

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2272 OF 2011

SURINDER MOHAN KATWALAppellant

Versus

STATE OF HIMACHAL PRADESHRespondent

WITH

CRIMINAL APPEAL NO.2273 of 2011

AND

CRIMINAL APPEAL NO.2275 OF 2011

O R D E R

R. BANUMATHI, J.

Criminal appeal No.2272 of 2011, Criminal appeal No.2273 of 2011 and Criminal Appeal No.2275 of 2011 arise from a common impugned order dated 11.05.2011 whereby the High Court of Himachal Pradesh at Shimla convicted the appellants Surinder Mohan Katwal and Dr. Vidya Nath under Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 420, 120-B, 218 and 477-A of IPC; and appellant-Rakesh Kumar Chhabra under Sections 120-B and 420 IPC, reducing the sentence imposed on each of the appellants to one year.

2. Common facts arising out of these criminal appeals are as follows:- At the relevant point of time, appellant Surinder Mohan Katwal was the Chairman of the Himachal Pradesh Subordinate Staff Selection Board (HPSSSB) with headquarter at Hamirpur and appellant Dr. Vidya Nath was a Member of that Board. Recruitment process was being carried out by the Board in lieu of 238 vacancies of Physical Education Teachers (PET) available in different schools of various districts of the state. Selection was to be made in three stages comprising of screening test,

ground test and viva-voce. Candidates who appeared successful in the screening test were allowed to appear for ground test and those successful in ground test were called for viva-voce. Final selection was based on the merit list prepared by considering both the marks obtained in viva-voce as well as in the ground test.

3. In order to facilitate the viva-voce, two boards were constituted, one headed by appellant-Surinder Mohan Katwal, in his capacity as Chairman of the Board and the other headed by appellant-Dr. Vidya Nath, as a Member of Board. Appellant-Rakesh Kumar Chhabra was interviewed by the Board headed by S. M. Kotwal. As per the score-sheet of the candidates, earmarked as Ext. PW3/A, the appellant-Rakesh Kumar Chhabra was awarded '7' marks in the viva-voce. Considering '51' marks in ground test, his total marks obtained was indicated to be '58' and accordingly he was remarked as 'below average'.

4. However, in the final merit list earmarked as Ext.PW3/K, appellant-Rakesh Kumar Chhabra was shown to have secured '13' marks in the viva-voce and his total marks obtained was indicated to be '64'. It is also brought on record that as a consequence of bungling of the merit list, appellant-Rakesh Kumar Chhabra was recommended for appointment and was ultimately appointed. On account of the above mentioned disparity in the merit list, all the three appellants faced criminal prosecution on the allegations of hatching a criminal conspiracy and duplicating the merit list to favour appellant-Rakesh Kumar Chhabra. In pursuance thereof, FIR No.1/2003 at PS Enforcement North Zone Dharamshala, District Kangra, was registered against the appellants under Section 13(2) of Prevention of Corruption Act alongwith Sections 120-B, 420, 468 and 471 IPC. After completion of investigation and after obtaining sanction order from the Government, chargesheet was filed against the appellants.

5. To prove the conspiracy and that the records of selection were falsified, prosecution has examined sixteen witnesses including two officials from the Board namely PW-3-Surinder Kumar, Senior Assistant and PW-4-Sanjeev Kumar, Senior Assistant and Handwriting Expert. PWs 3 and 4 deposed that the merit list (Ext. PW3/A) was in the hand of appellant-Surinder Mohan Katwal and the columns in which marks had been recorded in Ext.PW3/K were written in the hand of appellant-Dr. Vidya Nath. PW-7- Handwriting Expert-Dr. Minakshi Mahajan has also attributed handwriting and signatures of the officials in Ext.PW3/A to be that of appellant S.M. Katwal and the ones in Ext.PW3/K to be that of appellant-Dr. Vidya Nath.

6. Upon analysis of evidence, trial court took note of the fact that the appellants have not disputed the existence of their signatures on Ext.PW3/K and Dr. Vidya Nath's writing (in figure) in Ex.PW3/K; rather they have taken the plea of *bonafide* error or mistake on their part. Upon appraisal to avoid repetition of evidence, trial court found that the prosecution has established the guilt of the accused beyond reasonable doubt and therefore convicted the appellants S.M. Katwal and Dr. Vidya Nath of offences under Sections 13(2) of the Prevention of Corruption Act, and Sections 468, 471, 420 and 120-B IPC and they were sentenced to undergo three years rigorous imprisonment. Appellant-Rakesh Kumar Chhabra was convicted of offences under Sections 468, 471, 420 and 120-B IPC.

7. Appellants challenged their conviction by preferring separate appeals. High Court held that the appellants S.M. Katwal and Dr. Vidya Nath did not forge any document; rather they prepared false record of final result which amounted to offences punishable under Sections 218 and 477-A of the Indian Penal Code. On those findings, High Court acquitted the appellants S.M. Katwal and Dr. Vidya Nath

under Sections 468, 471 IPC and maintained their conviction under Section 13(2) of the Prevention of Corruption Act and Sections 420 and 120-B IPC. However, the High Court reduced the sentence of imprisonment to one year and imposed a fine of Rs.5,000/- with default clause in respect of each of the offences for which they have been convicted of. The conviction of appellant-R.K. Chhabra under Section 468 and 471 IPC was set aside and his conviction under Sections 120-B and 420 IPC was confirmed. His sentence of imprisonment was also reduced to one year.

8. We have heard the learned counsel appearing for the parties at considerable length. Mr. Jayant Bhusan learned Senior Counsel appearing for appellant-Dr. Vidya Nath submitted that appellant-Rakesh Kumar Chhabra appeared before the HPSSSB headed by S.M.Katwal and Dr. Vidya Nath simply signed in the final merit list and courts below wrongly relied upon the statements of PW-3-Surinder Kumar and PW-4-Sanjeev Kumar for coming to the conclusion that appellant-Dr. Vidya Nath has written the figure work in the merit list (Ext.PW3/K). The learned counsel submitted that the High Court erred in basing its conclusion on the statement of PW7-Dr. Minakshi Mahajan (handwriting expert) and holding that the prosecution has proved its case against the appellants, without appreciating the statements of the witnesses. It was submitted that such an approach of the High Court is perverse. The counsel urged that the High Court, as the first appellate court, ought to have thoroughly evaluated and analysed the evidence on record afresh; rather than simply endorsing the finding of the trial court that the score of appellant-Rakesh Kumar Chhabra had been shown to be higher than the actual score while preparing final list (Ext.PW3/K).

9. Per contra, learned counsel for the state submitted that the evidence of PWs 3 and 4 is corroborated by the evidence of handwriting expert-Minakshi

Mahajan (PW-7). Trial court and the High Court recorded concurrent finding of facts that merit list (Ext.PW3/A) was in the handwriting of appellant-S.M. Katwal and that the column figure recorded in Ext. PW3/K was in the handwriting of appellant- Dr. Vidya Nath. Resultantly, appellant-Rakesh Kumar Chhabra emerged as the beneficiary. It was finally submitted that the concurrent finding of the courts below do not suffer from any perversity warranting interference.

10. We have carefully considered the rival contentions, perused the impugned judgment of the High Court as also of the trial court and other materials on record.

11. PW-3-Surinder Kumar working as a Senior Assistant in the Board had stated that he was acquainted with the handwriting and signatures of the appellants S.M. Katwal and Dr. Vidya Nath but was not conversant with their writing in figures (Ext.PW3/K). PW-3-Surinder Kumar carried out the entry in first three columns of the interview sheet. PW-3 further stated that last column of remarks in the interview sheet Ext.PW3/A has been written, updated and signed by appellant-S.M. Katwal. PW-3 also stated that appellant-Dr. Vidya Nath has signed the documents Ext.PW3/J-1 to PW3/J-26 and that in the merit list Ext.PW3/K the last four columns appear to have been written by appellant-Dr. Vidya Nath. Corroborating PW-3's testimony, PW-4-Sanjeev Kumar, Senior Assistant stated that merit list Ext.PW3/K (two sheets) had been duly signed by the appellants S.M. Katwal and Dr. Vidya Nath. PW-4 further stated that appellant Dr. Vidya Nath had written column '5' to '8' of the merit list (Ext.PW3/K) in his own hand. Sl. No.32 in the said merit list referred to appellant-Rakesh Kumar Chhabra. PWs 3 and 4 working in the HPSSSB have thus clearly spoken that the columns in merit list (Ext.PW-3/K) pertaining to the score of written test, and viva-voce were written in the hands of appellants S.M. Katwal

and Dr. Vidya Nath. From the evidence of PWs 3 and 4, it is also brought on record that remarks of the interview sheet (Ext. PW3/K) has been updated and written by the appellant-S.M. Katwal.

12. Appellant-Dr. Vidya Nath has not disputed his signature on the merit list Ext. PW3/K; but has disputed the figures written vide 'Q-30' to 'Q-32' in the said merit list. In the context of the above defence plea, trial court as well as the High Court referred to the evidence of handwriting expert- PW-7-Dr.Minakshi Mahajan who has compared the disputed handwritings with admitted handwritings of the appellants. After comparison of appellant-Dr. Vidya Nath admitted handwriting with disputed figures Q-30 to Q-32 on merit list (Ext.PW3/K), PW-7-Minakshi Mahajan stated that the disputed figures have been written by none else than appellant-Dr. Vidya Nath and that the merit list contains the signature of appellants.

13. Referring to the evidence of PWs 3 and 4 and upon thorough analysis of evidence of handwriting expert PW-7-Dr.Minakshi Mahajan, the facts and circumstances of the case, it stands firmly established firstly that figures 'Q-30' to 'Q-32' on merit list Ext.PW3/K have been written by Dr. Vidya Nath and secondly that the list bears the signatures of both S.M.Katwal and Dr. Vidya Nath. S.M. Katwal and Dr. Vidya Nath in their statements under Section 313 of the Code of Criminal Procedure have admitted that both of them prepared the said merit list (Ext.PW3/K jointly. The evidence discussed above fully establishes that Dr. Vidya nath was the author of figures "13" and "64" on merit list Ext.PW3/K and no further evidence is required for the court to fix the identity of the author of figures "13" and "64" in merit list Ext.PW3/K.

14. While the trial court examined the evidence of PWs 3 and 4 and that of handwriting expert (PW-7) at threadbare for confirming the conviction of the

appellants S.M. Katwal and Dr. Vidya Nath, the High Court has not discussed the evidence on which it relied for confirming the conviction of the appellant. The powers of the appellate court under Section 386 Cr.P.C. are the same as that of the trial court. It is true that the trial court being a primary court of facts, which has the advantage of seeing and observing the witnesses has to thoroughly analyse the evidence and record its findings. In an appeal from a conviction, it is for the appellate court to be satisfied affirmatively that the prosecution case is substantially established and record its own findings to confirm the conviction. In the present case, even though there is no thorough evaluation of evidence by the High Court, in our view, impugned judgment does not suffer from any perversity warranting interference. The conviction of appellant-S.M. Katwal and Dr. Vidya Nath is based on material on record and warrants no interference.

15. In so far as Rakesh Kumar Chhabra is concerned, it is noteworthy that none of the candidates scored in viva voce test in double digits, whereas R.K.Chhabra is shown to have scored '13' marks in the interview. Courts have recorded the concurrent findings that the appellants conspired to make the entry of the marks scored by R.K. Chhabra as '13' so as to favour R.K. Chhabra and thus he was rightly convicted under Section 120-B read with Section 420 IPC.

16. In the result, all the appeals are dismissed. The appellants are on bail and their bail bonds shall stand cancelled. The appellants shall be taken to custody to serve out the remaining sentence.

.....J.
(V.GOPALA GOWDA)

.....J.
(R. BANUMATHI)

New Delhi;
July 14, 2016

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2274 OF 2011

SURINDER MOHAN KATWAL

...Appellant

Versus

STATE OF HIMACHAL PRADESH

...Respondent

WITH

CRIMINAL APPEAL NO.200 of 2012

ORDER

R. BANUMATHI, J.

These appeals arise out of the common judgment of the High Court of Himachal Pradesh at Shimla challenging the correctness of the judgment dated 11.05.2011 in Criminal Appeal No.305/2006, 297/2006, whereby the High Court confirmed the conviction of S.M.Katwal under Section 13(2) of Prevention of Corruption Act and reducing the sentence of imprisonment to one year with fine of Rs.5,000/- with default clause. High Court acquitted appellant-S.M. Katwal of other offences. By the impugned judgment, High Court confirmed the conviction of appellant Madan Gopal under Section 120-B IPC and reducing the sentence of imprisonment imposed on him to one year with fine of Rs.5,000/- with default clause. Appellant Madan Gopal was acquitted of other offences.

2. Common facts leading to these appeals are as follows: Appellant-Surinder Mohan Katwal is the Chairman of Himachal Pradesh Subordinate Service Selection Board (HPSSSB). There were some vacancies of Trained Graduate Teachers (Non-Medical) for which appellant-S.M.Katwal was required to recommend the names after following the due selection process. Written test was

held in which appellant Madan Gopal scored 111 marks. Madan Gopal alongwith other various candidates who had qualified the written test was called for interview and interview was held on 30.10.2002. List indicating the score in the written test as also in the interview and the total marks was prepared and the said list is Ext.PW-2/C-14. The score-card prepared, Ex.PW-2/C-14, depicted that Madan Gopal had secured '12' marks in viva-voce and his performance had been remarked as 'average'. However, in a subsequent score-card prepared, Ex.PW-2/C-15, marks secured by Madan Gopal in viva-voce was indicated to be '18' and he was remarked as 'above average'. The appellant-Surinder Mohan Katwal had taken a defence plea that Ex.PW-2/C-15 i.e. subsequent score-card was prepared as the first score-card, Ex.PW-2/C-14 had got torn.

3. In the trial court, a number of witnesses including PW-4-Surinder Kumar Clerk of the Subordinate Staff Selection Board and PW-39-Dr. Minakshi Mahajan were examined. Upon consideration of evidence, trial court held that appellant S.M.Katwal as Chairman of HPSSS Board by using his position as such public servant in order to cause pecuniary advantage in favour of A-4-Madan Gopal recommended his name for the post of Trained Graduate Teacher (non-medical) by tampering the marks in the interview score sheet (Ext.PW-2/ C-14) from '12' to '18' and by inserting the word 'above' before the 'average' and thus committed offence. Trial court convicted S.M. Katwal of offences under Section 13(2) of the Prevention of Corruption Act and Sections 466, 468 and 471 and 120-B of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of three years and a fine of Rs.5,000/- with default clause. In lieu of conviction under Section 13(2) of Prevention of Corruption Act and rigorous imprisonment for a period of two years and fine of Rs.2,000/- to undergo simple imprisonment for a further period of

six months, for each of the offences, in lieu of conviction under above mentioned sections of IPC. Appellant-Madan Gopal was convicted of offences under Sections 466, 468, 471 and 120-B of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of two years and fine of Rs.2,000/- with default clause. Being aggrieved, both the appellants challenged their conviction in appeal before the High Court.

4. On consideration of the evidence on record, the High Court dismissed the appeal filed by appellant-Surinder Mohan Katwal. However, taking into account his age and the fact that criminal acts were committed by him to favour just one candidate, sentence was reduced to one year rigorous imprisonment and confirmed the fine of Rs.5,000/-. The appellant-Madan Gopal was found guilty of offence punishable under Section 120-B IPC and sentence of imprisonment imposed on him was reduced to one year. However, he was acquitted of charges of forgery and his conviction for offences under Section 466, 468 and 471 of the IPC was set aside. High Court reduced the sentence to one year rigorous imprisonment and fine of Rs.5,000/- with default clause.

5. Based upon evidence of PW-4-Andeep, trial court and the High Court recorded the concurrent findings of facts that in the merit list (Ext.PW2/C-14), score of appellant-Madan Gopal has been changed from '12' to '18' and also word 'above' has been added to word 'average' initially written in remarks column. After comparison, Ext.PW-2/C-14 both the courts observed that word 'above' written in a pen and ink different from those with which word 'average' is written in the remarks column of Ext.PW2/C-14. Opinion of handwriting expert namely PW-39-Dr.Minakshi Mahajan is also to the same effect. PW-39 has opined that the word 'above' is in the handwriting of appellant-S.M.Katwal.

6. Appellant raised defence plea that the total score of appellant-Madan Gopal has remained unchanged which is '129' as even after adding '18' marks awarded in interview to the score of 111 in the written test which is sufficient to conclude that the score of appellant-Madan Gopal recorded as '18' under column interview was done in the beginning itself. Considering the submission and upon close scrutiny, the High Court observed that Ext.PW-2/C-14 changed the word made in the remarks column by adding the word 'above' before the word 'average' in a different pen and ink than the one used before. The evidence of PW-39-Dr. Minakshi Mahajan supported the prosecution case as to manipulating the score card so as to favour the appellant-Madan Gopal. Conviction of the appellant-S.M. Katwal under Section 13(2) of the Prevention of Corruption Act and also the offences under Sections 466, 468 and 471 IPC is based on evidence and material on record and the same warrants no interference.

7. Learned counsel for the appellant-Madan Gopal submitted that Madan Gopal could not have been convicted for the offence of criminal conspiracy and there was no evidence to show that Madan Gopal had played any role in the increase of marks awarded to him. As observed by the High Court, S.M. Katwal made the interpolations not to derive any benefit for himself; but he made the interpolation so as to favour Madan Gopal who is the ultimate beneficiary of the act of the appellant. High Court was right in observing that "*it can legitimately be presumed that there was criminal conspiracy between two appellants and the object of that conspiracy was to ensure the selection of appellant-Madan Gopal as TGT (non-medical)*". Conviction of the appellant-Madan Gopal under Section 120-B IPC is also based on evidence and material on record which warrants no interference.

8. In the result, both the appeals are dismissed. The appellants are on

bail and their bail bonds shall stand cancelled. The appellants shall be taken to custody to serve out the remaining sentence.

.....J.
(V.GOPALA GOWDA)

.....J.
(R. BANUMATHI)

New Delhi;
July 14, 2016

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPEAL NO. 955 OF 2012

S.M.KATWAL

...Appellant

Versus

STATE OF HIMACHAL PRADESH

...Respondent

ORDER**R. BANUMATHI, J.**

This appeal arises out of the judgment of High Court of Himachal Pradesh in Criminal Appeal No.3 of 2006 dated 11.03.2011 confirming the conviction of the appellant under Sections 468 and 471 IPC and the sentence of imprisonment of one year imposed on him. The High Court acquitted the appellant of charges under Section 13 (2) of the Prevention of Corruption Act and other offences he was charged of.

2. Brief facts which lead to the filing of this Criminal Appeal are as follows: In the year 1999, appellant S.M. Katwal was working as Chairman of Himachal Pradesh Subordinate Services Selection Board (HPSSSB). Number of vacancies of Vidya Upasaks (a category of teachers came to be advertised in the year 2000. The recruitment was carried out in two stages viz., written test and viva-voce. Merit lists were prepared wherein the names, marks obtained in written test and marks obtained in viva-voce were indicated, which are earmarked as Exts. P-97 to P-100, Ext. P-102 to 105, Ext. P-107 to 111, Ext. 113 to 116, Ext. 118 to 121, Ext. P-123, Ext. P-125 to 128, Ext.130 to 132, Ext. 134 to 137 and Ext.138 to 145. On conclusion of viva voce test and such proceeding on the basis of those lists, proceedings of selection were also prepared, consisting of eight sheets and were earmarked as Ext.P-138 to P-145.

3. In the year when the new Government took over, it was decided that the proceedings of selection will be recorded afresh and accordingly, selection lists were sent to Government Examiner of Documents, who vide report Ext.PW18/E, opined that viva-voce marks of five candidates, namely, Satish Kumar, Prem Lal, Roshni Devi, Netar Singh and Swayam Prakash Sharma had been increased by overwriting. Based upon the inquiry report dated 02.04.2003 submitted by Mr. Satish Kumar Deputy Superintendent of Police, Enforcement South Zone, Shimla complaint was lodged by Department of Enforcement, Government of Himachal Pradesh, Kangra. FIR was registered against appellant S.M. Katwal under Sections 420, 465, 467, 468, 471, 217, 218 and 120-B IPC read with Sections 13(2) of Prevention of Corruption Act and Sections 109, 193, 201 IPC. PW-18-Dr. Minakshi Mahajan, the handwriting expert 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 mentioned above.

4. Appellant-S.M. Katwal was charge-sheeted and prosecuted for the aforesaid offences. In all, the prosecution examined 27 witnesses and produced various documents to prove the guilt of the appellant. In his defence, the appellant maintained that he had been falsely implicated because of political vendetta. The appellant failed to offer any explanation regarding the overwriting in the merit lists; rather he simply denied that there was any overwriting.

5. The trial court found the appellant guilty and convicted him for offences punishable under Section 13(2) of the Prevention of Corruption Act and Sections 218, 465, 467, 468 and 471IPC. The trial court imposed a sentence of three years rigorous imprisonment and fine of Rs.10,000/- for offence under Section 13(2) of the Prevention of Corruption Act and rigorous imprisonment of one year for other

offences and fine of Rs.1,000/- for each of the remaining offences.

6. Challenging his conviction, the appellant preferred an appeal before the High Court. State also went in appeal seeking enhancement of punishment. The High Court acquitted the appellant of charges under Sections 13(2) of the Prevention of Corruption Act and Sections 218, 465, 467 IPC. However, conviction under sections 468 and 471 IPC and the sentence of imprisonment was maintained. The High court concluded that act of the appellant does not fall within any of the clauses of Section 13(1) of the Prevention of Corruption Act, because he is not shown to have obtained any valuable or pecuniary advantage for himself or any other person and acquitted the appellants under Section 13(2) of the Prevention of Corruption Act.

7. The High Court noted overwriting of marks in case of six candidates, namely, 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 was only in the viva-voce marks, but not in the total marks obtained. However, in case of one candidate named, Zalam Singh change is seen not only in the viva voce marks, which is raised from '2' to '13', but also in the total marks which has been raised from '49' to '60'. Opinion of PW-18-Dr. Minakshi Mahajan, the handwriting expert, as recorded in Ext. PW-18/E was also found against the appellant.

8. Members of the Committee viz. PW-6-Sanjudhir and PW-7-Chope Ram have deposed that the marks were awarded by the appellant; he used to write the marks in the list and lists were not shown to them. Appellant has offered no explanation for the change in marks of Zalam Singh. Referring to the evidence, High court has observed that 'digit 2' pertaining to viva-voce test, has been changed to '13' and the total has also been overwritten.

9. Both trial court and the High Court recorded concurrent finding of facts that the change was made to favour Zalam Singh because the marks awarded to Zalam Singh has been raised from '59' to '60' and no explanation was forthcoming from the appellant. The concurrent finding recorded by the courts below are based upon evidence and do not suffer from any perversity warranting interference.

10. In the result, the appeal is dismissed. The appellant is on bail and his bail bonds shall stand cancelled. The appellant shall be taken to custody to serve out the remaining sentence.

.....J.
(V.GOPALA GOWDA)

.....J.
(R. BANUMATHI)

New Delhi;
July 14, 2016

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the three separate signed orders. The appellants are on bail and their bail bonds shall stand cancelled. The appellants shall be taken to custody to serve out the remaining sentence.

(S. K. RAKHEJA)
COURT MASTER

(SUMAN JAIN)
COURT MASTER

(Three Signed Orders are placed on the file)

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned counsel for the parties.

The appeals are dismissed.

Reasons to follow.

(S. K. RAKHEJA)
COURT MASTER

(SUMAN JAIN)
COURT MASTER