engineer takes of the



measurement thereafter his report is verified by Assistant Engineer and then the remaining due amount is paid to the contractor after proper identification of the contractor.

15. The written report further discloses that scheme no. 22 of 84-85 was to dig a well on the land of Somar Paswan (not examined in this case), scheme no. 28 of 84-85 relates to digging a well on the land of P.W. 5 Ram Sanahi Paswan and scheme no. 29 of 84-85 was for digging a well on the land of P.W. 6 Singheswar Paswan. The beneficiaries, above named, were appointed as contractors vide written agreement to execute the aforesaid work. Payment of advance of Rs.16,000/- (rupees sixteen thousand) in different installments were shown to be made to each of the contractors who were beneficiaries of the scheme also. However, the contract was actually executed allegedly by appellant Nepal Jha and the beneficiaries were paid only labour charges @ Rs.16/- per day. Further, allegation is that the payment was made showing the radius of the well as 10' whereas on measurement the same was found 7'10" only. Thus, allegation is that as per the scheme the work should have been executed and payment of the amount should have been made to the beneficiaries but the same was got executed by a third person against the mandate of the scheme (no such scheme has been brought on the record). Further allegation is that in other undisclosed matters also similar embezzlement was there. Initially, in the FIR seven persons were



named besides the appellants, one Kapildeo Singh, the Block Nazir was also an accused named in the FIR. However, he died before trial, hence, he could not face trial.

16. Learned trial court relied on the prosecution evidences oral and documentary for coming to the conclusion that the appellants are guilty of the referred offences. The learned trial Judge disbelieved the defence version oral and documentary for the reason that they are not relevant for this purpose.

17. The prosecution examined altogether eight witnesses. P.W. 1 Arun Kumar Singh Vinit is informant of this case. He has supported the prosecution as disclosed in the written report as discussed above. He produced the records of different schemes which he claims to have collected during his preliminary inquiry. The documents are Exts. 3, 3/1, 3/2 and 3/3. The measurement books of the aforesaid four schemes have been marked as Exts. 4, 4/1, 4/2 and 4/3 on the evidence of this witness. In paragraph 15 of his deposition, the witness has admitted that he had not physically verified whether the wells were dug at the referred places or not. In paragraph 17, he admitted that in all the schemes the payment of advance was made to the beneficiaries. This statement of the witness is relevant to the extent that at belated stage the beneficiaries came and stated that the work was executed by appellant Nepal Jha and they were paid only daily wages labour charges. In paragraph 27, he admitted that



there was no documentary evidence to prove that the work was executed by appellant Nepal Jha rather on the basis of oral evidence, he had submitted the report. The witness has admitted that he had seen the well of Shankar Paswan but that was not on the land of Shankar Paswan. The prosecution did not bother to bring on the record the document supporting the fact that the referred plot was not of Shankar Paswan and was of named definite person. Therefore, only suspicion is there. The witness further admitted that appellant Gopal Krishna was a dealing Assistant and he had no field duty. He was only assisting in writing the order-sheet. The witness further admitted that he conducted the preliminary inquiry on the written order of Director General of Police, Vigilance. However, no such order was brought on the record.

18. P.W. 2 Awadh Kishore Prasad Sinha was posted as Clerk in the Block Office of Lakhisarai from 1981 to 1989. He has simply deposed that the appellants were posted at that time in his office in the referred capacity. He also identified signature of appellant Narendra Kumar Sharma on the application of Shankar Paswan vide Ext.5.

19. P.W. 3 Ram Nath Prasad is a typist posted in the Law Department, Government of Bihar. He has proved sanction orders for prosecution of some of the appellants who are public servants vide Ext. 8, 8/1 and 8/2.



20. P.W. 4 Sachidanand Jha is one of the Investigating Officers of this case who took up investigation on 30.05.1990 from the first Investigating Officer, Bharat Baitha. He has deposed that he concluded that the beneficiaries were landless person only on the basis of oral evidence came up before him. The witness has proved the case diary written by first Investigating Officer Bharat Baitha which is Ext. 9.

Ext. 9 cannot be looked into evidence unless the prosecution would have brought on the record that Bharat Baitha is dead or his attendance could not be procured in spite of best of the efforts for the purpose. Moreover, the defence did not get opportunity to cross-examine Bharat Baitha who was main Investigating Officer.

P.W. 4 further admitted in paragraph 8 that he had examined the place of work of only one scheme of Makuna village. The witness has admitted that he did not take the LTI/signature of the beneficiaries to verify the actual payment of the money of the scheme.

21. P.W. 5 Ram Sanehi Paswan is one of the beneficiaries. He has deposed that a well was dug on his land. However, the contractor was Nepali Babu and this witness was paid only wages of Rs.16/- per day. The well was made ready for use in eight days. Similarly, P.W. 6 Singheswar Paswan and other beneficiary has deposed that under government scheme a well was dug at his land but the digging cost was



not paid to him rather the work was got performed by agent Nepali Babu.

22. P.W. 7 Purusottam Lal is the co-villager of the beneficiaries. He has deposed that about eight years ago with the government money well were dug on the land of Somar Paswan, Ram Sanehi Paswan and Singheswar Paswan, the contractor was Bangali Jha. The contract was not given to the beneficiaries, rather they were paid wages.

If the evidence of this witness is accepted, who is a co-villager, it belies the prosecution case that no well was dug on the land of Singheswar Paswan. Further there is no allegation of misappropriation of public money rather only allegation is that work was performed not by the beneficiary rather by an independent contractor.

23. P.W. 8 Rama Anugrah Singh has deposed that he was Revenue Officer from 1991 to 1993 in Lakhisarai Anchal. From 1986 to 1993, he was Rajashwa Karamchari thereat. Plot No. 25 under khata no. 28 in village Makuna is registered in register 2 in the name of Bharthu Singh and is not the land of Shankar Paswan. In the cross-examination, he has stated that he has not brought the register 2 nor the same is before him. He cannot say the boundary of the land of Bharthu Singh. He has got no proof that the land is in possession of Barathu Singh. He denied the suggestion that the land is recorded in the name of Shankar Paswan.



24. The defence produced three witnesses. D.W. 1 Anil Kumar Singh, D.W. 2 Rajendra Prasad and D.W. 3 Ram Udit Singh. All are formal witnesses as they have proved Ext. A series which are letters not signed by the executant and Ext. B which is photo copy of extract of a register containing letters issued.

25. Learned counsel for the appellants submits that the prosecution has miserably failed to prove the charges against the appellants beyond reasonable doubt and the learned trial Judge has ignored the serious infirmities in the prosecution case and laches on the part of the prosecution to bring material evidences on the record in support of the charge. Learned counsel submits that the complaint petition of the real complainants was not brought on the record nor those complainants were examined in this case to substantiate the nature of the complaint. Moreover, the preliminary inquiry report is not on the record which was, allegedly, conducted by the Vigilance Bureau and which was basis of the FIR as such the appellants have seriously been prejudiced in the trial. Next contention is that there is no iota of evidence that public money was misappropriated without performance of the actual work and in collusion amongst the appellants. There is complete lack of evidence of criminal conspiracy. The learned court below has adopted different standard for applying the same evidence against the appellants and not against some of the persons who were also beneficiaries of the scheme.



Further contention is that no independent witness has been examined to substantiate the prosecution allegation. Last submission is that even if the prosecution story is taken to be true for the argument sake, no case of defalcation of public money is made out. Since the payment of money was made to the beneficiaries after obtaining their LTI on the note-sheet of the file which are available on the record and their LTI were identified by their own persons in token of receipt of advance money but the prosecution did not get the LTI examined by the expert to substantiate the allegation that in fact the LTI was not of the beneficiaries.

26. On the other hand, learned counsel for the Vigilance Bureau contends that meticulous appreciation of evidence is not warranted in cases which have been investigated by the Vigilance Bureau after receiving complaint of corruption against the public servant. Though some discrepancies are there but the same are not sufficient to interfere with the finding of the learned trial Judge.

27. The prosecution allegation and the material brought on the record reveals that there is allegation of embezzlement in four government schemes. Scheme No. 11 of 84-85 related to digging of a well on the land of appellant Shankar Paswan. The prosecution evidence would reveal that the authorities including the informant did not physically verified whether well was dug on the land of the informant or not. During investigation, it revealed, which has come in the prosecution



evidence, that though well was dug and constructed by appellant Shankar Paswan but the land was not of Shankar Paswan. At a belated stage P.W. 8 Rama Anugrah Singh deposed that the well was there on Plot No. 25 but the land belong to one Bharthu Singh and not of Shankar Paswan. The witness stated that he has not produced document to substantiate that the land was of Bharthu Singh nor during whole of the investigation it revealed that the land was of Bharthu Singh. The prosecution evidence is clear that the Junior Engineer and the Assistant Engineer (appellants) while measuring the construction of well have clearly reported that how much excess amount was paid to the beneficiaries which was Rs.1,816/- (rupees one thousand eight hundred sixteen) paid to Shankar Paswan. The same was recoverable after adjustment of the bill, but instead of taking any step for recovery criminal prosecution has been lodged without any material to substantiate malice on the part of the authorities in making advance payment of different installments of construction work.

28. Similarly, Scheme No. 22 of 84-85 related to digging and construction of a well on the land of Somar Paswan. Somar Paswan has not been examined as a prosecution witness nor he is accused in this case. The prosecution evidence (concerned file) brought on the record reveals the same mode of payment was adopted in the matter of digging of a well on the land of Somar Paswan. Scheme No. 28 of 84-85 and



Scheme No. 29 of 84-85 related to digging a well on the land of P.W. 5 Ram Sanahi Paswan and P.W. 6 Singheswar Paswan. There is no dispute that wells were not dug and it is also admitted that payments were made to the beneficiaries according to actual measurement of the construction. However, these witnesses, for the first time, during investigation of the case appeared and deposed against the record that they were beneficiaries but the construction work was done by contractor Nepal Jha and these witnesses were paid only labour charges. The available records would reveal that these witnesses have also put their signature/LTI while receiving advance payment for digging of the well and they have not denied the genuineness of their signature/LTI nor the prosecution got their signature/LTI examined by the expert to substantiate that those were forged documents. Therefore, in my view the belated statement of the prosecution witness that works were not executed by the beneficiaries is not acceptable.

29. On careful consideration of the prosecution evidence, I find that the learned trial court failed to consider that there is no evidence at all to substantiate that the appellants were acting under a criminal conspiracy, rather the record would reveal that every individual had performed his duty and had submitted report of measurement as per the actual work done for final payment of the bill. Administrative sanction was accorded for completion of work by the S.D.O. who is not an



accused in this case. The prosecution has failed to prove that which of the documents were forged by the appellants against whom charges of forging document have been found proved by the learned trial Judge. The prosecution has completed the entire enquiry and investigation in a casual manner. I find substance in the submission of the learned counsel for the appellants that very important materials have not been brought on the record such as allegation petition of charges of corruption or the allegation makers or the initial inquiry report on the basis whereof FIR was lodged. Those documents could have revealed real state of affairs. For above reasons, I am of the view that the appellants are entitled to the benefit of doubt. The informant who conducted the initial inquiry of the allegation petition has submitted report only on the oral statement of witnesses without verifying the documents or without physically verifying whether the work was actually performed or not. In the present matter only the document and physical verification would have been the best evidence. The learned trial Judge did not consider the serious infirmities aforesaid in the prosecution case besides the fact that the real Investigating Officer of the case who performed major part of the investigation could not be produced without any explanation by the prosecution which seriously prejudiced the case of the appellants as they lost opportunity to squeeze out the nature of the material collected against them and to test their trustworthiness.



30. In the result, I hold that the judgment of conviction and sentences passed by the learned trial Judge is not sustainable in law. Accordingly, the same stands set aside and these criminal appeals stand allowed. Let the appellants be exonerated from the liability of the bail bond.

(Birendra Kumar, J)

Kundan Sharma

AFR/NAFR	AFR
CAV DATE	29.03.2017
Uploading Date	02.08.2017
Transmission Date	02.08.2017

