

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.39 of 2011

1. Gopal Krishna Son of late Bhola Ishar Resident of Village Mai, Police Station Muffasil Munger, District- Munger.
2. Jageshwar Prasad Mehta son of Late Ramroop Mehta, resident of village Bansipur, P.S. Mednichouki, District- Lakhisarai

... .. Appellant/s

Versus

The State Of Bihar Through Vigilance

... .. Respondent/s

with

Criminal Appeal (SJ) No. 72 of 2011

Laxmi Shankar Rawat son of Late Sukan Rawat, resident of village Ratanpur, P.S. Gidhour, District- Jamui

... .. Appellant/s

Versus

The State Of Bihar Through Vigilance, Bihar, Patna

... .. Respondent/s

with

Criminal Appeal (SJ) No. 90 of 2011

Ram Prit Rai son of Late Baldeo rai, resident of village Narepur West, P.S. Bachchwara, District- Begusarai

... .. Appellant/s

Versus

The State Of Bihar Through Vigilance, Bihar, Patna

... .. Respondent/s

with

Criminal Appeal (SJ) No. 71 of 2011

Sheo Nandan Singh @ Shiv Nandan Singh S/O Banarai Singh R/O Village- Singh Chak, P.S.-Chandan Mananpur, Distt.-Lakhisarai, and at Present Residing At Banka, P.S.Banka Distt.-Banka

... .. Appellant/s

Versus

The State Of Bihar Through Vigilance, Bihar, Patna

... .. Respondent/s

with



Criminal Appeal (SJ) No. 95 of 2011

Narendra Kumar Sharma son of Late Brij Mohan Sharma, resident of Mohalla Sonari, near Mauni Baba Dham, P.S. Senari, District- Jamshedpur, Jharkhand

... .. Appellant/s

Versus

The State Of Bihar Through Vigilance

... .. Respondent/s

with

Criminal Appeal (SJ) No. 42 of 2011

Ram Swaroop Yadav son of Late Rameshwar Yadav R/O,English Lakhisarai,P.S.-Lakhisarai,Dist.-Lakhisarai

... .. Appellant/s

Versus

The State Of Bihar Through Vigilance

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 39 of 2011)

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. P.P.N. Shahi, Adv.

(In Criminal Appeal (SJ) No. 72 of 2011)

For the Appellant/s : Mr. Rajiv Kumar Singh, Adv.

(In Criminal Appeal (SJ) No. 90 of 2011)

For the Appellant/s : Mr. Abhinav Srivastava, Adv.

(In Criminal Appeal (SJ) No. 71 of 2011)

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Pankaj Kumar Sinha &
Mr. Rajiv Kumar Singh, Advocates

(In Criminal Appeal (SJ) No. 95 of 2011)

For the Appellant/s : Mr. Anand Kumar

(In Criminal Appeal (SJ) No. 42 of 2011)

For the Appellant/s : Mr. Viveka Nand Singh

For the Vigilance : Mr. Anjani Prasad Singh, Sr. Adv.
(in all the appeals)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 13-02-2019

These appeals are directed against the judgment



and order dated 21.12.2010 passed by Sri Rabindra Nath Singh, Special Judge, Vigilance II, Patna in Special Case No. 75 of 1986 arising out of Vigilance P.S. Case No. 30 of 1986, whereby and whereunder the appellants have been held guilty for the offences punishable under sections 120B, 420, 471, 409, 477A of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act. The appellants, Shiv Nandan Singh, Ram Prit Rai, Narendra Kumar Sharma, Gopal Krishna, Laxmi Shankar Rawat (since dead), Jageshwar Prasad Mehta (since dead) and Ram Swaroop Yadav have been sentenced to undergo rigorous imprisonment for two years for the offence punishable under section 120B I.P.C., two years rigorous imprisonment for the offence punishable under section 420 I.P.C. and three years rigorous imprisonment for the offence punishable under section 471 I.P.C. The appellants Narendra Kumar Sharma, Shiv Nandan Singh, Ram Prit Rai and Gopal Krishna have further been sentenced to undergo rigorous imprisonment for one years for the offence punishable under section 5(2) of the Prevention of Corruption Act, 1947, three years rigorous imprisonment for the offence punishable under section 409 I.P.C. and two years rigorous imprisonment for the offence punishable under section 477A I.P.C. All the sentences have been directed to run



concurrently. It has further been directed that the period already undergone shall be set off under the provision of Section 428 Cr.P.C.

2. Interlocutory Application Nos. 2245 of 2017 and 142 of 2018 have been filed for expunging the names of appellants, Jageshwar Prasad Mehta in Cr. Appeal (S.J.) No. 39 of 2011 and Laxmi Shankar Rawat in Cr. Appeal (S.J.) No. 72 of 2011 as they have died during the pendency of these appeals.

This Court vide order dated 17.01.2018 had called for a report from the Superintendent of Police, Lakhisarai and Jamui in this regard, which has been received and perusal whereof shows that the aforesaid two appellants have died. Accordingly, the appeal stands abated as against the appellants namely, Jageshwar Prasad Mehta in Cr. Appeal (S.J.) No. 39 of 2011 and Laxmi Shankar Rawat in Cr. Appeal (S.J.) No. 72 of 2011. The I.A. Nos. 2245 of 2017 and 142 of 2018 are, accordingly, disposed of.

3. On the basis of written report submitted by informant Shri Arun Kumar Singh “Vinit”, Police Inspector, Vigilance Bureau of Investigation, Vigilance P.S. Case No. 30/86 dated 1.10.1986 was registered under Sections 120B, 409, 420, 467, 468, 471 of the Indian Penal Code and Section 5(2)



and 5(1)(d) of the Prevention of Corruption Act, 1947 wherein it has been alleged that during the course of preliminary confidential enquiry with respect to the allegations levelled against Shri Narendra Kumar Sharma, the then Block Development Officer, Lakhisarai (Munger) and other persons, it was found that the said Shri Narendra Kumar Sharma and other persons by misusing their powers had misappropriated a total amount of Rs. 24,807/- from the Government fund on the basis of forged documents in connivance with different persons who were working on different posts under the Block including the present appellants. As per the prosecution story, in terms of a Government sponsored scheme for boring for the purposes of irrigation in different places for needy persons, different amount of money had been sanctioned and for completion of the work of fixing boring, different agents had to be employed. As per the scheme, a total amount of Rs. 15,000/- each was to be granted for pipes with 4" diameter but as per the measurement book, 7/84-85, pipes of 3" diameter were used in place of 4" diameter and for the said scheme, Shri Ram Swaroop Yadav was an applicant. The records show that a total of Rs. 4,545/- had been spent, 50% of which i.e. Rs. 2,272.50 was given as grant and Shri Narendra Kumar Sharma, the Block Development Officer



had approved the scheme and confirmed the work done by the concerned applicant. Furthermore from records, it appeared that even before completion of work at the site, the payment of grant of Rs. 2,272.50 was made to the applicant. In a similar manner, for Sscheme No. 98/84-85 one boring was approved for which an amount of Rs. 3,000/- was estimated as the cost. The work was sanctioned in favour of one Dinesh Yadav by Shri Narendra Kumar Sharma, the Block Development Officer, whereas upon examination of records, it was found that there was no application on part of the applicant, Shri Dinesh Yadav. It has been alleged in this regard that the Junior Engineer, Shri Shiv Nandan Singh had prepared the measurement book no. 90/84-85 and the Assistant Engineer Shri Ram Prit Rai, National Rural Employment Programme checked the same on 18.4.1985 and from the record, it appears that the total expense was shown to be Rs. 3015/-, 50% of which i.e. Rs. 1500/- was ordered to be paid by the Block Development Officer, Shri Narendra Kumar Sharma to the applicant Shri Dinesh Yadav which had been accordingly received by the applicant Shri Dinesh Yadav on 30.3.1985. It has been further alleged that in a similar manner different irregularities were found in other schemes as well and on the basis of a complaint received in this regard, the said



matter was inquired into by Shri Arun Kumar Singh “Vinit”, Inspector with the Vigilance Bureau of Investigation and on the basis of the report submitted by him a written complaint was lodged before the Officer Incharge, Vigilance P.S., Patna leading to the institution of Vigilance P.S. Case No. 30/86 alleging offences under Sections 120B, 409, 420, 467, 468, 471 of the Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. Upon institution of the said Vigilance P.S. Case No. 30/86, one Shri Ram Sagar Lal Gupta was entrusted with the investigation and later on the investigation was completed by one Shri Sachida Nand Jha under the supervision of Deputy Superintendent of Police, Shri P.A.K. Beg whereafter the sanction was obtained from the concerned authorities and the charge-sheet was submitted in the present case.

4. Upon completion of investigation by the Investigating Officer of the present case, charge sheet was submitted against altogether 23 accused persons under Sections 120B, 409, 420, 467, 468, 471 of the Indian Penal Code and Section 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 pursuant to which cognizance was taken and as the accused persons denied the allegations levelled against them,



they were put on trial.

5. The prosecution, in order to prove its case, has examined altogether 13 prosecution witnesses which included P.W.1, Shri Ram Nath Prasad, P.W.2, the informant Shri Arun Kumar Singh “Vinit”, P.W.3 Shri Awadhesh Kishore Prasad Singh, P.W.4 Shri Awdhesh Kishore, P.W.5 Shri Dhaneshwar Baitha, P.W.6 Shri Kanhaiya Lal, P.W.7 Shri Kedar Das, P.W.8 Shri Sachichidanand Jha, P.W.9 Shri Baleshwar Mahto, P.W.10 Shri Suresh Rai, P.W.11 Shri Anandi Mahto, P.W.12 Shri Ram Anugrah Singh and P.W.13 Shri Kaushal Kumar Rai.

6. In order to establish the charges, the prosecution has proved the following documents as exhibits :-

<i>Ext.1.</i>	<i>Carbon copy of sanction order vide Memo No.673/J, Patna dated 13.02.1992.</i>
<i>Ext.2.</i>	<i>Carbon copy of sanction order vide Memo No.597/J, Patna dated 09.02.1994.</i>
<i>Ext.2/1.</i>	<i>Written report of Arun Kumar Singh “Vinit”.</i>
<i>Ext.3.</i>	<i>Formal F.I.R.</i>
<i>Ext.4.</i>	<i>Private Boring Case No. 27/84-85.</i>
<i>Ext.4/1.</i>	<i>Case No.98/84-85.</i>
<i>Ext.4/2.</i>	<i>Case No.18/84-85.</i>
<i>Ext.4/3.</i>	<i>Case No.71/84-85.</i>
<i>Ext.4/4.</i>	<i>Case No.81/84-85.</i>
<i>Ext.4/5.</i>	<i>Case No.90/84-85.</i>
<i>Ext.4/6.</i>	<i>Case No.95/84-85.</i>
<i>Ext.4/7.</i>	<i>Case No.93/84-85.</i>
<i>Ext.4/8.</i>	<i>Case No.96/84-85.</i>
<i>Ext.4/9.</i>	<i>Case No.80/84-85.</i>
<i>Ext.4/10.</i>	<i>Case No.83/84-85.</i>



<i>Ext.4/11.</i>	<i>Case No.30/84-85.</i>
<i>Ext.4/12.</i>	<i>Case No.38/84-85.</i>
<i>Ext.4/13.</i>	<i>Case No.7/84-85.</i>
<i>Ext.4/14.</i>	<i>Case No.8/84-85.</i>
<i>Ext.4/15.</i>	<i>Case No.9/84-85.</i>
<i>Ext.4/16.</i>	<i>Case No.11/84-85.</i>
<i>Ext.4/17.</i>	<i>Case No.97/84-85.</i>
<i>Ext.5.</i>	<i>Page nos.3 to 6 of Measurement Book no.7/84-85.</i>
<i>Ext.5/1.</i>	<i>Page nos.7 to 10 of Record No.11/84-85.</i>
<i>Ext.5/2.</i>	<i>Page nos.42 to 39 of Record No.9/84-85.</i>
<i>Ext.5/3.</i>	<i>Page nos.38 to 35 of Record No.8/84-85.</i>
<i>Ext.5/4.</i>	<i>Page nos.24 to 21 of Record No.27/84-85.</i>
<i>Ext.5/5.</i>	<i>Page nos.74 to 72 of Record No.30/84-85.</i>
<i>Ext.5/6.</i>	<i>Page nos.90 to 88 of Record No.38/84-85.</i>
<i>Ext.5/7.</i>	<i>Page nos.136 to 134 of Record No.18/84-85.</i>
<i>Ext.5/8.</i>	<i>Page nos.15 to 17 of Measurement Book No.8/84-85, Project No.80/84-85.</i>
<i>Ext.5/9.</i>	<i>Page nos.19 to 21 of Project No.81/84-85.</i>
<i>Ext.5/10.</i>	<i>Page No.15 to 17 of Measurement Book No.9/84-85, Project No.71/84-85</i>
<i>Ext.5/11.</i>	<i>Page nos.81 to 83.</i>
<i>Ext.5/12.</i>	<i>Page nos.89 to 91.</i>
<i>Ext.5/13.</i>	<i>Page nos.93 to 95.</i>
<i>Ext.5/14.</i>	<i>Page nos.97 to 99.</i>
<i>Ext.5/15.</i>	<i>Page nos.101 to 103.</i>
<i>Ext.5/16.</i>	<i>Page nos.105 to 109.</i>
<i>Ext.5/17.</i>	<i>Page nos.111 to 113.</i>
<i>Ext.6.</i>	<i>Order sheet dated 04.01.1985 of Ext.4.</i>
<i>Ext.6/1.</i>	<i>Order sheet dated 02.02.1985 of Ext.4.</i>
<i>Ext.7.</i>	<i>Endorsement on second page of Ext.4.</i>
<i>Ext.8.</i>	<i>Report of Bhagwat Pandey in Ext.4.</i>
<i>Ext.8/1.</i>	<i>Report of Umesh Kumar in Ext.4.</i>
<i>Ext.8/2 & 8/3.</i>	<i>Enquiry report on the petition.</i>
<i>Ext.9/2.</i>	<i>Signature on the agreement.</i>
<i>Ext.10/2.</i>	<i>First and last bill.</i>
<i>Ext.6/7.</i>	<i>Order sheet dated 23.02.1985 of Ext.4/3.</i>
<i>Ext.6/8.</i>	<i>Order sheet dated 27.03.1985.</i>



<i>Ext.7/3.</i>	<i>Identification of money receiving on the order sheet.</i>
<i>Ext.9/3.</i>	<i>Signature on the agreement.</i>
<i>Ext.8/4.</i>	<i>Enquiry report on the petition.</i>
<i>Ext.10/3.</i>	<i>First and last bill.</i>
<i>Exts.6/9 & 6/10.</i>	<i>Order sheets dated 23.02.1985 and 27.03.1985 of Ext.4/4.</i>
<i>Exts.7/4 to 7/5</i>	<i>Identification of money receiving</i>
<i>Exts.8/5 & 8/6</i>	<i>Report on the petition.</i>
<i>Exts.9/4 to 9/5</i>	<i>Signature and approval on the agreement.</i>
<i>Exts.6/11 to 6/12.</i>	<i>Order sheet.</i>
<i>Ext.8/7.</i>	<i>Report on the petition.</i>
<i>Exts.10/4 to 10/5.</i>	<i>First and last bill.</i>
<i>Exts.6/13 to 6/34.</i>	<i>Order sheet.</i>
<i>Exts.7/6 to 7/16.</i>	<i>Identification of money receiving.</i>
<i>Exts.8/8 to 8/14.</i>	<i>Report on the petition.</i>
<i>Exts.9/6 to 9/7</i>	<i>Signature on the agreement.</i>
<i>Exts.10/6 to 10/17.</i>	<i>First and last bill.</i>
<i>Ext.9.</i>	<i>Endorsement on the agreement.</i>
<i>Ext.10.</i>	<i>First Account bill.</i>
<i>Ext.6/2.</i>	<i>Order sheet dated 20.01.1985 of Ext.4/1.</i>
<i>Ext.6/3.</i>	<i>Order sheet dated 28.03.1985 of Ext.4/1.</i>
<i>Ext.6/4.</i>	<i>Order sheet dated 30.03.1985 of Ext.4/1.</i>
<i>Ext.8/1.</i>	<i>Report on the petition of Dinesh Yadav.</i>
<i>Ext.9/1.</i>	<i>Endorsement on the agreement.</i>
<i>Ext.11.</i>	<i>Work order of the record.</i>
<i>Ext.7/1.</i>	<i>Identification of money receiving.</i>
<i>Ext.10/1.</i>	<i>First and last bill.</i>
<i>Ext.6/5.</i>	<i>Order sheet dated 02.02.1985 of Ext.4/2.</i>
<i>Ext.6/6.</i>	<i>Order sheet dated 12.03.1985.</i>
<i>Ext.7/2.</i>	<i>Identification of money receiving on the order sheet.</i>
<i>Ext.2/1.</i>	<i>Approval order.</i>



<i>Ext.2/2.</i>	<i>Approval order.</i>
<i>Ext.11.</i>	<i>Report of Kedar Das.</i>
<i>Ext.11/1.</i>	<i>Report of Kedar Das.</i>
<i>Ext.12.</i>	<i>Paragraphs 1 to 212 of the case diary.</i>
<i>Ext.13.</i>	<i>Forwarding report.</i>
<i>Ext.11/2.</i>	<i>Enquiry report of Ram Lakhan Paswan.</i>
<i>Ext.14.</i>	<i>Petition of Baleshwar Mahto.</i>
<i>Ext.14/1.</i>	<i>Petition of Suresh Ray.</i>
<i>Ext.15.</i>	<i>Report of Ram Anugarah Singh.</i>
<i>Ext.15/1.</i>	<i>Enquiry report of Ram Anugarah Singh.</i>

7. After examination of the prosecution witnesses, the case of the prosecution was closed and the statement of the appellant was recorded under section 313 Cr.P.C., in which the appellants have denied the allegations levelled against them and claimed themselves to be innocent.

8. The defence has examined only one witness namely, Ramesh Prasad Rajak as D.W. 1.

9. Before reaching to any conclusion, it is necessary to examine the evidence of prosecution witnesses.

P.W. 1/ Ram Nath Prasad in his evidence has said that since March, 1983 he is working on the post of Typist in the Law Department, Govt. of Bihar. He has proved the approval orders issued against accused Narendra Kumar Sharma, Block Development Officer, Lakhisarai and Ram Prit Rai, Assistant Engineer, Lakhisarai, which has been marked as Exhibit 1 and 2



respectively.

P.W.2/ Arun Kumar Singh “Vinit”, who is informant of this case, has stated in his evidence that he had made preliminary enquiry in Vigilance P.S. Case No. 30/86 and submitted the enquiry report on the basis of which order for registering F.I.R. in Vigilance police station was issued. This witness has proved the written report as Exhibit-2, formal F.I.R. as Exhibit-3, eighteen files relating to the borings in question as Exhibits -4 to 4/17 and twenty measurement books as Exhibits -5 to 5/19.

P.W. 3/ Awadh Kishore Prasad Singh, has stated in his evidence that he was posted as Assistant in Lakhisarai Block from the year 1981 to 1986. This witness has proved the signature of Gopal Krishna and Narendra Kumar Sharma as exhibits -6 and 6/1 respectively. He has also proved the endorsement on the order sheet as Exhibit- 7, report on the petition (Exhibit-4) of Bhagwat Pandey as Exhibit-8, report of Karmachari and his signature as Exhibit-8/, endorsement and signatures of Gopal Krishna and Narendra Kumar Sharma on Exhibit-4 as Exhibit-9, first amounts Bill in the handwriting and signature of accused Shiv Nandan Singh as Exhibit-10, signatures of Shashi Bhushan Ambastha and Narendra Kumar



Sharma on the order-sheet of 20.01.1985 and 28.03.1985 of Exhibit-4/1 as Exhibits 6/2 and 6/3 respectively.

This witness also said the order-sheet dated 30.03.1985 to be in the writing and signature of Kapildeo Singh and Narendra Kumar Sharma, has also proved the same as Exhibit-6/4. Report of Achutanand Prasad on petition of the Agent Dinesh Yadav which bears his signature has been proved as Exhibit- 8/1. This witness has also proved the endorsement of acceptance and signature of Narendra Kumar Sharma and Shashi Bhushan Prasad Ambastha on the agreement as Exhibit-9/1, the signature of Gopal Krishna and Narendra Kumar Shamra on the work order as Exhibit-11, receiving of money in the signature of Agent Dinesh Yadav as Exhibit-7/1 and the first and last bill bears handwriting and signature of the accused Shiv Nandan Singh as Exhibit-10/1.

This witness has further stated the order-sheet dated 02.02.1985 and 12.03.1985 to be in the writing and signature of Gopal Krishna and identified the initial of Kapildeo Singh made on it and told the aforesaid two orders to be in the signature of Narendra Kumar Sharma and proved the same has Exhibits- 6/5 and 6/6.

The endorsement of receiving of money by the



Agent identified by Deoki Paswan has been proved as Exhibit-7/2.

He has proved the report on petition of Tokhan Ram is in handwriting of Ram Swaroop Yadav and Kanjaiya Lal which bears their signature as Exhibit-8/2 and 8/3. Signature of Narendra Kumar Sharma and initial of Gopal Krishna on the agreement has been proved as Exhibit-9/2.

This witness stated the First and last bill to be in the writing and signature of Shiv Nandan Singh and identified the initial of Narendra Kumar Sharma made on it. First and last bill has been marked as Exhibit-10/2.

This witness stated the order-sheet dated 23.02.1985 and 27.02.1985 to be in the handwriting and signature of Gopal Krishna and Narendra Kumar Sharma respectively and proved the same as Exhibit-6/7 and 6/8. He has proved the receipt of receiving money by the Agent identified by Deoki Paswan as Exhibit-7/3. This witness stated the acceptance of agreement to be in the signatures of Narendra Kumar Sharma and Gopal Krishna, which has been marked as Exhibit -9/3. He has stated the enquiry report to be in the writing and signature of Laxman Shankar Rawat on the petition of applicant and proved the same as Exhibit-8/4. He has



identified the first and last bill to be in the handwriting and signature of Shiv Nandan singh as also the initial of Narendra Kumar Sharma, which has been marked as Exhibit-10/3.

He has stated the order-sheet dated 23.02.1985 and 27.03.1985 to be in the handwriting and signature of Gopal Krishna and also identified the signatures of Narendra Kumar Sharma made on it. Both the order-sheets have been marked as Exhibits- 6/9 and 6/10. He has stated the receipt of money by the Agent on identification of Deoki Paswan and also identified their writing and signature and proved the same as Exhibit-7/4. He has stated the enquiry report on the petition of the Agent to be in the writing and signature of Laxmi Shankar Rawat (since dead) and Nageshwar Prasad. Enquiry Reports have been marked as Exhibits- 8/5 and 8/6. This witness also identified the signatures of Narendra Kumar Sharma and Gopal Krishna on the agreement as Exhibit-9/4. He has stated the first and last bill to be in the writing and signature of Shiv Nandan Singh and Narendra Kumar Sharma, which has been marked as Exhibit-10/4.

He has stated the order dated 20.02.1985 and 28.03.1985 to be in writing and signature of Shashi Bhushan Kumar Ambastha and Narendra Kumar Sharma, which has been



marked as Exhibits- 6/1 and 6/2 respectively. He has stated the identification of Agent to be in the writing and signature of Shiv Nandan Singh, which has been marked as Exhibit-7/5. He identified the writing and signature of Laxmi Shankar Rawat (since dead) on the report on the petition of the Agent, which has been marked as Exhibit- 8/7. He identified the signatures of Narendra Kumar Sharma and Gopal Krishna on the agreement, which has been marked as Exhibit- 9/5. He has stated the first and last bill to be in the writing and signature of Shiv Nandan Singh and Narendra Kumar Sharma, which has been marked as Exhibit- 10/5.

He has stated the order dated 20.02.1985 and 28.03.1985 to be in writing and signature of Shashi Bhushan Kumar Ambastha and Narendra Kumar Sharma, which has been marked as Exhibits- 6/13 and 6/14 respectively. He has proved the money receiving endorsement by the Agent identified by Shiv Nandan Singh as Exhibit- 7/6. He has stated the enquiry report to be in the writing and signature of Laxmi Shankar Rawat (since dead), which has been marked as Exhibit- 8/8. This witness has stated the acceptance of agreement to be in the writing and signature of Narendra Kumar Sharma and Gopal Krishna, which has been marked as Exhibit -9/6. He has stated



the first and last bill to be in the writing and signature of Shiv Nandan Singh, which has been marked as Exhibit- 10/6.

He has stated the order dated 20.02.1985 and 28.03.1985 to be in writing and signature of Shashi Bhushan Kumar Ambastha and Narendra Kumar Sharma, which has been marked as Exhibits- 6/15 and 6/16 respectively. He has proved the money receiving endorsement by the Agent identified by Shiv Nandan Singh as Exhibit- 7/8. He has stated the enquiry report to be in the writing and signature of Laxmi Shankar Rawat (since dead), which has been marked as Exhibit- 8/9. He identified the writing and signature of Narendra Kumar Sharma on the agreement, which has been marked as Exhibit- 9/7. He has stated the first and last bill to be in the writing and signature of Shiv Nandan Singh, which has been marked as Exhibit- 10/7.

He has stated the order dated 20.02.1985 and 28.03.1985 to be in writing and signature of Shashi Bhushan Kumar Ambastha and Narendra Kumar Sharma, which has been marked as Exhibits- 6/17 and 6/18 respectively. He has proved the identification of money receiving by the Agent by Shiv Nandan Singh and his writing, which has been marked as Exhibit-7/8. He has stated the enquiry report on the petition of the Agent to be in the writing and signature of Laxmi Shankar



Rawat (since dead), which has been marked as Exhibit- 8/10.

He has identified the writing and signature of Gopal Krishna and Narendra Kumar Sharma on the order dated 23.01.1985 and 26.03.1985, which has been marked as Exhibits- 6/19 and 6/20 respectively. He has proved the identification of money receiving by the Agent by Shiv Nandan Singh and his writing and signature as Exhibit-7/9. He has stated the enquiry report on the petition of the Agent to be in the writing and signature of Laxmi Shankar Rawat (since dead), which has been marked as Exhibit- 8/11.

He has stated the order dated 23.01.1985 and 26.03.1985 to be in writing and signature of Gopal Krishna and Narendra Kumar Sharma, which has been marked as Exhibits- 6/21 and 6/22 respectively. He has proved the identification of money receiving by the Agent by Deoki Paswan and his writing and signature, which has been marked as Exhibit-7/10. He has stated the enquiry report on the petition of the Agent to be in the writing and signature of Laxmi Shankar Rawat (since dead), which has been marked as Exhibit- 8/12.

He has stated the order dated 20.01.1985 and 18.02.1985 to be in writing and signature of Gopal Krishna and Narendra Kumar Sharma, which has been marked as Exhibits-



6/23 and 6/24 respectively. He has proved the identification of money receiving by the Agent by Deoki Paswan and his writing and signature, which has been marked as Exhibit-7/11. He has identified the writing and signature of Umesh Singh, Karmachari, on the enquiry report, which has been marked as Exhibit- 8/13.

He has stated the order dated 29.01.1985 and 23.02.1985 to be in writing and initial of Gopal Krishna on which there is signature of Narendra Kumar Sharma and identified the same, which has been marked as Exhibits- 6/25 and 6/26 respectively. He has proved the identification of money receiving by the Agent by Jageshwar Prasad Mehta (since dead) and his writing and signature, which has been marked as Exhibit-7/12. He has identified the writing and signature of Umesh Singh, Karmachari, on the enquiry report, which has been marked as Exhibit- 8/14.

He has stated the order dated 12.01.1985 and 02.02.1985 to be in writing and signature of Gopal Krishan and Narendra Kumar Sharma and identified the same, which has been marked as Exhibits- 6/27 and 6/28 respectively. He has proved the identification of money receiving by the Agent by Deoki Paswan and his writing and signature, which has been



marked as Exhibit-7/13.

He has stated the order dated 22.01.1985 and 02.02.1985 to be in writing and signature of Gopal Krishan and Narendra Kumar Sharma and identified the same, which has been marked as Exhibits- 6/29 and 6/30 respectively. He has proved the identification of money receiving by the Agent by Deoki Paswan, which has been marked as Exhibit-7/14.

He has stated the order dated 22.01.1985 and 02.02.1985 to be in writing and signature of Gopal Krishan and Narendra Kumar Sharma and identified the same, which has been marked as Exhibits- 6/31 and 6/32 respectively. He has proved the identification of money receiving by the Agent by Deoki Paswan and his writing and signature, which has been marked as Exhibit-7/15.

He has stated the order dated 22.01.1985 and 02.02.1985 to be in writing and signature of Gopal Krishan and Narendra Kumar Sharma and identified the same, which has been marked as Exhibits- 6/33 and 6/34 respectively. He has proved the identification of money receiving by the Agent by Deoki Paswan and his writing and signature, which has been marked as Exhibit-7/16.

This witness stated the First and last bill to be in



the writing and signature of Shiv Nandan Singh, which is signed by Narendra Kumar Sharma and identified the same, which has been marked as Exhibit-10/8 to 10/11.

Earlier noted exhibits 5 to 5/17 are in the writing and signature of Shivnandan Singh and there are signatures of Ram Pirit Ray and Narendra Kumar Sharma also.

P.W.4/Awadh Kishore Prasad has stated in his evidence that in the year 1993, he was posted as Assistant in Munger Collectorate. At that time, Shri Mahavir Prasad was the Collector of Munger district. This prosecution order was passed against Kapildev Singh, the then Nazir, Gopal Krishna, Shashi Bhushan Ambastha and Achutanand, the then Assistants, Jageshwar Prasad Mehta (since dead), the then Jansevak, Devki Paswan, the then Chainman and Laxmi Shankar Rawat (since dead), the then Revenue Clerk . This order is typed by Nirmal Kanti Ghosh and is signed by the then Collector, Munger Sri Mahavir Prasad. He identified the same, which has been marked as Ext.2/1.

P.W.5/Dhaneshwar Baitha has stated in his evidence that in May, 1994, he was posted as Engineer-in-Chief-cum-Additional Collector-cum-Special Secretary, Road Construction Department. Proposal for sanctioned of



prosecution order against Shivnandan Singh, Junior Engineer, Lakhisarai Block was sent in his office by Vigilance Department. Along with the proposal, F.I.R. and case diary of the case was also sent. He stated that after perusing the records, prima facie seeing the allegation, he passed the necessary sanction order and this is the sanction order which is signed by him. He identified the same. Prosecution sanction order has been marked as Ext.2/2.

P.W.6/Kanhaiya Lal has stated in his evidence that from the year 1981 to 1990, he was working as Revenue Clerk in the Lakhisarai Circle. He has stated that he had given enquiry report on the petition of Tokhan Ram. He identified the same, which is already marked as Ext.8/3. He further stated that he had the occasion to visit Tokhan Ram's village Dogai. Tokhan Ram was of Kahar caste.

P.W.7/Kedar Das has stated that from the year 1985 to 1997, he worked as Revenue Clerk in Lakhisarai Circle. Khata No.3, 83, 216, 217 and 88 of village Rampur, Circle Lakhisarai is recorded in the Khatian and Register-II in the name of Jagdish Singh, Jagdamba Singh and Pashupati Singh, sons of Rajo Singh. Besides the above three persons, name of none of other family members was recorded in Khatian or



Register-II. He has stated that this report is in his writing and signature. He identified the same, which has been marked as Ext.11. He has further stated that Khata Nos. 185, 61 and 3 of village Rampur is recorded in the Khatian and Register-II in the name of Dharmendra Kumar Sao son of Gendhari Sao. Khata No. 222, khesra no. 992 is recorded in the name of Dharmendra Kumar Sao in Register-II wherein the name of Gendhari Sao was not recorded. He has stated that this report is in his writing and signature. He identified the same, which has been marked as Ext.11/1.

P.W.8/Sachchitanand Jha has stated in his evidence that in the year 1991, he was posted as Deputy Superintendent of Police in Bhagalpur Region of Vigilance Department. He has stated that he received the charge of investigation of Vigilance P.S. Case No. 30 of 1986 on 15.04.1991 from Sri Bharat Baitha, Watcher. He has stated that paragraphs 1 to 212 of diary of Vigilance P.S. Case No. 30 of 1986 are in the writing and signature of Sri Ramsagar Lal Gupta, the then Deputy Superintendent of Police, Vigilance. He identified the same, which has been marked as Ext.12. He has further stated that Ramsagar Lal Gupta has died.

He has further stated that after taking charge of



investigation of the case, he recorded the statements of Sri Hari Prasad Singh, Nazir, Sri Nand Kishore Narayan Sinha, Head Clerk, Sri Muridhar Prasad, Assistant, Sri Awadh Kishore Prasad Singh, Assistant, Sri Kanhaiya Lal, Revenue Clerk, Sri Kedar Das, Revenue Clerk, Sri Ram Lakhan Paswan etc.

He has further stated that during investigation, he received Letter No.491, dated 24.08.1991 of Circle Officer, Lakhisarai enclosing report of Ram Lakhan Paswan, Halka Karamchari. He has further stated that this is the forwarding report which is signed by the then Circle Officer. He identified the same, which has been marked as Ext.13 and enquiry report (with objection) of Sri Ram Lakhan Paswan has been marked as Ext.11/2. He has stated that in course of investigation after obtaining necessary sanction order, charge sheet was submitted.

P.W.9/ Baleshwar Mahto has stated in his evidence that he had submitted application for boring on his land before the Lakhisarai Block. He has further stated that this application was written by Saryu Singh, Teacher and he put his signature on the same. He identified the application, which has been marked as Ext.14.

He has further stated that order for boring was passed. He himself got the boring fixed. After boring, Sri



Sivnandan Singh, Engineer had came to see the same. Total expense for the boring was Rs.7,000/- to Rs.8,000/-. He has stated that he received only Rs.1600/- from the Block, which was made by Shivnandan Singh, Overseer (Junior Engineer) and as receiving, he took his signature on a blank paper. He has further stated that he had made statement before the police.

P.W.10/ Suresh Rai has stated in his evidence that he had submitted application for boring on his land before Lakhisarai Block, which was written by villager Anshu Mahto and he put his signature on the same. He has further stated that this is the application which is in the writing of Anshu Mahto and is in in his signature. He identified the same, which has been marked as Ext.14/1.

He has further stated that order for boring was passed. He himself got the boring done. Total expense for the boring was Rs.7,000/- to Rs.8,000/-.After boring, Sri Sivnandan Singh, Engineer had came to see the same. He has stated that he received only Rs.1600/- from the Block and as receiving, Shivnandan Singh took his signature on a blank paper. He has further stated that Bino Mahto son of Nanku Mahto, his villager, has died.

P.W.11/Anandi Mahto has stated in his evidence



that about 18 years ago, he had made application for boring on his land. He has further stated that he himself was appointed as Agent for the boring. Expense for the fixing the boring was about Rs.7500/-. He has further stated that Shivnandan Babu, Overseer had come to see the boring. He has further stated that Shivnanda Babu has paid Rs.1600/- to him and took his thumb impressions on two papers on which something was written from before. He has further stated that he was not told as to what was written on it. He had given his statement before the police.

P.W.12/Ram Anugrah Singh has stated in his evidence that from the year 1986 to 1993, he worked as Revenue Clerk in Lakhisarai Circle. He has stated that on the orders of Circle Officer, Lakhisarai, he had submitted report in respect of the land situated at Khata No.17, khesra no. 223, Mauza- Kiul, which is in his writing and signature. The same has been marked as Ext.15.

He has further stated that on the orders of the Circle Officer, Lakhisarai, he had also submitted report in respect of the land situated at khata no.134, khesra no. 49, Mauza- English Lakhisarai, which is in his writing and signature. The same has been marked as Ext.15/1.



P.W.13/Kaushal Kumar Ray, in his evidence has stated that from August, 1990 to 12-13 November, 1993, he was posted as Block Development Officer, Lakhisarai Block. In his evidence, he has narrated the entire procedure relating to private boring project.

10. It has been submitted on behalf of the appellants that the very basis of this trial is a preliminary report, which has not been brought on the record. The complainant of the said preliminary enquiry has not been examined as witness in this case. The work in question was temporary in nature, and therefore, change due to passage of time was quite natural. It has further been submitted that none of the prosecution witnesses gave any evidence on the facts of the case, rather they only proved the documents as the formal witnesses.

It has further been submitted that their case is based mainly on the point as to whether in absence of substantial evidence, can the allegations be assumed to be proved only on basis of corroborative evidence.

11. Learned Special P.P. appearing for the vigilance agreed with the fact that the law is well settled and on basis of corroborative evidence allegations cannot be proved.

12. Having heard the submissions advanced on



behalf of the parties and considering the entire evidence, this Court finds force in the submissions advance on behalf of the appellants. On perusal of the record, it is evident that there is absence of substantial evidence and the allegations have been assumed to be proved only on basis of corroborative evidence, and therefore, the entire prosecution is vitiated.

13. Accordingly, these appeals are allowed. The judgment of conviction and sentence dated 21.12.2010, passed by Sri Rabindra Nath Singh, Special Judge, Vigilance II, Patna in Special Case No. 75 of 1986 arising out of Vigilance P.S. Case No. 30 of 1986 is, hereby, set aside.

14. Since all the appellants are on bail, they are discharged from the liability of their bail bonds.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	N.A.F.R.
CAV DATE	NA
Uploading Date	14.02.2019
Transmission Date	14.02.2019

