
(2010) 07 PAT CK 0057

In the Patna High Court

Babban Das @ Baban Das and Others, Mahangu Mansuri, APPELLANT
Dharam Deo Rai and Sirajuddin Ansari @ Sarajuddin Ansari

Vs

The State of Bihar
 Munilal Mochi Vs The State of Bihar RESPONDENT
and The Additional Director General of Police cum Additional
Secretary, vigilance Department

Date of Decision : 28-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2), 389(1), 394
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 468
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (2011) 59 BLJR 82

Hon'ble Judges : Kishore Kumar Mandal, J

Bench : Single Bench

Judgement

Kishore Kumar Mandal, J.—These batch of five appeals arise out of and are directed against the judgment and order of conviction dated 19.07.2004, passed by the learned Special Judge, Vigilance, Patna, in Special case No. 87 of 1983. They have thus been clubbed together, heard and are being disposed of by the present order. Each of the appeal has been filed by one appellant and as such for the sake of clarity appellants of each appeal shall hereinafter referred to as A/1, A/2, A/3, A/4 and A/5 respectively.

2. P.W.4 Hemraj Prasad, on receiving a complaint in respect of serious illegalities and irregularities having been committed by the officers and executing agents of different schemes executed under National Rural Employment Programme (in short " NREP") carried out within Piro block in the District of Bhojpur, lodged an F.I.R. being Vigilance P.S. Case No. 18 of 1983, under Sections 409, 420, 120B 467, 468, 471, 477A of the Penal Code and Section 5(2) read with Section 5(1)(c) (d) of the Prevention of Corruption Act, 1947. A/1 to A/3 were held guilty of having committed offence(s) under Sections 409, 420, 120B 467, 468, 471, 477A of the Penal Code and Section 5(2) read with Section 5(1) (C)(d) of the P.C. Act. Similarly A/4 and A/5 were found guilty and convicted under Sections

120B and 420 of the Penal Code. The maximum punishment awarded to appellant A/1, A/2, A/3 is to undergo R.I. for two and half years and to pay a fine of Rs. 15000/- (Fifteen thousand) each having default clause(s). Similarly A/4 to A/5 were awarded maximum punishment under Sections 420/120B of the Penal Code and sentenced to undergo R.I. for 02 years on each count and to pay fine of Rs. 5000/- with default clause.

3. Several schemes of NREP allegedly executed between the years 1982-83 by the officers posted at Piro with the assistance of some executing agents/agencies came under the scan of the Vigilance Department. Enquires, including re-measurement of the schemes/works executed under these schemes revealed that local officers posted in the Block in connivance with agents appointed for few schemes fraudulently withdrew and misappropriated the Government funds in relation to those schemes and created official records/documents to cover up such defalcation. The appellants are, therefore, in two categories. A/1 to A/4 are Government employees, who were during the relevant period posted as J.E. R.E.O., Assistant Engineer NREP Ara, B.D.O. Piro and Jansevak posted in the said Block respectively. A/5 was an agent, who was assigned to execute scheme Nos. 21-1982-83 & 22-1982-83. A chart laid out herein below would show the details of fund allegedly misappropriated under different schemes of NREP in the said block:

Sl No.	Nature of Jobs	Est./Revised	Records prepared	Verification Amount	Amount and payment made found defalcated
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4/81-82	Culvert bridge	8543.00	4591.00	1300.00	3291/-
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21/82-83	Repair of Keshwa	14000.00	15294.00	2124.00	27996.00 kachcha Raod
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22/82-83		13557.00	16176.00		
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5/82-83	Digging of	34,833.00	10,881.00	2907.00	7974.00 Telhar pond 16 q.17Kgs.
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26/82-83	Repairing of	49504.00	20,188.00	3982.00	16,206.00 Chilbilia Ahar 29q.91Kg.
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27/82-83	Reparing of	37774.00	12764.25	2694.50	10069.75 Sukhraulia Ahar paise paise
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30/82-83	Repair work part-2	30,266.00	6075.00	807.50paise	6749/- (Sukhraulia Ahar)
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Executing agent(s) of scheme Nos. 21 and 22 of 1982-83 was A/5. Scheme No. 4 of 1981-82 and 26/30 of 1982-83 were got executed by other accuseds not facing the present trial. In respect of all the aforesaid schemes (refer chart) initial measurement of the works allegedly executed thereunder was/were entered in the measurement book(s) by the junior engineer NREP Piro and approved by A/2. Payments made to different agents/ government employees under the scheme(s) was/were approved by A/3, who was functioning as the

Block Development Officer, Piro. Be it noted here that there is further allegation that A/1 himself withdrew payment claimed by the work agent of the said scheme under third and final bill. P.W.11 Sharda Nand Singh made investigation of the case, seized all relevant documents/work records and upon conclusion of the same submitted charge sheet against the present appellants and few others. Learned Magistrate took cognizance of the case. It may be pointed out here that some of the accuseds died during pendency of the investigation/trial. Two of the accused, namely, Arjun Singh and Rajendra Sah facing the trial left appearing at the trial resultantly they have been declared absconder(s) and the trial was separated. Charges, as noted above, were framed and explained to them. Appellants pleaded not guilty. They claimed their false implication under political pressure. According to them, the works executed under the different schemes of NREP were executed as per the scheme(s) and measurements were properly taken and entered in the measurement books (MB's). Subsequently the verification report(s) were manufactured in order to implicate them. At the trial, the prosecution examined as many as 13 witnesses, besides exhibiting a host of documents as also the material exhibits to bring whom the charge(s).

4. PW-1 Bishwanath Prasad has proved Exhibit-1 (Sanction order) in respect of A/2.

5. PW-2 Ram Nath Prasad proved Exhibit 1/1, which is sanction order in respect of A/3.

6. PW-3 Bhuneshwar Singh, during the relevant time, was posted as Block Employment and Social Security officer in Piro Block. He was involved in verification of some of the schemes carried out by the Assistant Engineer (PW-5) posted in the Vigilance Department. In his presence in the month of July 1983, repair work of Keshwa Kachcha road (divided in two schemes), construction of Pharaura culvert were measured and verified by P.W.5 Purnanand Mishra, Assistant Engineer who carried out the measurement. He is on record deposing that in his presence measurement sheet was prepared and he signed the same. He has further deposed that besides those measurements he was also present while measurements of other schemes were being carried out.

7. PW-4 is informant and the Dy. S.P. of Vigilance. He has proved Exhibit-2 (written report) and F.I.R. (Exhibit-3).

8. P.W.5 Purnanand Mishra is the Assistant Engineer posted in Vigilance Department. He got measured and verified the schemes. According to him, verification of works and re-measurement was made by him in respect of 03 schemes in presence of PW's 3 and 4. Such re-measurement was carried out by him in respect of scheme Nos. 04 of 1981-82, 21 of 1982-83, 22 of 1982-83. This witness has proved the signature of Babban Das (A/1) on the measurement books as Exhibits 4 to 4/2, on the M.B. No. 7/82-83, M.B. No. 12 and M.B. No. 13 respectively. He has also proved the entire M.Bs. as Exhibits 5 to 5/2. The verification measurement chart of Keshwa road has been proved by him as

Exhibit-7. Verification measurement chart of Pharaura culvert has been duly proved as Exhibit 7/1. Similarly another verification report has been proved by him as Exhibit 7/2 which is in respect of one of the schemes in question. His deposition would reveal elaborately how the payments were made after showing measurement in the M.Bs in order to cover up the misappropriation of Government fund(s). His deposition further reveals the manner in which one work was bifurcated into two schemes bearing Nos. 21/82-83 and 22/82-83 and A/5 (Sirajuddin Ansari) was appointed agent. It is seen from his evidence that payments in those schemes against 3rd and final bill were received by Babban Das (A/1). What was actually found on verification in respect of the schemes allegedly executed under the NREP scheme can be seen from his deposition, and the verification reports Exhibit-7, 7/1 and 7/2. Bungling in execution of those schemes were found writ large. Collusion and conspiracy of all the accused persons in swindling government money by entering forged, fake and fictitious measurement(s) in MBs are explicit from bare reading of his deposition.

9. P.W.6 Radha Mohan Shrivastava proved sanction order in respect of A/4 (VLW).

10. P.W.7 Shailendra Kumar Singh, Nazir was posted during the relevant time in Zila Parishad and in whose presence measurement/re-measurement of few schemes allegedly executed under the NREP programme was made. He has stated in his deposition that he used to verify the bills and thus was aware of the writings of A/2 (Mahangu Mansoori), the Assistant Engineer. He has proved the endorsement and signatures of A/2 on the proceeding Books of Keshwa Kachcha road part -1 as Exhibit-4. Writings and signatures dated 8-4-83 as (Exhibit 4/1) and his signature on the report (Exhibit 4/2). He has also proved the signature of A/2 as Exhibit 4/3 to 4/5 on the proceeding book of Keshwa Kachcha road part-2.

11. P.W.8 Basudeo Rai was posted as S.D.O. Ara. He carried out measurement of works under orders of the District Magistrate. He has deposed that under orders of the District Magistrate, Bhojpur the works executed under NREP schemes in Piro Block was/were verified and measured at the spot in presence of Laxmi Kant Dubey Deputy Collector, Nazarat, Ara (PW-9). Shiv Pujan Singh Junior Engineer measured the works of scheme Nos. 25 of 1982-83 and 27 of 1982-83. While verifying and re-measuring the works, Block Development Officer (A/3) and the local M.L.A. were also present. Agent of those schemes, namely, A/4(Dharmdeo Rai) was also present. He is on record stating that the verification report was handed over to the Investigating Officer of the vigilance. According to him, some of the appellants and the agent(s) were present at the time of measurement when it was found that there was huge difference between the actual work carried out and projection(s) made in the corresponding MBs and the amount/fund withdrawn by the appellants. He has proved measurement book No. 19, which relate to scheme No. 25 of 1982-83 (Exhibit-5) and also measurement book No. 17 relating to scheme No. 27 of 1982-83 (Exhibit 5/1). Certificates granted by A/3 Munilal Mochi regarding page number of measurement book is Exhibit-6. This witness has stated that in both the aforesaid schemes excessive

payments were made than the actual work done and for that accused persons were solely responsible.

12. P.W.9 Laxmi kant Dubey was posted as Nazarat Deputy Collector at Ara. In his presence verification and re-measurement of works executed under scheme Nos. 25 and 27 of 1982-83 were made by a junior Engineer on which he had signed. He has proved the carbon copy of the measurement sheet prepared by Shiv Pujan Singh relating to scheme No. 27 of 1982-83 relating to Sukhrauli Ahar. He has also proved carbon copy of the measurement sheet of scheme No. 25 of 1982-83 which is in respect of repair work of Telar pond as Exhibit 11/1. Exhibits 11 and 11/1 are the measurement reports prepared by Shiv Pujan Singh (now deceased). From his evidence it reveals that after showing imaginary and fictitious works in the measurement books excessive payments were received in collusion with and in conspiracy of the accused persons causing huge monetary loss to the exchequer of the State government after ignoring the instructions of the department.

13. P.W.10 Krishna Kumar Mishra is the Chief State Examiner- cum - Director Finger print Bureau Criminal Investigation Department, Patna. He examined the finger prints of muster-roll relating to schemes in question. He found that in scheme No. 27 of 1982-83 thumbs impression on muster-roll marked as A/1, A/2, A/3, A/4 and A/5 were same which have been marked as Exhibit 7 to 7/5. This witness has further deposed that Exhibit 7/5 to 7/7 are also the same. Exhibit 7/8 and 7/9 were the same, Exhibit 7/10 to 7/19 are also the same. Exhibit 7/20 to 7/22 are of the same person. Regarding scheme No. 30/82-83 thumbs impression marked B/1, B/2, B/3, B/4, B/9, B/10, B/13, B/14, B/15, B/16 and B/17 were the same. B/7 and B/8 were again the same. B/5, B/6 and B/11 were found to be the same. Photographs of L.T.I. of muster roll have been marked as Exhibit 7/26 to 7/43 in the case. Relating to scheme No. 25/82-83 thumbs impression of muster-roll marked C/1, C/2, C/3, C/4 and C/5 were found similar, thumbs impression appearing on C/6, C/7 and C/14 were again found to be similar. Similarly C/8 and C/9 were similar. Thumbs impression appearing on C/10, C/11 and C/13 were found similar. As regard scheme No. 26 of 1982-83, thumbs impression of muster-roll marked by this witness are D/1 to D/16, D/16A, D/17 and D/32 which were found similar. This witness has further deposed that thumbs impression of muster-roll of scheme No. 21 of 1982-83 marked E/2 and E/3 were similar. Thumb impressions marked as E/4, E/5, E/5A and E/6 were similar whereas E/1 and E/7 did not tally. F/12, F/15, F/21 and F/22 were thumbs impression on muster-roll relating to scheme No. 22 of 1982-83 which were found the same. Similarly F/11, F/14 were found similar. F/4, F/13, F/16 and F/23 were similar. F/7, F/8, F/18 and F/20 were similar. F/9 and F/10 were again found similar. His report is Exhibit-8. He has proved the enlarged photographs as Exhibit 7/44 to 7/57. He has also proved the enlarged photographs relating to scheme No. 26 of 1982-83 as Exhibit 7/58 to 7/90, regarding scheme No. 21 of 1982-83 as Exhibits 7/91 to 7/98. Exhibits 7/99 to 7/123 relate to scheme No. 22 of 1982-83. His deposition clearly demonstrates

that LTIs on muster roll were forged. Collusion and conspiracy of the appellants are reflected therefrom. His cross-examination in no way discredit him.

14. P.W.11 Sharda Nand Singh is the Investigating Officer of the case. His deposition revealed that charge(s) leveled against the appellants were found technical in nature and as such measurements were got done by Assistant Engineer Vigilance (P.W.5) in presence of other persons including some of the appellants. He seized all relevant documents concerning the schemes in question. He called for and seized official files relating to Keshwa Kachcha road (Material Exhibit-I). This witness along with PW-12 has proved different material Exhibits, details of which are as under:

Material Contents Exhibit No. (i) File relating to measurement of report (ii) File relating to measurement of scheme no.4 of 1981-82 (iii) File relating to measurement of scheme no.25 of 1982-83 (iv) Filed relating to measurement of scheme no. 26/1982-83 (v) Muster roll (vi) File containing order sheets and correspondence relating to measurement of scheme no. 27 of 1982-83 Part -1 (vii) Muster- roll of the scheme (viii) File containing order sheet correspondence of scheme No. 30 of 1982-83 (ix) Guard filed containing circular of the State Government (x) Guard file part-II (xi) File containing list of labourers of gram panchayat Tilari Dih and Sukhrauli (xii) List of labourers of Gram panchayat Telar (xiii) Muster roll relating to scheme no. 21 of 1982-83 part-1 (xiv) Muster roll relating to scheme no. 22 of 1982-83 part-2 (xv) Muster roll relating to scheme no. 25 of 1982-83 (xvi) to XVI/CXVI Negative photographs of L.T.I.s

This witness has also proved the writings of Shiv Pujan Singh (Since dead) appearing at page Nos. 17 to 35 of Exhibit-9, which related to the verification of work of Chilbilia Ahar. It is found from his evidence that in scheme Nos. 21 and 22 of 1982-83, estimated cost was Rs. 27,552/- whereas payment(s) were made for Rs. 30,120/-. Thus a sum of Rs. 2,568/- was paid more than the amount of estimate. During verification by the vigilance Department the Government work done was found valued at Rs. 2,124/- only. Thus, according to him excessive amount of Rs. 28,096/- was made and thus misappropriated by the accused persons under the said schemes and to cover up the alleged misappropriation official documents were forged and used. He has further deposed that in the same plot both the schemes (scheme Nos. 21 and 22 of 1982-83) were shown to have been executed but in course of verification no sign was found indicating execution of 02 schemes. He has further stated that A/3 (Block Development Officer) appointed accused Sirajuddin Ansari (A/5) as agent whereas there was no evidence that aforesaid Sirajuddin was head of the labourers/mate. A/5 showed the work done for Rs. 25,326 without taking any advance which again was inconceivable for a labour/mate. According to him, the B.D.O. (A/3), in order to create jurisdiction of approval and sanction, bifurcated one scheme/work in two schemes. This was done with a view to arrogate to himself power of administrative sanction and payment. B.D.O was empowered to sanction scheme/work estimated/re-estimated only up to Rs. 15,000/-. His evidence revealed that

work of Rs. 104/- was only left to be done in part 1 whereas in part-2 earth work of Rs. 66/- was only left to be executed/done. A/3 Block Development Officer removed the agent (A/5) and nominated A/1 (junior Engineer) as agent who had already measured the work allegedly executed by Sirajuddin Ansari (A/5). On the strength of measurement taken by A/1 payments were shown to have been made. It can further be seen from his evidence that without receiving muster-roll A/3 (B.D.O) made all the payments. From his evidence it is also found that the department by different notifications had clearly instructed that work under the NREP scheme was not to be executed/performed by employing any contractor/agent. It was to be executed/performed through departmental agency or through Gram Panchayat Executive. The B.D.O. (A/3) had, therefore, clearly acted in gross violation of the said circular of the Government in order to enure undue benefit to him as also other accuseds under him. Another aspect of the matter revealed from his deposition is that the appellant (B.D.O) sent the file to the Assistant Engineer who without going on the spot entered the 3rd measurement of Rs. 2,748/- and thereafter forging the record recommended for payment of more than 10% of the estimate and the B.D.O.(A/3) without making any query, passed the payment of the 3rd bill and A/1 Babban Das received the same. Paragraph No. 19 of his deposition further discloses how interpolation in the order-sheet dated 05.02.1983 relating to scheme Nos. 27 of 1982-83 and 30 of 1982-83 were made and excessive payments made in favour of A/1 Junior Engineer. It is further seen from his deposition that earlier Ishwar Dayal Singh was appointed agent who showed the work of Rs. 9,596/- and food grains worth 22 quintals 58 Kgs but after scoring of the same subsequently A/1 (Baban Das) Junior Engineer presented re-estimate of Rs. 37,774/- after enhancing the rate from Rs. 6/- per labour to Rs. 8.50/- . It is further found from his evidence that the S.D.O. Ara (P.W.8) got measured the work in presence of MLA and other accused/appellants by one Shiv Pujan Singh Junior Engineer and found the work done only worth Rs. 2,694.50 paise and thereby excess payment made to the tune of Rs. 12,764.25/- and 18 quintals 91 Kgs. wheat were distributed. He therefore directed for immediate deposit of the excess amount of the food grains within 2 days. His evidence thus delineate in detail how the accused persons/appellants in collusion and in conspiracy with each other cheated the Government and committed misappropriation of Government fund allotted for execution of different schemes under NREP. They forged and fabricated measurement books, scoring of order sheets and after such cutting/scoring enhancing and re-estimating the rate(s) and thus estimated value. Some work/scheme was bifurcated into 02 schemes only with a view to create jurisdiction. This witness has further stated that he sent the thumb impression of muster-roll to State Thumb Impression Examiner (PW10). Requisition is on record as Exhibit-10. He has also proved the muster roll of different schemes.

15. P.W.12 Ashok Kumar Thakur is the State Photo examiner who has proved the negatives (material exhibits XVI to XVI/CXVI). He prepared positives of those negatives and has proved the same as Exhibit 6/1 to 6/124.

16. Mr. Sarvadeo Singh representing A/4 in Cr. Appeal No. 609 of 2004, brings to the notice of this Court an application being I.A. No. 862 of 2010 filed on 7.07.2010 u/s 374(2) and 389(1) of the Code of Criminal Procedure, para 3 whereof reads as under:

3. That the present memo of appeal is pending before this Hon''ble Court for final hearing, however the appellant is on bail by this Hon''ble Court. During the pendency of this present appeal the appellant died on 2.2.2010 during treatment at Medical college, Lucknow in this regard a death certificate has been issued on 9.2.2010 by the Registrar Birth and Death Lucknow Nagar Nigam.

Such statement is made on the basis of a death certificate dated 09.02.2010, issued by Lucknow Nagar Nigam. The affidavit has been affirmed by the son of A/4. According to him the appeal has become infructuous and needs to be disposed of in terms of Section 394 of the Code.

17. Different sets of lawyers appeared on behalf of the appellants. Cr. Appeal Nos. 595 of 2004 and 576 of 2004, however, remained unrepresented and as such this Court took the assistance of amicus curiae.

Mr. T.N. Matin, learned senior counsel appearing in Cr. Appeal No. 600 of 2004 made the leading arguments. Other counsels have adopted the argument made by him. Learned Counsel has submitted that A/3 is not named in the F.I.R. He was serving as Block Development Officer during the relevant time. He made payment on the basis of measurement made by A/1 Baban Das (Junior Engineer) and A/2 Mahangu Mansoori. Referring to the evidence of P.W.8 (Sub Divisional Officer), it is submitted that he has plainly accepted in paragraph No. 12 of his deposition that when he was posted as Block Development officer, he used to make payment on the basis of such measurement made by the Assistant Engineer and Junior Engineer. It is next submitted that there is no evidence and or material on record to show that he conspired with other accused persons. It is his contention that admittedly the scheme was afoot and as such it cannot be inferred from the materials on record that there was any misappropriation of fund by forging records and thereby cheating the Government fund. Referring to deposition of P.W.5, it is submitted that the re-measurement was made during rainy season and after expiry of certain period. It is thus contended that these factors would result in difference of measurement. It thus cannot be said that work(s) was/were not executed as per records. The prosecution, therefore, cannot be said to have proved the case beyond shadow of all reasonable doubts. He also criticized evidence of PW-8 on the ground that he has clearly stated that he got measurements done by one Junior Engineer named Sheo Pujan Singh who has not been examined in the case. Its further contended that the appellant was confronted with vague questions during his statement taken u/s 313 of the Code of Criminal Procedure which has gravely prejudiced his case. He made submissions with reference to evidence of PWs 4,5,8,9, and 11. Mr. Jitendra Prasad Singh representing A/5 additionally submits that as per the prosecution case he is said to have connived and cheated in respect of scheme Nos. 21 of

1982-83 (cost of which estimated at Rs. 14,000/- and 22 of 1982-83 cost of which estimated at Rs. 13,552/-). It is a meager amount for which he has sufficiently been punished and as such a lenient view has to be taken in so far as the imposition of sentence is concerned.

18. Learned Counsel appearing on behalf of the Vigilance supported the impugned judgment. He submits that learned trial Court has elaborately dealt with the evidence both oral and documentary adduced by the prosecution and has come to a conclusion that the culpability of the appellants stand proved beyond shadow of all reasonable doubts. Appellants have not been able to demonstrate any inherent lacunae in such consideration of the evidence on record. The charge of criminal conspiracy stand proved from the evidences of PWs 11 read along with the evidence of PWs 5, 8, 9 and 10.

19. I have heard learned Counsels for the appellant(s) and the Vigilance and perused the records. Contentions made on behalf of Mr. Matin, learned Counsel appearing on behalf of the A/3(Muni Lal Mochi) is that there is no material on record to show that the appellant connived with other accuseds in swindling Government fund. Said submission to my mind appears to be misplaced in view of depositions of PWs 4,5, 8 and 11. It can be seen from their evidence how the executing agent was changed and another accused, A/1 was allowed to present the fictitious bills which was paid under the signature of A/3 Munilal Mochi. PW-8 has clearly stated that although he used to make payment on the basis of entries made in MB's by the Junior Engineer and Assistant Engineer but it has also been stated that he used to visit the site and examine himself before authorizing such payment. Deposition of aforesaid witnesses further indicate the manner in which official records were interpolated and false entries were made by the accuseds in the measurement books and on the strength whereof bills were presented and passed by A/3. The evidence of PW-10 Dr. K.K. Mishra read along with the evidence of PW-12 Ashok Kumar Thakur leave no manner of doubt that fictitious entries were made in the MB's/ Measurement Sheet(s) which are already on record as Exhibits and thereby amounts were drawn far in excess of work which was executed under the aforesaid schemes of NREP. Relevant MB's are on record duly proved by PW-5 and PW11. It can further be seen from deposition of the Investigating Officer (PW-11) that the Government instruction relating to execution of the scheme under the NREP were thrown to winds inasmuch as an agent who was not the Government servant was appointed as an executing agent to execute the work. Learned Counsel for the appellants has laid great emphasis on the point that the accuseds were not noticed before taking the re-measurements of the works/schemes executed under the NREP. Such objection does not cut much ice as there is no requirement of issuing notice to the appellants before making such re-measurement as the allegation was that the appellants had connived, cheated and misappropriated huge government funds in connection with execution of 07 schemes under the NREP within Piro Block. Re-measurement of the works taken by the PW-5 and PW-8 if considered in the light of the exhibits, brought on record demonstrably indicate that such measurement

was made in which it was found that the work in some cases were not even executed and amount had been drawn in excess of the estimated/revised values of those plans/schemes. The deposition of PW-3 Bhuneshwar Singh clearly indicate that verifications and re-measurements were made of all the schemes in his presence by the Vigilance officer PW-5 and that he signed the measurement sheet. PW-4 the informant who is Dy. S.P. Vigilance is on record deposing that he verified all works executed under different schemes whereafter it was found that they were not executed and as per the scheme and excess payments were made thereunder by the accused persons. PW-4 in his deposition in paragraph Nos. 5 and 9 has stated that measurement/re-measurement of the 07 schemes were carried out at all the seven places. PW-9 Laxmi Kant Dubey Deputy Collector, Nazir posted at Ara has stated clearly that in his presence the verification/measurement was made by the Junior Engineer in connection with scheme Nos. 25 and 27. The contention of learned Counsel that after on expiry of certain time and particularly after onset of rainy season re-measurement of the work is bound to vary, in my view is of not much consequence in view of the evidence available on record. Other submission advanced on behalf of learned Counsel is that the evidence of PW-8 Basudeo Rai under whose supervision measurement of works was carried out is not worthy reliance as according to him he got such measurements made by Shiv Pujan Singh a Junior Engineer who has not been examined. It is to be borne in mind that aforesaid Shiv Pujan Singh died during the pendency of the trial. PW-13 Prabhu Dayal has been examined who has stated about the death of the witnesses in the present case. Learned Counsel has not been able to show from the records that aforesaid Sheo Pujan Singh (Junior Engineer) was still alive. Said submission of the counsel is, therefore, not sustainable in law. It has further been submitted by learned Counsel that looking to the questions put to A/3 u/s 313 of the Code of Criminal Procedure it would appear that they were general in nature and thus vague which has caused prejudice to the appellant. This Court on a perusal of the said documents finds that he was confronted with a host of questions which definitely indicate and convey the charge(s) for which the appellant was being prosecuted at the trial. In my view the said contention of the appellant is ill founded and fit to be rejected. It may be repeated here that counsels representing the appellant(s) made submissions with reference to the depositions of PWs 4, 5, 8,9 and 11 only. Evidence of PW-10, Dr. K.K. Mishra, Director finger print Bureau, C.I.D. has not been criticized by the appellants. This Court has already found and observed hereinabove that evidence/deposition of PWs 4,5,8,9,10 and 11 conclusively demonstrate the culpability of the appellants in committing offence(s) for which they have been held guilty and convicted.

20. Last contention of the learned Counsel representing different sets of appellants need consideration. It has been canvassed at the Bar that the occurrence out of which the present set of appeals arise had taken place in the year 1982-83. They were made to undergo excruciating circumstances in fighting the litigation for a long time. Trial Court convicted them in the year 2004 i.e.

nearly 21 years after occurrence. They had, therefore, reeled under the threat of being convicted and sentenced for all these years. Appeal(s) preferred by them remained pending for over six years. Appellants (except A/5) have since retired from service and are thriving on pension. There is no material on record to indicate that any departmental proceeding was levied and concluded against them for their omissions and commissions in execution of those schemes. It is thus the contention that the quantum of sentence awarded against them be interfered with and reduced. Submissions so advanced have some force.

21. Having considered the submissions advanced on behalf of the parties and in view of my discussions made hereinabove I am of the view that the prosecution has been able to prove all the charge(s) leveled against them beyond shadow of all reasonable doubts. Appellants have not been able to demonstrate any illegality and/or infirmity in appreciation of the evidence made by learned trial Court meriting interference by this Court in the judgment impugned.

22. In the result, the appeals are disposed of in the following manner:

(i) Cr. Appeal No. 609 of 2004, stands abated as the sole appellant died during the pendency of the appeal.

(ii) Cr. Appeal No. 576 of 2004, Cr. Appeal No. 595 of 2004 and Cr. Appeal No. 600 of 2004 are dismissed with modification in sentence only. The substantive sentence(s) imposed on them to undergo R.I. for two and half years u/s 409 and Section 120B of the Penal Code is reduced to a period of R.I. for 18 months. Similarly sentence(s) to undergo R.I. for 02 years imposed under Sections 467, 468, 471 and 477A of the Penal Code and Section 5(2) read with Section 5(1)(c) (d) is/are also reduced to a period of R.I. for 18(Eighteen) months. Other part(s)/ condition(s) of sentence(s) remain intact.

(iii) Cr. Appeal No. 625 of 2004 A/5 (Sirajuddin Ansari) is dismissed with modification in sentence only. The substantive sentence(s) of R.I. for 02 years awarded under Sections 420 and 120B of the Penal Code is reduced to R.I. for 01 years. Other part(s)/condition(s) of sentence(s) remain unaltered.

(iv) Appellant, namely, Babban Das @ Baban Das in Cr. Appeal No. 576 of 2004, appellant, namely, Mahangu Mansuri in Cr. Appeal No. 595 of 2004, appellant, namely, Munilal Mochi in Cr. Appeal No. 600 of 2004 and appellant, namely, Sirajuddin Ansari @ Sarajuddin Ansari in Cr. Appeal No. 625 of 2004, are on bail granted by this Court. Their bail bond(s) are hereby cancelled. They are directed to surrender to arrest.