HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
*****

Criminal Appeal No.742 OF 2007

Uradi Santosh Kumar ...Appellant/Accused No.2

And

The State, through
Asst. Commissioner of Police,
C.C.S., D.D., Hyderabad., rep
By Public Prosecutor,
High Court, Hyderabad. ...Respondent/Complainant

Criminal Appeal No.754 OF 2007

Kadimi Venkateswara Rao ...Appellant/Accused-4

And

The State of A.P.
Rep. by its Public Prosecutor,
High Court, Hyderabad. ...Respondent/Complainant

Criminal Appeal No.1028 OF 2007

Kotla Venkata Lakshmana Jayasimha ...Appellant/Accused No.1

And

State of A.P., rep., by Public Prosecutor,
High Court, Hyderabad. ...Respondent

DATE OF JUDGMENT PRONOUNCEMENT : 17.10.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

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K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 742of 2007

% Dated: 17.10.2023

Uradi Santosh Kumar ...Appellant/Accused No.2

And

$ The State, through
Asst. Commissioner of Police,
C.C.S., D.D., Hyderabad., rep
By Public Prosecutor,
High Court, Hyderabad. ...Respondent/Complainant

+ CRL.A. No. 754 of 2007

Kadimi Venkateswara Rao ...Appellant/Accused-4

And

$ The State of A.P.
Rep. by its Public Prosecutor,
High Court, Hyderabad. ...Respondent/Complainant

+ CRL.A.No.1028 of 2007

Kotla Venkata Lakshmana Jayasimha ...Appellant/Accused No.1

And

$ State of A.P., rep., by Public Prosecutor,
High Court, Hyderabad. ...Respondents

! Counsel for the Appellants: Sri Enuganti Sudhanshu Rao,
T. Pradyumna Kumar Reddy &
Sangeetha Reddy

^ Counsel for the Respondents: Sri Public Prosecutor

>HEAD NOTE:

? Cases referred

1.(1984) 4 SCC 116

2.(2023) 4 Supreme Court Cases 731

3.(2011) 10 Supreme Court Cases 768

4.(1995) 1 Supreme Court Cases 142

5. 1984 (Supp) Supreme Court Cases 207

6. (2019) 2 SCC 303

7. (Criminal Appeal No.25 of 2012 dated 11.08.2022)

8. 2023 SCC Online SC 900

9. 2023 SCC Online Pat 2239

10. (2012) 2 SCC 34

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos. 742, 754 and 1028 of 2007

COMMON JUDGMENT:

1. Criminal Appeal No.742 of 2007 is filed by A2, Criminal Appeal No.754 of 2007 is filed by A4 and Criminal Appeal No.1028 of 2007 is filed by A1. The appellants are questioning their conviction vide judgment in CC No.3 of 2003 dated 11.06.2007 passed by the Special Judge under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department etc., at Criminal Courts Complex, Hyderabad.

2. The case of the prosecution is that A1 to A11 entered into a criminal conspiracy to defraud the Government of the money meant for post-metric scholarships for the poor Scheduled Castes students. In the said process, all the accused have created false and forged Form 103, post-metric scholarship bills and its enclosures in the names of fictitious and non-existing colleges. The said bills were submitted in the office of Deputy Pay and Accounts Office, Masab Tank and managed to pass the said bills. Cheques were issued having passed the bills. Bank Accounts were opened in the names of fictitious Principals of non-existing colleges. The said cheques were deposited and monies were withdrawn or transferred from the accounts. In all an amount of Rs.22.00 Crores,

according to the investigation was falsely claimed towards scholarships amount of Scheduled Caste students.

3. A1, K.V.L.Jayasimha is a practicing advocate. A-2 U.Santosh Kumar worked as Assistant Social Welfare Officer (ASWO) in the office of Deputy Director, Social Welfare Department, Hyderabad from 18.5.1993 to 20.03.2000 and worked as District Social Welfare Officer (DSWO) in the same office from 21.11.2000 to June, 2002 in Hyderabad District. A-3 Manga Shambhavi worked as DSWO, Hyderabad District from 1.4.1994 to 25.6.1996 and as Deputy Director, Social Welfare Department, Hyderabad District from 26.6.1996 to 15.6.2002. A-4 K.Venkateshwar Rao worked as Superintendent from 7/1995 to 6/2002 and A-5 Arisetty Prasada Rao worked as Assistant Pay and Accounts Officer (APAO) from 4/1996 to 7/1998 in Deputy Pay and Accounts Office, Telugu Samkshema Bhavan, Masab Tank, Hyderabad. A-6 V.S.Kartikeyan worked as Chief Manager in Corporation Bank, Hyderabad Branch, Hyderabad from May, 1996 to May 1999. A-7 P.Suri Babu worked as Assistant General Manger in S.B.I, Old MLA Quarters Branch, Hyderabad from March, 1996 to February, 1998. A-8 P.L.N.Rao worked as Officer in S.B.I, Old MLA Quarters Branch, Hyderabad from August, 1992 to March, 1997. A-9 M.Bala Venkata Ramana Rao worked

as APAO from 1/1999 to 7/2001, A-10 Tangirala Venkata Sastry worked as Superintendent from 7/1998 to 8/2000 in Deputy Pay and Accounts Office, Telugu Samkshema Bhavan, Masab Tank, Hyderabad and A-11 Kambampati Vidya Sagar Ramachandra worked as Superintendent from 4/1997 to 2/1998 in the same Deputy Pay and Accounts Office, Telugu Samkshema Bhavan, Masab Tank, Hyderabad.

4. According to the prosecution, the bills prepared and forged were in the names of following colleges, which according to the prosecution did not exist. 1) Balagangadhar Tilak Degree College, Narayanaguda, 2) Koumudi Junior College, Narayanaguda, 3)K.M.R.Degree College, Boudha Nagar, Hyderabad, 4) Kusuma Haranath Baba Junior College, Musheerabad, Hyderabad, 5) Sri Vaishnavi Junior College, New Nallakunta, Hyderabad, 6) S.R.R.Degree College, Musheerabad, Hyderabad, 7) Om Sai Degree College, Erramanjil Colony, Hyderabad. 8) Sri Bharthi Degree College, Lwere Tank bund road, Hyderabad, 9) Narmada College of Arts and Commerce, Gemini Colony, Hyderabad, 10) Saraswati Junior College, Narayanaguda, Hyderabad, 11) Veda Vyasa College of Arts and Commerce, Chikkadpally, Hyderabad, 12) Mudrika Graduate College, Barkatpura, Hyderabad, 13) Lokamanya Tilak Law College, Himayatnagar, Hyderabad.

5. A1, according to the prosecution had established bogus institutions, accounts were opened in State Bank of India, Old MLA Quarters, Hyderabad Corporation Bank, Hyderguda Branch and Indian Bank Himayatnagar Branch. The said opening of accounts was with the assistance of A6 to A8, who were the Mangers in the said Banks.

6. The trial Court, after trial found that A1, A2, A4, A5 and 10 were complicit and convicted them for the offences under Sections 420, 109, 467, 468, 471 of IPC. A3 died during pendency of trial, as such, case was abated against her. A6 to A8 were discharged before examination of witnesses and the case against A9 was split up. A11 was acquitted.

SANCTION ORDERS:

7. P.W.37 was examined and Ex.P449 Sanction Order to prosecute A3, was marked. P.W.38 was examined and Exs.P449, P450, P451 and P453 were marked, which are sanction orders of A4, A10, A5 and A11 respectively.

8. Even prior to discussing the evidence in the present case, it is necessary that the law laid down by the Hon'ble Supreme Court for appreciating evidence has to be gone into. A reading of the evidence of witnesses and findings of the learned Special Judge, the basics of admissibility of evidence in criminal trial have been mostly disregarded

and on the basis of inadmissible evidence, conclusions were drawn in the judgment.

9. The case is one of circumstantial evidence. The five golden principles constituting panchsheel to prove a case based on circumstantial evidence were summed up in **Sharad Birdhichand Sarda v. State of Maharashtra**[1], which reads as follows:

> *"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri)1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*
>
> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency,*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

[1] (1984) 4 SCC 116

10. In **Neeraj Dutta v. State (Government of NCT of Delhi)**[2] the Hon'ble Supreme Court held as follows:

> *"52. Again, oral evidence can be classified as original and hearsay evidence. Original evidence is that which a witness reports himself to have seen or heard through the medium of his own senses. Hearsay evidence is also called derivative, transmitted, or second-hand evidence in which a witness is merely reporting not what he himself saw or heard, and not what has come under the immediate observation of his own bodily senses, but what he has learnt in respect of the fact through the medium of a third person. Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other witnesses, it would be admissible vide Mukhtiar Singh [Mukhtiar Singh v. State of Punjab, (2017) 8 SCC 136 : (2017) 3 SCC (Cri) 607] .*
>
> *55. Documentary evidences, on the other hand, are to be proved by the production of the documents themselves or, in their absence, by secondary evidence under Section 65 of the Act. Further, facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, or ill will need not be proved by direct testimony. It may be proved inferentially from conduct, surrounding circumstances, etc. (See Sections 8 and 14 of the Evidence Act.)*
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> *56. Insofar as oral evidence is concerned, this Court in State of Rajasthan v. Babu Meena [State of Rajasthan v. Babu Meena, (2013) 4 SCC 206 : (2013) 2 SCC (Cri) 364] ("Babu Meena") has classified the same into three categories : (i) wholly reliable; (ii) wholly unreliable, and; (iii) neither wholly reliable nor wholly unreliable. While an accused can be convicted on the sole testimony of a wholly reliable witness, the uncorroborated evidence of a wholly unreliable testimony of a witness must result in an acquittal.*
>
> *57. Section 60 of the Evidence Act requires that oral evidence must be direct or positive. Direct evidence is when it goes straight to establish the main fact in issue. The word "direct" is used in juxtaposition to derivative or hearsay evidence where a witness gives evidence that he received information from some other person. If that person does not, himself, state such information, such evidence would be inadmissible being hearsay evidence. On the other hand, forensic procedure as circumstantial or inferential evidence or presumptive evidence (Section 3) is indirect evidence. It means proof of other facts from which the existence of the fact in issue may be logically inferred. In this context, the expression "circumstantial evidence" is used in a loose sense as, sometimes, circumstantial evidence may also be direct.*
>
> *58. Although the expression "hearsay evidence" is not defined under the Evidence Act, it is, nevertheless, in constant use in the courts. However, hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but it does not*

[2] (2023) 4 Supreme Court Cases 731

necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed such as evidence of an informant of the crime.

61. Section 62 of the Evidence Act defines primary evidence to mean the documents itself produced for the inspection of the court. If primary evidence is available, it would exclude secondary evidence. Section 63 of the Evidence Act deals with secondary evidence and defines what it means and includes. Section 63 mentions five kinds of secondary evidence, namely—

(i) Certified copies given under the provisions hereinafter contained;

(ii) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(iii) Copies made from or compared with the original;

(iv) Counterparts of documents as against the parties who did not execute them; and

(v) Oral accounts of the contents of a document given by some person who has himself seen it.

69. One of the modes through which a fact can be proved. But, that is not the only mode envisaged under the Evidence Act. Proof of the fact depends upon the degree of probability of it having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him."

11. In **Sherimon v. State of Kerala**[3], the Hon'ble Supreme Court held as follows:

"17.The gist of the offence of conspiracy is the agreement between two and more persons to do or cause to be done an illegal act or a legal act by illegal means. There must be meeting of minds resulting in an ultimate decision taken by the conspirators regarding commission of the crime."

12. In **P.K.Narayanan v. State of Kerala**[4], the Hon'ble Supreme Court held as follows:

[3](2011) 10 Supreme Court Cases 768

[4](1995) 1 Supreme Court Cases 142

"9…….. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

10. The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. From the above discussion it can be seen that some of the circumstances relied upon by the prosecution are not established by cogent and reliable evidence. Even otherwise it cannot be said that those circumstances are incapable of any other reasonable interpretation."

13. In **Jethsur Suranghai v. State of Gujarat**[5], the Hon'ble Supreme Court held as follows:

"9. Having gone through the judgment of the High Court……In our opinion, the contention raised by the counsel for the appellant is well-founded and must prevail. With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the Sangh, unless the prosecution proved that there was a close cohesion and collusion between all the accused which formed the subject matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears…."

14. In **State of U.P. v. Wasif Haider**[6], the Hon'ble Supreme Court held as follows:

[5] 1984 (Supp) Supreme Court Cases 207

"22. In the instant appeals before us, the prosecution has failed to link the chain of circumstances so as to dispel the cloud of doubt about the culpability of the respondent-accused. It is a well-settled principle that a suspicion, however grave it may be cannot take place of proof i.e. there is a long distance between "may be" and "must be", which must be traversed by the prosecution to prove its case beyond reasonable doubt [see Narendra Singh v. State of M.P. [Narendra Singh v. State of M.P., (2004) 10 SCC 699 : 2004 SCC (Cri) 1893]].

23. This Court in Kailash Gour v. State of Assam [Kailash Gour v. State of Assam, (2012) 2 SCC 34 : (2012) 1 SCC (Cri) 717] , has held that : (SCC pp. 50-51, para 44)

"44. The prosecution, it is axiomatic, must establish its case against the accused by leading evidence that

is accepted by the standards that are known to criminal jurisprudence regardless of whether the crime is committed in the course of communal disturbances or otherwise. In short, there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for anything specially applicable to a particular case or class of cases."

24. In the present case, the cumulative effect of the aforesaid investigative lapses has fortified the presumption of innocence in favour of the respondent-accused. In such cases, the benefit of doubt arising out of a faulty investigation accrues in favour of the accused."

15. In **Ramnivas v. State of Haryana**[7], the Hon'ble Supreme Court held as follows:

"20. It is settled law that the suspicion, however strong, it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

21. In the preset case, we find that the prosecution has utterly failed to establish the chain of events which can be said to exclusively lead to the one and only conclusion, i.e., the guilt of the accused…."

16. In **A.Srinivasulu v. State rep. by the Inspector of Police**[8], the Hon'ble Supreme Court held as follows:

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[6] (2019) 2 SCC 303

[7] (Criminal Appeal No.25 of 2012 dated 11.08.2022)

"50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.

51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation."

17. In **Teni Yadav v. State of Bihar**[9], the Hon'ble Supreme Court held as follows:

"11. ..... The burden is always on the prosecution to prove its case beyond reasonable doubt on the basis of legally admissible evidence and when the offence charged is gruesome or diabolic, much higher, degree of assurance is required to infer the guilt of the accused. This principle is succinctly explained by the Hon'ble Supreme Court in Mousam Singha Roy v. State of W.B. reported in (2003) 12 SCC 377, paragraphs 27 and 28 of which reads as under:—

"27. Before we conclude, we must place on record the fact that we are not unaware of the degree of agony and frustration that may be caused to the society in general and the families of the victims in particular, by the fact that a heinous crime like this goes unpunished, but then the law does not permit the courts to

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[8] 2023 SCC OnLine SC 900

[9] 2023 SCC OnLine Pat 2239

punish the accused on the basis of moral conviction or on suspicion alone. The burden of proof in a criminal trial never shifts, and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In the similar circumstance this Court in the case of Sarwan Singh Rattan Singh v. State of Punjab (AIR 1957 SC 637) stated thus (AIR p.645,para 12)

"It is no doubt a matter of regret that a foul cold-blooded and cruel murder should go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.

28. It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused."

12. Similar is the observation of the Hon'ble Supreme Court in Shivaji Sahebrao Bobde v. State of Maharashtra ((1973) 2 SCC 793 : AIR 1973 SC 2622) whether it is held that certainly it is a primary principle that the accused 'must be' and not merely 'may be' guilty before a court to convict and the mental distance between 'may be' and 'must be' is long and divides vague conjunctures from sure conclusions."

BOGUS COLLEGES:

18. P.W.14, who worked as Secretary, A.P.State Council of Higher Education was examined, who stated that he had addressed a letter to the Registrar, Osmania University, regarding the 13 colleges. Ex.P149 is the letter dated 06.03.2002, which was sent by the Registrar, Osmania University. In response, Ex.P149 is the letter addressed regarding 10 colleges not being affiliated to Osmania University, which are as follows: 1) Balagangadhar Tilak Degree College, Narayanaguda, 2) K.M.R.Degree College, Boudha Nagar, Hyderabad, 3) Kusuma Haranath Baba Junior College, Musheerabad, Hyderabad, 4) S.R.R.Degree College, Musheerabad, Hyderabad, 5) Om Sai Degree College, Erramanjil Colony,

Hyderabad. 6) Sri Bharthi Degree College, Lwere Tank bund road, Hyderabad, 7) Narmada College of Arts and Commerce, Gemini Colony, Hyderabad, 8) Veda Vyasa College of Arts and Commerce, Chikkadpally, Hyderabad, 9) Mudrika Graduate College, Barkatpura, Hyderabad, 10) Lokamanya Tilak Law College, Himayatnagar, Hyderabad. Thereafter, P.W.15 addressed a letter to the ACP stating that three colleges were not recognized by the Board of Intermediate Education, which are 1)Sri Vaishnavi Junior College, New Nallakunta, Hyderabad, 2) Koumudi Junior College, Narayanaguda, Hyderabad and 3) Saraswathi Junior College, Narayanguda, Hyderabad.

19. On the basis of the evidence of P.Ws.14 and 15, Ex.P149 and P151, learned Special Judge concluded that all the 13 colleges are bogus. The evidence is to the effect that the 13 colleges were not affiliated. Non-affiliation would not mean that the colleges are non-existent. The investigation ought to have taken steps to collect evidence regarding non-existence of the colleges. The colleges which are established may ask for affiliation and various colleges may or may not be registered with the concerned authorities or pending recognition. It is not known why Osmania University had given details of ten colleges that were not affiliated to Osmania University and three colleges by Board of Intermediate Education that they were not affiliated. No reasons are

given as to why only affiliation details were sought and no investigation done to verify whether the colleges were functioning or not.

OPENING OF BANK ACCOUNTS BY A1:

20. Charge No 2 to 7 were framed by the Trial Court under sections 419, 420, 467, 468, 471 and 201 of IPC for opening accounts in the banks in the names of bogus colleges. P.W.35 is the Assistant Manager in State Bank of India, Old M.L.A Quarters Branch who was examined to mark Exs.P229 to P232 which are account opening forms and other documents of Saraswathi Junior College. Ex.P254 is the account opening form of Veda Vyasa College of Arts and Commerce, on which photograph of A1 is affixed. Ex.P256 is a copy of resolution passed authorizing A1 to open the account. Exs.P208 to P211 documents were collected from the Bank pertaining to Balagangadhar Tilak Degree College with the signature of A1. Accounts of three colleges were opened on 30.12.1996. A perusal of Exs.P229, 253, 208, 230 to 232, 254, 256, 209 to 211 would show that they were signed by A1. Comparison of signatures was done by the learned Special Judge with the signatures of A1 during his examination under Sections 238 and 313 Cr.P.C examinations. The prosecution has relied on the account opening forms and annexed documents such as authorization to open the bank accounts, letters requesting issuance of cheque books and information to the bank that

the college was sponsored and address details etc., marked by the prosecution during the course of trial.

21. The signatures of A1 in the account opening forms and other documents which are Exs.P186 to P189, P277 to P280 bear the signature of A1. Ex.P145, the account opening form of Sai Degree College has the photograph of A1 affixed on it. The signatures on the account opening form also are that of A1.

22. P.W.11, Branch Manager was examined to speak about account opening forms and other documents of S.S.R Degree College, Narmada College of Arts. As seen from record, A1 had signed on the said account forms and also on the photographs on the account opening forms. Signatures are across photographs on the application. The said signatures are tallying with the signature of A1. Exs.P141, 143, 144, 148, 146, 147, 139, 140 and 142 are all containing the signatures of A1 and photographs in Ex.P142 and P148.

PURCHASE OF PROPERTIES:

23. Learned Special Judge framed charges 9 to 13 for purchasing properties from the ill-gotten wealth. Item 1 of charge No.9 was for purchase of agricultural land of Acs.1.12 guntas in Ibrahimpatnam village, which according to the learned Special Judge was proved and

other charges from 10 to 12 which are for purchase of other different properties as benami was not proved by the prosecution. Learned Special Judge found that jewellery under charge No 13 was also proved to have been purchased from the ill-gotten money.

24. Prosecution has also adduced evidence that A1 had deposited certain amount with Indian Overseas Bank, Chikkadpallly, SBH, Chikkadpally and SBH, A.P. High Court Extension Branch. A1 has admitted that out of Exs.P161, 162, 163, 165 and 167 account opening forms that were marked, he has opened the account Ex.P163. However, the learned Special Judge found that the signatures on all account opening forms tallies with his signature made during Section 238 and 313 of Cr.P.C examinations.

25. The signatures on the cheques under Exs.P306, 312 and 314 tallies with the signature of A1. So also, the cheque under Exs.P158, 302 and 156 bears the signature of A1. The cheques under Exs.P333, 334 and 338 also tallies with the signature of A1. Exs.P301, 303, 305, 307, 309, 310 and 311 tally with the signatures of A1.

26. The prosecution has filed the relevant statements of accounts and also the cheques which clearly indicate that A1 had issued cheques and transacted business in the accounts.

27. All the above mentioned documents which are account opening forms, cheques and specimen signatures in the account forms and enclosed documents tally with the signature of A1. The Investigating Officer had sent the said documents, as seen from the documents, to hand writing expert. The signatures on almost all the documents were encircled and numbers were given, which indicates that the documents were sent to handwriting expert. However, no handwriting expert was examined in the present case and no opinion was produced by prosecution.

28. In the absence of the said evidence of the handwriting expert, in the present facts, when the photographs of A1 was available in most of the account opening forms and some of the accounts were admitted by A1, it cannot be said that it was not A1, who was operating the said accounts. A glance at the signatures on the documents and also the admitted signatures of A1 during Section 238 and 313 of Cr.P.C examinations would clearly indicate that it was A1, who has signed on the said documents. Documents, such as authorization to opening of accounts, resolution of the society/trust, letter for transfering funds, letter for issuance of cheque book contain signatures of A1. A1 has signed above his name in the documents. A glance at the said

signatures would reveal that it was A1 who had signed the documents and most of the documents are admitted.

29. Learned counsel appearing for A1 has argued that the prosecution has not produced any relevant evidence nor examined any direct or circumstantial witness as to the alleged concert in floating of various colleges in so far as A1 is concerned. The prosecution has not examined any direct or circumstantial witness to *prima facie* show that A1 presented the bills of those colleges either before social welfare department or before the Pay and Accounts Department. The prosecution has not examined the inward clerks who receives the said bills in the social welfare department as well as in the pay and accounts department and not filed any inward register to substantiate that A1 has submitted the alleged bills and received the alleged cheques. The prosecution has not examined any direct or circumstantial witnesses to show that A1 has actually opened the bank accounts pertaining to the alleged colleges involved in the above case and not examined the concerned bank witnesses, who were present at the time of opening of the alleged bank accounts. The prosecution has not examined any direct or circumstantial witnesses to show that the appellant has actually presented the government cheques for clearance in respect of bank accounts pertaining to the alleged colleges involved and en-cashed them. Police did not

conduct proper investigation to ascertain who had actually opened the alleged accounts. For all the lapses in prosecution case, A1 is entitled to acquittal.

30. Insofar as the bank documents containing the signatures of A1, most of the signatures are admitted by A1 and the remaining when tallied with his signatures available in the record such as Sections 238 and Section 313 Cr.P.C examination, the signatures are identical. The Court under Section 73 of the Evidence Act, is empowered to tally the signatures and come to a conclusion. Several hundred signatures are available and it can be said beyond reasonable doubt that it was A1 who has signed all the signatures in the Bank documents, cheques, when compared with the signatures available in the Court record signed by A1 during trial.

31. The argument that no bank witnesses were examined to speak about opening of the bank accounts in their presence or that the cheques were presented for clearance in the banks and cheques were issued, cannot be accepted. Having accepted signatures and execution of documents during trial, A1 cannot now say that relevant witnesses were not examined.

32. Once the prosecution has established that the signatures on the account opening forms and other bank documents, cheques are that of

the accused-A1 and some of the bank accounts as accepted by A1 that the accounts were opened by him, the burden shifts on to A1 to prove the genuinity of the opening of accounts and the business transacted in the accounts.

33. Section 106 of Evidence Act:

> **Burden of proving a fact, especially within knowledge:** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

34. A1 has merely denied some of the transactions and accepted some of the bank transactions. Such denial would not entail discarding of the evidence adduced by prosecution which is apparent that it was A1 who has transacted business in the accounts after opening the said accounts with the supporting documents in respect of opening the accounts.

35. An adverse inference has to be drawn due to A1 not explaining the transactions in the accounts. It is for A1 to show existence of colleges since he has opened the accounts in the names of such colleges and the supporting documents filed to open the accounts such as authorization etc. Further, it is for him to explain as to how the cheques that were issued in favour of the colleges meant for scholarships of Scheduled Caste Students were en-cashed and transferred from the accounts opened by him. To the extent of A1's culpability of opening the accounts and transacting business in the accounts is established by the

prosecution. The charges 2 to 7 framed for opening the bank accounts by impersonation, fabrication of documents and using fabricated documents as genuine are proved.

RAISING AND PASSING OF BILLS AND ISSUANCE OF CHEQUES IN DISTRICT SOCIAL WELFARE OFFICE AND PAY AND ACCOUNTS OFFICE:

36. A2 was the District Social Welfare Officer, A4, A5 and 10 are the officials of Pay and Accounts Office. It is the case of the prosecution that A2 while working as Assistant Social Welfare Officer has signed in Form No.103, post-metric scholarship bills and connected documents like advance stamp receipts etc., of the bogus colleges. The prosecution has examined P.Ws.2, 3, 7, 13, 30 and 31 from the Social Welfare Department. However, only P.W.3, who worked as District Social Welfare Officer has identified the signatures of A2 in the bills. At the same time, he disowned his signature in the said bills. It is the case of A2 that he did not counter sign in any Form 103 scholarship bills which were not genuine and such bills cannot be submitted unless there is sanction of scholarships to the colleges and sanction proceedings are issued by the District Social Welfare Officer of list of approved colleges to whom scholarships would be sanctioned. The said details would be entered into the register maintained in the office and also in the computers. Though

P.W.3 and other witnesses have also signed in the bills, it is A2 who was singled out and made scapegoat, only on the basis of evidence of P.W.3, which is doubtful. Though several Assistant Social Welfare Officers were working, none of them were cited as witnesses. Deliberately, the investigating agency has not examined the said witnesses.

37. Further, according to the learned counsel for A2, no credibility can be attached to the evidence of P.W.3, who did not identify the signatures during investigation and was examined by the prosecution to falsely implicate A2. Ex.D10 in which P.W.3's signature appears was confronted; however, he denied his signature. In fact, P.W.3 had deliberately changed the very morphology of his signature after registration of the case. A2 filed miscellaneous petition to call for the admitted signatures of P.W.3, however, in the summoned document Ex.D10, P.W.3 denied his own signature.

38. P.W.3 admitted in his cross-examination that register will be maintained with the list of colleges in whose favour scholarships would be sanctioned. It can be verified whether particular scholarship was granted or not from the said register. However, the said register was not handed over to the police.

39. Learned Special Judge found that P.W.3 was a competent witness under Section 47 of the Evidence Act to identify the signatures of A2 in

the bills, since A2 was subordinate to P.W.3. Though a Subordinate officer or a clerk who has seen a person writing or receives documents with the writings or signatures in the normal course, is a competent witness to identify the signatures, in the present facts, the evidence of P.W.3 is doubtful.

40. P.W.3 has failed to identify his own signature in Ex.P10 for the reasons best known to him. In Form 103 bills, his signatures are also present. During trial, he denied his signatures in the said bills, however, identifies the signature of A2. There is a total denial by A2 regarding signatures being made on fake bills knowing them to be false. On account of the denial of signatures by A2, it was incumbent on the Investigating Officer to send the said bills to a handwriting expert. Firstly, it would have been made clear whether P.W.3 also signed on the said bills and whether the signatures of A2 appear in the said bills. Both the issues would have been put at rest if the documents were sent to an expert. Without resorting to the scientific method of ascertaining the signatures of the accused, services of PW.3 were pressed in to implicate A2. In the peculiar facts of the present case, the evidence of PW.3 becomes suspicious and cannot form sole basis to infer that A2 was the person who signed on the fake bills. For the said reason, the evidence of P.W.3 is insufficient to hold that it was A2, who has signed on Exs.P338,

341, 344, 359, 358, 363, 362, 371, 370, 375, 374, 379, 345, 348, 351, 355, 354, 367 and 366. Learned Special Judge found that the signature on the said exhibits tallied with the signatures in the memo of appearance filed on 17.12.2003 by the counsel, however, does not tally with Section 313 Cr.P.C examination signatures. Learned Special Judge held that conscious effort was made by A2 to disguise his signatures. The said finding of the learned Special Judge has to be set aside. Since there is not enough material to compare the signatures and come to a conclusion regarding A2 being the person who has signed on the said bills.

41. The role attributed to A4 is that he was working as Superintendent in the Pay and Accounts Office. According to P.W.5, who is the Pay and Accounts Officer, having received bill from the auditor, A4 as Superintendent shall verify the correctness of the bill and enclosures. He shall also verify the budget with reference to the budget control register. All the checks had to be done by the Superintendent including comparison of the signatures with the specimen signatures, arithmetical accuracy and correctness of the list of colleges. Learned Special Judge found that from the very fact that A4 had cleared Form 103 post-metric scholarship bills submitted on behalf of the bogus colleges involved in the case, it is obvious that he had not made such checks which he was

supposed to do. Had he made little effort, he would have definitely detected that all those bills were submitted on behalf of non-existing bogus colleges. He did not make any effort in that direction and wanted to clear them at his level and push them to the next authority, which is the Assistant Pay and Accounts Officer. Learned Special Judge found that only for the reason of specimen signatures of the Drawing and Disbursing Officer and sanctioning authorities were not seized from the Office of Deputy Pay and Accounts Office, it cannot be said that it is not possible to conclude that A4 was not involved. Further, it is not possible to have specimen signatures of Drawing Officers of bogus colleges in the Deputy Pay and Accounts Office for comparison. For the said reason, it cannot be said that bills passed by A4 were not routinely done, but there is a possibility that he would have done it intentionally to help A1. Further, A4 did not peruse page 2 of the bills, which were mostly left blank.

42. The evidence of witnesses goes to show that according to the procedure, the specimen signatures of Drawing Officers were available with the Pay and Accounts Office. None of the witnesses who are examined from the Pay and Accounts Office stated that there were no such signatures of the Drawing Officers available in the Pay and Accounts Office. In the said circumstances, when it is the case of the

prosecution that the specimen signatures were available as stated by witnesses, the Court cannot conclude and assume that they will not be available in the office since colleges are bogus colleges. Unless investigation reveals and the witnesses state that any documents were not available in the office such as registers, lists etc., including specimen signatures, the Court cannot conclude giving benefit to the prosecution. The benefit of doubt always goes in favour of the accused. Even in cases where the statute shifts burden on to the accused, in such circumstances also, the initial burden would always be on the prosecution to lay foundation for drawing such presumptions. Accordingly, the finding of the learned Special Judge, which is on the basis of assumption that A4 had cleared the bills intentionally and not in routine discharge of his duties, cannot be accepted and same is set aside.

43. The allegation against A5 is that while he was working as Assistant Pay and Accounts Officer in the Deputy Pay and Accounts Office, he has deliberately avoided following the departmental procedure of the Pay and Accounts Office and passed bogus bills which were claimed by A1 knowing that the said bills were forged and fabricated. Though the details of the budget were not available and budget was not sanctioned and budget expenditure was not entered in the format of

budget at page 2 of the bills by the Drawing and Disbursing Officers, accepted the bills instead of returning them.

44. Charges 32 to 50 were framed against A5 for issuance of cheques in favour of the bogus colleges. In all 61 cheques were issued, according to the prosecution. The prosecution has placed reliance on the evidence of PW.5 to the effect that the said cheques were issued by A5 and during the course of Section 313 Cr.P.C examination, A5 has admitted that the said cheques were issued by him. According to A5, he was the person who has passed the bills and also signed on the cheques. Learned Special Judge has found that manual of Pay and Accounts Office have to be followed. More specifically, Clauses 3.2 and 5.3 of the manual, whereby the APAO, who issues cheques should do complete checks in the section including verification of signatures, accuracy, budget provisions and correctness of the bill. However, in the present case, Form 103 post-metric scholarship bills were not filed and marked and not collected during investigation for the reason of their alleged destruction. Learned Special Judge found that A5 must have passed those bills by deliberately avoiding to follow due procedure prescribed, to facilitate A1.

45. Admittedly, the bills were not collected. When there is no evidence to prove that the said bills were destroyed it cannot be assumed that A5 has fraudulently issued cheques. In the discussion of the learned Special

Judge, it was found that every officer, who deal with bills should do the exercise of conducting checks, which include verification of signatures, budget provisions, correctness of the bills etc. and then pass the bills. If every officer had to do all the checks pertaining to a bill, it is quite abnormal as to why several officers who are involved in the hierarchy while passing the bills were not arrayed as accused and only A5 is responsible. Witnesses stated that their signatures were on the bills. No reasons are given by the Trial court as to why they can be passed off witnesses and not conspirators. Two possibilities arise in the situation. Firstly, one officer relying on another for verification and passing them or the entire office and the witnesses who had deposed from the office were also responsible. Since the signatures of the witnesses were also available in the bills, it is not made clear as to how the Investigating Officer had identified the accused herein as the person responsible and not the witnesses, who were brought to identify the cheques and examined by the prosecution, whose signatures were available in the bills. The only basis appears to be identification of the signatures in the bills as far as accused are concerned and the witnesses denying their signatures in the bills. In such a situation, the Investigating Officer ought to have sent all the relevant documents to handwriting expert. In the absence of clear demarcation of the duties and to show that said

duties were flouted deliberately as part of conspiracy, accused/officials cannot be mulcted with criminal liability. Only for the reason of signatures being found or as cheques being issued against bills which were presented, cannot solely form the basis to infer guilt of the accused.

46. In the absence of the bills against which cheques were issued by A5 and also for the reason of not collecting all the relevant documents which were available in the office, benefit of doubt has to be extended to A5.

47. The allegation against A10 is that he has passed Form 103 bills knowing them to be false and fabricated. The learned Special Judge found that some of the bills were not signed by A10. The main witness who identifies the initials of A10 is P.W.5. Some of the bills were not shown to P.W.5 to elicit information regarding initials of A10. The said bills are Exs.P379, 355 and 367. However, the learned Special Judge found that the initials found in Exs.P363, 375, 348, 351, 379, 355 and 367 were tallying with the admitted initials of A10 in Form 103 and on bills 338, 341, 344, 349 and 371. Learned Special Judge further found that A10 claims that he has discharged his duties as per rules in good faith. However, the fact that he has cleared Form 103 bills in favour of bogus colleges at his level would clearly go to show that he has not bothered about rules nor there was any good faith in discharging his

duties. Had he made little effort, he would have definitely detected that all those bills were submitted on behalf of bogus colleges. Page 2 of the bills was left blank which are vital columns. For the said reason, A10 must have cleared bills intentionally avoiding following the departmental procedures or else, the bills would not have been passed.

48. The reasons discussed while extending benefit of doubt to A5 are applicable to A10.

49. In view of the foregoing discussion and also in the background of non-availability of the record and the Investigating Officer not collecting relevant record from the office of District Social Welfare Office and Pay and Accounts Office, benefit of doubt is extended to A2, A4, A5 and A10.

50. However, in case of A1, it is established by the prosecution that he has opened accounts in the names of 13 bogus colleges. Since benefit of doubt is extended to the officials, A2, A4, A5 and A10, the same cannot be extended to A1 for the reason of burden shifting on to A1 under Section 106 of the Evidence Act. The reasons discussed regarding A2, A4, A5, A10 are not applicable to A1. Though the situation appears to be tricky, no evidence is placed by the prosecution to substantiate the claim of the prosecution that the officials had knowledge about falsity of the alleged colleges. Assumption that officials must have colluded as found by the learned Special Judge cannot form basis to convict them. There

cannot be any selective conviction of the officials/appellants herein when it is brought on record that other official witnesses have also signed on the bills passed and cheques issued. Documents should have been sent for hand writing expert opinion. For the reason of the prosecution not being able to prove the case beyond reasonable doubt, this Court found that they are entitled to acquittal. However, the acquittal of the said officers will not entail an acquittal as far as A1 is concerned. When the bank accounts were opened by A1 and operated, it is for A1 to explain as to how he has secured the cheques from the Pay and Accounts Office and en-cashed the same.

51. The applicability of Section 106 of Evidence Act is to shift burden of proving facts especially within exclusive knowledge of the accused. The section cannot be used to shift the onus of proving the offence which is on the prosecution initially on to the accused. In the present case, the prosecution has laid foundation that the colleges for which accounts were opened by A1 did not exist. In such circumstances, when the account opening forms, the photographs on the forms, his signatures were tallying with that of A1 and opening of some of the accounts is admitted by A1, it is for A1 to explain that the said colleges were running and the amounts were towards the scholarships of students belonging to Scheduled Castes from the said colleges.

52. No steps were taken by A1 to explain about the colleges and the transactions in the accounts.

53. The prosecution failed to prove its case insofar as other accused are concerned for want of admissible and reliable evidence to prove their complicity that they in collusion with A1 had passed the bills or issued cheques.

54. The Hon'ble Supreme Court in **Kailash Gour v. State of Assam**[10], has held that: (SCC pp.50-51, para 44)

> *"44. The prosecution, it is axiomatic, must establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal jurisprudence regardless of whether the crime is committed in the course of communal disturbances or otherwise. In short, there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for anything specially applicable to a particular case or class of cases.*
>
> *24. In the present case, the cumulative effect of the aforesaid investigative lapses has fortified the presumption of innocence in favour of the respondent-accused. In such cases, the benefit of doubt arising out of a faulty investigation accrues in favour of the accused."*

55. The alleged scam is enormous in the context of involvement of officials/accused, fabrication of documents and the way the Government was cheated. However, the investigation has not collected direct evidence which was available and based investigation on assumptions and presumptions. Even during the course of trial, the prosecution has merely marked documents without connecting the links. The evidence is

[10] (2012) 2 SCC 34

circumstantial in nature and the circumstances so elicited during evidence has to form a complete chain without there being any missing links or doubts that would be created when the case is viewed as a whole. The prosecution has resorted to marking documents through witnesses who had no knowledge about the execution of the said documents and deposed based on their information from others. It is not known as to why the persons who had direct knowledge about the transactions were not examined. Merely marking documents will not suffice to read into the contents of the said documents and infer culpability of the accused.

56. There cannot be any moral conviction of accused. Unless the burden is discharged by the prosecution proving the case beyond reasonable doubt, no conviction can be recorded. For the reasons best known, none of the documents were subjected to handwriting expert examination and no reasons are given why the procedure which could aid in concluding the guilt or otherwise of the accused was not followed. The specimen signatures of sanctioning officer of bills were available in the Pay & Accounts Office but not collected during investigation. The register of tokens given to persons who present bills and collect cheques were available but not seized for reasons best known to the investigating officer.

57. A perusal of documents would show that most of the documents in the case were sent for FSL examination by a hand writing expert. It is evident since there were markings as 'Q' in the documents encircled with red and blue pencils. Nothing is clarified by the Investigating Officer as to why documents were sent and no opinion was received. If received, why reports were not filed or having sent them, why the documents were taken back without opinion.

58. No evidence is adduced to show that A1 had approached the Pay and Accounts Office and submitted bills. Further, there is no proof that he had approached any of the accused in the office of Pay and Accounts Office and received the cheques. However, the fact remains that the cheques were issued from the Pay and Accounts Office and said cheques were deposited into the accounts opened by A1. In the present facts as already stated, A1 has failed to discharge his burden and accordingly, A1 is liable to be convicted for the charges No 2 to 7 for impersonation, forging documents and also cheating punishable under sections 419, 420, 467, 468, 471. Since benefit of doubt is extended to other accused, A1 is acquitted for the charge under Section 120-B of IPC. No case is proved under section 201 IPC against A1. While confirming conviction under the said sections 420, 467, 468, 471, for the charges No 2 to 7, the substantive sentence under each count is 3 (three) years. All the

sentences shall run concurrently. Conviction of A1 of all the other charges framed against him is set aside. Fine component remains unaltered. The period of imprisonment already undergone shall be set off under Section 428 Cr.P.C.

59. The trial Court shall cause appearance of A1 and send him to prison to serve out the remaining part of the sentence.

60. Criminal Appeal No.742 of 2007, filed by A2 is allowed.

61. Criminal Appeal No.754 of 2007, filed by A4 is allowed.

62. Criminal Appeal No.1028 of 2007, filed by A1 is partly allowed.

K.SURENDER, J

Date: 17.10.2023.
Note: LR copy to be marked.
B/o.kvs

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos. 742, 754 and 1028 of 2007

Date: 17.10.2023

kvs