

**THE HIGH COURT OF TRIPURA  
AGARTALA**

**Crl. A. No. 21 of 2003**

**Appellant :**

Sri Amiya Ranjan Chakraborty,  
S/O. Late Jatirmoy Chakraborty,  
of Ramnagar, Road No.1,  
P.S. West Agartala,  
District – West Tripura.

**By Advocates :**

Mr. S. Kar Bhowmik

- Vs -

**Respondent :**

The State of Tripura

**By Advocates :**

Mr. S. Chakraborty, Special P.P.

**Crl.A. No. 22 of 2003**

**Appellant :**

Sri Anil Chandra Debnath,  
S/O. Late Radha Charan Debnath,  
Resident of West Nowabadi,  
P.S. East Agartala,  
District – West Tripura.

**By Advocates :**

Mr. A. K. Bhowmik, Sr. Advocate,  
Mr. R. Datta,

- Vs -

**Respondent :**

The State of Tripura

**By Advocates :**

Mr. S. Chakraborty, Special P.P.

**BEFORE**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

Dates of hearing : 03.04.2013, 04.04.2013,  
 05.04.2013, 09.04.2013,  
 10.04.2013, 17.04.2013,  
 and 02.05.2013.

Date of delivery of judgment : **29.11.2013.**  
 & Order.

Whether fit for reporting : **Yes**

**JUDGMENT & ORDER**

Both the appeals by the convicts, namely, Sri Amiya Ranjan Chakraborty (the appellant in Criminal Appeal No. 21 of 2003) and Sri Anil Chandra Debnath (the appellant in Criminal Appeal No. 22 of 2003) are directed against the judgment and order of conviction and sentence dated 01.04.2003, delivered in Special Case No. 20 of 1994 by the Special Judge, West Tripura, Agartala and hence the appeals are tied up together for disposal by a common judgment. By the said judgment and order the appellants have been convicted and sentenced to suffer rigorous imprisonment for 4(four) years with a fine of Rs.5,000/- and in default of payment of fine to suffer R.I. for further three months and also R.I. for three years with a fine of Rs.3,000/- and in default of payment of fine to suffer further R.I. for two months for the offences under Sections 409 and 468 of the Indian Penal Code (for short 'IPC') respectively. It has been further directed that the sentences shall run concurrently. It is to be noted that the co-accused, namely, Sri Satyendra Chatterjee, was acquitted from the charges on benefit of doubt.

2. Smt. Rajlaxmi Devi (PW27), the then Deputy Director of Education, South District Zonal Office, Udaipur, South Tripura had lodged a written Ejahar to the Officer-in-charge, Nutanbazar Police Station on 07.11.1984 alleging that the appellant, Sri Amiya Ranjan Chakraborty, the then Headmaster of Nutanbazar H. S. School in connivance with the other appellant, Sri Anil Chandra Debnath, LDC, the Cashier etc. and Sri Satyendra Chatterjee, UDC, Directorate of School Education, Agartala had misappropriated the Government money to the extent of Rs.54,753.98 as detected on preliminary scrutiny of the records. It had been further alleged that the said misappropriation had taken place from the fund placed for distribution of pre-matric and post-matric Scholarships/stipends for the year 1984-85 amounting to Rs.92,723/- the sum was detected during inspection of the School records on 26.09.1984.

3. The basis facts, those are required to be noted for purpose of appreciating the appeals, may briefly be stated at the outset. Shri Amiya Ranjan Chakraborty, the then Headmaster of Nutanbazar H. S. School, Sri Anil Chandra Debnath, Cashier-cum-LDC-cum-Accountant of Nutanbazar H. S. School and Sri Satyendra Chatterjee, U.D.Clerk of the Directorate of School Education, Tripura, Agartala being in league misappropriated a sum of Rs.54,753.98P from the fund of pre-matric/post-matric stipends etc. for the year 1984-85. The lapses of Sri Amiya Ranjan Chakraborty, the then Headmaster of Nutanbazar H. S. School, Sri Anil Chandra Chakraborty, Cashier-cum-LDC-cum-

Accountant of Nutanbazar H. S. School and Sri Satyendra Chatterjee, U.D.Clerk of the Directorate of School Education, Tripura, Agartala, have been enumerated as under :

(i) Bill No.32 dated 02.07.1984 for Rs.1,515/- was prepared by Sri Anil Chandra Debnath, Cashier, towards payment of post-matric Scholarship for the year 1983-84 in favour of Sri Nilmani Chakma, a student of Class-IX of Nutanbazar H. S. School. After the bill was signed by Sri Amiya Ranjan Chakraborty, Headmaster on 02.07.1984 Sri Anil Chandra Debnath had drawn the amount of the bill from the United Bank of India, Amarpur Branch on 05.07.1984 having the bill passed by the Treasury. An amount of Rs.615/- was paid to Shri Nilmani Chakma by taking his signature on the Acquittance Roll (AR) who has also corroborated it. But payment was not certified by any officer. The entire amount of Rs.1,515/-, however, got entered into the Cash Register on 05.07.1984 and was shown disbursed on 18.07.1984. The Cash Account Register was written by Sri Anil Chandra Debnath and counter-signed by Sri Amiya Ranjan Chakraborty, Headmaster after entry of receipt of the cash but there was no signature of the Headmaster about disbursement of the cash.

(ii) Bill No. 33 dated 02.07.1984 for Rs.2,875/- was drawn by Sri Anil Chandra Debnath, Cashier on 05.07.1984

in connection with payment of post-matric Scholarship of Shri Ranjan Das and other four students for the year 1982-83 and 1983-84 @ Rs.50 per month per student. The receipt of the amount was entered into the Cash Book on 05.07.1984 and signed by Sri Amiya Ranjan Chakraborty, Headmaster, Nutanbazar H. S. School, but disbursement of the amount was not signed by the Headmaster and the disbursement was shown on 18.07.1984. Sri Anil Chandra Debnath, Cashier and Sri Amiya Ranjan Chakraborty, Headmaster of Nutanbazar H. S. School have collaborated in misappropriating the amount of Rs.1,192/- in as much as out of the total amount drawn i.e. Rs.2,875/- as an amount of Rs.1,683/- only was disbursed to the students in the following manner :

- (a) Shri Ranjan Das - Rs.665/-
- (b) Shri Sukuntala Chowhan - Rs.348/-
- (c) Shri Ranjit Das - Rs.215/-
- (d) Shri Rakesh das - Rs.140/-
- (e) Smt. Gita Rani Das - Rs.315/-

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Rs.1,683/-

(iii) Bill No.34 dated 02.07.1984 for Rs.6,700/- was drawn on 05.07.1984 by Sri Anil Chandra Debnath, Cashier, Nutanbazar H. S. School in connection with payment of LIG stipend of 10 numbers of ST/SC students for the period

from July 1983 to March 1984 and in respect of 3 nos. of students for the period from August 1982 to March 1984. The receipt of the amount was entered in the Cash Book by Sri Anil Chandra Debnath, Cashier on 05.07.1984 and was duly signed by the Headmaster. The disbursement shown on 18.07.1984 in the Cash Book had not been authenticated by the Headmaster. Out of Rs.6,700/- drawn by Sri Anil Chandra Debnath, Cashier, an amount of Rs.3,813/- was disbursed to 10 numbers of students and such payment has been admitted by the payee. No amount was disbursed to the following three students :

- (a) Shri Ashim Saha - Rs.805/-
- (b) Shri Babul Dey - Rs.459/-
- (c) Shri Swapan Kr. Banik - Rs.459/-

Less payment of Rs.50/- each to five numbers of students and also less payment of Rs.457/- each to two numbers of students was made by the Cashier. Thus, Sri Anil Chandra Debnath and Sri Amiya Ranjan Chakraborty, Headmaster have collaborated in misappropriating an amount of Rs.2,887/- out of the drawn amount of Rs.6,700/-.

(iv) Bill No. 45 dated 20.07.1984 for Rs.5,500/- was drawn on 01.08.1984 by Sri Anil Chandra Debnath, Cashier from the Bank towards payment of post-matric scholarship for eight numbers of students for the year 1982-83 and

1983-84 @ Rs.50/- per month per student including the annual charges. There was no entry of the said amount in the Cash Book and no AcquittanceRoll was also found for disbursement of the amount during investigation. The names of students appeared in the bill were found fictitious during inquiry. Thus, it is obvious that Sri Anil Chandra Debnath, Cashier, Nutanbazar H. S. School had misappropriated the entire amount of Rs.5,500/- fraudulently.

(v) Bill No. 46 dated 20.07.1984 for Rs.16,950/- was prepared and drawn by Sri Anil Chandra Debnath, Cashier on 01.08.1984 from U.B.I., Amarpur Branch in connection with LIG stipends for 37 students in collaboration with Sri Amiya Ranjan Chakraborty, Headmaster, Nutanbazar H. S. School, who had signed the bill as the Headmaster. But no Cash account was maintained regarding receipt and disbursement of the amount and no AcquittanceRoll about payment of the amount was available during inquiry. The names of 24 numbers of students as appeared in the bill were found fictitious during inquiry as they were not actually students of the said school. The names of another 13 numbers of students as appeared in the bill were already available in the list of the students who had drawn stipend under LIG in bill No. 34 dated 05.07.1984. Thus, the names of 13 numbers of students were replicated in the bill with motive to embezzle the sum of Rs.5.967/-. Thus, it is

evident that Sri Anil Chandra Debnath, Cashier had misappropriated the entire amount drawn in bill No. 46.

(vi) Against the Bill No. 57 dated 28.08.1984 an amount of Rs.11,550/- was drawn on 01.09.1984 by Sri Anil Chandra Debnath, Cashier, Nutanbazar H. S. School towards payment of pre-matric scholarship/stipend of 55 numbers of students for the year 1984-85 and against the Bill No. 58 dated 28.08.1984 an amount of Rs.6,300/- was drawn on 01.09.1984 by Sri Anil Chandra Debnath, Cashier, Nutanbazar H. S. School towards payment of pre-matric scholarship/stipends of 85 numbers of students (ST-30 and SC-55) for the year 1984-85. There was no entry of receipt of the amount in the Cash Book and disbursement of the same. No AcquittanceRoll was also available showing disbursement of the amount to any students. It is revealed from the inquiry that 57 numbers of students are fictitious out of 85 students and the names of the rest 28 numbers of students (ST-14 and SC-14) had appeared in Bill No. 74. So, it is obvious that Sri Anil Chandra Debnath, Cashier, Nutanbazar H. S. School had misappropriated the entire amount of Rs.17,850/- vide Bill No. 57 and 58 after drawal on 01.09.1984.

(vii) Against the Bill No.74 dated 13.09.1984 an amount of Rs.8,820/- was drawn on 19.09.1984 towards payment of pre-matric Scholarship/stipends of 42 numbers of students

for the year 1984-85 @ Rs.210/- per month by Sri Anil Chandra Debnath, Cashier, Nutanbazar H. S. School. There was no entry of receipt of the amount in the Cash Book. The Acquittance Roll showed disbursement of Rs.4,000/- to 23 numbers of students who admitted the receipt. As per sanction each student was entitled to be the recipient of Rs.210/- per month and as such an amount of Rs.2,730/- was required for payment to 13 numbers of students Sri Anil Chandra Debnath, Cashier, Nutanbazar H. S. School made an excess payment of Rs.1,270/- (Rs.4,000/- – Rs.2,730/-) to 13 numbers of students. Out of 42 numbers of students 2 students are fictitious and no amount was paid to 27 numbers of students. Against the Bill No.74 dated 13.09.1984 an amount of Rs.4,820/- has been misappropriated by Sri Anil Chandra Debnath, Cashier, Nutanbazar H. S. School.

3.1 Against the Bill Nos. 45, 46, 57, 58 and 74 some names of the students are found fictitious. No such students were admitted in the institution. The LIG stipend was drawn for 37 numbers of students by preparing bills twice through the Bill Nos. 46 and 34. Sri Amiya Ranjan Chakraborty, Headmaster had himself tendered those bills for encashment.

3.2 Sri Amiya Ranjan Chakraborty, thus, in his capacity as Headmaster of the Education Department conspiring with the other accused has been alleged to have committed criminal

breach of trust, misappropriated a sum of Rs.54,753.98 against the bills mentioned above, derived wrongful pecuniary advantage to that extent either for himself or for others by corrupt or illegal means or by otherwise abusing his position as a public servant by preparing/signing aforesaid false and forged bills.

3.3 An amount of Rs.16,500/- + Rs.9,000/- = Rs.25,000/- was allotted to Nutanbazar H. S. School for pre-matric scholarship of ST/SC students for 1984-85 by the Director of School Education under Order No.F.9(11)-DSE/84(P-I) dated 16.08.1984. No formal proposal was received in the Directorate for this amount from the Headmaster, Nutanbazar H. S. School.

3.4 Sri Aditya Acharjee, LDC of stipend/scholarship section of the Directorate of School Education having been instructed by his superior, Shri Satyendra Chatterjee, UDC stipend/scholarship Section had processed the File No. 9(11)-DSE/84(P-I) on 13.08.1984 for allotment of fund of Rs.25,500/- in favour of Headmaster, Nutanbazar H. S. School, without having any proposal from the Headmaster, Nutanbazar H. S. School. The allotment of fund of Rs.25,500/- got approval of the Director of School Education as per noting of Shri Arun Baran Majumder, Head Clerk, Shri Amaresh Dutta, Office Superintendent of the Directorate of School Education, the same was communicated to Nutanbazar H. S. School from the Directorate of School Education Office on the basis of which the questioned bills were prepared.

3.5 Shri Satyendra Chatterjee had informed Shri Aditya Acharjee that he had discussion with the Director of School Education on this issue and the Director of School Education himself instructed him to process the file though subsequently this statement was found not correct. Thus, Shri Satyendra Chatterjee had committed offences under Section 468 read with Section 409/109 of the IPC. The handwritings of Sri Anil Chandra Debnath, LDC-cum-Cashier, Shri Satyendra Chatterjee, UDC and Sri Amiya Ranjan Chakraborty, Headmaster got examined by the handwriting expert, Kolkata. The handwritings have been confirmed by the expert.

4. In the FIR, such details have not surfaced. But it has been stated that there was mis-appropriation of fund of Rs.54,753.98P. Based on the said written Ejahar (Exbt.-P/12), Nutanbazar P.S. Case No. 1(11)84 under Sections 409/34 of the IPC was registered and taken up for investigation. On completion of investigation, the charge sheet was filed against Sri Amiya Ranjan Chakraborty and Sri Anil Chandra Debnath under Section 120B read with Sections 409/109/467/463/471 of the IPC and Section 5(2) read with Section 5(1)(c) and (d) of the Prevention of Corruption Act, 1947, whereas against Sri Satyendra Chatterjee, the charge sheet was filed under Sections 468/409/109 of the IPC. The Governor of Tripura had also accorded sanction under Section 197 of the Criminal Procedure Code (Act No. 2, 1974) and also under Section 6(1)(b) of the Prevention of Corruption Act, 1947 against Sri Amiya Ranjan

Chakraborty and others for the said offences or any other offences punishable under any other provisions of law in respect of the commissions as aforesaid and for taking cognizance of the said offence by a Court of competent jurisdiction.

5. After filing of the charge sheet, the case was committed to the Court of the learned Special Judge, West Tripura, Agartala and the learned Special Judge after such commitment framed the charge against the said accused persons under Section 120B read with Section 409/34 of the IPC, under Section 467 read with Section 109 of the IPC, under Sections 468 and 409 of the IPC, under Section 471 read with Section 467 of the IPC and under Section 13(1)(c), punishable under Section 13(2) of the Prevention of Corruption Act, 1947. The appellants and the other accused person pleaded total innocence and claimed to face the trial.

6. The prosecution has produced as many as 29 witnesses including the complainant, Smt. Rajlaxmi Devi (PW27), Shri Gobinda Gopal Basak (PW29), who conducted the inquiry and some of the students, who were part of the questioned transactions and also introduced as many as 49 documents and two material objects, whereas no evidence was advanced for the defence except admitting some part of the documents from Exbt.-A to Exbt.-D. After recording of the prosecution evidence, the statements of the appellants and another accused person were recorded on examination in terms of the provision of Section 313

of the Cr.P.C. In those statements, the appellants and another have either denied the incriminating materials as surfaced against them or had given some explanation which was exclusive to their knowledge. After appreciation of the evidence the Special Judge by the impugned judgment has returned the finding of conviction as stated.

7. Even though the prosecution case is primarily based on documentary evidence, but they have introduced several witnesses for establishing the discrepancies in the records. What has appeared further that for returning the finding of the conviction, Exbt.-P/47, report of the handwriting expert, i.e., Government Examiner of Questioned Documents, was relied heavily. From the findings, as extracted hereunder, it would be apparent that the said report was relied upon extensively for returning the finding of conviction.

***"I have examined and scrutinized Q1 to Q6. Q1 is handwriting of Bill No.33, Q2 is the signature of the Cashier who received the money from the Bank and Q6 is the list of students attached with Bill No.33, Q3 and Q4 are signatures of the D.D.O and Q5 is the signature of the D.D.O in the list of students i.e. Q6. Similarly Bill No. 34 is Q7, Q10 is receipt of the amount by the Cashier, Q11 is the list of students, Q8 & Q9 are signatures of the D.D.O. and Q12 is the signature of the D.D.O in the list of students. It has clearly been stated in Exbt.P/47 that Q1, Q2 and Q6 all were written by one and the same person and Q3, Q4 and Q5 all were also written by one and the same person. It may be mentioned here that the Bill along with list of students were prepared by the accused-Cashier and the amount in question was received by him from the Bank and in the Bill there are two signatures of accused-D.D.O and one signature is in the list of students. Similar position is found in respect of other bills. Therefore, it can safely be said that both the accused persons jointly misappropriated the Government money by***

***preparing bills entering the fictitious names, reflecting the names of students in two categories and also by not making payment to the students or making partial payment.***

***In view of the discussions and analysis made above I am satisfied that the prosecution has been able to prove its case against both the accused persons namely, Amiya Ranjan Chakraborty and Anil Chandra Debnath under Section 409 I.P.C. and also under Section 468 I.P.C. read with Section 34 I.P.C. and accordingly I hold them guilty under the aforesaid Sections of the Indian Penal Code and they are liable to be convicted and sentenced."***

8. As stated earlier the other accused person was acquitted on benefit of doubt under Section 232 of the Cr.P.C. as no incriminating material was found against him in the evidence as adduced by the prosecution.
9. No doubt for purpose of seizure the statement of PW29 and for purpose of the entire prosecution case, the oral testimony of PW27 are immensely relevant.
10. PW1, Sri Saradindu Dey, Deputy Manager, United Bank of India, Amarpur Branch has identified the Bill Nos. 32, 33, 34 and 36 and his signatures thereon. He has stated that the Bill Nos. 45, 46 were drawn by the D.D.O himself from the Bank. The Bill Nos. 57 and 58, dated 28.08.1984, were also identified by him even though the said bills were passed by the Manager, Sri Samir Sarkar on 01.09.1984. In the cross-examination he has admitted that in the statement, as recorded by the police officer under Section 161 of the Cr.P.C, he did not state that Sri Anil Chandra Debnath received the payment from Bank in connection with the aforesaid bills.

11. PW2, Smti. Minati Majumder, is one of the students. She has admitted that she received Rs.384/- as stipend and that has been reflected in the AcquittanceRoll.
12. PW3, Sri Ranjan Das, another student of Class-XII of Nutanbazar H. S. School, has submitted that what has been recorded in the AcquittanceRoll was correct as he received Rs.665/- as scholarship.
13. PW4, Sri Ashim Saha, another student of Class-XII of the said School, has stated that he did not receive any scholarship or stipend.
14. PW5, Sri Dilip Kumar Chakraborty, a student of Nutanbazar H. S. School, has deposed that he received Rs.459/- as stipend and the same amount has been reflected in the AcquittanceRoll.
15. PW6, Sri Debasish Banik, who was a student of Class-XI of the said School in the year 1984 had received Rs.459/- as stipend and the said amount had been recorded in the AcquittanceRoll.
16. PW7, Sri Sibapada Naha, a student of the said school, has stated that he had received Rs.340/- as stipend in the year 1984 and the same amount had been reflected in the AcquittanceRoll.

17. PW8, Smt. Sukuntala Chouhan, a student of Class-XI of Nutanbazar H. S. School, has stated that she received Rs.348/- as scholarship and the same amount was reflected in the AcquittanceRoll.
18. PW9, Sri Ranjit Kumar Das, a student of the said school, has stated that he received Rs.215/- as stipend and the said amount had been reflected in the AcquittanceRoll.
19. PW10, Sri Arunjoy Reang, who was a student of Class-IX of Nutanbazar H.S. School in the year 1984, has stated that he did not receive any amount as scholarship from the school.
20. PW11, Sri Nilmani Chakma was a student of Nutanbazar H.S. School. He has stated that he received Rs.615/- as scholarship and the said amount was recorded in the AcquittanceRoll.
21. PW12, Sri Babul Chandra Dey, a student of Nutanbazar H. S. School, has stated that he did not receive any Scholarship. However, he was told that no stipend was sanctioned in his favour.
22. PW13, Sri Prabir Bhowmik, an Assistant Teacher, was the in-charge of the Nutanbazar H. S. School. On 20.12.1985 the police seized the documents from the School in his presence and also form his custody by preparing seizure lists. He has also identified the handwriting of Manindra Debnath in documents

Exbt.-M.O.1 series. He has further stated that in his presence Exbts.-M.O.2 series, M.O.3 series and M.O.4 series were also seized. According to him, Exbt.-M.O.3 and M.O.4 series were written by the appellant, Sri Anil Chandra Debnath and signed by the appellant, Sri Amiya Ranjan Chakraborty. He had also identified the signature of Sri Amiya Ranjan Chakraborty in Exbt.-P/11.

23. PW14, Sri Kanu Lal Saha, was the seizure witness to Exbt.-M.O. 2 series, M.O. 3 series and M.O. 4 series.

24. PW15, Sri Surendra Uchai, is another student of that School, who had admitted that he had received Rs.155/- each on two occasions.

25. PW16, Sri Santi Ranjan Banik, who was a teacher of Nutanbazar H. S.School at the relevant point of time, has stated that usually applications for stipend are to be addressed to the Headmaster of the school.

26. PW17, Shri Debaki Dulal Bhattacharjee, S.I. of police, is the recording officer and he has submitted that he could not find any record in the Nutanbazar H.S. School on 08.11.1984 when after registration of the case he had visited the said school.

27. PW18, Sri Ratan Lal Dey, PW19, Sri Aditya Acharjee and PW20, Sri Nirodh Chandra Datta are the witnesses for the prosecution, who were handling the relevant transactions in the Directorate of School Education and they had identified the

relevant documents, sanction orders etc. and there was no change to that aspect of the matter.

28. PW21, Smt. Gouri Rani Saha, another student of Class-XII of Nutanbazar H.S. school, has stated that he had received Rs.348/- as stipend. He had identified his signature in the Acquittance Roll.

29. PW22, Smt. Madhuri Saha, a student of that school has stated that she had received Rs.459/- as stipend from the Cashier.

30. PW23, Smt. Gita Rani Das, another student of that school, has stated that she had also received Rs.315/- as the LIG stipend.

31. PW24, Sri Manik Lal Thakur and PW25, Sri Santosh Debnath are the witnesses of the seizure of various documents from A.G.Office, Agartala and the U.B.I, Amarpur Branch respectively.

32. PW26, Sri Himangshu Sekhar Dey has stated that in his capacity of the District Inspector of Schools, South Tripura District, he accompanied Smt. Raj Laxmi Devi, Deputy Director of School (PW27) for inspection of Nutanbazar H.S. School on 26.09.1984. They took the Attendance Registers from the Headmaster and examined them. They had particularly examined the Attendance Registers of the students from Class-IX to Class-XII. He has stated that at the time of inspection the Cashier of the

School was absent and the Headmaster could not produce the other documents relating to pre-matric/post matric scholarship. He has further stated that the Headmaster could not show the fund-placing order received by his Office from the Directorate of School Education, but they could locate nine numbers of bills bearing Nos.32, 33, 34, 36, 45, 46, 57, 58 and 74 in the Bill Register. The Cash Book was not properly maintained after July 1984. On that day a sum of Rs.15,000/- or so was in the cash and also some vouchers and one draft for a sum of Rs.4,000/-. On the next day when they visited that school they took in their custody the Cash Book, A.P.Rs, Acquittance Roll, Attendance Registers of students and one office copy of the bill. He has further stated that the Deputy Director received the written statement submitted by the Headmaster and the Cashier. They found several discrepancies in the Attendance Registers. During their scrutiny, they found shortage of money around Rs.54,000/-. According to him, the Headmaster had signed the Cash Book lastly on 05.07.1984. During inquiry, PW27 put her signature in the Cash Book and he had identified her signature, Exbt.27/4. He had also identified a few entries in the Bill Register in respect of Bill Nos. 45 and 46 dated 20.07.1984, where Sri Amiya Ranjan Chakraborty put his signature. He had identified the signature of Sri Amiya Ranjan Chakraborty, Exbt.-38/4. He had also identified the enrolment figures of the school for the year 1983-84 containing signature of the Headmaster. When he was asked in the cross-examination as regards the shortage of money around

Rs.54,000/-, he could not say anything in details. He has also stated that the names of the students, who got stipend and the period for which stipend was paid under that bills, were mentioned and the names of the students were entered into the register on the basis of the Attendance Register.

33. PW27, Smti. Raj Laxmi Devi, is the most vital witness for the prosecution. She has stated that when she had visited the school, she found Sri Amiya Ranjan Chakraborty, Headmaster and some other staff, but students were not there. On her request Sri Amiya Ranjan Chakraborty had shown her the Attendance Registers of students of Class-IX, X, XI and XII for verification of pre-matric and post-matric scholarship for ST/SC students and also stipend of Lower Income Group students. On the following day when she had visited the school she asked the Headmaster to produce the Cash Book, Bill Registers, Original proposals for scholarship and stipend which were initiated by the Headmaster for both pre-matric and post-matric, LIG sanction orders and the office copies of the bill by which money was drawn from the Bank. But the Headmaster could only show the Bill Register, Cash Book and the office copy of Bill No.74 but no other documents. After going through the Bill Register it was found that the said Headmaster had drawn money of scholarship and stipend by 9 bills numbering 32, 33, 34, 36, 45, 46, 57, 58 and 74. She had identified the Bill Register Exbt.-P/28. In the Bill Register there was reference of Bill Nos. 32, 33, 34, 36 dated 02.07.1984 with their respective denomination. In the Bill Register, there are

references of Bill Nos. 45 and 46 dated 20.07.1984 for Rs.5,500/- and Rs.16,950/- respectively and the said bills were personally drawn by Sri Amiya Ranjan Chakraborty from the U.B.I, Amarpur Branch. He did not put his signature in the column No.11 although the rubber stamp of the Headmaster was there. In the said Bill Register there was also reference of Bill No.57 and 58 for Rs.11,550/- and Rs.6,300/- respectively and that carried the signature of the Headmaster. But under the disbursement column there was no signature of the Headmaster. The Bill No.74 had also found place for Rs.8,820/- in the Bill Register. All these bills were drawn for pre-matric/post-matric scholarship and stipend. The Cash Book was opened on 28.08.1982 and was written upto 18.07.1984, but signatures of the Headmaster were not there at the bottom of the relevant pages. Due authentication by putting on signature by the Headmaster was last given on 05.07.1984. At Page No. 117 of the Cash Book reference of Bill Nos. 32, 33, 34 and 36 dated 02.07.1984 was there, but there was no reference to Bill Nos. 45, 46, 57, 58 and 74 under the receipt and expenditure column. The double keys of the chest were required to be maintained by the D.D.O and the Cashier keeping one key by each. On 27.09.1984 she wanted to verify the cash in hand and she found cash in hand was amounting to Rs.15,265/- which was brought out by the Headmaster and the Cashier and there was a draft of Rs.4,540/-. There were also some vouchers totaling Rs.1,147.40 and the said vouchers and draft were relating to non-Government fund. She received the statements

from the Headmaster and the Cashier. She had identified the Attendance Register, list of students of Class-XI and XII, Exbt.-P/43 and the office copy of Bill No.74 along with the list of students attached with the bill, Exbt.-P/41 and P/41/3. She has stated that though Smti. Sakuntala Chouhan was not an S.C. student, she was allowed to draw scholarship for the S.C. student. Even though by the Bill No.34 an amount of Rs.6,700/- was drawn but disbursement was made only for Rs.3,813/-. Based there on it has been stated by PW27 that the appellants misappropriated the remaining sum of Rs.2,887/-. Similarly, by Bill No. 45, an amount of Rs.5,500/- was drawn, but no disbursement was made out from the drawn money, thereby the entire amount was misappropriated. By the Bill No.46 an amount of Rs.16,950/- was drawn but no amount was disbursed and the entire amount was defalcated. She has submitted that the entire amount of Bill Nos. 45 and 46 was drawn by the Headmaster. Similarly, by the Bill No. 57 an amount of Rs.11,550/- was drawn but no amount was disbursed. The said bill was related to 55 SC students, out of which 41 names were fictitious and remaining 14 students were there in the Bill No.74. Against the Bill No.58 an amount of Rs.6,300/- was drawn but there was no disbursement. The said bill was related to 30 numbers of ST students, out of which 16 names were fictitious and names of remaining 14 students were there in Bill No.74. Similarly, against Bill No.74 Rs.8,820/- was drawn for 42 numbers of SC and ST students, but only Rs.4,000/- was made to 13 students and the balance amount of Rs.4,820/-

was misappropriated. Having confronted thus, she lodged the written ejahar on 07.11.1984 with Nutanbazar Police Station. She had identified the ejahar, marked Exbt.-P/12/1 and her signature, marked Exbt.-P/12/2. She had also identified the Acquittance Roll, Exbt.-P/45. According to her, the total amount of Rs.60,510/- was drawn by the said nine bills and an amount of Rs.10.411/- was disbursed. Out of the balance amount of Rs.50,099/-, Rs.11,034.70 was handed over by the Headmaster to the Accounts Officer, Sri Sudhangshu Bhowmik and the remaining amount was misappropriated. But she had not stated at this phase about her recovery of amount of Rs.15,265/-from the said chest of that school. She has also stated that they made calculation in respect of the Bill Nos. 37 to 102 and it was found that total amount of Rs.1,47,000/- and odd was drawn from the Treasury and according to the Headmaster total amount of Rs.1,05,000/- and odd was disbursed through the A.P.R. She had admitted that the bills were prepared by the Cashier and the Cash Book was also written by the Cashier. There were entries in the Bill Register by the Headmaster in respect of two bills which were received by him. She had also denied the suggestion that the accused Amiya Ranjan Chakraborty gave the written statement under threat and duress.

34. PW28, Sri Samir Sarkar, was the Branch Manager, U.B.I, Amarpur Branch at the relevant point of time. He has stated that Bill Nos. 45 and 46 dated 20.07.1984 for Rs.5,500/- and Rs.16,950/- respectively were passed by Amarpur Treasury

on 30.07.1984 and the U.B.I., Amarpur Branch made payment of the said amount on 01.08.1984 to the D.D.O, Sri Amiya Ranjan Chakraborty. According to him, the Bill No.45 relates to 8 students and Bill No.46 relates to 36 students. He had identified his signature in the Bills, marked Exbt.-28/10 series and had submitted that Sri Amiya Ranjan Chakraborty as the D.D.O put his signatures on those two bills and he had identified those signatures in those two bills.

35. PW29, Sri Gobinda Gopal Basak, a police Inspector in the Enforcement Department, Government of Tripura, is the investigating officer of the case. He has submitted that he took up the investigation on 17.12.1984. He has briefly stated how he had seized the relevant documents and recorded the statements of the witnesses.

36. Mr. S. Kar Bhowmik, learned counsel appearing for the appellant, Sri Amiya Ranjan Chakraborty has raised three aspects/questions for consideration of this Court.

(i) Whether the prosecution has succeeded in proving the *mens rea* in as much as nowhere it has been established by evidence that the appellants had forged the documents for purpose of mis-appropriating any money from the fund released by the authority for disbursing pre-matric/post-matric stipends for SC and ST students. The student witnesses, who had appeared in the trial, had categorically

stated that they signed in the Acquittance Roll against the amount they received.

(ii) There was a denial of fair trial rights of the accused as the cross-examination of some of the witnesses was not allowed, even though it was recorded that "cross declined". It would be apparent from the record that on the relevant day no counsel had represented the appellants.

(iii) Most importantly he has raised a question that the report of the handwriting expert as relied upon by the trial Court has been illegally admitted in the evidence in as much as the handwriting expert was not examined by the prosecution.

37. Mr. A. K. Bhowmik, learned senior counsel appearing for the appellant, Sri Anil Chandra Debnath has submitted that the Cashier or the Accountant does not prepare the list of students. It is the duty of 'the other authority' to prepare the list of the eligible students for purpose of granting stipends. Thereafter the amount for stipend is sanctioned in terms of that list. As such, he cannot be made responsible for any discrepancy or even misconduct for disbursing the amount according to the list. He has categorically submitted that the Bill Nos.45 and 46 cannot be made related to the appellant, Sri Anil Chandra Debnath in as much as the said bills were encashed by the appellant, Sri Amiya Ranjan Chakraborty. He has submitted that the appellant, Sri Anil Chandra Debnath had all the time prepared

the Cash Book and that was not signed by the appellant, Amiya Ranjan Chakraborty. For the lapses of Sri Amiya Ranjan Chakraborty he cannot be framed in the false case. Mr. Bhowmik has also submitted that there is no proof that the appellant, Anil Chandra Debnath had misappropriated the money meant for disbursement of pre-matric/post-matric stipends. According to him, there is no legal evidence against the appellant, Anil Chandra Debnath and as such his conviction under Sections 409/468/34 of the IPC is absolutely unwarranted.

38. To buttress the respective point, the learned counsel for the parties have referred to the relevant parts of the documents. On scrutiny of the records and on appreciation of the submission, this Court finds that the following pertinent questions require response from this Court.

- (i) Whether the prosecution has proved the misappropriation by criminal breach by the appellants or any one of the appellants?
- (ii) Whether admission of the handwriting expert's report (Exbt.-P/47) is tenable in view of the fact that without examining the said expert in the trial the Ext.P/47 has been introduced?
- (iii) Whether there have been denial of fair trial rights to the appellants or not?

39. Before making an analysis for arriving at a finding on those points, this Court has heard Mr. S. Chakraborty, learned special P.P. for the State. Mr. Chakraborty has submitted that the appellant, Amiya Ranjan Chakraborty had failed to show to PW27 the records when the other appellant was absent at her first inspection. But the appellant, Amiya Ranjan Chakraborty had shown the Attendance Registers from Class-IX to Class-XII for verification of pre-matric and post-matric scholarship for SC/ST student and for stipend of LIG students and on verification it was detected that the number of SC/ST students were much less in comparison with the sanctioned amount. He has further submitted that it is also apparent from the evidence of PW27, Smt. Raj Laxmi Devi that on the next date she went to the School and on that day the accused Sri Anil Chandra Debnath, Cashier was present. This witness had asked the Headmaster, Sri Amiya Ranjan Chakraborty to show the Cash Book, Bill Register, Office copy of the proposal for scholarship and stipend which were initiated by Sri Amiya Ranjan Chakraborty for pre-matric and post-matric, L.I.G sanction order and also the office copy of the bills by which money was drawn from the Bank and A.P.Rs. Mr. Chakraborty has submitted that the Bill Nos. 32, 33, 34, 36, 45, 46, 57, 58 and 74 are the evidence which has established that by virtue of those bills the amount was taken out from the Bank. While he was elaborating his submission he has contended that (i) against the Bill No.32 an amount of Rs.1,515/- was drawn, but payment was made only for Rs.615/- and thereby Rs.900/- was

misappropriated; (ii) against the Bill No.33 Rs.2,875/- was drawn, but only Rs.1,683/- was disbursed and thereby Rs.1,192/- was misappropriated; (iii) against Bill No.34 Rs.6,700/- was drawn and payment was made only Rs.3,813/- and thereby there was misappropriation of Rs.2,887/-; (iv) against Bill No.45 Rs.5,500/- was drawn, but there was no disbursement and, therefore, the entire money was misappropriated; and (v) against Bill No. 46 Rs.16,950/- was drawn, but no amount was disbursed at all and the entire money was misappropriated. The Bill No.46 was related to 37 numbers of students, out of which 24 names were fictitious and the names of remaining 13 students were already there against the Bill No.34. He has submitted that the amount against Bill Nos. 45 and 46 were drawn by the appellant, Amiya Ranjan Chakraborty himself. Mr. Chakraborty has further submitted that against Bill No.57 Rs.11,550/- was drawn, but no amount was disbursed. The said bill is related to 55 numbers of SC students, out of which 41 names were fictitious and the names of remaining 14 students were there in the Bill No.74. Against the Bill No.58 Rs.3,600/- was drawn, but no disbursement was made. The said bill is related to 30 number of ST students, out of which 16 names were fictitious and the names of remaining 14 students were there in the Bill No.74. Against the Bill No. 74, an amount of Rs.8,820/- was drawn for 42 numbers of ST/SC students, but actual payment was made to 13 students totaling Rs.4,000/- and the balance amount of Rs.4,820/- was misappropriated. Mr. Chakraborty has further submitted that

there was no cross-examination on that point. It is clear from the Bank's statement that 7 numbers of bills bearing Nos. 32, 33, 34, 36, 57, 58 and 74 were drawn by the Cashier, Sri Anil Chandra Debnath and Bill Nos. 45 and 46 were drawn personally by the D.D.O, i.e. Headmaster, Sri Amiya Ranjan Chakraborty and the payment was made in respect of certain bills and no payment was made at all. He has further submitted that by the aforesaid bills total amount of Rs.60,510/- was drawn and the disbursement was only restricted to Rs.10,411/- and at the time of handing over the charge by the appellant, Amiya Ranjan Chakraborty Rs.11,034.70P was handed over to the Accounts Officer, Sri Sudhangshu Bhowmik. According to Mr. Chakraborty, the entire remaining amount was misappropriated by the appellants. Therefore, there is no question of interfering with the findings so returned by the learned Special Judge, West Tripura, Agartala.

40. While examining the issue of criminal breach of trust and *mens rea* together this Court finds that against Bill No.32 an amount of Rs.1,515/- was drawn for the student, Sri Nilmani Chakma (PW11), but he was paid only Rs.615/- by the Cashier, Sri Anil Chandra Debnath. Vide Bill No.33 against the student, Sri Ranjan Das (PW3), Rs.715/- was drawn, but in his deposition he has stated that he had received only Rs.665/- from the Cashier, Sri Anil Chandra Debnath and vide the aforesaid bill against the student, Smti. Sukuntala Chouhan (PW8), Rs.715/- was drawn, but she was paid only Rs.348/- by the Cashier, Sri Anil Chandra Debnath.

41. On the basis of those examples, it cannot be held that there had been any misappropriation in as much as the entries in the Acquittance Roll and the statement regarding receipt of money are not at variance. Mere non-payment of money cannot be held to be criminal breach of trust. For this, there may be departmental action, but there is no *mens rea* as such. For purpose of proving the charge under Section 409 of the IPC the *mens rea* is the *sine quo non* in as much as the section itself provides that "whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine". Therefore, the misappropriation has to be strictly proved. When it is question of strict proof, presumption cannot be made basis.

42. What appears from the evidence so led by the prosecution is that there exists suspicious circumstances poised against the appellants. But it cannot be held beyond reasonable doubt that the appellants have defalcated the amount in as much as the prosecution has failed to prove that by not causing disbursement of pre-matric/post-matric stipends, the appellants had misappropriated the sum. Merely showing from the evidence that no such students were available in the School is not sufficient

for thrusting the criminal liability upon a person unless it is proved that the accused is entirely liable for the machination leading to embezzlement. Moreover, the receipt of the amount of the referred bills is placed under cloud, if Exbt.-P/47, the expert report, is not read into the evidence. Moreover, what has come to the fore is that the prosecution has failed to show that the amount that was received from the safe chest or the amount that was handed over to the successor by the appellant, Sri Amiya Ranjan Chakraborty whether were related to the present transaction or those were beyond it.

43. Let us examine what would be the consequence of non-examination of the handwriting expert and relying on the handwriting expert's report, Exbt.-P/47 for purpose of returning the finding of the conviction against the appellants.

44. The learned counsel for the appellant, Sri Amiya Ranjan Chakraborty has relied on the decision of the Apex Court in **Keshav Dutt V. State of Haryana** reported in **(2010) 9 SCC 286**, where the Apex Court while considering the question whether without examining the handwriting expert his report could have been admitted into evidence or not has answered the issue in the following manner:

**"9. The other question raised was whether without examining the handwriting expert his report could have been admitted into evidence and relied upon although the same formed the main basis of conviction. In this regard, the learned counsel placed reliance on the decision of this Court in State of Maharashtra V. Damu, (2000) 6 SCC 269 wherein while considering the case of abducting the triple**

*infanticide, this Court had occasion to consider whether reliance could be placed on the opinion of the Assistant State Examiner of Documents without examining him as a witness in Court. This Court held that from the opinion itself it could not be gathered whether his office would fall within the purview of Section 293 CrPC. Accordingly, the Court observed that without examining him as an expert witness, no reliance could be placed on his opinion. The learned counsel urged that the conviction of the appellant on the basis of the above could not be sustained."*

**[Emphasis added]**

45. It has been further observed by the Apex Court in **Keshav Dutt (supra)** as under :

**"15. In the instant case, the report of the handwriting expert who had not been examined indicates that a specimen writing had been given by the Appellant and on a comparison of the same with the writings in Ex.PR, the handwriting expert had come to the conclusion that they had been written by the same person. The Trial Court skirted the issue by holding that the defence counsel could have examined in their defence to rebut the findings of the Assistant Director, Forensic Science Laboratory, Haryana. The High Court also skirted the issue by observing that the science of handwriting being imperfect and inaccurate, it is very difficult, if not impossible to give the opinion that the writings were in the hand of one and the same persons. The High Court went on to observe that the Appellant did not have the courage to examine any counter expert in rebuttal of the report. The High Court recorded that the report having gone unrebutted could be relied upon without any demur.**

**16. We are afraid that we cannot concur with the views either of the Trial Court or of the High Court in the above regard. When the Trial Court chose to rely on the report of the handwriting expert (Ex.PR), it ought to have examined the handwriting expert in order to give an opportunity to the Appellant and the other accused to cross-examine the said expert. There is nothing on record to show that the Appellant and the other respondents had admitted to the report of the handwriting expert.**

**17. In our view, the Trial Court ought to have allowed the Appellant an opportunity to cross-**

**examine the expert and both the Trial Court and the High Court erred in denying him such opportunity and shifting the onus on the accused to disprove Ex.PR which had not been formally proved by the prosecution. The decision cited on behalf of the Appellant regarding reliance on the opinion of an expert who had not been examined as a witness, however, includes an Assistant Director of the State Forensic Science Laboratory in Clause (e) of Sub-section (4) of Section 293 Cr.P.C.**

**18. Section 293(4)(e), which is relevant for our purpose is extracted below:**

**293. Reports of certain Government scientific experts. - (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.**

**(2) - (3)**

**(4) This section applies to the following Government scientific experts, namely -**

**(a) - (d)**

**(e) The Director [Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory;**

**(f)**

**19. In the instant case, it is only the report of the handwriting expert, Ex.PY, which connects the Appellant with the offence on account of Ex. PR which is said to be in his handwriting. Since the Appellant had neither received the money nor was he present at the spot from where the other accused were apprehended, his case has to be treated on a different footing and since his complicity has not been established beyond doubt on the basis of Ex.PR and Ex.PY, he must be given the benefit of doubt. Without, therefore, going into other questions which have been raised in this Appeal, we are of the view that the same should be allowed on the aforesaid ground alone."**

46. In **Kailash Kumar Sanwatia V. State of Bihar & anr.** reported in **(2003) 7 SCC 399**, the Apex Court has held that the basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not; misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had *mens rea* for the crime.

47. In **Kailash Kumar Sanwatia (supra)**, the Apex Court has further illustrated by observing that "**even if there is a loss of money, the ingredients necessary to constitute criminal breach of trust are absent. If due to a fortuitous or intervening situation, a person to whom money is entrusted is incapacitated from carrying out the job, that will not bring in application of Section 405 IPC or Section 409 IPC, unless misappropriation, or conversion to personal use or disposal of property is established.**"

**[Emphasis added]**

48. In **S.W.Palanitkar & ors. V. State of Bihar & anr.** reported in **(2002) 1 SCC 241**, the Apex Court has held that every breach of trust may not result in a penal offence of criminal

breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with *mens rea* gives rise to a criminal prosecution as well. In this case it has been succinctly surfaced that none of the students were paid less and no receipts were taken from them for a higher amount. It shows that there was no mens rea. The element of vague names in the list was tailor-made for purpose of criminal breach of trust has not been proved to the hilt as the prosecution has failed to establish by adducing positive evidence that the appellants had prepared or were instrumental in preparation of the list. Their dereliction will amount to mens rea.

49. Further question that has been raised stoutly by both the learned counsel is that there was denial of fair trial rights in as much as the appellants were not allowed to cross-examine PW2, PW3, PW4, PW5, PW6, PW20, PW22, PW24 and in the case of PW29 the cross-examination could not be carried out as it has been reported that PW29 had died before the prosecution could complete his examination-in-chief.

50. When in absence of the counsel defending the accused the cross-examination is closed that might cause serious detriment to the fair trial rights of the accused person. In this regard reliance can be placed in **Mohd. Sukur Ali V. State of Assam**, reported in **(2011) 4 SCC 729**, where the Apex Court

has given dos and don'ts when the counsel for the defence does not appear and the accused are trapped in a situation of incapacity of cross-examining the witnesses of the prosecution. It has been held, while considering the question whether in a criminal case if the counsel for the accused does not appear, for whatever reasons, should the case be decided in absence of the counsel engaged by the accused, or should the court appoint an *amicus curiae* or a legal aid counsel to defend the accused, that **"we are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as amicus curiae to defend the accused. This is because liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be said to be the "heart and soul" of the fundamental rights".**

51. It has been further observed having referred to **Maneka Gandhi V. Union of India**, reported in **(1978) 1 SCC 248** that it is not fair or just that a criminal case should be decided against an accused in the absence of a counsel. It is only

a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, in our opinion, if a criminal case (whether a trial or appeal/revision) is decided against an accused in the absence of a counsel, there will be violation of Article 21 of the Constitution.

52. Since the lawyer in criminal court was in laxity, in **Mohd. Hussain @ Zulfikar Ali V. State (Government of NCT of Delhi)**, reported in **(2012) 2 SCC 584**, the Apex Court has again decided on that aspect of the matter. In **Mohd. Hussain @ Zulfikar Ali(supra)** it has been held that "**it will, thus, be seen that the trial court did not think it proper to appoint any counsel to defend the appellant-accused, when the counsel engaged by him did not appear at the commencement of the trial nor at the time of recording of the evidence of the prosecution witnesses. The accused did not have the aid of the counsel in any real sense, although, he was as much entitled to such aid during the period of trial. The record indicates, as I have already noticed, that the appointment of the learned counsel and her appearance during the last stages of the trial was rather pro forma than active. It cannot seriously be doubted at this late date that the right of cross-examination is included in the right of an accused in a criminal case, to confront the witnesses against him not only on facts but also to discredit the witness by**

**showing that his testimony-in-chief was untrue and unbiased".**

53. Learned counsel for the appellants have in unison stated that the denial of the right to cross-examine the prosecution witnesses has vitiated the entire trial. The practice of the trial Court in this regard has to be deprecated despite the repeated enunciations by the apex court. In **Zahira Habibulla H. Sheikh & anr. V. State of Gujarat & ors.**, reported in **(2004) 4 SCC 158**, it has been held that it is one of the salutary principles of the administration of justice that justice should not only be done but it should be shown to have done. As such the fair trial rights have to be guarded with right earnestness as denial of fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.

54. Ancillary to this observation, another question that would emerge for response of this Court is that after such a long distance of time this Court is not inclined to remand the matter for affording the cross-examination of the witnesses, who were not cross-examined by the defence. In view of the **Mohd. Hussain @ Zulfikar Ali (supra)** where it has been held that "**after such a distance of time it shall be travesty of justice to direct for**

**the appellant's *de novo* trial. By passage of time, it is expected that many of the witnesses may not be found due to change of address and various other reasons and few of them may not be in this world. Hence, any time-limit to conclude the trial would not be pragmatic".** This Court having faced with similar circumstances is of the view that for the plea taken by the learned counsel for the appellants as regards the denial of fair trial rights by not affording the further opportunity of cross-examination is of the further opinion that this case should not be remanded for further trial in as much as even on the evidentiary materials brought on records, the charge against the appellants has not been proved beyond reasonable doubt.

55. Having held so, the impugned judgment and order of conviction and sentence are liable to be set aside on benefit of doubt and, accordingly, these are so set aside and quashed. As corollary thereto, both the appeals stand allowed.

Send down the lower court records forthwith.

**JUDGE**

*asim*