

(2012) 11 JH CK 0070

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 821 of 2012

Shashi Bhushan Prasad Azad

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471, 477A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2013) 1 JLJR 594

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Delip Jerath, Anil Kumar, Abhinesh Kumar, Rajesh Kr., Manoj Kr. No. 3, Ashok Kumar and S.K. Pandey, for the Appellant; Mokhtar Khan for the C.B.I., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Both the appeals since arising out of same judgment and order were heard together and are being disposed of, by the common judgment and order. Both the appeals are directed against the judgment of conviction dated 13.7.2012 and the order of sentence dated 19.7.2012, passed in R.C. Case No. 15A/994-D, whereby and whereunder, the appellants having been found guilty for the offences punishable u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and also u/s 420 of the Indian Penal Code were sentenced to undergo R.I. for two years and a fine of Rs. 5,000/- for the offences u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. In default to undergo S.I. for two months. Further, they were sentenced to undergo R.I. for three years u/s 120B read with Section 420 of the Indian Penal Code and to pay fine of Rs. 5,000/- with a default clause to undergo S.I. for two months.

2. The case of the prosecution is that B.C.C.L. had constructed some quarters at Matigarha section of Kesargarh Colliery, which were to be provided with water

supply through overhead tank. For construction of overhead tank, an estimate of Rs. 1,83,782.14 was prepared for having overhead water tank of a capacity of 50,000 gallons. On the basis of the said estimate, tenders were invited. Pursuant to that on amongst others, M/s Rajesh Trading Company, Dhanbad submitted its tender papers. A Tender Committee consisting of the Deputy General Manager, Deputy Chief Finance Manager, Area Civil Engineer, Block II Area, was constituted for the purpose of detail scrutiny of the tender papers and to take decision for recommending the name of the successful bidder for awarding contract. In the N.I.T., it was provided that the tenderer should have prior experience of construction of overhead water reservoir. M/s Rajesh Trading Company, Dhanbad though had no such experience, but the Tender Committee made recommendation for awarding work to him by showing undue favour. The said recommendation was even approved by the General Manager, Block II Area of B.C.C.L. Accordingly, work order was issued in favour of M/s Rajesh Trading Company, Dhanbad on 25/27.6.1990. Thereafter work got started and it was completed in December 1991. After more than a year, to test it as to whether it does have any fault or not, the overhead tank was partially charged with water on 18.1.1993. On the following day it was further charged with water. In the afternoon, overhead water tank got collapsed with heavy sound which attracted attention of Bishwanath Rawani [P.W. 2], Tapan Kumar Singh [P.W. 5], and Awadhesh Prasad Srivastava, Assistant Engineer [P.W. 6], who reported the matter to Nikhilesh Kumar Jha, General Manager, (Construction) [P.W. 1]. On enquiry, P.W. 6 found that quality of reinforced cement was quite poor which resulted into collapse of water tank.

3. When the matter was reported to the C.B.I. it got a First Information Report [Exhibit-13] lodged which was registered as R.C. 15A/1994-D, u/s 120B read with Sections 420, 468, 471 and 477A of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(d) of the P.C. Act not only against the appellant No. 1, who happened to be the Senior Executive Engineer (Civil) and the appellant No. 2 the then Senior Overseer, Block II Area, B.C.C.L., but also against five others including the General Manager, [Safety], the Deputy General Manager, the Deputy Chief Finance Manager, Area Civil Engineer and the proprietor of M/s Rajesh Trading Company, Dhanbad.

4. While the matter was under investigation by the C.B.I., Anjani Kumar Verma [P.W. 7], the Superintending Engineer on holding enquiry submitted an enquiry report to P.W. 1- Nikhilesh Kumar Jha, who held both the appellants responsible for collapse of water tank and hence, submitted its enquiry report against the appellants vide Exhibit-1 and Exhibit-1/1. The I.O., Manoj Kumar Sharma [P.W. 16] during investigation, in presence of Md. Jalaluddin [P.W. 12], Assistant Surveyor, C.P. W. D. and other officials of the B.C.C.L. took the sample of the north side of the wall of the collapsed dome on 6.9.1993, and prepared a memorandum [Exhibit-11]. Similarly on collecting sample of shaft wall as well as southern side of dome wall on 7.4.1993, a memorandum [Exhibit-12] was prepared. The said samples were sent to Bhawani Kumar Bishwash [P.W. 11],

Scientist of the National Test House, Calcutta for its chemical examination. On examination, ratio of cement, sand and coarse aggregate by weight was found in case of shaft wall as 1:5.1: 11.5 and in case of dome wall [South side], as 1: 6.2: 13.3 and in case of unmarked sample, as 1:5.1: 8.6. P.W. 11 accordingly submitted its report [Exhibit-9]. The C.B.I. having completed investigation, sought for, sanction for prosecution from competent authority. Accordingly, the competent authority accorded sanction for prosecution of the appellants, Shashi Bhushan Azad and Maheshwari Prasad. P.W. 3, Tapan Kumar Mazumdar has proved the order sanctioning prosecution of the appellant-Shashi Bhushan Azad as Exhibit-4, whereas, P.W. 4 has proved the order of sanction for prosecution of Maheshwari Prasad as Exhibit-4/1. Accordingly, the I.O. submitted charge-sheet against these two appellants as well as proprietor of M/s Rajesh Trading Company only. Upon which cognizance of the offences was taken. Subsequently charges were framed against the appellants and the proprietor to the effect that the appellants being public servant employed as the Executive Engineer [Civil] and the Overseer [Civil], respectively Block II Area, BCCL, Dhanbad committed criminal misconduct punishable u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act as they obtained work order of contract for Om Prakash Gupta, proprietor of M/s Rajesh Trading Company and also obtained pecuniary advantages of Rs. 2,61,340/- from the B.C.C.L., Dhanbad and that they in furtherance of criminal conspiracy got the work in favour of M/s Rajesh Trading Company for construction of reservoir which collapsed due to use of substandard material in its construction and fraudulently and dishonestly induced to deliver Rs. 2,61,340/- to the accused-Om Prakash Gupta and thereby, committed offence u/s 120B and also u/s 420 of the Indian Penal Code.

5. The prosecution in order to prove the charges examined as many as 16 witnesses in order to prove the factum that overhead water tank got collapsed due to use of substandard materials for which the appellants were responsible as they were to supervise the work of construction.

6. However, the case of the defence as has been put-forth is that they had nothing to do with the process of tender and for selecting the successful bidders rather the then Deputy General Manager, Deputy Finance Manager and also Area Civil Engineer were the members of the Tender Committee who on scrutiny of the tender papers made recommendation for awarding contract to M/s Rajesh Trading Company which got approval by the then General Manager. On such approval, the work order was issued to M/s Rajesh Trading Company and that the job which was assigned to the appellant No. 1, the Executive Engineer (Civil) was to ensure periodical inspection and control over the work done at site and to check periodically daily report prepared by the Overseer and further to ensure checking of at least 20% of the recorded items of minimum value of the 20% of the work done and that so far as the appellant No. 2 is concerned, he was supposed to ensure execution of work, as per specification and to ensure daily inspection of the work site to ensure effective and physical control during execution of the work and to ensure preparation of monthly bill of accepted work

done at the site. The defence in order to prove this fact has adduced in evidence a document proved as Exhibit-E.

7. Further case is that the appellants had also nothing to do with the quality of the work as the work relating to the quality had been assigned to Quality Control Committee consisting of Area Manager [Technical], Area Finance Manager, Area Civil Engineer, on whose certification regarding quality of work, payments were used to be made to the Contractor. In support of this plea of defence, documents Exhibit F Series have been adduced in evidence.

8. However, the trial court did hold that Quality Control Team was never responsible for use of poor quality of the material rather it were the appellants who were to supervise the work of construction and hence, were responsible for the use of substandard material due to which there was collapse of the overhead water tank and that the appellant No. 1 who was in collusion with the Contractor, did not properly check the design submitted by the Contractor and allowed to be approved by the superior officer of the B.C.C.L. and thereby, the trial court recorded the order of conviction and sentence against both the appellants.

9. Mr. Delip Jerath, learned counsel appearing for the appellant, Shashi Bhushan Prasad Azad, submitted that the finding recorded against the appellants is against the material available on record and on this ground alone judgment of conviction and order of sentence is fit to be set aside. In this regard, learned counsel submitted that the appellant was never supposed to do anything with respect to quality of work which even the prosecution witness has admitted, but in spite of that the court below recorded that the appellant was very much concerned with the quality of the work and that the prosecution has not come forward with a definite case that either it is due to poor quality of the work, the overhead tank got collapsed or due to faulty design as some of the prosecution witnesses have themselves admitted that overhead water tank got collapsed due to faulty design and thereby, even if it is assumed that the appellant had to ensure quality of work, he cannot be held responsible for collapse of the tank and thus, the impugned judgment and order is fit to be set aside.

10. Similar plea was also advanced on behalf of the other accused.

11. However, Mr. Khan, learned counsel appearing for the C.B.I. submitted that since the appellants had been entrusted to supervise the work, he was supposed to ensure the quality of work, but they did not seem to have discharged the duty as the work had never been done as per the specification given under the estimate. The ratio of cement, sand and coarse aggregate in the shaft wall should have been in the ratio of 1:2:4 and in the dome wall it should have been in the ratio of 1:1.5:3, but construction was not made as per the specification and due to that reason, the overhead water tank collapsed and, therefore, the court under the circumstances, as aforesaid has rightly convicted the appellants.

12. At the outset, it be recorded that charge has been framed against the appellants for commission of the offence u/s 13(2) read with Section 13(1)(d) of

the P.C. Act on the accusation that these appellants obtained work order of contract for M/s Rajesh Trading Company, but according to the case of the prosecution itself, the appellants had no hand in accepting tender submitted by M/s Rajesh Trading Company rather it were the members of the Tender Committee, to which the appellants were never the members, made recommendation for awarding contract for constructing overhead water tank in favour of M/s Rajesh Trading Company which was approved by the then General Manager, but the persons who were responsible for awarding contract to said company has never been made accused rather the charge has been framed against these appellants of obtaining work order of contract for M/s Rajesh Trading Company which charge under the circumstances never stands against these appellants.

13. However, the charge which was projected against the appellants is that the appellants being Executive Engineer as well as Overseer/Engineer Assistant upon contract for construction of overhead water tank being awarded to Contractor were entrusted job to supervise the work. On completion of construction, it remained unused for almost a year. When it was charged with water, it collapsed on 19.1.1993 on the day it had been fully charged. On its collapse, enquiry was made by P.W. 1 the then Additional Chief Engineer who on the basis of enquiry report submitted by Anjani Kumar Verma, Superintending Engineer [P.W. 7] found that as the concrete mix was not of that grade what it should have been there as per the specification, the appellants can be held responsible for that as they had to supervise the work. As per the report of P.W. 11, ratio of cement, sand and coarse aggregate was not found in proportion as it was specified under the agreement, it was assumed by the court that it were the appellants who allowed the Contractor to do work with poor quality, but from the evidence of P.W. 9, it would appear that after awarding contract to the Contractor, the Contractor was allowed to give his own drawing and design which on its submission got approval from the Department and, therefore, P.W. 9 has testified that the work which was done was never, in consonance with the specification as the drawing and design was different from the estimate which had been prepared earlier.

14. Further he has accepted that the design which was submitted was inferior to the bill of the quantity. The I.O. in his evidence has also accepted that during investigation, he came to know that whatever drawing and design had been submitted by the Contractor, that was faulty. In spite of that, design was accepted by the Department.

15. Under the circumstances, if ratio of cement, sand and coarse aggregate has not been found, in consonance with the estimate how the appellants can be held responsible for allowing the Contractor to use the materials in proportion other than the estimate. Moreover, the appellants were never concerned with the quality of the work as it has come in the evidence of P.W. 7 that for ensuring quality of the work, a Quality Control Committee was there consisting of Area

Manager [Technical], Area Finance Manager and Area Civil Engineer, who were to ensure that the work should be done according to the specification and it is only on the satisfaction of the Committee regarding work being done, as per the specification, payments were used to be made to the Contractor. This assertion of P.W. 7 finds support from Exhibit-F Series which are the certificates issued by the member of the Technical Committee who on inspection and having been satisfied with the quality of work has certified that the work done was satisfactory and thereby, Committee made recommendation for making payment.

16. Thus, when on such certification, payments were allowed to be made to the Contractor then how the appellants can be held responsible for poor quality of the work and for the payment which was made to the Contractor. In this regard, it be further stated that P.W. 1 has himself in his evidence has admitted that the Overseer/Engineer Assistant had to ensure execution of work, as per the specification. He has to ensure effective physical control during examination of the work and was to submit daily report and to ensure preparation of monthly bill of the work done. He has further deposed that the Executive Engineer was supposed to ensure periodical inspection and to check periodically, daily report prepared by the Engineer Assistant and to ensure checking of at least 20% of the recorded item, minimum value of 20% of the work done. This assertion made by P.W. 1 finds support from Exhibit-E which is an order issued by the Office of Additional Chief Engineer, Koila Nagar, Dhanbad, with respect to duty of the appellants. From the evidence of P.W. 1 given in this respect and also on perusal of Exhibit-E, it is quite clear that the appellants were to ensure the work. Moreso quantity of the work, as per specification and had nothing to do with the quality of the work as it has been found earlier that for ensuring quality of the work, there was a Committee, called Quality Control Committee who was supposed to ensure the quality of the work as per specification and not by these appellants. Still the trial court recorded that the appellants who had to supervise the work was to ensure quality of the work which is against the material available on record and hence, any finding to this effect certainly suffers from illegality.

17. Under the circumstances, the trial court certainly seems to have committed illegality in finding the appellants guilty for the offence.

18. Accordingly, the judgment of conviction and order of sentence passed by the trial court against the appellants is hereby, quashed.

19. Consequently, the appellants are acquitted of all the charges. Thus, both the appeals are allowed.