

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.09.2017

Pronounced on : 21.09.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Crl.A.Nos.956 and 984 of 2002

1.N.Natarajan
2.P.Thirupathy(died)
3.U.Pandian
4.T.Muthulakshmi
5.Smt.Uma Rani
6.T.Uma Shankar
7.Smt.A.Mallika
8.T.Kannan
9.T.Senthilkumar
(impleaded as 4 to 9 as legal representative
of deceased 2nd appellant made in M.P.No.
1 of 2014 in Crl.A.No.956 of 2012 order
dated 04.02.2015 by RMJ) ..Appellants in Crl.A.No.956 of 2002

G.A.Palanisamy ..Appellant in Crl.A.No.984 of 2002

/versus/

State by Inspector of Police,
Vigilance and Anti-Corruption,
Dharmapuri.
(Crime No.3/AC/79)

.. Respondent in Crl.A.No.956 of 2002

Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Dharmapuri.
Cr.No.3/AC/79/DP

..Respondent in Crl.A.No.984 of 2002

Common prayer: These Criminal Appeals are filed under Section 374 of the Criminal Procedure Code against the judgment of conviction and sentence passed in C.C.No.1 of 1987 on the file of the First Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri dated 14.06.2002.

For Appellants :Mr.A.K.Kumaraswamy, SC for
Mr.S.Kaithamalaikumaran in
Crl.A.No.956/2002
Mr.A.Thiyagarajan in Crl.A.No.984/2002

For Respondent :Mr.R.Ravichandran, GA(crl.side)
(in all cases)

COMMON JUDGMENT

The appellants in Crl.A.No.956 of 2002 are arrayed as A5, A7 and A8; the appellant in Crl.A.No.984 of 2002 is arrayed as A2; the appellant in Crl.A.No.998 of 2002 is arrayed as A1; the appellant in Crl.A.No.991 of 2002 is arrayed as A3 and the appellant in Crl.A.No.1008 of 2002 is arrayed as A6 in C.C.No.1 of 1987 on the file of the First Additional Sessions Judge cum Chief Judicial Magistrate, Krishnagiri. Pending appeals, the 1st accused S.Murugan, 6th accused M.A.Yesudoss and the 3rd accused viz., A.N.Vedhachalam died.

2. The trial Court, under judgment, dated 14.06.2002, has convicted the appellants/accused and sentenced them as follows:

Rank of the accused	Conviction for the offence under section	Sentence imposed by the trial Court
A2	120(B) of IPC 167 of IPC 420 of IPC 5(1)(d) r/w 5(2) of PC Act	to undergo RI for 1 year to undergo RI for 2 years to undergo RI for 2 years and imposed a fine of Rs.1000/- i/d, to undergo 3 months imprisonment to undergo RI for 2 years and imposed a fine of Rs.1000/- i/d 3 months imprisonment
A5	102(B) of IPC 420 of IPC 5(1)(d) r/w 5(2) (2 counts) of PC Act 109 r/w 5(1)(d) r/w 5(2) 2 counts	to undergo RI for 1 year to undergo RI for 1 year to undergo RI for 1 year in each counts to undergo RI for 1 year (each count)
A7	102(B) of IPC 420 of IPC 5(1)(d) r/w 5(2) (2 counts) of PC Act	to undergo RI for 1 year to undergo RI for 1 year to undergo RI for 1 year in each counts

<i>Rank of the accused</i>	<i>Conviction for the offence under section</i>	<i>Sentence imposed by the trial Court</i>
	109 r/w 5(1)(d) r/w 5(2) 2 counts	to undergo RI for 1 year (each count)
A8	102(B) of IPC 420 of IPC 5(1)(d) r/w 5(2) (2 counts) of PC Act 109 r/w 5(1)(d) r/w 5(2) 2 counts	to undergo RI for 1 year to undergo RI for 1 year to undergo RI for 1 year in each counts to undergo RI for 1 year (each count)

The trial Court has directed that the sentences to run concurrently. Aggrieved by the said conviction and sentence, these present appeals are filed.

3. Background of the case is as follows:

Kumarachetti Eri in Athimutlu Village, Palacode Taluk of Dharmapuri District, was breached and found in a dilapidated condition covered with shrub of jungle and not in use for more than 20 years. Hence, the Public Works Department proposed to restore Kumarachetti Eri by clearing the shrub jungle and strengthen the bund with channel to drain the excess water stored in the

lake. Accordingly, an estimation was prepared by the Public Works Department for restoration work and the same was approved by the Government according administrative sanction vide Order in G.O.Ms.No.560, Revenue Department, dated 10.03.1977 for the estimated cost of Rs.19.45 lakhs.

4. On receipt of the Administrative sanction given by the Government, the Superintending Engineer, PWD Department, inspected the site on 27.04.1977, suggested certain technical changes in the plan and instructed the Executive Engineer to prepare a revised plan and estimation based on the technical changes in the maximum flood estimation and alignment and the cost based on the schedule of rates prevailing. Mr.S.Murugesan [A1], then the Assistant Engineer and Mr.G.A.Palanisami [A2], then the Assistant Executive Engineer were entrusted with the task of preparing revised estimation as per the instruction of the Superintending Engineer. Accordingly, a revised estimate of Rs.24.89 lakhs was submitted by them and tenders were floated for the said work by the Tender Committee constituted for the said purpose. The restoration of the breached Kumarachetti Eri work was splitted into six contracts for the sake of convenience and tenders were called for by the Tender Committee constituted for the said purpose. Thiru.Muthu-Contractor[A4] was the lowest tenderer for all the six contracts and he was awarded the said work. The restoration work was started on 01.12.1977 in all six contracts. In the course of executing the work,

there were several modifications and additions in the restoration work and based on the instructions of the Superintending Engineer, the work was carried on, as per the revised and modified plan expecting ratification.

5. While so, on 14.11.1977, the Vigilance and Anti-Corruption Department has registered the First Information Report based on the source information alleging that Mr.S.Murgan[A1], Assistant Engineer, Mr.G.A.Palanisami[A2], Assistant Executive Engineer, and Mr.A.N.Vedhachalam[A3], Executive Engineer, along with the contractor Mr.Muthu[A4] have conspired to defraud the Government money by recording false measurement by abusing their official position, which resulted in pecuniary loss to the Government to the tune of Rs.8,42,000/-.

6. After registration of the said First Information Report, a detailed enquiry was conducted by the Vigilance and Anti Corruption Department wherein, the material evidence collected by them indicating Mr.Murugan[A1], Assistant Engineer, Mr.G.A.Palanisami[A2], Assistant Executive Engineer, and Mr.A.N.Vedhachalam[A3], Executive Engineer, all are in-charge of executing the Kumarachetti Eri work. Mr.K.Muthu[A4], Contractor, Mr.N.Natarajan[A5]-Technical Assistant(PWD), Mr.M.A.Yesudoss[A6]-Works Inspector(PWD), P.Thirupathu[A7],Work Inspector(PWD) and U.Pandian[A8] Head Mazdoor, all

together have conspired to commit the illegal act of fabricating the measurement book and other documents to show as if the excess work has been done by the contractor more than what was found in the estimation or the records were fabricated as if certain works were done by the contractor though it was not actually done by the Contractor or the work done by the contractor were of substandard in nature. However, the records were fabricated as if the work was done as per the specification and money was paid to the contractor over and above the entitlement thereby, they all committed the offence of conspiracy, cheating, fabrication of records. Hence, charge sheet was filed against them for the offence under Sections 120B, 109, 167, 420, 5(1)(d) of IPC in respect of public servants and Sections 120B, 167 r/w 109, 5(1) r/w 109 of IPC in respect of the private individual namely, Mr. K. Muthu [A4], Contractor.

7. Specific allegations against the accused:

On receipt of the final report, the trial Court has framed 43 charges in total as against A1 to A8. The nature of the work entrusted to A4 was to restore the breached Kumarachetti Eri. The work was divided into 6 contracts for convenient execution. The total area of Lake was divided into 5 contracts, which are as follows:

- 1) 1 to 150 meters
- 2) 150 to 280 meters

- 3) 280 to 310 meters
- 4) 310 to 340 meters
- 5) 340 to 450 meters

6th contract of the work was construction of flow of excess water.

8. While executing the same, it is alleged by the prosecution that, the excess bill was raised in respect of top soil removal, excavation of cut off trench, old bund removal, earthwork for forming the bund in hearting and causing sections, work of formation of zoned filter of the bund and body wall of the surplus weir. It is further alleged that, A1 to A3 had permitted the Contractor[A4] to use the old revetment materials free of cost. The charges against A5 to A8 were that they abetted the contractor[A4] to use substandard work materials in respect of constructing wall of surplus weir and allowed him to make a dishonest withdrawal of Rs.9,612/=.

9. Broadly, the allegation centers upon misconduct of the public servants who are in charge of supervising the execution of the restoration work by the contractor, had failed to monitor the work properly and prepare the measurement books as per the work executed by the Contractor in accordance with the estimation and plan.

10. Proceeding and finding of the trial Court:-

To substantiate the allegation against the accused that they all have conspired to cheat the Government by fabricating measurement book to show as if certain works were done by the Contractor[A4] and he is entitled for payment though it was not executed by the contractor and certain work was executed by the contractor, which are not part of the contract specification and allowed the contract to draw the money and to establish certain work done by the contractor are substandard in nature, the prosecution has examined 36 witnesses and marked 142 exhibits.

11. PW1-Mr.R.Ananda Padmanaban, has introduced the case of the prosecution by marking the files relating to the estimation of Kumarachetti Eri restoration work and the proposal sent by Mr.Gopal, the Executive Engineer of (D.P.A.P.) to the Superintending Engineer for the revised estimation of Rs.24.9 lakhs and he has explained, how the entire work was divided into 6 contracts and 6 tenders were called for and lastly finalized in favour of Mr.K.Muthu[A4] the contractor, who was the successful bidder. He has also deposed that A3-Mr.A.N.Vedhachalam[A3], the Executive Engineer took the charge on 14.11.1977 and entered into the contract with Mr.K.Muthu[A4] Contractor. The contracts entered between A3 and A4 for 6 contracts were marked as Exs.P6 to P11 and the same have been signed on 08.12.1977. Further, he has deposed that A5,A6

and A7 were the persons in-charge of the site to monitor the quality of the work and report the same to A1, A2 and A3, who are the persons authorised to make the payment based on the PWD code proportionate to the work executed by the Contractor. According to his evidence, A4 has raised the bill for a sum of Rs.17,71,335/- for the six contracts in the following manner:

1. I Contract	:	Rs.4,08,902-00
2. II Contract	:	Rs.3,37,022-00
3. III Contract	:	Rs.2,95,284-00
4. IV Contract	:	Rs.2,82,991-00
5. V Contract	:	Rs.1,86,434-00
6. VI Contract	:	Rs.2,60,909-00

Total		Rs.17,71,335-00

Bill Raised for		Rs.17,71,335-00
		Rs.13,24,977-00

Loss prior to deduction		Rs.4,46,358-00

According to PW1, in each of six contracts, the following excess payment were made to the 4th accused the contractor, in view of the false entry made in the measurement book.

1. I Contract	:	Rs.3,35,849-50
2. II Contract	:	Rs.3,03,184-00
3. III Contract	:	Rs.2,61,405-00
4. IV Contract	:	Rs.2,54,223-00
5. V Contract	:	Rs.2,69,816-00

Total	:	Rs.14,80,704-50

12. The prosecution has highlighted the fact that PW3-Mr.Gnanasekaran, who was a member of the team and who had inspected the soil of Kumarachetti Eri, has deposed that the soil test was conducted in the lake and they found no solid rocks and the estimation prepared by them marked as Ex.P1 does not refer about any work pertaining to blasting of rock and its removal.

13. PW5-Mr.P.Srinivasan, who took charge as Superintending Engineer of Salem and Dharmapuri Districts on 15.08.1978, has deposed about the inspection of restoration of breach in Kumarachetti Eri on 04.10.1978 along with A1 to A3 and found that payment has been made over and above the estimated cost and other defects in the execution of the work and payment such as payment for blasting rock, when there is no indication of existence of rock or sanction of money for blasting of rock. His observation of excess excavation of soil and payment for the same to the contractor has been reported to the Executive Engineer[A3] pointing out all the deficiencies in the said work and the said report has been marked as Ex.P63. According to him, total tender amount for all the six contracts was Rs.13,24,968/-, whereas the Contractor was paid a sum of Rs.20,13,399/- and further amount was liable to be paid by the PWD Department as per the measurement took and approval of payment made by A1 to A3.

14. PW9-Mr.Viswanathan, Superintending Engineer of Vellore District during 1978-1979 had accompanied with the Investigating Officer of the Vigilance and Anti Corruption Department to inspect Kumarachetti Eri, pursuant to the investigation carried out by the respondent police and he has submitted his report marked as Ex.P69 dealing out the irregularity in the said work.

15. PW36-Mr.GopalaKrishnan has deposed the manner in which he has investigated the case by collecting the evidence through seizure mahazar of the accused's house A1 to A4 by making spot inspection with the help of engineering experts viz., Mr.Murugappan and Mr.Manikesi appointed by the Government and collecting the samples from the work site subjecting the same to chemical analysis and obtaining a report from them. He has consolidated the evidence and filed the final report.

16. The contention of the learned counsels representing for the appellants/accused challenging the judgment of the trial Court is on the following grounds:

The evidence let in by the prosecution witnesses regarding the procedure adopted by the Department before passing any bill will clearly indicate that there was no violation in respect of the procedure followed by the accused persons particularly, A1 to A3 for preparing the bills and passing the same. Whatever

money paid to the Contractor were towards the work done by him and the work was in consonance with the approved sanction plan and certain deviations were carried out, as per the instruction of Mr.Sripatha Rao, the then Superintending Engineer. When there is no excess money paid to the contractor over and above the work he has done, there cannot be any charge of cheating or misappropriation. The entries found in the measurement book and the corresponding documents are the actual work done by the contractor under the supervision of A5 to A8 and A1 and A2. The charge of conspiracy by abusing the official position to obtain pecuniary advantage has not been proved by the prosecution. Therefore, the conviction and sentence imposed by the trial court have to be set aside.

17. All the measurements taken and recorded in the measurement books were perused and compared with the agreement and approval of the Accountant and the Divisional Accountant. However, they were not arrayed as accused, who should have been held responsible, if really there was any manipulation in the measurement book vis-a-via the actual work done. Only after comparison and approval made by the Accountant and Divisional Accountant, the Executive Engineer[A3] has passed the bill and if there was any irregularity in the bill prepared, then the person who prepared the bill, has to be held responsible primarily.

18. It is further contended by the learned counsel appearing for the appellants that the investigation was conducted by the investigating agency belatedly, after lapse of 3 years. Inspection after 3 years from completion of work itself is not appropriate to assess the quality of construction (or) nature of work carried out in restoring the breach of Kumarachetti Eri. Further more, the inspection report (or) lab report, is spoken to by the person, who is not the signatory of those documents. The trial Court ought not to have taken all those documents to base the conviction of the appellants.

19. The super check report, which is marked as Ex.P70 is an inadmissible piece of document, since Mr.Murugappan, who was the author of the document Ex.P70 was not examined. Ex.P70 prepared by Mr.Murugappan has no evidentiary value without subjecting himself to cross examination. At the most, if it is treated as opinion of an Expert on the subject matter, his opinion ought to have been put into test by examining the author of the report. Since the said Mr.Murugappan died before commencement of trial, no evidentiary value can be given to the said report. However, the trial Court has erroneously taken it as an admissible piece of evidence. The trial Court has failed to consider the inspection note of Mr.U.B.Sripatha Rao, the then Superintending Engineer and his report marked as Ex.P68 wherein, he has given a specific direction to his Subordinates regarding renovation of breached Kumarachetti Eri. Deviation is to be carried out

in order to make the restoration work to the tune with technical development occurred between the sanction of the project and the execution of the project. While Ex.P68 clearly indicates the presence of rock and removal of it and how the old bund has to be removed. The accused herein, who are the Subordinates to Mr.U.B.Sripatha Rao have carried out the same as per his instruction and they have raised the bill proportionate to the work done by the contractor. After inspection, Mr.U.B.Sripatha Rao, the then Superintending Engineer has changed the bund alignment to hold some more water and in order to increase the capacity of the tank, he has ordered to excavate more soil, create store and make the Eri fit for major irrigation. The action taken by the accused in good faith by carrying out the instruction of the supervisor, by no stretch of imagination, could not be considered as a conspiracy to make pecuniary gain by abusing the official position. The extra work related to renovation of lake were carried out, without resorting to new tender, in order to avoid the delay and completion of the work before rainy season. By resorting to that measure, the accused officials have saved money to the Government and if they have resorted to new tender, it would have incurred more cost to the Government and the work would not have been completed in time.

20. It is also brought to the notice of this Court that the revised estimation of Rs.24.90 lakhs was approved by the Government and a Government Order

was issued by the Government under G.O.Ms.No.102 dated 23.01.1980, which clearly shows that for completion of restoration of the tank by putting up new bund and construction of canal for flow of excess water, the estimate cost was Rs.24.90 lakhs whereas, the said work has been completed with lesser cost. A bare arithmetic comparison of tender amount offered by the contractor should not be the test to fix criminal liability on the appellants but, the nature of work carried out by the officials through the contractor with minor variation, which is permissible under the manual, has to be taken into consideration and if such proper application of law and facts are applied in this case, it will clearly show that none of the accused is guilty of charges framed against them.

21. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that admittedly, the contract work was given to one and the same person A4[Mr.K.Muthu]. Some of the bills paid to the contractor A4[Mr.K.Muthu] was not at all covered under the estimation or incidentally required for the main work of restoring the bund. The prosecution has proved through evidence that the bills were raised by the contractor over and above the estimated cost. For each and every work A1 to A3, who are the responsible for proper scrutiny of work done, have miserably failed to do so, which has led to passing of bills with excessive measurements and also for work which does not form part of the contract. Further, A5 to A8 who are supposed to

be in the site and supervise every inch of the work, have failed to discharge their duties. They have allowed the contractor to use the substandard materials and also permitted him to use the old revetment materials without cost.

22. The learned Government Advocate (CrI.Side) further submitted that when there is enough evidence to show that there was no rock or hard granite to blast and remove it from the work site, the accused herein have entered into the measurement book and other related records to show as if hard granites were removed by the blasting work, thereby causing pecuniary loss to the Government. Similarly, when the tender was to remove the top soil and cut off trench in a particular manner and particular extent, the earth work required for the bund formation is only about 1,45,000 cubic meter as per the estimation, whereas the payment was made to the contractor as if the earth work was made to an extent of 1,99,000 cubic meter and all these irregularities have been noticed by the Superintending Engineer, Mr.Srinivasan[PW5] and his report was marked as Exs.P60, his communications with A3 regarding the irregularities pointed out by him were marked as Exs.P62, 65,& 66.

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23. Relying upon these documents and the lab report, the learned Government Advocate (CrI.Side) submitted that the prosecution has clearly established the guilt of the accused and on proper appreciation of evidence, the

trial court has held them as guilty and there is no substance in the grounds of appeals raised by them. Hence, the these appeals have to be dismissed.

24. Finding of this Court:

The charges against the appellants are on the following broad spectrum:

Extra work without authorization or which was not covered under estimation was awarded to the contractor Mr.K.Muthu [A4] and the money was paid to him under the restoration of breached Kumarachetti Eri. Certain works, which were not really carried out, were shown as work done by the Contractor and the amounts being paid for such work. The third category of work done by the Contractor[A4] was not to the specification of the contract, but, there were of substandard materials. The field staff [A5 to A8] in consonance with other accused have approved the work and based on their approval, bills were prepared by A1 and A2 and sanctioned by A3. As per the charge, the overall loss was Rs.11,04,042/-.

25. At the outset, it has to be pointed out that even according to PW5, the entire amount paid to the contractor was only Rs.20,13,399/-. The revised estimation for the work was Rs.24.90 lakhs. The actual tender price quoted by the contractor was Rs.13,24,968/-. It is invariably accepted by the prosecution witnesses that the contractor has completed the work as per the tender. At the

most, the work completed by him could be in variation to the tender specification. The allegation as to the variation in the tender specification is concerned, this has happened due to the instruction given by then the Superintending Engineer, Mr.U.B.Sripatha Rao who had inspected the site on 31.1.1978 and given certain specific instruction to the Subordinates viz., A1 to A3 and the Contractor.

26. It is relevant to extract the inspection note as found in Ex.P68, which gives light to the issue on hand:

"The kumara Chetty Eri was inspected and the following observations are made.

The general progress was found satisfactory, but proper planning to ensure to tackle the two deep bed portions before May'78 was impressed on the site officers, as rains are likely to occur in this area even in the month of May itself filling up the tank.

- i. instructions were given to have a ring bund in the deep beds to divert the flowing water through the sluice by excavating a leading channel.
- ii. The crest weir should be at ground level until the bund reaches the M.W.L in all the reaches.
- iii. The alternate alignment of the surplus course to divert the surplus water to the adjacent—higher contoured odai, as already instructed is confirmed.
- iv. The alignment of the channel in the head reaches up to 500 M is approved.
- v. The alignment of the bund from 0/0 of 0/180 requires a shift to the upstream, to avoid the

deep filling at 0/150 of the bund. Care should be taken to minimize the earthwork by this shifting by utilizing the local ridge available in the site. The possibility of this may be examined.

- vi. The abundant quantity of available rock should be carefully utilized for the "RIP-RAP" revetment (by increasing the thickness packing to double the that of rest in the reaches where the depth of storage is less than 6 M and for the rock toe , toe wall and toe filter.
- vii. Stepping of 2M X 2M should be done before placing new banks in the deep bed portions on either side with at least 1 to 1 slope, with extra lugs of 3 M downstream and in the left and right slopes of the bund to avoid shear. Proper rock toe formation and clay blanket may be provided.
- viii. Screw gearing shutters may be provided with proper functioning arrangements, as explained at site.
- ix. Old bunds soils are found with boulders etc., and hence should not be used on formation of bund for the present, the soil may be dumped elsewhere and later this earth could be examined and utilized for the bund above M.W.L.
- x. The hearting section at the two deep beds may be adopted as per the cross sections, adopted for Pambar and Kelavarapalli. (i.e.) 1 to 1 side slopes may be provided for the hearting sections.

Proper bank connections between the old ground and new bunds may be provided at deeps with proper filter arrangements."

27. This inspection note with instruction of Mr.U.B.Sripatha Rao if compared with the communications between Mr.Srinivasan PW5], who took charge, after Mr.U.B.Sripatha Rao as Superintending Engineer and A3, which are

marked as Exs.60 to 67 will go to show that if the first estimation for renovation of breached Kumarachetti Eri was started in the year 1971. Due to technology development and other reasons, the estimation has been revised frequently and the last revised estimation was approved in the year 1980, after initiation of investigation by registering the First Information Report by the Vigilance and Anti Corruption on 14.11.1979. The allegation of paying the contractor for the work, which does not form part of the sanctioned scheme had been carried out by these accused, at the instance of their superior Mr.U.B.Sripatha Rao, the then Superintending Engineer, who is not arrayed as an accused nor examined. His inspection report was marked by the prosecution itself as Ex.P68, which indicates several deviations and variations in the approved estimation, naturally, such deviations require extra expense and payment.

28. The explanation of A3 marked as ExP64 he has detailed out the reason for the deviations and justification for the deviations. This explanation has not been considered by the trial Court. In the light of A3 communication dated 28.10.1978 marked as Ex.P64, which is self explanatory, there cannot be any reason to believe that the accused have conspired to cause pecuniary loss to the Government and thereby, made any pecuniary gain over it.

29. The portion of the letter submitted to the Superintending Engineer, which was marked as Ex.P64, is extracted as below:

"With reference to the above, I submit that the increase in earthwork quantities in the above work is due to actual necessities for work that have arisen during execution. The former superintending Engineer also inspected the work and issued instructions at several stages to overcome many problems that arose from the beginning of removal of top soil, old bund etc., until formation of bund to above 60% of its length and trackling of the two deep bed portions etc., in time. There was the fear of the seasonal rains in the month of May 1978 itself in that area and we had no rake timely precautions and proceed with the work to avoid breaches etc., as envisaged twice the floods threatened us and but for the safety items of works executed the bund would not be as safe and strong as it is now.

The estimate for Rs.24.90 lakhs does not contain all the essential requirements needed for this site. For instance it was found necessary to provide 1:1 slopes in the hearting zone at the two deep beds as vouch safed by the Superintending Engineer whereas the estimate contains provisions for $\frac{1}{2}$:1 slope only just as any other normal tank deep bed. The deep bed in this case exceeds 19 metres. It is even deeper than the Pamber Reservoir earthen bund for that matter.

I enclose herewith a comparative statement showing the earthwork quantities as in the estimate for Rs.24.90 lakhs and the ones as under execution. The enhancement proposals were anticipated in time and the field officers have furnished these particulars by about the end of May 78 after the former Superintending Engineer inspected and issued instructions at the site, vide his inspection notes. I have informed the Collector also about this and taken him to the site during execution of the work and

appraised him that the cost is likely to exceed the tendered amount due to inevitable extra items of works involved.

I was asked to keep up the tempo of works and the work had been in progress as a prestigious one to benefit 600 and odd acres within a year. The Chief Engineer for Irrigation had also inspected the site on 26.08.78 and appreciated the progress and performance of various items executed there in. He had even asked about the cost and I have informed him that it is likely to exceed even Rs.24.90 lakhs. But, every efforts is being made to restrict it to well within the amount.

The tender savings involved are being utilized inevitably but to the best advantage of the work. This is the only work perhaps in the entire D.P.A.P.Schemes executed so far that is proceeded on as per time schedule. The Chief Engineer(Irrigation) said that he would like to show it to visiting dignitaries also. "

30. The prosecution can be successful only if they could prove that the extra work carried out in the restoration of Kumarachetti Eri was unwarranted or without carrying out the work, the bill was raised by the contractor in connivance with the officials. For the said purpose, the prosecution would rely upon the report of PW9 marked as Ex.P69. While the deposition of PW9 Mr.Viswanathan indicates that he accompanied with the investigation team to inspect Kumarachetti Eri and submitted the report Ex.P69, in his cross examination, he admits that Ex.P69 does not contain his signature. It is not the original report, but only a copy of it. He also admits that he did not forward the samples collected from the site for chemical analysis. He also admits that he did not take

any photograph of Kumarachetti Eri, when he visited.

31. Though PW9 claims to be an expert accompanied with the investigation team since he has retired as Superintending Engineer, he was not able to tell the source of water to Kumarachetti Eri (or) which direction the bund of Eri is located (or) whether there was any hard granite present in the Eri. For all these questions, during the cross examination, he has just replied that he is not aware of the details and he admits that he did not examine the inspection notes Ex.P68 of Mr.U.B.Sripatha Rao.

32. Under these circumstances, the reliability of the report submitted by PW9 becomes highly doubtful and no conviction can be passed on such truncated report of the expert, who is not even able to say about topography or layout of the bund which is the subject matter of the investigation. For the said reason, this Court has no hesitation to reverse the finding of the trial court and acquit the accused extending the benefit of doubt.

33. Accordingly, these Criminal Appeals are allowed. Convictions and sentences imposed on the appellants by the learned First Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri in C.C.No.1 of 1987 dated 14.06.2002 are hereby set-aside. The appellants are

acquitted of the charges levelled against them and they are directed to be set at liberty forthwith, unless their presence are required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall be refunded to them.

21.09.2017

Index:Yes/No

Internet:Yes/No

ari

Speaking order/Non speaking order

To

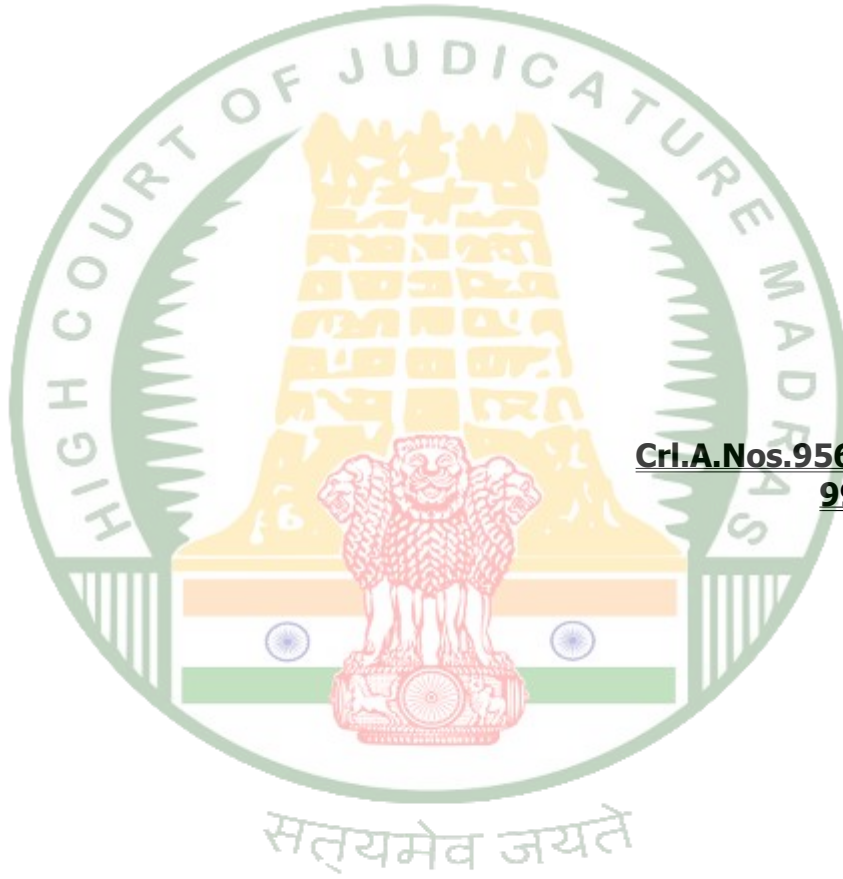
- 1.The First Additional Sessions Judge cum Chief Judicial Magistrate, Krishnagiri
- 2.The Public Prosecutor,HighCourt, Madras.



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Dr.G.Jayachandran,J.

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998 of 2002

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