(2018) 04 GAU CK 0112

In the Gauhati High Court

Case No : Crl.A. 154, 166 of 2009

DWIJEN THAKURIA — APPELLANT

Vs

CENTRAL BUREAU OF INVESTIGATION C.B.I. — RESPONDENT

Date of Decision : 26-04-2018

Acts Referred:

Indian Penal Code 1860 — Section 120B, 201, 419, 420, 465, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 04 GAU CK 0112

Hon'ble Judges : HITESH KUMAR SARMA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

[1] These 2 (two) appeals are proposed to be disposed of by this common judgment since they have arisen out of the same judgment passed by the

learned Special Judge, CBI, Assam in Special Case No. 25/2006, convicting and sentencing the present accused-appellants of both the appeals to

undergo Rigorous Imprisonment for 3 (three) years with a fine of Rs. 10,000/- with a default clause under Sections 468/120(B) of the IPC, Rigorous

Imprisonment for 1 (one) year under Sections 471//465/120(B) of the IPC, Rigorous Imprisonment for 3 (three) years with a fine of Rs. 10,000/- with

a default clause under Sections 420/120(B) of the IPC, Rigorous Imprisonment for 3 (three) years with a fine of Rs. 10,000/- with a default clause

under Section 120(B) of the IPC. The accused-appellant, Kameshwar Boro in Criminal Appeal No. 166/2009 has been further sentenced to Rigorous

Imprisonment for 3 (three) years with a fine of Rs. 20,000/- with a default clause under Sections 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the PC Act). The sentences are ordered to run concurrently

[2] Heard Mr. B Prasad, learned Amicus Curiae, appearing for the accused-appellant in Criminal Appeal No. 154/2009 as well as in Criminal Appeal

No. 166/2009. Also heard Mr. D Talukdar, learned counsel for the accused-appellant in Criminal Appeal No. 166/2009 as well as Mr. SC Keyal,

learned Standing Counsel, CBI.

[3] The case for the prosecution, briefly stated, is that on 26.12.2003, Sri Dhrubananda Das, the Senior Devisional Manager, LICI, Guwahati Division

lodged a complaint before the DIG, CBI, Guwahati on the following facts. One Phatik Thakuria of village Mirza assured his life with the LICI, Mirza

Branch and two policies, being No. 480657491 and No. 481351283, were issued in his favour by the said Branch. His wife, Bina Thakuria was the

nominee for both the aforesaid policies. Both these policies were settled as death claims during the lifetime of the holder of the policies, Sri Phatik

Thakuria, and the payments amounting to Rs. 175583.00 were released by the Mirza Branch of the LICI through the bank account opened in the

name of the aforesaid Bina Thakuria at the Central Bank of India, Mirza Branch. But, the amount so released was not, in fact, received by the

nominee, Bina Thakuria. The account in her name, in the aforesaid Central Bank, affixing the photograph of Bijuli Thakuria, wife of accused-appellant,

Dwijen Thakuria was opened. The accused-appellant, Dwijen Thakuria is an Agent of the LICI, Mirza Branch.

Another policy being No. 481669989 stood in the name of one Tarani Kakati of village Majirgaon, Mirza. His wife Smt. Rina Kakati was the nominee

in the said policy. This policy was also settled as a death claim and payment of Rs. 99220/- was made by the LICI, Mirza Branch by a cheque on

28.03.2001 which was encashed through the Account No. 9899 in the said Central Bank in the name of said Rina Kakati. But, in fact, this Rina Kakati

did not receive the payment. There was an allegation that there was a nexus between the Government officials, Doctors and officials of LICI, Mirza

Branch and one Sri Biswajit Das, the Development Officer of the LICI, Mirza, who has taken initiative for the settlement of the policies aforesaid was

also involved.

[4] On receipt of the FIR, the CBI registered a case, investigated into it and filed

charge-sheet against both the accused-appellants under Sections

120(B)/419/420/468/471/201 of the IPC read with Section 13(1)(d)/13(2) of the PC Act in respect of the fraudulent settlement and the payment of the

money to the nominees of the insured aforesaid.

[5] The learned trial court of Special Judge, CBI, after appearance of the accused-appellants, and after exhausting all the required formalities, framed

a formal charge against the accused-appellants under Sections 468/471/465/420/120(B) of the IPC. In respect of the accused-appellant, Sri

Kameshwar Baro, two more charges were framed under Section 201 of the IPC and under Sections 13(1)(d)/13(2) of the PC Act. While the charges

were explained to them, both the accused-appellants pleaded innocence. Therefore, the trial commenced.

[6] During the course of trial, the prosecution examined as many as 25 (twenty five) witnesses who were subjected to cross-examination at length by

the defense. In the statements of the accused-appellants recorded under Section 313 of the Cr.PC they are heard denying the accusations made

against them although the settlement of the insured policy in respect of Phatik Thakuria, during his lifetime, as death claim has been admitted which is

otherwise also a matter of record.

[7] Now, the questions before this Court for consideration, in view of the accusations and evidence on record, are whether the accused-appellants

pursued the death claim of insurer Phatik Thakuria and received the death claim although he was alive at that time and whether both the accused-

appellants got the death claims settled in respect of the policy holder, Tarani Kakati, and the settled amount although was issued by valid cheques

received not by the nominees of the aforesaid claims rather by some other persons at their instance.

[8] I have scanned the evidence on record.

[9] The PW4 is an LIC agent of the Mirza Branch of the LICI. It has come out from his evidence that Rina Kakati approached him after death of her

husband Tarani Kakati to know as to how she would get the LIC policy settled which stood in the name of her deceased husband. Thereafter, this

PW4 helped in processing the death claims of Late Tarani Kakati. Ultimately after official assessment, as per procedure, the death claim was settled

in favour of the nominee, Smti Rina Kakati who was the wife of the policy holder, Tarini Kakati. The evidence on record makes it clearly appear that

the cheque was issued in favour of the aforesaid Rina Kakati. It was also deposited in her account. This account was opened by the accused-

appellant, Dwijen Thakuria, in the name of Rina Kakati aforesaid affixing photograph of his wife, Bijuli Thakuria and ultimately the money got

encashed and the same was received by aforesaid Bijuli Thakuria. The evidence makes it appear that the fraud practised in the instant case, so far

Rina Kakati is concerned, in respect of the policy of Late Tarini Kakati, was by the accused-appellant, Dwijen Thakuria and the accused-appellant,

Kameshwar Baro only issued the cheque on account of settlement of the death claim on the basis of the relevant materials placed before him. There

is no instance in the evidence, on record, to suggest, even remotely, that there was any wrongful gain by the accused-appellant, Kameshwar Baro.

There is also no evidence forthcoming that the accused-appellant, Kameshwar Baro conspired with the accused-appellant, Dwijen Thakuria to get the

money passed over to the wife of the accused-appellant, Dwijen Thakuria instead of Rina Kakati, the wife of Late Tarini Kakati.

[10] Such being the fact, as gathered from the totality of the evidence, it does not appear to this Court that the accused-appellant, Kameshwar Baro

committed the offence alleged, and therefore, the conviction recorded against him appears to have not been based on the materials on record and as

such the order convicting him needs to be set aside.

[11] So far the involvement of the accused-appellant, Dwijen Thakuria with the alleged offence is concerned, the evidence of PW5 is that the he

obtained the cheque issued against the policy holder, Phatik Thakuria although at that relevant point of time, Phatik Thakuria was alive. So it is clear

that while Phatik Thakuria was alive, his claim was settled as a death claim. Therefore, it is apparent that some fraud has been practised. Now, the

question before this Court is as to who amongst the accused-appellants committed the fraud in settling the death claims of Phatik Thakuria.

[12] I have scanned the evidence of PW17 who is an employee of the Central Bank of India, Mirza Branch. It has come out from his evidence,

particularly Ext. 28, that the accused-appellant, Dwijen Thakuria got the accounts opened in the name of Bina Thakuria. He obtained the cheques

issued in favour of Bina Thakuria from the other appellant, i.e., Kameshwar Baro, Branch Manager, and also deposited in the Bank. Then the money

was not received by the nominee of the deceased Phatik Thakuria, i.e., Bina Thakuria, apparently due to fraudulent opening of the account by the

accused-appellant, Dwijen Thakuria. The fact remains that the policy holder was alive when the death claim was settled at the instance of the

accused-appellant, Dwijen Thakuria who is an agent of the LICI, Mirza Branch at the relevant point of time. Such evidence which remained

unassailed, even during the cross-examination of the PW17, points that, it is none but the accused-appellant Dwijen Thakuria who did the fraud for his

wrongful gain, and therefore, on such materials, the conviction recorded by the learned trial court in respect of him appears to be based on evidence

on record and therefore, the order of his conviction needs no interference except in respect of Section 120(B) of the IPC. The punishment under

Section 120(B) of the IPC, separately imposed upon him was not necessary as he has been convicted on the principal offence and conspiracy with the

co-accused has not come out from the evidence on record. Therefore, the separate sentence under Section 120(B) of the IPC is set aside and the

conviction and sentence recorded in respect of the other provisions of law stands.

[13] In view of the above discussions and decisions, the Criminal Appeal No. 166/2009 is allowed and the conviction and sentence passed against the

accused-appellant, Sri Kameshwar Baro is set aside. He stands acquitted. In respect of the accused-appellant, Sri Dwijen Thakuria in Criminal

Appeal No. 154/2009 except setting aside the sentence independently imposed under Section 120(B) of the IPC, the conviction and sentence recorded

against him is maintained. Therefore, the appeals preferred by him is dismissed. He is directed to appear before the learned trial court within a period

of 1 (one) month from the date of received of a certified copy of this judgment to serve out the sentence.

[14] Accordingly, both the criminal appeals stands disposed of.

[15] Send down the LCR alongwith a copy of this judgment.

[16] This Court appreciates the legal assistance rendered by Mr. B Prasad, learned Amicus Curiae and directs payment of remuneration of Rs.

7,000/- to the learned Amicus Curiae.

