

(2011) 03 SHI CK 0180

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No's. 3 and 277 of 2006

S.M. Katwal

APPELLANT

Vs

State of H.P.
 State of H.P. Vs S.M. Katwal

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 207, 313
Penal Code, 1860 (IPC) — Section 218, 463, 464, 465, 467
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2011) 1 ShimLC 465

Hon'ble Judges : Surjit Singh, J;Kuldip Singh, J

Bench : Division Bench

Judgement

Surjit Singh, J.—By means of this judgment, two appeals, one filed by convict S.M. Katwal, which is Criminal Appeal No. 3 of 2006, and the other filed by State of H.P. for enhancement of punishment, i.e. Criminal Appeal No. 277 of 2006, are being disposed of, as both of them arise out of the same judgment, i.e. judgment dated 31.12.2005, of learned Special Judge, Hamirpur.

2. Appeal No. 3 of 2006 has been filed by S.M. Katwal, hereinafter referred to as accused. He has challenged his conviction for offences, u/s 13(2) of the Prevention of Corruption Act and Sections 218, 465, 467, 468 and 471 IPC and also the sentences of three years rigorous imprisonment and fine of `10,000/, for offence u/s 13(2) of Prevention of Corruption Act and rigorous imprisonment for one year and fine of `1000/- for each of the remaining offences. Cr. Appeal No. 277 of 2006 has been filed by the State for enhancement of punishment for all the offences of which accused S.M. Katwal has been convicted.

3. Case of the prosecution, per evidence adduced during the course of trial is like this. Accused S.M. Katwal was appointed as Chairman of Subordinate Services Selection Board (for short Board) in the year 1999. Main function of the Board was to select subordinate staff for appointment in various departments of the Government of H.P. In the year 2000, there were 214 vacancies of Vidya Upasaks

(a category of teachers), which were to be filled from amongst the residents of Karsog Sub Division in Mandi District. Posts were advertised. There were more than three thousand candidates for those 214 posts. The Board, probably for the convenience of the candidates, conducted the written test as also the viva-voce test at the headquarters of Karsog Sub Division itself. Initially, a written test was conducted and after the answer sheets had been evaluated, viva-voce test was held from 23.6.2000 to 27.6.2000. Lists, indicating the names, marks obtained in written test and marks obtained in viva-voce test were prepared, which are Exts. P-97 to P-100, Exts. P-102 to 105, Exts. P-107 to 111, Exts. 113 to 116, Exts. 118 to 121, Ext. P-123, Exts. P-125 to 128, Exts. 130 to 132, Exts. 134 to 137 and Exts. 138 to 145. Proceedings of selection were also drawn, on conclusion of viva voce test & such proceeding on the basis of those lists, consisting of eight sheets, are Ext. P-138 to P-145.

4. Accused, it appears, was appointee of the Government of one political party, which got defeated at the hustings in the year 2003. New Government of rival political party took over on 6.3.2003. On the very next day, Secretary (Home) wrote to the Inspector General (Enforcement) that record of the Board, pertaining to selection of candidates for various categories, was likely to be destroyed and, therefore, action should be taken, at once, to ensure that no such destruction took place. On 8.3.2003, a police party, headed by DIG namely, Shri Jagjit Gupta, rushed to the office of Board at Hamirpur. Record was sealed. Thereafter record was scanned and it was found that marks awarded to some of the candidates in viva-voce test had been increased by over-writing in lists Exts. P-97 to P-100, Exts. P-102 to 105, Exts. P-107 to 111, Exts. 113 to 116, Exts. 118 to 121, Ext. P-123, Exts. P-125 to 128, Exts. 130 to 132 & Exts. 134 to 137, with a view to including such candidates in the list of selected candidates.

5. Matter was investigated. Lists were sent to Government Examiner of Question Documents, who vide report Ext. PW18/E, opined that viva-voce marks of five candidates, namely Satish Kumar, Prem Lal, Roshani Devi, Netar Singh and Swayam Prakash Sharma, had been increased by over writing. Similarly, Handwriting Expert, namely PW-18 Dr. Minakshi Mahajan, opined that marks awarded to Zalam Singh in viva-voce test as also the aggregate of his marks, i.e. marks secured in written test and viva-voce test, had been changed in the aforesaid lists Exts. P-97 to P-100, Exts. P-102 to 105, Exts. P-107 to 111, Exts. 113 to 116, Exts. 118 to 121, Ext. P-123, Exts. P-125 to 128, Exts. 130 to 132 & Exts. 134 to 137.

6. On completion of investigation, report, u/s 173 Cr. P.C. alongwith relevant papers, was filed in the Court of Special Judge, who after complying with the requirement of Section 207 Cr. P.C. and hearing learned Public Prosecutor and the learned defence counsel, found that a prima-facie case, under the aforesaid penal provisions of law, was made out. Accused was charged accordingly. He pleaded not guilty to the charge. Therefore, prosecution was called upon to lead its evidence. Twenty Seven witnesses were examined by the prosecution.

Documents in the nature of award lists Exts. P-97 to P-100, Exts. P-102 to 105, Exts. P-107 to 111, Exts. 113 to 116, Exts. 118 to 121, Ext. P-123, Exts. P-125 to 128, Exts. 130 to 132 & Exts. 134 to 137, minutes of the proceedings Exts. P-138 to P-145, final select list, Ext. PW3/A-2, opinion of Handwriting Expert Ext. PW18/E and several other documents like the reasons, in support of the opinion of Handwriting Expert, photographs of over-written entries in lists Exts. P-97 to P-100, Exts. P-102 to 105, Exts. P-107 to 111, Exts. 113 to 116, Exts. 118 to 121, Ext. P-123, Exts. P-125 to 128, Exts. 130 to 132, Exts. 134 to 137 and Exts. 138 to 145, were also proved.

7. Accused was examined, u/s 313 Cr.P.C. He took the plea that he had been falsely implicated, because of political vendetta. He though was specifically examined with respect to over writings in the lists of marks Exts. P-97 to P-100, Exts. P-102 to 105, Exts. P-107 to 111, Exts. 113 to 116, Exts. 118 to 121, Ext. P-123, Exts. P-125 to 128, Exts. 130 to 132 & Exts. 134 to 137, did not offer any explanation. He simply denied that there was any overwriting, which, as we would be demonstrating from the evidence, being discussed hereinafter, is not correct.

8. Learned trial Court concluded that case of the

9. We have heard learned Counsel for the Appellants as also learned Deputy Advocate General and gone through the record.

10. Marks of six candidates, in all, have been increased, by overwriting. These candidates are Satish Kumar, Prem Lal, Roshani Devi, Netar Singh Swayam Prakash Sharma and Zalam Singh. In the case of Satish Kumar, Prem Lal, Roshani Devi, Netar Singh and Swayam Prakash Sharma change is only in the viva-voce marks, but not in the total marks obtained in written test and viva-voce test, meaning thereby that change had taken place before the marks, under the two heads were totaled.

11. It is only in the case of one candidate, by the name of Zalam Singh, that change is there not only in the viva-voce marks, which appear to have been raised from 2 to 13, but also in the total, which has been raised from 49 to 60, per opinion evidence of PW-18 Dr. Minakshi Mahajan, Her written opinion is Ext. PW18/E and it is supported by statement of reasons and a large number of photographs, which were taken to facilitate comparison. We also find, by looking at the relevant list, Ext. P-104, as also the enlarged photographs that marks of Zalam Singh have been changed. We have observed on the basis of opinion of PW-18 Dr. Minakshi Mahajan that initial total of the marks of this candidate was 49 and he had been awarded only two marks in viva-voce test, initially, and later on, the figure was changed to 13. However, the case of the prosecution has been and also as it was put to the accused in the course of examination, u/s 313 Cr. P.C., is that initially 12 marks had been awarded, on account of viva-voce test and the last digit 2 of figure 12 had been changed to 3 and thus the total was raised from 59 to 60, to include said Zalam Singh in the list of selected

candidates.

12. Final result was prepared on the very day of the conclusion of viva-voce test, vide minutes Exts. P-138 to P-145. These minutes, though written in the hand of the accused, are signed by a Member of the Board, besides the accused.

13. Learned Counsel for the accused submits that the fact that minutes are signed by a Member also, namely Dr. Vidya Nath, suggests that he was aware of the change in marks and, therefore, the presumption should be that change of marks was not illegal. We do not find ourselves in agreement with this submission, for the reason that there were two Selection Committees, one headed by the accused and the other headed by Dr. Vidya Nath. Minutes of the proceedings Exts.P- 138 to P-145 and select list Ext. PW3/A-2, were prepared by compiling the marks, indicated in the lists of the two Committees headed by the accused and Dr. Vidya Nath, the other Member.

14. Prosecution examined two Members, who were part of the Committee of the accused. They are PW-6 Sanjudhir and PW-7 Chop Ram. Both of them stated that marks were awarded by the accused himself and it was he who used to write the marks in the list. They also stated that lists were not shown to them. There should be no reason to disbelieve the testimony, especially when the lists are not signed by them and one of the witnesses of the prosecution, namely Mehar Chand Jublani, Under-Secretary of the Board, testified that marks, under the columns of viva-voce and the total in the list, particularly list Ext. P-104, in which marks of Zalam Singh were increased, are written in the hand of the accused.

15. Accused has offered no explanation for the change in marks of Zalam Singh. While answering question No. 32, with regard to the change in marks, under columns of viva-voce marks and the total marks, he said that there was no evidence that change had taken place. However, it is clear even to the naked eye that digit 2 in the marks, pertaining to viva-voce test, has been changed to 3 and the total has also been overwritten. Though according to the Handwriting Expert it has been raised from 49 to 60, accused was asked during his examination, u/s 313 Cr. P.C. that change was from 59 to 60.

16. Failure on the part of the accused to offer explanation, about the change, clearly suggests that this change was made to favour Zalam Singh, who but for his total score being raised to 60, would not have been in the select list.

17. In view of the above discussion, we are of the considered view that the accused changed the marks of Zalam Singh in the award list Ext.P-104, dishonestly, to cause wrongful gain to Zalam Singh and thereby committed offence of forgery, as defined, u/s 463 read with clause "secondly" to Section 464 and punishable u/s 468 IPC, as the forgery was committed, with a view to cheating the Education Department to offer the post of Vidya Upasak to Zalam Singh, to which post he was appointed on the basis of aforesaid act of forgery. Further, the list was used for the purpose of cheating and, therefore, offence, punishable u/s 471 IPC was also committed. However, accused cannot be said to

have committed criminal misconduct, u/s 13(2) of the Prevention of Corruption Act, as his act is not covered by any of the clauses of Section 13(1) of the said Act, because he is not shown to have obtained any valuable or pecuniary advantage for himself or any other person.

18. Consequently, conviction of the Appellant for offences, under Sections 468 and 471 IPC is upheld. Offence of forgery simplicitor, u/s 465 IPC, of which accused has been convicted in addition to Section 468 IPC by the trial Court, is covered u/s 468 IPC itself. His conviction and sentence for offence, u/s 13(2) of the Prevention of Corruption Act are set aside. His conviction and Sentence, u/s 218 IPC are also set aside, because this is not a case of preparation of incorrect record, but a case of forgery.

19. Learned Counsel for the accused submits that leniency may be shown and punishment awarded by the trial Court be reduced, looking to the fact that accused is an old man of 74 years and has been subjected to surgery four times, on account of some infection in the prostate gland. He also submits that the wife of the accused is critically ill. We do not think these are good grounds for reducing the sentence. Accused was holding very high position. He was repository of public faith, with regard to selections of persons for appointment to public posts. By favouring a candidate, he not only committed offences, punishable under the penal laws, but also violated the Constitutional provisions, pertaining to fundamental rights of the citizens, which guarantee that nobody will be discriminated in the matter of appointment to public posts.

20. As a result of above discussion, appeal filed by the accused is partly accepted. His conviction and sentence for offence, u/s 13(2) of the Prevention of Corruption Act, Sections 218 and 465 IPC are set aside. However, conviction and sentence of the accused, under Sections 468 and 471 IPC are maintained.

21. We are not inclined to accept the appeal of the State for enhancement of punishment, in view of the age of prosecution stood proved against the accused. Consequently, he was convicted and sentenced, as aforesaid. the accused and the sickness of his wife. So, the appeal filed by the State is dismissed.

Both the appeals stand disposed of accordingly.