

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.284 of 2002

Judgment Reserved on : 20.1.2021

Judgment Delivered on : 18.3.2021

1. Ramswaroop Gupta, S/o Balkrishna Gupta, Aged 63 years, Agriculturist, R/o Banaras Road, P.S. and Tahsil Ambikapur, District Surguja, Chhattisgarh
2. Harbhajan Singh, S/o Santosh Singh, Aged 45 years, Shopkeeper, Mayapur Ward, P.S. Ambikapur, District Surguja, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh

--- Respondent

Criminal Appeal No.285 of 2002

Harish Kumar Verma, S/o Shri Sharda Prasad Verma, Aged 65 years, Executive Engineer (Retired), M.P.E.B., Ambikapur, District Surguja, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh

--- Respondent

and

Criminal Appeal No.287 of 2002

B.R. Boonkar, S/o J.R. Boonkar, Aged about 45 years, R/o Ambikapur, District Surguja, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through P.S. Ambikapur, District Surguja, Chhattisgarh

--- Respondent

For Respective Appellants	:	Shri P.K. Verma, Senior Advocate with Shri Virendra Verma, Advocate and Shri Sunil Tripathi, Advocate
For Respondent/State	:	Shri Rakesh Sahu, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Since all the appeals arise out of a common judgment, they are decided by this common judgment.
2. All the appeals have been preferred against judgment dated 9.3.2002 passed by Ist Additional Sessions Judge and Special Judge under the Prevention of Corruption Act (henceforth 'the PC Act'), Ambikapur, District Surguja in Special Case No.5 of 1997, whereby the Appellants have been convicted and sentenced as under:

<u>Appellants</u>	<u>Conviction</u>	<u>Sentence</u>
Ramswaroop Gupta	Under Section 120B of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.3000/- with default stipulation
	Under Section 420 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.5000/- with default stipulation
Harbhajan Singh	Under Section 120B of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.3000/- with default stipulation
	Under Section 420 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.5000/- with default stipulation
Harish Kumar Verma	Under Section 120B of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.3000/- with default stipulation
	Under Section 420 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.5000/- with default stipulation
	Under Section	Rigorous Imprisonment

	13(2) of the PC Act	for 5 years and fine of Rs.5,000/- with default stipulation
B.R. Boonkar	Under Section 120B of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.3000/- with default stipulation
	Under Section 420 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.5000/- with default stipulation
	Under Section 13(2) of the PC Act	Rigorous Imprisonment for 5 years and fine of Rs.5,000/- with default stipulation

3. Facts of the case, in short, are that at the relevant time, Appellant Harish Kumar Verma was posted as Executive Engineer in M.P.E.B., Mandal Ambikapur, Appellant B.R. Boonkar was posted as Tahsildar, Ambikapur. Appellant Ramswaroop Gupta owned a land bearing Khasra No.39/17 area 4 acres and Appellant Harbhajan Singh owned a land bearing Khasra No.38/26 area 2.56 acres. According to the case of the prosecution the aforesaid two lands were received by Appellants Ramswaroop Gupta and Harbhajan Singh by the Government as patta. According to the further case of the prosecution, for installation of 132 KV sub-station at Village Bishunpur, the aforesaid two lands total area 6.56 acres were purchased by the M.P.E.B. on excessive price as a result of criminal conspiracy between all the Appellants of the present appeals. It was further alleged that the said lands were purchased at total consideration of Rs.25,91,200/-, but they were factually valued at Rs.3,93,600/- and thus, allegedly, all the Appellants caused wrongful loss to the M.P.E.B. to the tune of Rs.21,97,600/-. One Ramprasad, a member of Nagrik Sangharsh

Samiti presented a written complaint against this. On his written complaint, a preliminary inquiry was conducted and thereafter offence was registered by Anti Corruption Bureau. On completion of investigation, a charge-sheet was filed. The Trial Court framed charges.

4. To bring home the offence, the prosecution examined as many as 21 witnesses. Statements of the Appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the guilt, pleaded innocence and false implication. 4 witnesses have been examined in their defence.
5. On completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in 2nd paragraph of this judgment. Hence, these appeals.
6. It was jointly submitted on behalf of the Appellants that without there being any clinching and sufficient evidence on record, the Trial Court has wrongly convicted the Appellants. It was further submitted that according to the case of prosecution, at the time of execution of the sale-deeds, guideline rate issued by the Government for the lands in dispute was Rs.60,000/- per acre, but, it was not duly proved by the prosecution. In this regard, the prosecution has relied upon a document Ex.P-8 which is a photo copy and is not clearly readable. It is not a public document. Therefore, only on the basis of said photo copy of the document, it cannot be said that the guideline rate for the said lands was Rs.60,000/- per acre. It was further submitted that from the

evidence led by the prosecution it is established that initially a proposal was sent and was approved by the headquarter of the M.P.E.B. for purchase of a Government land measuring area 10 acres for a total consideration of Rs.27,00,000/-. Referring to the statement of Shailendra Nath Banerjee (PW9), it was further submitted that this witness had also submitted a proposal to the M.P.E.B. for sale of his land situated behind the disputed lands for a consideration of Rs.2,50,000/- to Rs.3,00,000/- per acre. Referring to the statement of S.K.Choudhary (DW4), Record Keeper of the office of Sub-Registrar, Ambikapur and further referring to the guidelines of the Government (Ex.D6), it was further argued that price of the land situated adjoining the road was Rs.12/- per square feet and the price of the land situated behind the land situated adjoining the road was Rs.8/- per square feet. Thus, it is well established that at the time of alleged sale, guideline rate as well as market value of the disputed land was about Rs.4,00,000/- per acre. Therefore, the disputed lands were purchased by the M.P.E.B. above the guideline rate or market value is not established. Further referring to the statement of Tahsildar S.N. Ram (PW8) and Inspector of the office of Lokayukta B.R. Chaturvedi (PW17), it was argued that Appellants Ramswaroop Gupta and Harbhajan Singh were recorded Bhumiswami of the disputed lands and both had full right to sell the said lands. Therefore, they sold the said lands concealing any fact is not established. It was further submitted that even if for the sake of argument the entire case of the prosecution is taken as it is then also the alleged cheating is done with the M.P.E.B., but the

M.P.E.B. has not raised any complaint. The Complainant in this case is an individual and he even has not been examined by the prosecution nor his complaint has been made a part of the charge-sheet. In this regard, reliance has been placed on **2009 SAR (Criminal) 961 SC (Mohd. Ibrahim v. State of Bihar)**. Therefore, the finding of the Trial Court is not in accordance with law and the evidence adduced by the prosecution. Thus, the conviction of the Appellants is not sustainable.

7. On the contrary, Learned Counsel appearing for the State opposed the submissions put-forth on behalf of the Appellants and supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the entire material available on record.
9. First, I shall examine what was guideline rate and market value of the disputed lands. According to the case of prosecution, guideline rate of the disputed lands was Rs.60,000/- per acre. In this regard, the prosecution has relied upon the document Ex.P8 as a guideline rate of the disputed lands. On perusal of Ex.P8, it appears that it is not a readable document and it is a photo copy of the guideline. Apart from this, the prosecution has not placed on record any other document showing guideline rate of the disputed lands to be Rs.60,000/- per acre. Since Ex.P8 relied by the prosecution is not a public document and is a photo copy and thus it is not admissible in evidence, therefore, on the basis of only the said document, guideline rate was Rs.60,000/- per acre is not established. One

more document has been proved by the defence, i.e., Ex.D6. Ex.D6 shows guideline rates of the lands situated outside the area of municipality. According to the contents of Ex.D6, in Village Bishunpur, where the disputed lands are situated, the guideline rate is Rs.12/- per square feet for the land adjoining the road and Rs.8/- per square feet for the land situated behind the land adjoining the road. On the basis of this guideline, the price of the disputed lands comes to from Rs.3,75,000/- to Rs.5,25,000/- per acre. Though Ex.D6 shows that this guideline rate is for upto 10,000 square feet of land, this document does not show what will be the guideline rate for the land above 10,000 square feet. On further examination of the prosecution evidence, I find that Shailendra Nath Banerjee (PW9) had submitted a proposal to the M.P.E.B. for sale of his land @ Rs.3,00,000/- per acre, but this land is situated behind the disputed lands.

10. Chandrashekhar Sahu (PW1), Executive Engineer of the M.P.E.B. has also deposed that initially they had received a sanction for purchase of total 10 acres of Government land for a total consideration of Rs.27,00,000/-.
11. Sub-Registrar Smt. Sandhya Singh (PW5), who executed the sale-deeds (Ex.P2 and P4) has also admitted the fact that at the time of registration they verify the sale consideration mentioned in the sale-deed with the market value and thereafter registration is done.
12. Inspector S.N. Pandey (PW14) has also admitted the fact that at the relevant time what was the actual value of the disputed lands of

Village Bishunpur was not inquired by him. According to this witness, it was inquired by Inspector B.R. Chaturvedi (PW17), but B.R. Chaturvedi (PW17) has not stated anything in this regard.

13. On a minute examination of the above evidence, it is clear that at the time of execution of the sale-deeds, the guideline rate of the disputed lands was Rs.60,000/- per acre, no legally admissible document is available on record in this regard. According to the contents of Ex.D6, for the land situated adjoining the road guideline rate was Rs.12/- per square feet and Rs.8/- per square feet for the land situated behind the land situated adjoining the road. These rates were for the land upto 10,000 square feet. Ex.D6 does not say anything about the land above 10,000 square feet. From the material available on record, it is clear that a sanction was accorded for purchase of a Government land measuring 10 acres for a total consideration of Rs.27,00,000/-. From the statement of Shailendra Nath Banerjee (PW9) it is also established that he had also given a proposal to the M.P.E.B. for sale of his land situated behind the disputed lands @ Rs.3,00,000/- per acre. As admitted by Sub-Registrar Smt. Sandhya Singh (PW5), it is also established that at the time of registration of the sale-deeds (Ex.P2 and P4), sale considerations mentioned in Ex.P2 and P4 were verified with the market value and thereafter the registrations were done. Thus, it appears that at the time of execution of the sale-deeds, market value of the disputed lands were from Rs.3,00,000/- to Rs.5,00,000/-. What was the exact guideline rate for the disputed lands is not established. It is clear that registration is done

according to the market value of the land which can be above the guideline rate. Purchase of the disputed lands was done according to the market value of the lands. Therefore, it cannot be said that any irregularity or corruption was done. Furthermore, the certificate given by Tahsildar/Appellant B.R. Boonkar was for a higher side of the market value or guideline rate is also not established.

14. According to the case of prosecution, the disputed lands were received by Appellants Ramswaroop Gupta and Harbhajan Singh in Singhdev Scheme as patta, which, during pendency of the trial, vide order of the Additional Collector, Ambikapur dated 24.7.1995 (Ex.P14) and dated 4.7.1995 (Ex.P15), were cancelled. But, the prosecution has not placed on record any of the said original patta. Tahsildar S.N. Ram (PW8) has admitted the fact that Appellants Ramswaroop Gupta and Harbhajan Singh were given those patta in Singhdev Scheme as Bhumiswami Patta. Inspector B.R. Chaturvedi (PW17), who conducted preliminary inquiry, has also admitted that it was found by him that the disputed lands were of Bhumiswami right of Appellants Ramswaroop Gupta and Harbhajan Singh. Therefore, any fact was concealed by Appellants Ramswaroop Gupta and Harbhajan Singh at the time of execution of the sale-deeds in favour of the M.P.E.B. is also not established. Even if for the sake of argument it is considered that if the disputed lands were not of Bhumiswami right of Appellants Ramswaroop Gupta and Harbhajan Singh and by concealing this fact they sold the disputed lands to the M.P.E.B. then also the alleged fraud arises against the M.P.E.B. But, the M.P.E.B. has not raised any

complaint in this regard. In spite of that one Ramprasad has made the written complaint with whom no cheating is done. Thus, material ingredients of the offence under Section 420 of the I.P.C. are missing in this case. Looking to the entire evidence adduced by the prosecution, in my considered view, the finding of the Trial Court is not in accordance with the evidence and law. All the Appellants are entitled to get benefit of doubt.

15. Consequently, the appeals are allowed. The judgment under challenge is set aside. The Appellants are acquitted of the charges framed against them.

Sd/-
(Arvind Singh Chandel)
JUDGE