

# SUPREME COURT OF INDIA

Kuldeep Sharma

Vs.

State of H.P. & Anr.

CrI.A.No.1362 of 2003

(Harjit Singh Bedi and Chandramauli Kr.Prasad,JJ.,)

04.04.2011

## JUDGMENT

### **Chandramauli Kr.Prasad,J.,**

1. Appellant, aggrieved by his conviction and sentence under Sections 120-B, 467, 468, 471 and 420 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") and Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter called as "P.C. Act") is before us with leave of the Court.

2. According to the prosecution, in the year 1984 the appellant Kuldeep Sharma and Co-accused Rajinder Sharma were posted as Junior Engineer and Assistant Engineer respectively at Jubbal Sub-division of the Irrigation and Public Health Department of the Government of Himachal Pradesh. A telegram alleging malpractices against both of them were received on 26th September, 1984 in the Anti-Corruption Unit at Shimla. A preliminary investigation was conducted and on that basis, First Information Report No. 5/84 was lodged. Investigation revealed that muster roll no. 146 (Ext. PW-1/A) for the period 1st of July, 1984 to 31st of July, 1984 which pertained to the running and maintenance of flow irrigation scheme was earlier given to PW-1 Chander Singh, Meter Reader, who returned with the endorsement `blank' on it to the co-accused. On 29th of August, 1984, co-accused smeared the word `blank' with red ink and handed over to PW-2 Dula Ram to enter the names of two labourers and to mark them present for the month of July, 1984. In the said muster roll, the names of Kanshi Ram and Ram Bahadur were recorded by PW-2 Dula Ram, the then Supervisor and it was countersigned by the appellant. On the basis of the said entry, wages were paid to the aforesaid persons. According to the prosecution on investigation it transpired that the aforesaid labourers did not work for the period for which they were marked "present" in the muster roll.

3. Further case of the prosecution is that Muster Roll No. 230 (Ext. PW-3/A) for the period 1st September, 1984 to 30th September, 1984 pertaining to the repairs and maintenance of water supply scheme was issued by the then Executive Engineer PW-14 D.R. Gupta to the co-accused who in turn endorsed it to the appellant herein. However, lateron, co-

accused struck-off the first endorsement and endorsed it to Hazari Nand (PW-8), the then Supervisor. This muster roll contained the names of Devki Nand, Gursa Ram, Lok Pal and Joginder Singh as casual labourers recorded by Hazari Nand and verified by the appellant. Payments to the aforesaid labourers were made by the Assistant Engineer who succeeded the co-accused.

4. Sanction for prosecution of the appellant alongwith co-accused was granted for offence punishable under Sections 409, 465, 467, 468, 471, 201, 511 and 120-B of the IPC as also for offence under Section 5(2) of the P.C. Act. While granting sanction, the State Government observed that the appellant entered into criminal conspiracy with the co-accused and prepared false muster roll no. 146 in which names of casual labourers, who were not engaged, inserted.

5. Both of them i.e. Appellant Kuldeep Sharma, Junior Engineer and Co-accused Rajinder Sharma were sent up for trial and they were charged for commission of the offence under Sections 467, 468, 471, 420 and 120-B of the IPC and Section 5(2) of the P.C. Act. Appellant, pleaded not guilty and claimed to be tried.

6. In order to bring home the charge, the prosecution has altogether examined 15 witnesses besides a large number of documents were exhibited. The defence of the appellant is denial simplicitor and he termed the incriminating evidence against him as false when examined under Section 313 of the Code of Criminal Procedure. On appraisal of the evidence, the Trial Court convicted the appellant and the co-accused for offence under Sections 120-B, 467, 468, 471 and 420 of the IPC and Section 5(2) of the P.C. Act and sentenced them to various terms of imprisonment.

7. Appellant as also the co-accused aggrieved by their conviction and sentence preferred separate appeals. The High Court by the impugned judgment dismissed both the appeals with some reduction in sentence.

8. This order will govern the case of the appellant only.

9. Mr. Ashok Kr. Panda, learned Senior Counsel appearing on behalf of the appellant made attempt to assail the finding of the trial court as affirmed by the High Court and while doing so contended that in fact the appellant had not certified the contents of the muster roll and further no certificate was given by him. However, from the evidence of PW-1, Shri Chander Singh, PW-2 Shri Dula Ram and PW-14 Shri D.R. Gupta, Meter Reader, Supervisor and Executive Engineer respectively, it is evident that the muster roll was verified by the appellant herein. The muster roll has been exhibited which bears the signature of the appellant. PW-14, D.R. Gupta has stated in his evidence that the muster roll basically is a document which is maintained by the Junior Engineer in which the names of the persons engaged and working are shown and on that basis the payment is made to the labourers engaged. The witnesses have further stated that muster roll no. 146 and 230 (Ext. PW1/A and Ext. PW-3/A) respectively were verified and countersigned by the appellant. In that view of

the matter, there is no escape from the conclusion that it is the appellant who had verified and countersigned the muster roll and gave false certificate and on that basis wages were disbursed to the labourers.

10. Mr. Panda, then submits that the appellant was a whistle blower and in fact complained about the mal-functioning of the co-accused and was forced to sign the muster roll. In support of the submission, reliance has been placed on few decisions of this Court. Mr. Himinder Lal, learned Counsel, however, representing the respondent submits that the appellant after having been caught is raising the plea of whistle-blower and at no point of time he ever complained about the functioning of the Assistant Engineer, the co-accused Rajinder Sharma. In this connection, he drew our attention to the evidence of P.W.14, the Executive Engineer who denied the appellant's suggestion that any complaint was made to him against the Assistant Engineer. The plea of whistle-blower has not been stated by the appellant even in statement under Section 313 of the Code of Criminal Procedure. In fact, he had denied his participation in the crime in any way. At no point of time, did he raise any objection about the alleged coercion and threat by the co-accused. Appellant was not a casual daily wager and could not have been removed by the co-accused. In that view of the matter, we are of the opinion that the plea raised by the appellant of whistle blower deserves to be rejected. In view of what we have found on fact, it is not necessary to refer to the decisions of this Court relied on by the appellant.

11. Mr. Panda, then submits that the State Government while granting sanction has taken into account the entry of fictitious names of casual labourer in muster roll no. 146 but charge was framed in respect of muster-roll no. 230 and therefore the conviction of the appellant is vitiated on this ground alone. This submission need not detain us much. As stated earlier, the appellant has been convicted for his role in relation to muster roll no. 146 and 230. Admittedly, while sanctioning prosecution, the role of the appellant in relation to muster roll no. 146 has been adverted to. Therefore, his conviction can not be held to be illegal only for the reason that no reference was made to muster-roll no. 230 in the sanction- order.

12. Mr. Panda, lastly submits that the occurrence had taken place as back in the year 1984 and the appellant had not only suffered ordeal of trial and appeal for long 27 years and infact lost the job also and in such a situation, the ends of justice shall be met if the sentence of the appellant is reduced to the period already undergone. It is relevant to state that the High Court while dismissing the appeal has reduced the substantive sentence to one year each for the offence under Section 120-B, 467, 468, 471 and 420 of the IPC besides Section 5(2) of the P.C. Act. We are of the opinion that sentence awarded to the appellant in the facts and circumstances of the case cannot be said to be excessive, calling for interference in this appeal.

13. In the result, we do not find any merit in the appeal and it is dismissed accordingly.