AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 16.05.2019

Judgment Delivered on :29/07/2019

CRA No. 637 of 2013

1. Goverdhan Singh Dewangan (G.S. Dewangan) S/o Late Ramcharan Dewangan, Aged About 54 Years, Occupation – Patwari, R/o Village Dewada, Tahsil -Patan, P.S.- Patan, Civil & Rev. Distt. Durg C.G. , Chhattisgarh

---- Appellant

Versus

1. Union of India, Through C.B.I., Bhopal (M.P.) at present C.B.I. Bhilai Unit Bhilai, Distt. Durg C.G., Chhattisgarh
2. State of Chhattisgarh Through District Magistrate Raipur, Distt. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

CRA No. 645 of 2013

1. I.R. Dehari S/o Late Shri M.L. Dehari, Aged About 53 Years, the then Sub Divisional Officer (Revenue), presently working as Secretary, Chhattisgarh State Election Commission, Raipur, R/o Senior MIG-70, Sector-3, Deendayal Upadhyay Nagar, Post Ravi Shankar University Thana Deendayal Upadhyay Nagar Tahsil & District Raipur Revenue District Raipur C.G. Pin 492010., Chhattisgarh

---- Appellant

Versus

1. Union of India, Through the Central Bureau of Investigation, Bhopal, Madhya Pradesh, Presently Bhilai Unit, Bhilai, District Durg C.G., Chhattisgarh

---- Respondent

CRA No. 659 of 2013

1. Tripati (Tripti) Jhadi S/o Late Bakaiya Jhadi, Aged About 64 Years, Retired Deputy Collector, R/o Akash Nagar, Fejarpur, P.S. Bodhghat Thana, Jagdalpur, Civil and Revenue District Bastar C.G., Chhattisgarh

---- Appellant

Versus

1. Union of India, Through C.B.I., Bhopal (M.P.), at present Bhilai Unit, Bhilai, Civil and Revenue District Durg C.G. , Chhattisgarh

---- Respondent

CRA No. 679 of 2013

1. Hastimal Surana S/o Late Narsingh Malji, Aged About 67 Years, R/o Village & Post Geedam, Police Station - Geedam , Distt. Dantewada C.G. , Chhattisgarh

---- Appellant

Versus

1. Union of India Through - Central Bureau of Investigation, Bhopal (M.P.), At present Bhilai Unita, Bhilai , Distt. Durg C.G. , Chhattisgarh

---- Respondent

For Appellant : Shri T.K. Tiwari, Advocate for the appellant in CRA No.637/2013.
Dr. N.K. Shukla, Senior Advocate with Shri Ajay Lakra and Shri Vikram Sharma, Advocates for the appellant in CRA No.645/2013.
Shri Rajeev Shrivastava, Advocate for the appellant in CRA No.659/2013.
Shri Shivang Dubey, Advocate for the appellant in CRA No.679/2013.
For Respondent - CBI : Shri B.Gopa Kumar, Asst. S.G. with Shri Krishna Gopal Yadav and Shri Vaibhav P. Shukla, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment

29/07/2019

1. These appeals have been preferred against judgment dated 03-07-2013 passed in Special Criminal Case (CBI) No.51/04 by the Special Judge (C.B.I.), Raipur C.G.

2. By the impugned judgment appellants Goverdhan Singh Dewangan and I.R. Dehari have been convicted and sentenced in the following manner:-

Sl.No.	Conviction	Sentence
1.	U/s 120(B) of the IPC	R.I. for 2 years & Fine of Rs.5000/-, in default of payment of fine, additional R.I. for 3 months,
2.	U/s 420 read with Section 120(B) of the IPC	R.I. for 2 years & Fine of Rs.10000/-, in default of payment of fine, additional R.I. for 6 months,
3.	U/s 468 read with Section 120(B) of the IPC	R.I. for 3 years & Fine of Rs.10000/-, in default of payment of fine, additional R.I. for 6 months,
4.	U/s 471 read with Section 120(B) of the IPC	R.I. for 2 years & Fine of Rs.5000/-, in default of payment of fine, additional R.I. for 3 months,
5.	U/s 13(2) read with Section 13(1) D of Prevention of Corruption Act	R.I. for 1 years & Fine of Rs.1000/-, in default of payment of fine, additional R.I. for 1 month.

By the impugned judgment appellant Tripati (Tripti) Jhadi has been convicted and sentenced in the following manner:-

Sl.No.	Conviction	Sentence
1.	U/s 120(B) of the IPC	R.I. for 2 years & Fine of Rs.5000/-, in default of payment of fine, additional R.I. for 3 months,
2.	U/s 420 of the IPC	R.I. for 2 years & Fine of Rs.10000/-, in default of payment of fine, additional R.I. for 6 months,
3.	U/s 468 of the IPC	R.I. for 3 years & Fine of Rs.10000/-, in default of payment of fine, additional R.I. for 6 months,
4.	U/s 471 of the IPC	R.I. for 2 years & Fine of Rs.5000/-, in default of payment of fine, additional R.I. for 3 months,
5.	U/s 13(2) read with Section 13(1) D of Prevention of Corruption Act	R.I. for 1 years & Fine of Rs.1000/-, in default of payment of fine, additional R.I. for 1 month.

By the impugned judgment appellant Hastimal Surana has been convicted and sentenced as mentioned below:-

Sl.No.	Conviction	Sentence
1.	U/s 120(B) of the IPC	R.I. for 2 years & Fine of Rs.5000/-, in default of payment of fine, additional R.I. for 3 months,
2.	U/s 420 read with Section 120(B) of the IPC	R.I. for 2 years & Fine of Rs.10000/-, in default of payment of fine, additional R.I. for 6 months,
3.	U/s 468 read with Section 120(B) of the IPC	R.I. for 3 years & Fine of Rs.10000/-, in default of payment of fine, additional R.I. for 6 months,
4.	U/s 471 read with Section 120(B) of the IPC	R.I. for 2 years & Fine of Rs.5000/-, in default of payment of fine, additional R.I. for 3 months.

All the jail sentences awarded to all these appellants have been directed to be run concurrently.

3. The case of the prosecution, in brief, is this, that in compliance of the order of Hon'ble the Supreme Court in WPC No.202/1995 dated 07-01-2008 CBI Bhopal Branch lodged the FIR Ex.-P/17 and investigated the case regarding felling of trees standing on Government lands. Name of appellant Hastimal Surana (appellant in CRA No.679 of 2013) appeared in the investigation. It was found that appellant Hastimal Surana had made purchase of land bearing Khasra No.265 measuring 2.80 acres situated at Village Chittaloor from one

Chandan Singh in the year 1991. Similarly, he had purchased another land bearing Khasra No.1183/2 measuring 0.97 acres from one Dheerpal by registered sale deed dated 11-01-1991. The mutation entries were accordingly made in the revenue records in favour of appellant Hastimal Surana. During investigation it was discovered that lands purchased by appellant Hastimal Surana were originally recorded in the name of State Government and the vendors of appellant Hastimal Surana, namely, Chandan Singh and Dheerpal were encroachers of the State land, who got benefit of settlement in their favour and the title of such land was untransferrable. Appellant Hastimal Surana filed application before the Collector Dantewada for grant of permission to fell the trees standing on the land bearing Khasra No.265/2 in Village Chittaloor and Khasra No.1183/2 in Village Balud. On the basis of which two revenue cases were registered. A report Ex.-D/6 was submitted by appellant I.R. Dehari (appellant in CRA No.645 of 2013) along with report of Tahsildar Ex.-P/29 and report of Patwari vide Ex.-P/60, in these reports it was specifically mentioned that the land in question on which the trees were standing neither Forest nor Government land. On that basis the then Additional Collector passed the order dated 12-01-1992 granting permission for felling of trees standing in the land in Gram Chittaloor. It is alleged that appellant Tripati (Tripti) Jhadi (appellant in CRA No.659 of 2013) had played a role in submitting false report that the land did not belong to Government or Forest department. In another revenue case again appellant I.R. Dehari, the then S.D.O. (Revenue) submitted report dated 28-11-1994 vide Ex.-P/52 in favour of appellant Hastimal Surana, on the basis of which the Additional Collector Dantewada passed order dated 11-01-1995 Ex.-P/54 granting permission for felling trees present on the land bearing Khasra No.1183/2 situated at village Balud. It is alleged that appellant Tripati (Tripti) Jhadi again had submitted a report Ex.-P/7 mentioning that the land did not belong to Forest Department or Government, which was a false report. Consequent to these, orders were passed granting permission for felling, the trees standing on the lands in question were felled and sold to the forest department and the proceeds amount were received by appellant Hastimal Surana from the Forest department.

4. During investigation it was discovered that the land encroachment case was registered against Dheerpal as revenue case No.70/336-A/68/1981-82 and in the final order passed in that revenue case Dheerpal was given benefit of settlement and a settlement certificate Ex.-P/27 was issued in his favour. On that basis his name was mutated in the revenue record. Similarly, it was found that one encroachment case, revenue case No.14-A/68/1983-84 was registered against Chandan Singh, in which Chandan Singh was given benefit of settlement on the Govt. land. In the case of granting sanction of felling the trees appellant Goverdhan Singh Dewangan (appellant in CRA No.637 of 2013) the then Patwari submitted a false report that the land was neither the Government land nor the forest land. On this basis it was concluded that all the appellants conspired with intent to cheat, forged documents, suppressed the fact that the land in question was Government land, regarding which the application was filed for felling of trees, for which the appellant Tripati (Tripti) Jhadi had given a false report with respect to the land bearing Khasra No.265/2 and similarly appellant Goverdhan Singh Dewangan had submitted a false report with respect to the land bearing Khasra

No.1183/2 situated in Village Balud. It was also concluded that appellant I.R.Dehari, the then S.D.O. had certified that the lands that were sold by Chandan Singh and Dheerpal were in fact ancestral lands, which was false certification. It was further concluded that appellant Hastimal Surana had actively participated in this conspiracy for commission of crime had dishonestly and illegally felled the trees standing on Government land and caused loss to the Government exchequer. It was also concluded that appellants, namely, I.R. Dehari, Goverdhan Singh Dewangan and Tripati (Tripti) Jhadi had in capacity of public servant committed criminal misconduct which amounts to commission of offence under the provisions of Prevention of Corruption Act.

5. After completion of the investigation and all the formalities for filing charge sheet, the charge sheet was filed against the appellants. Appellant Hastimal Surana (appellant in CRA No.679 of 2013) was charged with offence under Section 120B, 420, 468 and 471 of the IPC, whereas, rest of the appellants were charged with offence under Section 120B, 420, 468, 471 of the IPC and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. All the appellants denied the charges and prayed for trial.

6. After conclusion of the prosecution evidence, the appellant were examined under Section 313 of the Cr.P.C., in which they denied all the incriminating evidence against them, pleaded innocence and false implication. Three witnesses were examined in defence.

7. On completion of the trial, the impugned judgment has been passed in which the appellants have been convicted and sentenced as aforementioned.

8. It is submitted by learned counsel for the appellant Tripati (Tripti) Jhadi in CRA No.659 of 1013 that he was posted as Tahsildar between May 1988 to May 1992. It is submitted that in the concerned revenue case it was appellant Hastimal Suarana (appellant in CRA No.679 of 2013) who had manipulated the patwari report which did not mention that the land in question was Government land, on which vendor of that land was settled. This appellant himself had not prepared any report, regarding which admissions have been made by Sudruram Baghel (PW-5) who was the then clerk of this appellant. The Patwari report that was submitted in the revenue case did not mention that the land in question was settlement land. It is submitted that this appellant had believed the report submitted by co-accused Goverdhan Singh Dewangan (appellant in CRA No.637 of 2013) in which it was nowhere mentioned that the land was Government land or Forest land, on the contrary in point No.3 it is specifically mentioned by the Patwari that the land is not included in the lands of any Government land or Forest land. There is no evidence at all on the record that this appellant had ever received any illegal gratification and had conspired with the other co-accused persons for commission of offence as alleged. This fact was never brought to the notice of the appellant while he was performing his official function that the trees were placed on the settlement land. Therefore, it is a case of no evidence. Hence, it is prayed that the appeal of this appellant may be allowed.

Reliance has been placed on behalf of the appellant on the judgments delivered by Hon'ble the Supreme Court in the matter of

(1) **S. Arul Raja Vs. State of Tamil Nadu**, (2010) 8 SCC 233, (2) **Sanatan Naskar and another Vs. State of West Bengal**, (2010) 8 SCC 249, (3) **S.W. Palanitkar and others Vs. State of Bihar and another**, (2002) 1 SCC 241 and (4) **Mohammed Ibrahim and others Vs. State of Bihar and another**, (2009) 8 SCC 751.

Reliance has also been placed on behalf of the appellant on the judgment dated 26-11-2015 delivered by this Court in the matter of **Dr. Meghraj Vs. Anupam Griha Nirman Sahkari Samiti Maryadit and another** in FA No.182 of 2004.

9. On behalf of appellant Goverdhan Singh Dewangan (appellant in CRA No.637 of 2013) it is submitted that the sale deed of the land in question still exists and stands in favour of co-accused Hastimal Surana (appellant in CRA No.679 of 2013) which has not been cancelled nor any proceeding has been drawn by the authorities for cancellation of the same, which shows that appellant Hastimal Surana was the person entitled for possession and had entitlement for the standing trees on the land in question. The Patwari report that was submitted by this appellant was submitted in accordance with law and on the basis of official records after due verification of the revenue records that were present in the office. This appellant was never a beneficiary of the said sale proceeds received from the felling of the trees as all the sale proceeds were received by the owner of the land, i.e, Hastimal Surana. Therefore, it is submitted that this appellant had not committed any offence. Hence, the appeal of this appellant may be allowed.

10. On behalf of appellant I.R. Dehari (appellant in CRA No.645 of 2013) it is submitted that this appellant was posted as Sub-

Divisional Officer at Dantewada from 13-09-1994 to 30-01-1997. The allegation against him is this that he recommended for granting permission for felling of trees standing on the land bearing Khasra No.1183/2 situated at Village Balud. It is submitted that demarcation report that was given by co-accused Goverdhan Singh Dewangan did not mention that the land in question was the Government land or Forest land. The hand-written report Ex.-P/7 is a photocopy which is not admissible in evidence. The evidence of connected witnesses P. Nahlani (PW-1), Ramcharan Goti (PW-4) and Nandkumar Soni (PW-8) is not at all relevant, whose statement has been exhibited in proof of handwriting of the report, which has not fulfilled requirement of Section 45 and 47 of the Indian Evidence Act.

11. It is also submitted that the prosecution has failed to establish that the land in question were in fact Government land and the vendors of the said land to Hastimal Surana were the person settled, on the contrary there is evidence on record to show that the land in question were title lands which were transfered to co-accused Hastimal Surana by the said vendors. It was burden of the prosecution to prove it beyond reasonable doubt that the land in question were Government land in which the prosecution has failed. The Settlement Patta in favour of vendor Dheerpal was not produced and proved before the Court. The sale deed in question in this case is dated 11-01-1991. The trial Court erroneously held that amended provision of M.P. L.R.C. of 1992 in the shape of Section 165(7)(b) shall applicable, as the provision does not have retrospective effect, therefore, there was no requirement of any

sanction for the said transfer. Further, it has been argued that this appellant was not posted in Dantewada at the time of sale and mutation of the land of co-accused Hastimal Surana.

Reliance has been placed on behalf of this appellant on the judgment delivered by Hon'ble the Supreme Court in the matter of **Ambika Prasad Thakur and others etc. Vs. Ram Ekbal Rai (dead) by his legal representatives and others etc.**, AIR 1966 SC 605.

Reliance has also been placed on behalf of this appellant on the judgment dated 18-05-2018 delivered by this Court in the matter of **State of Madhya Pradesh Through The Collector Durg (now Chhattisgarh) Vs. Smt. Jhamman Chandrakar and others** in FA No.102 of 1993.

12. On behalf of appellant Hastimal Surana (appellant in CRA No.679 of 2013) it is submitted that the title on the lands were rightly transferred in favour of this appellant by registered sale deed giving him entitlement of the lands. This appellant was never informed that the land sold to him were the lands allotted to the vendors Chandan Singh and Dheerpal in the process of settlement of Government land. The lands were mutated in favour of the appellant reflecting him as title holder of the lands in revenue records. The reports in question namely Ex.-P/7 and P/55 are not disputed, which were prepared by co-accused Goverdhan Singh Dewangan. These documents cannot be said to be forged documents, it may be a case that this appellant may have been cheated by the vendors of the said lands by suppressing the fact that the lands were allotted to them in settlement. The appellant had made purchase of the said

lands after due enquiry, therefore, he is bonafide purchaser, because duty is cast upon the seller of the land to point out material defect in the seller's title which was not done by the said vendors, Chandan Singh and Dhirpal. It is also argued that the revenue records of 1955-56 vide Ex.-P/5 shows that Dheerpal is Bhumiswami of the land in question. There is no evidence to show that this appellant had conspired with other co-accused persons, he is not a party in preparation of any report or forgery of any document. The appellant had filed application officially along with reports and other documents in support, which were scrutinized and verified and then the orders were passed in favour of the appellant. The trees were sold to the Forest department and proceeds amount have also been received by the appellant as he was the original claimant of the same. Therefore, no offence has been committed as it is alleged in this case. The CBI has come up with a false case against this appellant and other co-accused. Hence, it is prayed that the appeal of this appellant may be allowed.

13. Learned counsel for the CBI has submitted that the prosecution has proved its case beyond reasonable doubt, regarding which finding has been given by the Court below in the impugned judgment. The claim that the lands in question were private property transferred in favour of the appellant Hastimal Surana has not been proved by any evidence or by production of any document in defence, on the contrary the documents which are part of the record clearly demonstrate that the lands in question were Government lands. The public officials have very clearly conspired and assisted the co-accused Hastimal Surana by submitting erroneous reports and

passing erroneous orders for felling of trees, because of which co-accused Hastimal Surana has been benefited unlawfully and that has caused loss to the Government exchequer. As the whole incident has been clearly shown to be a conspiracy for successful commission of crime, therefore, it can be presumed that the public officials who deliberately submitted the erroneous and false reports have taken benefit in the proceeds. Therefore, there is no room for interference in the impugned judgment and thus all the appeals are without any substance, which may be dismissed.

14. Heard learned counsel for the parties and perused the record of the trial Court.

15. The question that requires determination in these appeals is as to whether the prosecution has been able to establish guilt of accused/appellants, on the basis of evidence beyond reasonable doubt?

16. P. Nihlani (PW-1) has stated about the rules and regulations that have been followed for allotment of Government lands in settlement. He has stated that one of the vendors Dheerpal was allotted Government land in revenue Case No.70/A-68/81-82 by order dated 08-11-82. The said land was sold to Hastimal Surana without previous sanction of the Collector and the fact of land allotment in settlement has been suppressed by the vendor as well as the purchaser. He has also stated that another land bearing Khasra No. 265 measuring 4.90 acres was allotted in settlement to one Chandan Prasad in revenue Case No.14/A-68/83-84 by order dated 03-01-84, again the said land was sold to Hastimal Surana without previous sanction of the Collector and similarly the fact that

the land was settlement land was suppressed. In cross-examination he has admitted that the document attached in file Article 'A' page 29 is photocopy of Cadastral survey of 1964-65 which mentions that the land bearing Khasra No.1183 situated in Village Balud is entered in the name of Deena. He has also admitted that in the records of rights of 1954-55 name of Vijay Singh and Mohan Singh is reflected, which is exhibited as Ex.-P/5, although he states that entries are suspicious, however, it is not denied that Ex.-P/5 is a certified copy. He has also admitted the suggestion given in defence that all the revenue records show the entry in favour of appellant Hastimal Surana and it is on that basis he has been granted permission for felling trees. He has also made this admission that Dheerpal is Dhakad by caste who is not a tribal and therefore he did not require any permission of Collector for the sale of his property.

17. Yashpal Singh Thakur (PW-2) (Patwari) has stated that he was successor of appellant Goverdhan Singh Dewangan. He has identified the signature of Goverdhan Singh Dewangan on photocopy report Ex.-P/7 and other connected documents, Ex.-P/8, P/9, P/10, P/11, P/12, P/13, P/14 and P/15. He has also identified signature of S.D.O., I.R. Dehari on inspection report Ex.-P/16. He has identified signatures of appellant Goverdhan Singh Dewangan, appellant Tripati (Tripti) Jhadi on Ex.-P/18, P/19, P/20 to P/26.

18. Ramcharan Goti (PW-4) is retired Joint Collector. He has stated that according to Article 'E' original mutation register, entry No.180 shows that the land bearing Khasra No.1183/2 measuring 0.97 acres was Government land allotted to Dheerpal S/o Devi Singh in settlement and the same was sold to appellant Hastimal Surana

which was later on mutated in the revenue records. He has also stated that Article 'G' is the record of settlement in favour of Dheerpal S/o Devi Singh in which the order of settlement is attached as Ex.-P/27. He has stated that when a land is allotted in settlement, standing trees on the said land belong to the State Government. He has not quoted any provision of law in support of this statement.

19. Ramcharan Goti (PW-4) has further stated that according to the register Article 'C', entry No.82 it is mentioned that land bearing Khasra No.265 area 4.90 acre was allotted to Chandan S/o Sahdev in Revenue Case No.14-A/68/1983-84 which was sold to appellant Hastimal Surana and mutated in his favour. He has made statement that the then Tahsildar of Dantewada has not mentioned in his reports that the land of Khasra No.265/2 situated in Village Chittaloor was the Government land and allotted in settlement and it is certified in Ex.-P/29 that the standing trees on the said land were under the title of appellant Hastimal Surana. In cross-examination he has admitted that a private land cannot be declared as Government land and private owner is also the owner of standing trees on the land. He has admitted that Ex.-P/5 demonstrates that land bearing Khasra No.1183 is entered in the name of Vijay Singh S/o Mohan Singh and the entry shows that the land is ancestral. On the basis of Ex.-P/6, he has made statement that in the copy of the form B1 name of Vijay Singh S/o Mohan Singh is reflected in the year 1959-60 and the name of Dheerpal is mentioned in the entry for the year 1964-65. He has also admitted that no permission of the Collector is required for transfer of private land. He has admitted

that error may occur in settlement when a private land may be entered as a Government land in the settlement records. He has admitted that in case no dispute arises the mutation order is passed. He has also admitted that he has not seen any correction of entries in the revenue records on the basis of entries of allotment in settlement to the respective person.

20. Sudaruram Baghel (PW-5) was clerical staff in the office of appellant Tripati (Tripti) Jhadi, who was Tahsildar at that time. He has identified the hand-writing and signature of appellant Tripati (Tripti) Jhadi in the record of Article 'H' on Ex.-P/31, P/33, P/34, P/35, P/36, P/37, P/38, P/39, P/40, P/41. Similarly, he has identified signature of appellant Tripati (Tripti) Jhadi in the documents present in Article 'A' on Ex.-P/10, P/11, P/12, P/13, P/14, P/15, P/42, P/43, P/19 to P/26, P/29, P/30, P/44, P/45, P/46, P/47, P/48, P/49, P/50. In cross-examination there is no specific admission that he was unaware of the hand-writing and signature of appellant Tripati (Tripti) Jhadi and there is no other contradictory statement.

21. Joint Collector, Nandkumar Soni (PW-8) has stated that appellant Hastimal Surana filed an application on 12-08-94 for felling trees on the land bearing Khasra No.1183/2 situated in Village Balud, in which report of Patwari Ex.-P/7 was attached. Appellant I.R.Dehari who was the then S.D.O. (Revenue) was instructed to inspect the plot. Appellant I.R. Dehari then after making inspection of the plot submitted a report in which there was recommendation for felling of trees that were standing on the land of Khasra No.1183/2 area 0.97 acre and the report is Ex.-P/52 signed by appellant I.R. Dehari. He has specifically mentioned in the report that the land was not

allotted in settlement and the supporting document of the report were signed by appellant Tahsildar Tripati (Tripti) Jhadi and appellant Goverdhan Singh Dewangan. On the basis of this report and documents the then Addl. Collector Dantewada has granted permission for felling trees vide Ex.-P/54. He has made statement that the Patwari had given the report on 06-04-91 that the land bearing Khasra No.1183/2 was a land alloted in settlement to Dheerpal S/o Devi Singh, on the basis of report Ex.-P/55 attached in filed Article 'H', this appears to be a correct statement on the basis of Ex.-P/55. It is stated that the photocopy of report dated 06-04-91 was attached with the application for felling the trees in which the portion of report of the Patwari which mentions that the land was allotted in settlement is missing. He has also stated that it was the appellant Tripati (Tripti) Jhadi who had personally inspected the spot and given report Ex.-P/29 mentioning that the trees standing on the land were property of appellant Hastimal Surana.

22. Regarding land bearing Khasra No.265/2 Nandkumar Soni (PW-8) has stated that this land was allotted in settlement to Chandan Singh S/o Sahdev by order dated 03-01-1984 by revenue Case No.14-A/68/1983-84. Report filed by Patwari in Revenue Case No.96/A-63/90-91 dated 06-04-91 does not mention that the land in question was allotted in settlement, which is mentioned in Article 'C', the mutation register. In cross-examination he has admitted that a private land cannot be allotted in settlement. He has further admitted that name of Dheerpal is reflected in the revenue document of 1954-55 that is Ex.-P/5 which also mentions that the land is ancestral in the entry for 1961-62 and these documents are

attached in Revenue Case No. 6A/63/1994-95 and which is document on page No.35 and 36 attached in filed Article 'A'. He has also admitted that Dheerpal is Dhakad by caste, thus, he is a non-tribal person. He has further admitted that the then Addl. Collector has given finding in his order Ex.-P/54 that the land in question was ancestral land of Dheerpal. In cross-examination by appellant Tripati (Tripti) Jhadi he has admitted that apart from Ex.-P/7 the appellant Tripati (Tripti) Jhadi has certified all the documents that are present in the record of revenue Case No.6-A/63/1994-95.

23. Ghasiya Ram Tandan (PW-10) was the then Revenue Inspector who has identified the signature of appellant Goverdhan Singh Dewangan in various documents on record.

24. Deepak Kumar Tiwari (PW-11) has stated that according to Ex.-P/27 and Article 'G' the land was allotted in settlement to Dheerpal S/o Devi Singh. Similarly, according to mutation register Article 'E', entry No.180 the land was allotted in settlement. He has further stated that appellant Hastimal Surana has purchased the land bearing Khasra No.265 situated in Village Chittaloor from Chandan Singh S/o Sahdev Dhakad who was Dhakad by caste. He has further stated that according to the entry in register, Article 'C' in serial No.82, the above mentioned land was allotted to Chandan in settlement.

25. The dispute has been raised in the arguments by counsel for the appellants that the lands in question were in fact ancestral land and that was wrongly entered as Government land and settlement order was passed in favour of Chandan Singh and Dheerpal. P. Nihlani (PW-1) has although stated in favour of prosecution in examination-

in-chief, but he has admitted in cross-examination that in cadestral survey of 1964-65 mentions Deena as title holder of the land bearing Khasra No.1183 situated in Village Balud which was earlier reflected in the names of Vijay Singh, Mohan Singh in the year 1954-55 Ex.-P/5. Similarly, Ramcharan Goti (PW-4) has in cross-examination made this admission that Ex.-P/5 demonstrates that the land bearing Khasra No.1183 was earlier entered in the name of Vijay Singh S/o Mohan Singh as an ancestral land vide Ex.-P/5. In the Form B1 of year 59-60 vide Ex.-P/6 again name of Vijay Singh S/o Mohan Singh is reflected which has been land which entered in the name of Dheerpal in the year 1964-65. Similar admission has been made by Nand Kumar Soni (PW-8) in his cross-examination in connection with Ex.-P/5.

26. There is no such admission made by any of the witnesses or in the documents as exhibited or proved by the defence with respect to the land bearing Khasra No.265/2 situated in Village Chittaloor.

27. The admissions so made by these witnesses have relevance to create doubt on the prosecution case that the land bearing Khasra No.1183 had been in fact a Government land, therefore, the settlement procedure taken up and the order passed in favour of Dheerpal itself becomes doubtful. The basis of the allegation had been this, that, false and fictitious report was submitted by Patwari – appellant Goverdhan Singh Dewangan with respect to the land bearing Khasra No.1183 situated in Village Balud which was certified by appellant I.R. Dehari, the then S.D.O. of Dantewada. As the document Ex.-P/5 and Ex.-P/6 which demonstrate the title of Dheerpal, therefore, it cannot be held on clear terms that it had

been a case of suppression of facts with respect to the land bearing Khasra No.1183/2 situated in Village Balud. Further admission made by the witnesses that Dheerpal was Dhakad by caste, therefore, a non-tribal person, for whom there was no requirement to obtain permission to sale before selling out his land from the Collector of the District. Similarly, there had been no restriction in granting permission for felling of trees standing on the land bearing Khasra No.1183/2. Hence, in absence of evidence of prosecution beyond reasonable doubt with respect to the land bearing Khasra No.1183/2 situated in Village Balud, the connected appellants cannot be held criminally responsible for the act on their part.

28. P. Nihalani (PW-1) has made clear statement that the land bearing Khasra No.265/2 measuring 4.90 acres was allotted in settlement to Chandan Prasad in Revenue Case No.14/A-68/83-84 by order dated 03-01-84, which has been sold without any previous sanction of the Collector to appellant Hastimal Surana.

29. Ramcharan Goti (PW-4) has made similar statement and also Nandkumar Soni (PW-8) has supported the same in his statement. There is admission by the witnesses that Chandan Singh was also Dhakad by caste. There is no such claim made with respect to the land bearing Khasra No.265 situated in Village Chittaloor that it was ancestral land. Therefore, there is evidence available to hold that the land abovementioned was a Government land and which was settled and allotted in favour of Chandan Singh, which has been transferred to appellant Hastimal Surana in the year 1991. It cannot be said that title has accrued in favour of appellant Hastimal Surana on the basis of this transfer and he has become Bhumiswami of the

said land.

30. Section 179 of the C.G.L.R.C. clearly provides that only Bhumiswami of the land shall have the title over trees standing on the said land. It is not disputed that appellant Hastimal Surana moved application for felling the trees on the land bearing Khasra No.265/2 of Village Chittaloor and of land bearing Khasra No.1183/2 situated in Village Balud. There is evidence to show that it was appellant Goverdhan Singh Dewangan who submitted report in both the cases making clear statement that the lands in question are not Government land or Forest land, on the basis of which appellant Tripati (Tripti) Jhadi recommended felling of trees standing on the land bearing Khasra No.265/2 situated in Village Chittaloor to Additional Collector Dantewada and similarly appellant I. R. Dehari had recommended felling of trees standing on the land bearing Khasra No.1183/2 situated in Village Balud. On the basis of these reports and recommendation the Additional Collector had passed the orders in favour of appellant Hastimal Surana who was ultimate beneficiary.

31. Considered on the criminal responsibility of appellant Goverdhan Singh Dewangan, the then Patwari. On the basis of discussion made hereinabove, it cannot be held that this appellant has deliberately submitted false report with respect to the land bearing Khasra No.1183/2 of Village Balud. However, there is evidence present to show that he was the person who submitted the report with respect to the land bearing Khasra No.265/2 in clear terms that it was not a Government land nor a Forest land, which is clearly a report suppressing the fact that the land was a Government land

and allotted in settlement to Chandan Singh. On the basis of this report, erroneous recommendation was made by appellant Tripati (Tripti) Jhadi, the then Tahsildar and consequent to which, the order for felling trees was passed by the Addl. Collector Dantewada in favour of appellant Hastimal Surana who got benefit without any entitlement**.**

32. A Patwari cannot claim that he does not have access to revenue records because he is the person who is keeper of revenue records and also has authority to make entries in the same on the basis of the orders passed regarding settlement of land in favour of any person. Hence, it is a clear case where it appears that appellant Goverdhan Singh Dewangan has clearly and deliberately suppressed the fact and submitted false report.

33. Section 13(1)(d) (ii) of Prevention of Corruption Act read as under:-

"13. Criminal misconduct by a public servant.—

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) xxxxxx xxxxxxx

(b) xxxxxx xxxxxxx

(c) xxxxxxx xxxxxxx

(d) if he,—

(i) xxxxxx xxxxxx

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or"

34. In this case the act of appellant Goverdhan Singh Dewangan appears to be clearly covered under this provision, therefore, his conviction under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act is correct finding of the Court below.

35. Similarly the act of appellant Goverdhan Singh Dewangan also falls

under the definition of forgery under Section 463 of the IPC which is offence under Section 468 of the IPC and the same forged document was used as genuine which is further offence under Section 471 of the IPC. Hence, conviction of this appellant under Section 420, 468 and 471 of the IPC does not warrant any intervention. Correctness of conviction of this appellant under Section 120B of the IPC shall be considered after considering the case of other appellants.

36. The case of appellant I.R. Dehari is different. He is the person who recommended the felling of trees standing on the land bearing Khasra No.1183/2 of Village Balud, as there is finding very clearly in the discussion made hereinabove, that the prosecution has failed to prove that the land abovementioned was a Government land. Hence, the recommendation made by this appellant for felling of trees cannot be said to be made with any criminal intention and only his recommendation is the ground for his prosecution in this case. Hence, it is held that conviction of this appellant for offence under Section 120B, 420/120B, 468/120B, 471/120B of the IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act is without any basis and bad in law. Therefore, he deserves to be acquitted.

37. Appellant Tripati (Tripti) Jhadi has submitted a report vide Ex.-P/29 after making inspection of the spot along with Patwari. There is nowhere mentioned in his report that he has verified from the revenue records that the land in question was a Government land or Forest land. Therefore, it does not appear that he has verified the report made by the Patwari Goverdhan Singh Dewangan or was

directed by Addl. Collector for verifying the same. The act of this appellant appears to be a part of duty in which it can be said that he was careless or negligent, but he is neither maker of the false document nor he can be regarded as beneficiary of the same. His act does not appear to be covered under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. Apart from that, there is no direct evidence that he has been a party to the conspiracy neither there is other circumstantial evidence to show the same fact. Therefore, on the basis of this discussion and finding I am of this view that the prosecution has failed to prove participation of this appellant in the said commission of offences as charged against him. Hence, conviction of this appellant for offences under Sections 120(B), 420, 468, 471 of the IPC and Section13(1)(d) read with Section 13(2) of Prevention of Corruption Act is bad in law and he also deserves to be acquitted in this case.

38. Regarding the role played by appellant Hastimal Surana in the alleged commission of offence, it is very much clear that he is the person who got the direct benefit of offence committed by co-accused Goverdhan Singh Dewangan.

39. It has been held in Mohammad **Usman Mohammad Hussain Maniyar & Ors. v. State of Maharashtra**, (1981) 2 SCC 443 in paragraph 17 it is held that :-

"It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. In this case, the fact that the appellants were possessing and selling explosive substances without a valid licence for a pretty long time leads to the inference that they agreed to do and/or cause to be done the said illegal act, for, without such an agreement the act could not have been done for such a long time."

40. A conspiracy from its very nature is generally hatched in secret. Like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed in most, cases, proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances, and antecedent and subsequent conduct, among other factors, constitute relevant material. It has been held likewise in **Subrata Barman V. State of West Bengal**, 2004 Cri LJ 3695 (Cal). Therefore, involvement of appellant Hastimal Surana in the said commission of crime by appellant Goverdhan Singh Dewangan cannot be ruled out on the ground that he himself was not aware of the facts and circumstances of the land bearing Khasra No.265/2 situated in Village Chittaloor. Further, it was this appellant who obtained the report and presented before the Additional Collector with his application for permission for felling the trees on the said land which shows his personal and direct interest. All the act of co-accused Goverdhan Singh Dewangan cannot be considered as act in his own interest, on the contrary, it was an act in the interest of this appellant. Therefore, very clearly the offence of conspiracy under Section 120B is made out against appellant Hastimal Surana and similarly the offences under Section 420/120B, 468/120B, 471/120B are also clearly made out. Hence, there is no need to interfere with the conviction against appellant

Hastimal Surana in the appeal filed by him.

41. Now the picture is clear that appellant Goverdhan Singh Dewangan collaborated with appellant Hastimal Surana in the commission of crime and thereby he prepared false report to be submitted for the proceedings of felling of trees in the land bearing Khasra No.265/2 situated in Village Chittaloor. Hence, there is proof that appellant Goverdhan Singh Dewangan has conspired with appellant Hastimal Surana for the commission of offences charged against him.

42. After overall consideration on all, the facts and circumstances and on the basis of the findings hereinabove, the appeal of appellant I.R. Dehari, i.e. CRA No.645 of 2013 and appeal filed by appellant Tripati (Tripti) Jhadi, i.e., CRA No.659 of 2013 are allowed and they are acquitted of all the charges against them. Conviction and sentence passed against them in the impugned judgment are set aside. They are reported to be on bail. Their bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

43. On the basis of the findings hereinabove, CRA No.637 of 2013 filed by appellant Goverdhan Singh Dewangan and CRA No. 679 of 2013 filed by appellant Hastimal Surana are without any merits, therefore, they are dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil