

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.185 of 2012

Arising Out of PS. Case No.-7 Year-1998 Thana- C.B.I CASE District- Patna

Vishwanath Ganguli, son of Late Dr. B.D.Ganguli, resident of Navin Mitra
Road, Bardhaman Compound, Ranchi

... .. Appellant/s

Versus

The State Of Bihar through Vigilance

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 149 of 2012

Arising Out of PS. Case No.-7 Year-1998 Thana- C.B.I CASE District- Patna

Chinta Devi, Wife Of Late Kapil Deo Prasad Sinha R/O 3K/89 Bariatu
Housing Colony, Ranchi

... .. Appellant/s

Versus

The State Of Bihar through Vigilance

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 156 of 2012

Arising Out of PS. Case No.-7 Year-1998 Thana- C.B.I CASE District- Patna

Nirmala Jha W/O Shachi Nath Jha @ Shashi Nath Jha R/O Vill.+P.O.+ P.S.-
Dhamdaha, Distt-Purnia, presently Residing At Flat No.B-31, Sri Ram Kunj
Apartment , East Boring Canal Road, Mitra-Mandal Compound, Patna-1

... .. Appellant/s

Versus

The State Of Bihar through Vigilance

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 175 of 2012

Arising Out of PS. Case No.-7 Year-1998 Thana- C.B.I CASE District- Patna



Anil Kumar Rai @ Anil Kumar Roy son of Late Shiv Shankar Rai, resident
Of Village- Rannuchak, P.S.- Nathnagar, District- Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar through Vigilance

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 187 of 2012

Arising Out of PS. Case No.-7 Year-1998 Thana- C.B.I CASE District- Patna

Deep Narain Mandal son of Late Ganouri Mandal, resident of Arajar, P.S.
Chousa, Distt-Madhepura

... .. Appellant/s

Versus

The State Of Bihar through Vigilance

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 185 of 2012)

For the Appellant/s : Mr. Ashutosh Ranjan Pandey, Adv
Mr. Rakesh Narayan Singh, Adv

For the Vigilance : Ms. Archana Palkar Khopde

(In CRIMINAL APPEAL (SJ) No. 149 of 2012)

For the Appellant/s : Mr. Mr. Krishna Prasad Singh, Sr. Adv
Ms. Meena Singh, Adv

Mr. Rakesh Singh

For the Vigilance : Ms. Archana Palkar Khopde

(In CRIMINAL APPEAL (SJ) No. 156 of 2012)

For the Appellant/s : Mr. Subodh Kumar Jha, Adv
Mr. Pranav Kumar Jha, Adv

For the Vigilance : Mr. Anil Singh

(In CRIMINAL APPEAL (SJ) No. 175 of 2012)

For the Appellant/s : Mr. Brahmadeo Prasad Singh, Adv
Mr. Sanjay Kumar Singh, Adv

For the Vigilance : Ms. Archana Palkar Khopde

(In CRIMINAL APPEAL (SJ) No. 187 of 2012)

For the Appellant/s : Mr. Jitendra Singh, Sr. Adv
Mr. Tej Pratap Singh, Adv

Mr. Yash Singh, Adv

Mr. Ishan Singh, Adv

Mr. Nitin Kumar, Adv

For the Vigilance : Ms. Archana Palkar Khopde

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR



CAV JUDGMENT

Date : 22-03-2024

Heard the parties.

2. The present appeals have been filed against the judgment of conviction and order of sentence dated 07.02.2012 passed by learned Special Judge, Vigilance-II, Patna in connection with Special Case No. 7 of 1998, arising out of Vigilance P.S. Case No. 7/1998, whereby and whereunder the accused appellants and others were found guilty and convicted and convicts Kapildeo Narain Prasad Sinha, Vishwanath Ganguli, Shashinath Jha, Deep Narain Mandal and Anil Kumar Rai were sentenced to undergo rigorous imprisonment for one year for the offence punishable under Section 120(B) of the Indian Penal Code, rigorous imprisonment for one year for the offence punishable under Section 420 of the Indian Penal Code, rigorous imprisonment for one year for the offence punishable under Section 467 I.P.C, rigorous imprisonment for one year for the offence punishable under Section 468 I.P.C, rigorous imprisonment for one



year for the offence under Section 471 of the I.P.C. Further the convicts Kapildeo Narain Prasad Sinha, Vishwanath Ganguli, Shashinath Jha and Deep Narain Mandal were sentenced to undergo rigorous imprisonment for a period of one year under Section 13(10(d) of the P.C Act. Further the convict Anil Kumar Rai was sentenced to undergo rigorous imprisonment for six months under Section 12 of the P.C. Act. All the sentences were directed to run concurrently.

3. The case of the prosecution is that an enquiry was conducted by the Crime Investigation Department and it was found that the estimate was prepared in the year 1986 for capital maintenance of Unit No. II of Koshi Hydal Power Station, Birpur, Saharsa under the supervision of Larson & Turbo Company, Calcutta. This estimate was prepared by the engineers of Larson & Turbo after physical verification of Unit No-II at Birpur. At that time, the Engineers of Bihar State Electricity Board were also present. This estimate



was prepared for Rs. 5,75,795/-, but the file relating to the said estimate could not return from Head Office, B.S.E.B, Vidyut Bhawan, Patna to Birpur and then in November, 1988, on the same basis, another estimate was prepared for Rs. 6,36,852/-. There was difference of time of one year and eleven months in between the first and second estimate and during that period there was price rise and due to which the amount of second estimate was raised. The estimates were prepared by the local Executive Engineer, Assistant Engineer and Junior Engineer. The second estimate was sent to Chief Engineer, Hydal and Investigation Sri. S.B. Ram for its acceptance, who sent it to the then Project Manager, Jal Vidyut Pratishtan, Sikidri K.P. Sinha and Executive Engineer (Civil) Ranchi V.N. Ganguli. These two persons arbitrarily enhanced the estimate to Rs. 8,93,330/- without obtaining price list of the articles. In enhancement of the estimate cost, the role was played by S.P. Ram, K.P. Sinha, V.N. Ganguli and D.N. Mandal,



the then Executive Engineers, Koshi Hydal Power Station. It is further alleged that Phulanand Jha, the then Electrical Execution Engineer who is now dead was also one of the associates in enhancement of rate of estimate. D.N. Mandal was camping in Ranchi from Birpur only for this work. The second estimate of Rs. 6,36,852/- was also prepared by him and again a third estimate of Rs. 8,93,330/- was prepared in connivance of D.N. Mandal and other officials. In the file relating to the estimate which was sent to Chief Engineer Ranchi for its acceptance, it was specifically provided that the basis of estimate is Larson & Turbo but the accused persons did not obtain any rate of articles from Larson & Turbo and arbitrarily they enhanced the estimates. It is further alleged that the materials required for capital maintenance of the second unit was purchased from the market without giving any advertisement or without obtaining any quotation, and as such, the accused persons arbitrarily enhanced the amount of third



estimate. The accused persons even did not contact the Larson & Turbo company at the time of preparation of estimate. After that the work was got done by M/s Gaurav Constructions, Birpur on the basis of third estimate and its payment was made by Chief Engineer, Hydal and Investigation, Ranchi. M/s Gaurav Constructions & Company is not authorized for the work, rather it works as middleman and in fact the work was got done by technically expert firm in Ranchi.

4. On the basis of this report, Vigilance P.S. Case No. 7 of 1998 was registered under Sections 120(B), 420, 468, 467, 471 of the Indian Penal Code, Section 5(2) r/w 5(1)(d) of the P.C Act, 1947, corresponding to Section 13(2) r/w 13(1)(d) of the P.C. Act, 1988.

5. After completion of the investigation, charge sheet was submitted against altogether six accused persons above named under the aforesaid sections and thereafter cognizance was taken and the accused



persons were put on trial.

6. P.W. 5 Upendra Kumar (informant) has deposed in his evidence that the case relates to the capital maintenance of Unit No. II of Koshi Hydal Power Station, Birpur for which in the year 1986, estimate was prepared by Larson @ Tubro Company. At that time, the Engineers of B.S.E.B were also present. The first estimate was for Rs.5,75,975, but the file relating to the said estimate could not return from Head Office, Patna and then again on the same basis, another estimate of Rs.6,36,852/- was prepared. The time gap in between the first and second estimate was one year and eleven month and due to rise of price, the amount of estimate was enhanced. The second estimate was prepared by local Executive Engineer, Assistant Engineer and Junior Engineers and it was sent to Sri S.B.Ram, the then Chief Engineer for its technical acceptance, who sent the same to the then Project Manager K.P.Sinha and appellant B.N. Ganguli,



Executive Engineer (Civil) who arbitrarily enhanced the amount of estimate to the tune of Rs.8,93,330/. He has further stated that Sri S.B. Ram, K.P. Sinha, B.N. Ganguli (appellant), D.N. Mandal (appellant), the then Executive Engineers were involved. In this episode one Phulanand Jha, Electrical Executive Engineer was also involved, but now he is dead. It is further stated that the appellant D.N. Mandal was camping in Ranchi from Birpur and the estimate of Rs.6,36,852/- was prepared by him. He has further stated that third estimate was prepared in connivance with all the accused persons. No tender or quotation was invited prior to the preparation of the estimate nor any query was made from Larson @ Tubro regarding the price of the articles, whereas in 1989, the price list was given by Larson @ Tubro and on the basis of that, a comparative chart was prepared and in this way, the B.S.E.B was put in loss of Rs. 2,56,478/- due corrupt practice of the accused persons. He has further



stated that on the basis of third estimate, the work was got done by M/s Gaurav Construction which is not an authorized company rather works as middleman and in fact the work was done by a firm in Ranchi. He has further proved formal F.I.R of this case (Exhibit-3)

7. P.W. 2 Ramashish Ram was posted as Assistant Engineer at the relevant time had deposed that the file relating to maintenance of Unit No.II was prepared by appellant D.N.Mandal and at that time, Nawal Kishore Prasad Singh, Electrical Executive Engineer had given him the said file for his note. P.W.2 mentioned in his note that the rate was fixed with the help of Engineers of Larson & Tubro and the file was prepared on 10 percent more rate. After giving his note, the file was sent through proper channel to Ranchi for sanction of the estimate and the estimate was sanctioned and tender was invited. The tender was given to Gaurav Construction whose proprietor is appellant Anil Kumar Rai. He has further stated that he heard that the



repairing works of parts of Unit No-II was done in Ranchi and it was done more than the estimate.

8. P.W. 3 Devendra Kumar Srivastav, Steno at the relevant has stated in his evidence that turbine of Unit No-II was sent to Ranchi for it repairing

9. P.W.4 Prahalad Prasad who was working as skilled labourer in Hydal Station has stated in his evidence that he and his team opened the machine of Unit No-II and defect in running plate was detected which was sent to Ranchi for its repairing by appellant D.N. Mandal.

10. P.W.7 Yogendra Paswan who was Accounts Officer at the relevant period in the Office of General Manager-cum-Chief Engineer, B.S.E.B, Rancht has stated in his evidence that the Vigilance Department demanded some papers relating to this case from his office namely photo copy of Cheque and Measurement Book. He searched the papers, prepared the list and handed over the same to the Vigilance Officials. He has



identified his signature on the list.

11. P.W.9 Avinash Yadav Rao Dixit who was posted as Section Head in Larson @ Tubro Company, Calcutta has stated in his evidence that Sant Kumar Sharma, the Investigating Officer (P.W.6) had sent a registered Letter No.216 dated 1.10.99 to Larson @ Tubro company. He has proved carbon copy of said letter marked as Ext-4/29. Further he replied the said letter on 23.10.99 on behalf of Larson @ Tubro to Sant Kumar Sharma (P.W 6) He has proved the said letter already marked as Ext-4/7.

12. P.W.6 Sant Kumar Sharma and P.W.8 Amrendra Kumar Prasad are the Investigating Officers of this case.

13. P.W.8 Amrendra Prasad Kumar has stated in his evidence that he took charge of the case for investigation and obtained relevant papers relating to the case. He perused the papers and came to know that this case relates to capital maintenance of Unit No-II of



Birpur Hydal Station. The estimates were prepared with the help of Larons @ Tubro, Calcutta and thereafter second and third estimates were also prepared by the local engineers. There was major difference in between the second and third estimates. During the course of investigation, he recorded the statement of witnesses. He visited the place of occurrence. He came to know during the course of investigation that M/s. Garuav Construction is an inferior firm owned by appellant Anil Kumar Rai who has no any workshop. During the course of investigation, from the perusal of the papers, he came to know that the accused Kapildeo Narain Sinha also checked the estimates. He further came to know that the first estimate was prepared with the help of Larson @ Tubro for Rs.5,75,795/- which was raised to Rs.8,93,330/- which was prepared by the appellant D.N. Mandal, Assistant Engineer, General Manager, S.B. Ram and other accused persons. He has proved the inquiry report which is in 15 pages which bears the signature of



appellant D.B. Mandal and the then Executive Engineer marked (Ext-8). He has obtained the price list dated 01.06.1988 and April, 1989 from Larson @ Tubro marked as Ext-9. He has also obtained technical sanction letter dated 03.05.1989 by S.B.Ram marked as Ext-10. He prepared production-cum-seizure list dated 15.09.1998 which bears his handwriting. He has proved the Inquiry Reports of Upendra Kumar Dy. S.P dated 18.11.1996, 14.06.1996, 15.12.1995, 29.04.1995 and 10.04.1995 (marked as Ext-13 to 13/4). In the mean time he handed over the charge of investigation of this case to Sant Kumar Sharma (P.W.6) as per order of the Senior Officers on 17.06.1999.

14. P.W. 6 Sant Kumar Sharma is another Investigating Officer of the case who took over the charge of investigation from first Investigating Officer, Amrendra Kumar Prasad (P.W.8). He has stated in his evidence that during the course of investigation, he came to know that Larson @ Tubro company is



worldwide reputed company and work was to be done by the said company, but the work was got done by Guru Ram Das Engineering, Ranchi which is quite inferior to Larson @ Tubro. The metals were not used as per estimate rather inferior quality was used, but payment was made at the higher quality with the connivance of accused persons to Gaurav Construction which caused loss of Rs. 2, 56,446/- to the B.S.E.B. He has proved the Sanction order for prosecution of accused Shashi Bhushan Ram, Kapildeo Prasad Sinha, Deep Narain Mandal (appellant) and B.N.Ganguli (appellant) which bears the signature of Joint Secretary namely S. Atiquellah(Ext-1/1 to 1/4). During course of investigation, he recorded the statements of the witnesses and after concluding the investigation, he submitted charge sheet against the accused persons.

15. P.W.1 S. Atiquellah has proved Sanction for prosecution of accused S.N. Jha (Ext-1).

16. Learned counsel appearing on behalf of the



Vigilance has submitted that three estimates were prepared for capital maintenance of Unit No-II of Koshi Hydal Power Station, Birpur. The difference of amount in first and second estimates was due to time gape of one year and eleven months and price rise during that period. The first and second estimates are not under allegation in this case because it were prepared under the assistance of Larson @ Tubro company. However, the third estimate was prepared by the accused persons in connivance with each other without consultation of Larson @ Tubro Company, whereas it was specifically provided that estimate was to be prepared with the assistance of Larson @ Tubro and price fixed by it. The Investigating Officer Sant Kumar Sharma (P.W. 6) has also stated in his evidence in para-5 that during the course of investigation, he came to know that the estimate was to be prepared with the assistance of Larson @ Tubro and the work was to be done by it, but in spite of that the accused persons did not follow the



mandate without assigning any reason in this regard and arbitrarily prepared the third estimate enhancing the cost. Learned counsel appearing for the Vigilance has further submitted that the work was to be done by Larson @ Tubro company, but in spite of that the accused persons did not prefer to get the work done by Larson @ Tubro without assigning any reason in this regard and they arbitrarily got the work done by Gaurav Construction company. From the materials available on record, it is apparent that the accused persons prepared third estimate enhancing the amount of second estimate arbitrarily without any valid reason in connivance with each others and for their own benefit which caused loss of Rs, 2,56,478/- to the Bihar State Electricity Board.

17. Learned counsel appearing on behalf of the appellants have submitted that prosecution was required to prove with cogent evidence of material but the entire case is based upon surmises and conjecture. With a view to prove the prosecution case, the prosecution has



examined P.W.s 2, 3, 4 and 7 to prove the prosecution case but none of them have given any information before the learned Court to prove the prosecution story. P.W. 2 who was Assistant Executive Engineer in para 6 of his deposition has stated that he did not find anything wrong in the work done. Further in para 4 of his deposition he has stated that he heard that the repairing works of parts of Unit No-II was done in Ranchi and it was done more than the estimate. Hence, the evidence of this witness is worthless and is helpless for the prosecution. The P.W. 3 Devendra Prasad Srivastava in his deposition has also stated that he is having no knowledge of any technical wrong nor he is aware of estimate nor he knows anything. Hence, the evidence of this witness is also worthless. Similarly P.W. 4 Prahalad Prasad in para-5 of his deposition has stated that machine was brought from the Ranchi and it is still in running condition. Hence, the contention of the Investigating Officer (P.W. 6) that the work was of sub-



standard stands falsify by the evidence of P.W. 4. Learned counsel for the appellants further contended that the evidence of P.W. 7 is also not worth consideration since this witness was Accounts Clerk in the year 2000 and this witness in para 4 and 5 of his deposition has made categorical statement that in the year 1990-91, he was not in the services of the Bihar State Electricity Board. He also said that he is not aware of payment nor he has seen the measurement book nor he is aware of it. This witness has stated that only after following all the process, payment was done. This witness was also not aware about any internal or external audit report against the work. The informant (P.W.5) in paragraphs 16, 17, 18 of his evidence did not disclose when the tender was issued, from where the tender was issued, when the agreement was executed, when the work order was issued. This witness in para 17 has deposed that he is not aware whether payment was done on the basis of estimate or on the



basis of expense on the work done. In para 18 of his evidence this witness could not say the name of Engineer in-charge and he had said that he has not seen the measurement book. He has also not named any person as to who has recommended for payment and who has made payment. In para 20 this witness did not say as to whether S.B. Ram, B.N. Ganguli and K.P. Sinha did payment or not. In his entire deposition, this witness could not withstand the scrutiny of cross examination and his entire evidence *prima facie* shows that he in fact did not make any investigation nor he is in basic knowledge of facts. Therefore, this witness (P.W. 5) cannot be considered since he is unreliable witness and does not support the prosecution case at all. The another Investigating Officer of this case namely Sant Kumar Sharma (P.W. 6) has also failed to withstand the scrutiny of cross-examination. This witness in paragraphs 43 and 44 has said that he did not examine the machine. He did not go to Birpur for



inquiry since he is not technical expert. In para 44, he has said that in the charge-sheet, he has shown that sub-standard work has been done which is based on his inquiry. He has further deposed that he has not seen the machine nor remember as to whether there was any agreement for work to be done by Larson & Tubro. In paragraph 45, this witness has stated that the bill was prepared by Junior Engineer, checked by S.D.O and payment was made by the Executive Engineer. In para 49, this witness has stated that in the course of investigation, he had not gone to Birpur. The machine which was prepared was in Birpur Hydal. He did not take the statement of the officers working there. He did not take statement of any Engineer who had prepared the estimate. He also did not say anything about 1st and 2nd estimate. He was also not aware about the 3rd estimate with regard to the date and preparation. This fact itself shows that the prosecution itself is not sure with regard to violation of any rule. The entire



deposition of this witness is in fact contrary to record and this witness is not trustworthy. Learned counsel further submitted that P.W. 8 in paragraph 16 of his evidence has stated that the estimate of 3rd tender is Rs. 7,71,364/- which itself shows that P.W 5 and P.W 6 had never gone into record nor did they had seen the 3rd estimate since P.W. 6 and P.W. 5 have denied that the 3rd estimate was of Rs. 7,71,364/-. P.W. 8 in para 16 has further said that as per letter of the Chairman, there was no requirement of experience for tender. He has further said that appellant B.N. Ganguli was having no role in preparation of 3rd estimate. P.W. 8 has further stated in para 16 that the Vigilance department had sought his conclusion on certain points from Chief Engineer (production) who had replied that there was no defect against the accused persons. He had also informed that 20 percent increase in two years period is not wrong. He had also informed that if the work is done in good manner then expense increases which is



not much. He has also denied any irregularity in price increase in estimate. This witness in para 18 of his evidence has stated that due to work, the Bihar State Electricity Board has received Rs. 8,15,40,000/- as revenue. The machine was still running which itself shows that the quality of work was very good and in fact the Bihar State Electricity Board benefited. Thus, the prosecution could not produce any evidence to substantiate the charges for constituting the offence under Section 420, 468, 471, 120(B) of the Indian Penal Code nor there is any ingredient to satisfy the offence under the P.C Act. No technical person has been examined in this case to substantiate any charge against the accused persons to prove the case of the prosecution, rather the evidence of P.W. 8 which is based upon investigation with the help of technical experts and his last progress report shows that there was no irregularity and the informant could not understand the difference between metal and metalizing



factor leading to the prosecution case. The prosecution has also not produced the estimate nor the measurement book, nor the payment bill etc. Hence, the prosecution has miserably failed to substantiate the charge and prove that the accused has played fraud, fabricated record/documents for their personal gain dishonestly and has received the amount for personal gain and as such they are fit to be acquitted.

18. From perusal of the records and on going through the evidences, it appears that the F.I.R was based on the following assertions (a) arbitrary enhancement to the tune of Rs. 2,56,478/- of estimate in connivance by the accused (b) basis of 1st and 2nd estimate was Larson & Tubro, yet the accused neither obtained articles from the Larson & Tubro and arbitrarily enhanced the amount in 3rd estimate (c) materials were purchased from market without tender or seeking quotation of rates (d) accused persons did not contact Larson & Tubro personnel at the time of



preparing and affirming the 3rd estimate (e) work was done by M/s Kumar Gaurav Construction, Birpur which is not authorized for the work, rather it works as a middleman and in fact, it was done by Technical Expert firm in Ranchi.

19. In the Enquiry report prepared by the informant Upendra Kumar (P.W. 5), it has come that the tender was duly invited through advertisement in newspaper. Three tenderers had participated, one did not deposit the security money and out of two others, second tenderer M/s Kumar Gaurav Construction was lowest bidder. Hence, work was allotted to M/s Kumar Gaurav Construction(Ext-13/4). During the course of investigation, the 1st Investigating Officer, Amrendra Kumar Prasad (P.W. 8) has also revealed in the final report that for the Capital Maintenance and Reclamation, tender was duly published in the newspaper by the office of the General Manager-cum-CEF (H & I) in which three tenderers had participated



and M/s Kumar Gaurav Construction was allotted the work order on account of being the lowest bidder. P.W. 8 in para 2 has stated that the turbine was inspected by him and he found that amount of 24 blades which were required for Capital Maintenance and Reclamation work for which tender was published and work was allotted to M/s Kumar Gaurav Construction. However the informant Upendra Kumar (P.W. 5) in para 16 has stated that he does not know whether the tender was published or not as also the 2nd Investigating Officer Sant Kumar Sharma (P.W. 6) also stated that he does not know whether after estimate, tender was published or not.

20. The 2nd estimate of Rs. 6,36,852/- was prepared in the year 1988 (24.11.1988), after 1st estimate was neither approved or returned by the Board and to provide price rise during the period of 1 year 11 months. The 3rd estimate was prepared for Rs. 7,71,634/- and it was sanctioned on 29.03.1989 but



since amount of cost of item no. 3 was inadvertently left out earlier [Ext-Y/I(page-4)], it was added in the estimate and tender was opened on the revised estimate of Rs. 7,71,364/- as gets reflected from paragraph nos. 2, 4 and 20 of the deposition of P.W. 8. The work order was issued on 25.09.1989 from the office of B.N. Ganguli, the Executive Engineer (Civil) and agreement thereof was made between contractor M/s Kumar Gaurav Construction and Electrical Executive Engineer, Koshi Hydal Power Station Division, Birpur, Saharsa on 26.10.1989. During the course of reclamation work of Main Blade Upper Sleeve, it was found that the blades were damaged up to 12.5 inches but tender was published for the damage work up to 9 inches, hence, for the additional work of 3.5 inches, an agreement was executed between the contractor and the Executive Engineer of Koshi Hydal Power Station on 11.09.1990 and an amount of Rs. 1,22,126/- was added and revised estimate of Rs. 8,93,330/- was



prepared on 24.11.1989.

21. The 1st Investigating Officer Amrendra Kumar Prasad (P.W. 8) in para 16 has deposed that the fourth estimate was revision of the 3rd estimate as reclamation work was enhanced from 9 inches to 12.5 inches and additional amount of Rs. 1,22,126/- was added. In para 25, he has deposed that no cutting except on the cost which was corrected. Item No. 5 was left in the estimate and therefore, the 3rd estimate was revised.

22. The 2nd Investigating Officer Sant Kumar Sharma (P.W. 6) in para 49 and 50 has deposed that during the course of investigation, he did not visit the place of occurrence, Birpur nor recorded the statement of persons posted there. He did not remember when, where and by whom the estimate was prepared. He also did not remember that what was the difference between both estimate regarding items/articles.

23. In the Final Progress Report (Y/I) which was



submitted by the 1st Investigating Officer (P.W. 8), at page-7, this witness has mentioned that the price has been calculated on the basis of material deposit on the component and not on the weight of electrodes. Thus, it cannot be compared the price of the electrodes with the cost of material deposited.

24. P.W. 6 in para 43 has deposed that he did not investigate the point no. 7 which deals with welding length of 10 mm since instrument were not present and in para 24 he has deposed that he did not have the technical knowledge.

25. P.W. 8 in para 18 had deposed that there was no violation of any terms and conditions by the Contractor and work has been executed by him under the supervision of Larson & Tubro officials. In the terms and conditions, it was mentioned that the contractor may execute the work outside the plant on his own cost. The contractor had done the work at Ranchi which was not unauthorized.



26. The informant (P.W. 5) in para 11 has deposed that he did not remember on whose complaint the inquiry was initiated and when it was completed. The record is not available in his presence. In para 13-15 he deposed that does not know whether the complaint was lodged in the year 1990 before the Vigilance Department. In para 17 he admits that there are several circumstances and reasons for revision of the estimate. In para 22 he has deposed that machine is still running. In para 24 he has stated that he not a technical expert and in conducting enquiry he did not take help of any technical expert.

27. P.W. 6, Sant Kumar Sharma (I.O.) has also admitted in para 41 that he is not the technical expert. In para 44, he has stated that he did not remember that the machine was Japanese machine and had to be repaired after 20,000 hours. This witness further deposed that he did not remember that the machine has been running for 43,000 hours (para 44). He deposed



in para 48 that he did not know about metals and metalizing factor. He did not know that the tender was published after preparation of estimate. In para 49, this witness has deposed that during the course of investigation, he did not visit Birpur nor statement of any of the employees was taken. He further deposed in para 50 that he did not remember whether there was any difference in items in both the estimates or not. He also deposed in para 52 that he did not go to Ranchi to verify if the work was done by Gururam Das Company since he was not a technical expert. He did not investigate the work done by Gururam Das Company. In para 53 he has deposed that he did not get expert opinion on the variation of the 1st and 2nd estimate. In para 56 he has deposed that he did not remember which provision was not followed.

28. P.W. 8 Amrendra Kumar Prasad(1st I.O) after investigation submitted final report (Y/1). This witness in his deposition has stated that the unit is running



since 02.06.1993 which was also supported by P.W. 2 in para 4. In paragraph 16, this witness (P.W. 8) has deposed that the 4th estimate was revised estimate of 3rd estimate as reclamation of additional work of 3 ½ inches was added and cost of the additional work of Rs. 1,22,126/- which was added in the 4th estimate. The witness has further deposed that after 3 years, enhancement of 20 percent is not improper and for better work, the cost usually increased. At para 17 and 20, this witness had categorically stated that price list of L & T is prescribed only for L & T godown but articles, service of L & T Engineer, if taken, then cost will be counted as material deposit. At para 18, this witness has deposed that the unit has generated revenue of Rs. 8,15,40,000/- and the unit is running. There is a need for Capital Maintenance after 20,000 hours. No terms and conditions of contract have been violated. There was no provision for the contractor to get the work executed outside on his own cost. The



work done by the contractor at Ranchi was not wrong. At para 20 and 21, this witness has deposed that some item was left in the estimate which was included.

29. No technical person has been examined in this case to substantiate any charge against the accused persons to prove the case of the prosecution, rather the evidence of P.W. 8 which is based upon investigation with the help of technical experts and his last progress report shows that there was no irregularity and the informant could not understand the difference between metal and metalizing factor leading to the prosecution case. The prosecution has also not produced the estimate nor the measurement book, nor the payment bill etc.

30. The learned Trial Court has not considered the deposition of P.W. 8, the I.O as is manifest from his deposition, has not been declared hostile much less cross-examined by the prosecution and the information of opinion from the evidences of P.Ws. 5, 6 and 8 has



been completely ignored and in cryptic manner, ignoring material evidence of prosecution itself which binds the prosecution merely on the basis of the enhancement of the amount from Rs. 6,36,852 to Rs. 8,93,330, the appellants have been convicted under Sections. 120(B), 420, 467, 468, 471 of the Indian Penal Code for a period of one year and under Sections 13(1)(d) of the Prevention of Corruption Act for one year.

31. Hence, the prosecution has not been able to prove that the estimate prepared was wrong or the items used in the estimate were unnecessary or unwanted. The prosecution has also failed to prove that the cost of material deposit in the place of price of electrode was wrong or the work of reclamation was not done as per the contract given to M/s Kumar Gaurav Construction or inferior work was done. The prosecution has also failed to prove that inferior quality was used or any terms and conditions of the contract was violated or the additional work which later on carried out was



unnecessary.

32. This Court finds much force in the submissions made on behalf of the appellants and the submissions made on behalf of the Vigilance is devoid of any merits.

33. In that view of the matter, judgment of conviction and order of sentence dated 07.02.2012 passed by learned Special Judge, Vigilance-II, Patna in connection with Special Case No. 7 of 1998, arising out of Vigilance P.S. Case No. 7/1998 is set aside.

34. The appellants are acquitted of all the charges.

35. It is relevant to mention here that appellant Kapil Deo Prasad Sinha @ Kapil Deo Narain Prasad Sinha (Cr. Appeal (SJ) No. 149/2012) and appellant Shachi Nath Jha @ Shashi Nath Jha (Cr. Appeal (SJ) No. 156/2012) have died during the pendency of the appeal and their wives have been substituted in their place.



36. The appellants, except appellant Kapil Deo Prasad Sinha @ Kapil Deo Narain Prasad Sinha (Cr. Appeal (SJ) No. 149/2012) and appellant Shachi Nath Jha @ Shashi Nath Jha (Cr. Appeal (SJ) No. 156/2012) are all along on bail. They are discharged from the liabilities of their bail bonds.

37. Accordingly, the appeals stand allowed.

(Sunil Kumar Panwar, J)

Shageer/-

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