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

Criminal Appeal No.667 OF 2007

Between:

Ganesh Rathod ...
Appellant/A11

And

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

Criminal Appeal No.714 OF 2007

Between:

Pamula Gangadharam
...Appellant/A12

And

The State of A.P. rep. by
Public Prosecutor. ...Respondent

Criminal Appeal No.753 OF 2007

Between:

Kadimi Venkateswara Rao ...Appellant/A3

And

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

Criminal Appeal No.791 OF 2007

Between:

R.Mothya Naik ...Appellant/Accused No.1

And

The State of A.P.
Through Public Prosecutor,
High Court of A.P. ...Respondents

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

K.SURENDER, J

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

+ CRL.A. No. 667 of 2007

% Dated 17.10.2023

Ganesh Rathod ...
Appellant/A11

And

$ The State of Andhra Pradesh, rep.by
Public Prosecutor, High Court of A.P.,
Hyderabad.
...Respondent

+ CRL.A. No. 714 of 2007

Pamula Gangadharam ...Appellant/A12

And

$ The State of A.P. rep. by
Public Prosecutor. ...Respondent

+ CRL.A.No. 753 of 2007

Kadimi Venkateswara Rao ...Appellant/A3

And

$ The State of A.P.
Rep by its Public Prosecutor,
High Court, Hyderabad.
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+ CRL.A.No.791 of 2007

R.Mothya Naik ...Appellant/Accused
No.1

And

The State of A.P.
Through Public Prosecutor,
High Court of A.P. ...Respondent

! Counsel for the Appellants: Sri A. Prabhakar Rao, K. Suresh Reddy,

T.Pradyumnakumar Reddy &
Sreenivasa Rao Ravulapati

^ Counsel for the Respondents: SriPublic Prosecutor

>HEAD NOTE:

? Cases referred:

1.2023 SCC Online SC 900

2.(2007) 1 SCC 1

3.(1984) 4 SCC 116

4.(2023) 4 Supreme Court Cases 731

5.(2011) 10 Supreme Court Cases 768

6.(1995) 1 Supreme Court Cases 142

7.1984 (Supp) Supreme Court Cases 207

8.(2019) 2 SCC 303

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

10.2023 SCC Online SC 900

11.2023 SCC Online Pat 2239

12. 1973 AIR 2773

13.(2012) 2 SCC 34

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos.667, 714, 753 and 791 OF 2007

COMMON JUDGMENT:

1. Criminal Appeal No.667 of 2007 is filed by A11, Crl.A.No.714 of 2007 is filed by A12, Crl.A.No.753 of 2007 is filed by A3 and Crl.A.No.791 of 2007 is filed by A1, questioning their conviction in CC.No.2 of 2003, vide Judgment dated 11.06.2007 recorded 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, Nampally, Hyderabad.

2. The appellants were convicted and sentenced for the offences punishable under Sections 420, 471, 409 r/w.109, 420 r/w.109, 467 r/w.109, 468 r/w.109 and 471 r/w.109 of the Indian Penal Code. Since all the appeals are arising out of common judgment in CC No.2 of 2003, all these appeals are being heard together and disposed by way of this Common Judgment.

3. The case pertains to the pre-metric scholarships scam. Investigation was triggered on the basis of report Ex.P2 given by PW1-B.Limba Reddy who was Inspector of Police, Special Team, WCO, Central Crime Station, Hyderabad. DCP-Sri Narasimha Rao directed PW1 to inquire into pre-metric scholarship scam.

The said orders were given to PW1 on 03.10.2002. Ex.P2-report was given by PW1 on 09.11.2002, addressed to the DCP, Detective Department. In Ex.P2, PW1 stated that he enquired into the pre-matric scholarship scam perpetrated by the accused. He presented a detailed enquiry report to the DCP, Detective Department, Hyderabad, stating that during the period from 1992 to 2000, A1-R.Mothya Naik in conspiracy with the other accused floated 8 bogus schools which were not in existence, forged and fabricated pre-matric scholarship bills in the names of those bogus schools, collected A.P.Government Cheques from the Deputy Pay Accounts Office and embezzled about Rs.3.78 crores and thereby cheated the Government.

4. The said complaint was addressed to the Deputy Commissioner of Police, Detective Department. The same was registered on 9.11.2002. Investigation was handed over to PW.52- Investigating Officer. Details of investigation are-

(i) A-1 R.Mothya Naik worked as a Warden in Social Welfare Department from 3/1985 to 6/2002 and was dismissed from service. A-2 D.Vijaya Lakshmi @ R.Vijaya Lakshmi is the wife of A-1. A-3 Kadimi Venkateswar Rao worked as Sperintendent from 7/1995 to /2002 (dismissed from service), A-4 Ratilal Lalji

Praveen Chander worked as an Auditor from 7/2000 to /2002 (dismissed from service), A-5 Pemmirajuu Ramalingeswara Sarma worked as Superintendent from 1/1994 to 4/1997 (retired from service), A-6 K.V.S.Ramachandra worked as Superintendent from 4/1997 to 2/1998, A-7 Tangirala Venkata Sastri worked as Superintendent from 7/1998 to 8/2000 (dismissed from service), A-8 Tangirala Laxminarayana worked as APAO (Assistant Pay and Accounts Officer) (retired from service), A-9 Arisetty Prasada Rao worked as APAO from 4/1996 to 7/1998 (retired from service), A-10 Maddali Bala Venkata Ramana Rao worked as APAO from 1/1999 to 7/2001 (dismissed from service) in Deputy PAO, Telugu Samkshema Bhavan, Masab Tank, Hyderabad. A-11 Ganesh Rathod worked as Junior Assistant from 6.09.94 to 15.09.2001 in District Tribal Welfare Office, Parigi, Ranga Reddy District and was dismissed from service. A-12 Pamula Gangadharam worked as D.T.W.O. (District Tribal Welfare Officer) from 28.12.1998 to 27.10.2000 and retired from service. A-13 Krishna Kumar worked as Deputy Pay and Accounts Officer from July 1999 to 31.07.2000 and retired from service.

(ii) A-1 to A-13 were parties to a criminal conspiracy to swindle huge amounts of Government money meant for pre-matric scholarships for the poor students of ST community and in pursuance of the said criminal conspiracy they created false and forged bills, cheques and other documents. Opened bank accounts in the names of Principals/Headmasters of the bogus non-

existing schools in various banks by impersonation and later withdrew those amounts from the bank accounts and misappropriated the same. Thus they have cheated the Government and caused loss to the extent of several crores of rupees. A-1 R.Mothya Naik, A-3 K.Venkateswara Rao and A-11 Ganesh Rathod have master minded the conspiracy and in connivance with the officials of DTWO's office and Pay and Accounts Office, Hyderabad, prepared forged and fabricated pre-matric scholarship bills in the names of fictitious and non-existing schools viz., 1)RSM School, Sainagar, Hyderabad, 2) Alekhya High School, Prashanthnagar, Hyderabad 3) Chaitanya High School, Upperapalli, Hyderabad, 4) Effiath School, Jangammer, Hyderabad, 5) Divya Teja Public School, Prashanth Nagar, Langerhouse, Hyderabad, 6) New Eden Public School, Natraj Nagar, Karwan, 7) Srinikethan High School, Karwan and 8) St.George High School, Uerpalli, Hyderabad. Such bills were presented in the Deputy Pay and Accounts Office, Telugu Samkshema Bhavan, Masab Tank, Hyderabad from the years 1992 to 2000, got them passed with A-3 K.Venkateswara Rao, Auditor, A-4, Ratilal Lalji Praveen Chander, Auditor, A-5 Pemmiraju Ramalingeswara Sarma, Superintendent, A-6 K.V.S.Ramachandra, Superintendent, A-7 Tangirala Venkata Sastry, Superintendent, A-8 Tangirala Laxminarayana, APAO, A-9 Arisetty Prasada Rao, APAO, A-10 Maddali Bala Venkataramana Rao, APAO and A-13 Krishna Kumar, Dy.APAO and collected A.P.Government cheques to the tune of Rs.3.78 crores.

iii) A-1 R.Mothya Naik opened accounts in State Bank of Hyderabad, Raidurg Branch and Ramnagar Branch, deposited A.P.Government cheques, got them cleared from SBH, Gunfoundary, Hyderabad, presented self-cheques in the concerned banks in the name of fictitious Principals/Headmasters and withdrew a total amount of Rs.3.78 crores. He has distributed the ill-gotten money to the other accused as per their shares. He and A-3 have purchased huge properties disproportionate to their known source of income with the ill-gotten money in their names and in the names of their family members and relatives and also deposited cash in banks. The other accused who have also received the ill-gotten money from A-1 and A-3 spent the same for their family necessities. Thus the accused have caused wrongful loss to the Government to the tune of Rs.3.78 crores which was meant for the students of ST community.

5. Learned Special Judge examined the witnesses P.Ws.1 to 52, marked Exs.P1 to P105. The defence examined D.W.1 and during the course of trial, Exs.D1 to D13 were marked.

6. Learned Special Judge concluded that no case was made out against A2, A4 to A6, A8 and A10. Case against A10 was split up. Since he died during trial, case was abated against him.

SANCTION ORDERS TO PROSECUTE PUBLIC SERVANTS

7. Sanction against public servant is an act necessitated under Section 197 of Cr.P.C to protect officers from false

criminal prosecutions. Learned Special Judge has committed an error in finding that there was no necessity of Sanction orders, reducing sanctity of Section 197 of Cr.P.C for obtaining sanction orders and its object redundant. Section 197 of Cr.P.C or similar provision under the Prevention of Corruption Act were introduced by the legislature to prevent and protect public servants from being criminally prosecuted, which acts amounted to criminal offences, during discharge of their official duties. Recently, the Hon'ble Supreme Court in the case of **A.Srinivasulu v. State rep. by the Inspector of Police**[1] clarified that the observations of the Hon'ble Supreme Court in **Prakash Singh Badal and another v. State of Punjab and others**[2], held as under:

> *"**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*

[1] 2023 SCC OnLine SC 900

[2] (2007) 1 SCC 1

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."*

8. The Hon'ble Supreme Court observed that the requirement of previous sanction would be rendered redundant if it is interpreted that every act of which a public servant is alleged to have committed would be without protection, which the legislature thought it fit to protect public servants who were discharging their duties, which are reasonably connected to their official functions.

FINDINGS OF TRIAL COURT

9. The findings of the learned Special Judge is on the following basis;

i) Eight schools were bogus and floated by A1;

ii) The Pay and Accounts personnel, who were accused have conspired with A1 and processed the bills;

iii) A1 and A2 opened accounts in SBH and Andhra Bank, deposited cheques and withdrew the money;

iv) Witnesses are examined to speak about receipt of cheques from the fake account opened by A1.

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

11. 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**[3], 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."*

[3] (1984) 4 SCC 116

12. In **Neeraj Dutta v. State (Government of NCT of Delhi)**[4] the Hon'ble Supreme Court held :

> *"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.)*
>
> *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 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.*

[4] (2023) 4 Supreme Court Cases 731

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."

13. In **Sherimon v. State of Kerala**[5], 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."

14. In **P.K.Narayanan v. State of Kerala**[6], the Hon'ble Supreme Court held as follows:

"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

[5](2011) 10 Supreme Court Cases 768

[6](1995) 1 Supreme Court Cases 142

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."

15. In **Jethsur Suranghai v. State of Gujarat**[7], 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…."

16. In **State of U.P. v. Wasif Haider**[8], the Hon'ble Supreme Court held as follows:

"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

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[7] 1984 (Supp) Supreme Court Cases 207

[8] (2019) 2 SCC 303

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."

17. In **Ramnivas v. State of Haryana**[9], 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…."

18. In **A.Srinivasulu v. State rep. by the Inspector of Police**[10], the Hon'ble Supreme Court held as follows:

"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

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

[10] 2023 SCC OnLine SC 900

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."

19. In **Teni Yadav v. State of Bihar**[11], 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 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."

[11] 2023 SCC OnLine Pat 2239

BOGUS SCHOOLS:

20. The Special judge has concluded that the prosecution has proved that the schools were bogus on the basis of the evidence of P.W.1, Ex.P2, the evidence of P.W.26, Assistant Director in the office of Commissioner and Directorate of School Education and the letter issued by him under Ex.P179.

21. Ex.P2 is the letter/complaint by P.W.1 addressed to the Dy.Commissioner of Police, Detective Department. In the said letter, P.W.1 specifically stated that A1 along with other officials of District Tribal Welfare Office and Pay and Accounts Office during the years 1992-2000 conspired to swindle the Government funds meant for pre-matric scholarships in the name of the eight schools. Accounts were opened in Andhra Bank, Karwan branch, State Bank of Hyderabad, Ramnagar branch, State Bank of Hyderabad, Raidurg branch and withdrew an amount of Rs.3.67 Crores. With the said amount, A1 and A2 purchased several properties and were also shared among the other accused. During cross-examination, PW1 admits that he has not made any specific enquiry nor mentioned names of the officials whom he met and on what date. No documents were obtained from any of the office nor can give names of the officials whom he met in Pay and Accounts Office and District Tribal Welfare Office (DTWO). Further, he says that he received

information from informants and came to conclusion that schools were bogus. Government records were not verified regarding the existence or otherwise of the schools. Having given the details of the eight alleged bogus schools, exact amount swindled, one fails to understand as to how these details were available with P.W.1 even before initiating any investigation in the case and without examining any official or visiting any office or going through any official record in the DTWO or PAO offices or banks. The final outcome of the investigation gives the very same details as in Ex.P1. Apparently, P.W.1 suppressed the actual events and there was no necessity to do so. Investigation should be fair and transparent. Suppression creates doubts in the mind of the Court.

22. The other evidence is that of P.W.26, who has given Ex.P179 letter. The said letter was addressed by Dr.Man Mohan Singh, Commissioner and Director of School Education to Sri Mohd. Ismail, Assistant Commissioner of Police. P.W.26 has signed the said letter on behalf of the Commissioner and Director of School Education. In the said letter, it is mentioned that in respect of Alekhya High School, Prashant Nagar, permission was not granted and no school in the Mandal. In respect of Chaitanya High School, Upparapalli, the same was existing at

Hyderguda, Ranga Reddy District and not at Upparpally. In respect of Effiath School, the school was granted recognition. In respect of New Eden Public School, Prasanth Nagar, school was granted recognition and finally in respect of St.George High School, Moulali, it was existing and classes I to X were being run.

23. The said document goes contrary to the case of the prosecution that eight schools are bogus schools. In Ex.P179, it was informed regarding existence of five schools out of the alleged eight bogus schools. In the cross-examination, the witness stated that his boss Commissioner was examined by police and he was not examined. He further admits that he is not aware about the basis on which Ex.P179 was prepared. A letter cannot form basis to rely on the said contents unless prosecution places any other circumstantial evidence to substantiate the contents of the letter. As already said, Ex.P2 claims eight schools were bogus. However, Ex.P179 claims existence of five schools out of the said eight schools.

24. The Investigating Officer-P.W.52 has stated that he has based his conclusion regarding the bogus nature of the schools on the basis of the letter issued under Ex.P2 and Ex.P179. It is admitted by the witness that the department maintains a list of the schools that are recognized and existing in the jurisdiction.

However, the said registers or the details which are available in the department were not collected during the course of investigation. P.W2 admits that a list is available regarding recognized schools and also to whom the scholarships can be granted. The said documents which would establish the allegation of the prosecution that the eight schools are bogus were not seized nor copies produced nor are any witnesses examined who maintains the registers and scholarship details.

25. Under Section 114-G of Indian Evidence Act, it may be presumed that evidence that could be produced and is not produced, if produced would be unfavorable to the person who withholds it. The Court may presume the existence of such fact. In the absence of any evidence apart from the inadmissible and uncorroborated contents of Exs.P2 and P179, it creates any amount of doubt on the prosecution case about the claim of the eight schools being non-existent.

26. In **Kali Ram v. State of Himachal Pradesh**[12], the Hon'ble Supreme Court held that if a statement made by a person to a police officer in the course of an investigation is inadmissible except for the purpose mentioned in s.162, the same would be true of a letter containing narration of facts

[12] 1973 AIR 2773

addressed by a person to a police officer during the course of investigation. It is not permissible to circumvent the prohibition contained in S.162 by the investigating officer obtaining a written statement of a person instead of the investigating officer himself recording that statement. The restriction placed by s.162 on the use of statement made during the course of investigation is in general terms. There is nothing in the section to show that the investigation must relate to any particular accused before a statement to the police pertaining to that accused can be held to be inadmissible. The letter is, therefore, inadmissible in evidence.

27. Though the authors of the letters Ex.P2 and P179 are examined as PW1 and P26 respectively, both the witnesses are personally not aware about the contents of the letters. The witnesses stated that the information is on the basis of information received from others and registers available in the office. Details of such persons who secured information was not given nor the documents/registers produced. The evidence is hearsay and inadmissible.

SUBMISSION OF BILLS AND RECEIPT OF CHEQUES:

28. Learned Special Judge has framed a point no.5 that arises for consideration. For the sake of convenience, the same is extracted hereunder:

"5. Whether the prosecution has proved its case against A1 regarding preparation of pre-matric scholarship bills etc., as mentioned in Charge No.8 beyond all reasonable doubt?"

29. Having framed the point for consideration, nowhere in the judgment, learned Special Judge has discussed about the preparation of pre-matric scholarship bills by A1. However, coming to the finding at page 122 and 129 of the judgment, learned Special Judge has stated that as per the findings for Point no.5 it was A1 who submitted form 103 pre-matric scholarships bills on behalf of the said bogus schools in Deputy PAO's office. Not even a single witness stated about bills being submitted by A1. Learned Special Judge further found that A3 in criminal conspiracy with A1 intentionally avoided following the established departmental procedures and cleared bogus bills in Form 103 submitted to facilitate A1 to get Government cheques. The said finding is without any discussion or what evidence formed the basis for such conclusion, except stating that the prosecution has proved its case. Assumptive inferences or conclusions without any basis are illegal and untenable.

30. None of the witnesses have spoken regarding A1 submitting any bills. P.W.2 is the District Tribal Welfare Officer. Through the said witness, Exs.P3 to P17 bills of alleged bogus schools were marked. In the said bills, P.W.2 has also signed. However, in all

the bills he claims that his signature was forged but identifies the signatures of other accused. Similarly, other witnesses are all examined to identify that bills were produced against which cheques were issued. However, none of the witnesses speak about A1 submitting any of the bills or receiving any cheques. In the absence of any such direct evidence or prosecution producing any circumstantial evidence, there cannot be any assumption that bills were produced by A1 and cheques were drawn by him.

31. P.W.2 speaks about the procedure of scholarship claims. According to P.W.2, he was dealing with pre-matric and post-matric scholarship for students of SC and ST community. According to procedure, Press notification will be issued calling for applications from students of ST community who are eligible for scholarships. There is a selection committee under the Chairmanship of District Collector and the DTWO as a Convener. After applications are received, the DTWO will examine the applications with the help of DEO, students will be selected for scholarships. It is done with the approval of District Collector. After selection, principals of respective schools will admit the students and the DTWO will visit the schools concerned to verify whether admissions are made or not in accordance with the selection list. Thereafter, DTWO will send proposals to the

Commissioner of Tribal Welfare for release of budget. After budget is released, principals will claim scholarships from the DTWO. Having received the bills from the Principals, DTWO will prepare bills and submit it to Pay and Accounts Office. After processing the bill, the Pay and Accounts officer will issue cheques in the name of concerned principals through DTWO. Thereafter, DTWO will handover the cheques to the concerned Principals, then the principals would encash the cheques.

32. In the said procedure, the persons involved are the DTWO (A12), P.W.2, DEO and the District Collector. According to the procedure, principals would claim scholarships from DTWO and DTWO send the same to the Pay and Accounts Officer-P.W.4. The communication and documents would be between DTWO, P.W.2 and P.W.4 regarding the applications for scholarships, budget being released. Recommendation for payment and handing over of cheques to the concerned principals was also by P.W.2 after receiving them from P.W.4's office.

33. Both P.W.2 and P.W.4 pleaded ignorance about the applications and the cheques being handed over and only stated that they have not signed on the bills identified by them.

34. At this juncture, it would be appropriate to discuss the investigation which was done in the present case. Though all the documents were collected which are bills, account opening

forms, cheques etc., none of the documents were subjected to hand-writing expert examination. Though it is on record that admitted signatures of all the accused were handed over to the investigating officer, however, there is no opinion in respect of any of the documents. Curiously, no efforts were made to ascertain who had submitted cheques in the banks or the bills Exs.P3 to P17. The appellants have pleaded ignorance. It is for the prosecution to substantiate their case by sending documents to the expert to ascertain writings on the documents. Exs.P19, 20, 21, 23, 24, 25 and 26 which are bills pertaining to the various schools including form 103 bills etc. All the said cheques and bills were collected during the course of investigation. However, none of the cheques were sent to expert to ascertain whether A1 and A2 had either claimed the cheques or presented them or withdrew the amount from the bank account.

35. Another curious aspect of the case is that the account opening forms were produced but marked by bank officials, who had no personal knowledge.

36. There is no investigation in the direction of ascertaining that the signatures in any of the vouchers pertaining to the schools or in the account opening forms in the Banks were that of A1 and A2. No reasons are given as to why secondary evidence

which are photo copies of account opening forms etc., filed in the case should be accepted.

37. The Pay and Accounts Officer-P.W.4 is crucial witness for the prosecution from the Pay and Accounts Office. P.W.4 has stated that the Assistant Social Welfare Officer or the Assistant Tribal Welfare Officer and the District Backward Classes Welfare Officer would present the pre-matric scholarship bills at the Deputy Pay and Accounts Office, Masab Tank. At the time of presenting the bills, token will be given at the counter. Thereafter, the bills would be taken to the scholarship section where the Assistant Auditor would make a note regarding all the bills received in a register called Audit Treasury Manual. Then the Assistant Auditor will pass on the bills to the Auditor who deals with scholarship bills. The Auditor shall verify the specimen signatures of the sanctioning authority and the drawing officer with the signatures in the bills as per para 5.4 of the Functionary Manual of PAO. The Auditor checks all the enclosures of the bill with regard to accuracy. The bills would contain sanction proceedings, non-drawl certificate, list of students for whom the scholarships were sanctioned and attendance of the students. After satisfying the correctness of the bills, the same is entered into Form-44 Register, which is called the Budget Control Register. Brief note is made in the said

Register. The entries regarding the scholarship, token number and total amount will also be reflected in the register. After being satisfied about the said bills they will be passed on to the Superintendent, who will sign the bill along with Form 44 Register. The Superintendent, who is the immediate superior officer of the auditor would verify regarding the contents of the bill and then pass on to the Assistant Pay & Accounts Officer, who is the passing authority. The Assistant Pay & Accounts Officer would go through the bill and after satisfying himself regarding the correctness, the same is entered in Form 44 register. The said bill will be sent to the cheque section and on giving the token and on the basis of the authorization given by the Drawing Officer, cheque will be handed over to the person with the token. The said bills will be given voucher numbers and fed into the computer for preparation of accounts. After preparation, they will be sent to the main office forthwith for consolidation. The Deputy Pay & Accounts Office prepares an expenditure statement showing the particulars of the amounts drawn during the particular month with full details. The Drawing Officer would send his staff to the Deputy Pay & Accounts Office to take the expenditure statement and after obtaining expenditure statement, which would come to the main office and verify the correctness in the Central Compilation Section. In the

said section, the expenditure statement with the records available in the office would be verified and if there is any variation, it would be brought to the notice of the scholarship section in Dy.PAO's office where it would be rectified. It is the duty of the Drawing Officer to see to that the concerned institutions would receive the amounts in accordance with the budget allocation.

38. P.W.4 further identified the bills Exs.P19, 20, 21, 22, 23, 24, 25 and 26 which are the files pertaining to the alleged bogus schools. In the said files, the signatures of A3, A4, A7, A9, A10 and A13 were identified by the witnesses. P.W.4 does not say why the procedure prescribed for passing of bills was not followed. He only identifies the signatures of the accused and states that he has provided admitted writings of A3, A4, A7, A9, A10 and 13 to the Investigating Officer. It is not the evidence of P.W.4 that the bills were not in order or not in accordance with the procedure prescribed.

39. The Investigating Officer has failed to collect the Audit Treasury Manual, Budget Control Register, Form 44 Register, which would reflect the passing of bills. The procedure as spoken to by P.W.2-District Tribal Welfare Officer, PW.4-Pay and Accounts Officer, there are set of schools which are identified and accordingly on the basis of requirements, budget is allocated

and thereafter disbursed in accordance with the procedure as stated above. It is again suspicious as to how over a period of several years fraud could not be detected. It is not the case that any of the accused who were tried have anything to do with the identification of the schools or preparing the list of schools or students who are entitled to claim scholarships. If the budget allocation is on the basis of earlier exercise of preparing the details of schools and requirements for scholarships, it is not explained as to how the budget was allocated in favour of non-existent schools. Even according to P.Ws.2 and 4, there is periodical check regarding the allocations and distribution of the scholarships. None of the accused were tried or shown as responsible for preparing the eligibility list of schools or students and the consequent approval of the budget. The said factors also give rise to any amount of doubt in the prosecution case.

40. Heavy reliance is placed on the evidence of Bank officials who are P.W.8 to P.W.21. P.Ws.22 to 26 are examined to state that cheques were issued by A1 from the accounts maintained by him in the accounts of bogus schools which were operated by A1 and A2.

41. Prosecution chose to examine the bank officials who were not present at the time of opening of accounts. PW8 of SBH Bank admits that he did not have any personal knowledge.

P.Ws.9 and 10 of Andhra Bank admitted that they did not work in the said bank when the transactions had taken place. P.W.13 has no personal knowledge. P.W.24 deposed that he has no personal knowledge. P.Ws.15 to 17 who speak about opening of accounts on the basis of documents, did not have personal knowledge. P.W.20 of Indian Bank has no personal knowledge. P.Ws.39 and 40 Bank officials do not have personal knowledge about the accounts being opened by A1 and A2. The witnesses who were examined were either not working in the bank when the accounts were opened or when the transactions have taken place or have deposed that they came to know that A1 and A2 were running the accounts. It was admitted by all the bank officials that there was nothing wrong with the opening of the accounts which were in different names. None of the account opening forms or any vouchers or cheques was sent for the purpose of hand writing examination. The sending of documents to the hand writing expert is significant for the reason of total denial by the accused A1 and A2 that they are no way concerned with the bank transactions. The bank officials who were examined did not have knowledge about the transactions. Hearsay evidence cannot be made basis to infer guilt of the accused.

42. The Hon'ble Supreme Court in **Kailash Gour v. State of Assam**[13], 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."*

43. 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 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

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[13] (2012) 2 SCC 34

said 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 that the accused were responsible. The basis for the scam being floating of fake schools and fake names of students, however, the direct evidence available regarding details of schools in the departments, which witnesses admit as available, was not produced.

44. 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. The prosecution has placed heavy reliance on the alleged transactions in banks. The said bank officials had no direct knowledge and none of the witnesses said about withdrawal of the amounts by the accused or depositing of the cheques by the accused. The said cheques originated from the Pay and Accounts Office and en-cashed in the Bank. Serious doubts arise in the absence of proof of documents and absence of witnesses to speak about handing over of the cheques to the accused or the accused transacting business in the account. For the reasons best known, none of the documents were subjected to handwriting expert examination and no reasons are given why the said 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.

45. 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 blue and red pencils. Nothing is clarified by the Investigating Officer as to why documents were sent and no opinion was received. If received, why the said reports were not filed or having sent them, why the documents were taken back without opinion.

46. The prosecution has left yawning gaps in investigation and failed to prove their case beyond reasonable doubt by adducing admissible evidence. For the reasons in the foregoing paragraphs, the prosecution has failed to prove by reliable evidence that the offence was committed by the appellants herein, as such, benefit of doubt is extended to the appellants.

47. In the result,

48. Criminal Appeal No.667 of 2007 filed by A11 is allowed.

49. Crl.A.No.714 of 2007 filed byA12 is allowed.

50. Crl.A.No.753 of 2007 filed by A3 is allowed.

52. Crl.A.No.791 of 2007 filed by A1 is allowed.

K.SURENDER, J

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

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos. 667, 714, 753 and 791 OF 2007

Dt. 17.10.2023

kvs