IN THE GAUHATI HICH COURT
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA:MIZORAM AND ARUNACHAL PRADESH)
SHILLONG BENCH

1. Crl Appeal No.(SH) 1 of 2009

Shri Jatin Dutta,
S/o (L) M Dutta,
R/o Motinagar, Shillong,
Meghalaya

2. Crl Appeal No.(SH) 4 of 2009

Shri Vijay Kumar Lyngdoh,
S/o (L) KD Agnihotri
R/o Riat Laban, Shillong,
Meghalaya.

3. Crl Appeal No.(SH) 5 of 2009

Shri Takap Ringu
S/o L Marke ringu
R/o 'C' Sectpr,
Itanagar, Arunachal Pradesh.

: Appellants

-Versus-

The Central Bureau of Investigation
Oakland, Shillong, East Khasi Hills,
Meghalaya :
Respondent

4. Crl Appeal No.(SH)9 of 2009

Superintendent of Police,
Central Bureau of Investigation/Anti
Corruption Bureau, Shillong. : Appellant

- Versus –

1. Mr KM Roy,
President M/s Save Environment
And Humanity Riat Laban,
Shillong.

2. Mrs Darilin Pyngrope,
S/o Shri VK Lyngdoh,

Secretary M/s Save Environment and
Humanity Riat Laban,
Shillong.
Respondents.

B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI

For the appellant In Crl Appeal Nos.(SH) 1 and 4 of 2009	: Shri SP Mahanta, Shri AK Agarwal, Shri H Abraham
For the appellant In Crl Appeal No.(SH) 5 of 2009	: Shri D Das, Sr Adv Shri D Talukdar Adv
For the appellant in Crl Appeal No.(SH) 9 of 2009	: Shri VK Jindal, Shri S Jindal,
For the respondents in Crl Appeal Nos. 1,4 and 5 of 2009	: Shri VK Jindal,SC CBI Shri S Jindal Shri S Dey
For the respondents in Crl Appeal No.(SH) 9 of 2009	: Shri SP Mahanta, Shri AK Agarwal, Shri H Abraham
Date of hearing	: 12.11.2012
Date of judgment & Order	: 30.01.2013

JUDGMENT AND ORDER

This batch of four criminal appeals are directed against a common judgment and order dated 30-4-2009 passed by the learned Special Judge (CBI) at Shillong in Special (CBI) Case No. 2 of 2001. By the impugned common judgment, the learned Special Judge convicted the appellants, namely, Shri Tikap Ringu ("A-1" for short), Shri Jatin Dutta ("A-2" for short), and Shri V.K. Lyngdoh, ("A-3" for short) under Section 120-B IPC and Section 13(2) read with Section 13(1)(d)(ii),

Prevention of Corruption Act, 1988 ("PC Act" for short) and sentenced them to undergo six months of imprisonment for the offence of Section 120-B IPC and another 2 years of imprisonment for the offence of Section 13(2) PC Act with a fine of `30,000/- each and in default of the fine, to undergo another six months of imprisonment. The learned Special Judge, however, acquitted the non-official co-accused, namely, K.M. Roy ("NA-1" for short) and Mrs. Darilin Pyngrope ("NA-2" for short) of the charges by giving them the benefit of doubt. Criminal Appeal No. 1(SH) of 2009 is filed by A-2. Criminal Appeal No. 4(SH) of 2009 is filed by A-3, and Criminal Appeal No. 5(SH) of 2009 is filed by A-1. Criminal Appeal No. 9 (SH) of 2009 is preferred by the CBI against the acquittal of the non-appellants, namely, Shri K.M. Roy and Mrs. Darilin Pyngrope.

2. The facts giving rise to these appeals may be noted at the outset. The case of the prosecution is that during the year 1997-98, A-1, who was at that time the Secretary of the North Eastern Council (NEC), A-2, who was at that time Under Secretary (Planning), NEC and A-3, who was the then Assistant Research Officer, NEC had entered into a criminal conspiracy with each other together with NA-1 and NA-2, who were the President and Secretary of the Society under the name and style of "M/s Save Environment & Humanity" ["the Society" for short], which was run by none other than the family members of A-3, to cause wrongful loss to the Government of India and wrongful gain to the Society by sanctioning `4,79,500/- and disbursing `2,39,750/- to the said society for plantation of *texus bacatta* (a medicinal plant) at an inflated rate on the basis of the application by the Society when it had not even been registered under the Meghalaya Societies Registration Act. On the basis of the confidential letter dated 25-8-1998 (Ext-30) of Shri G.K. Pillai, the then Joint Secretary to the Government of India, Ministry of

Home Affairs (PW 15) addressed to the Additional Director, CBI, New Delhi, CBI/ACB Guwahati Branch, case No. RC14(A)/98-SHG dated 23-11-1998 U/s 120-B/420/409 IPC and Section 13(2) r/w Section 13(1)(d) of the PC Act was registered against the A-1,A-2, A-3 and NA-1 and NA-2. In the course of investigation, it was found that a discussion had been held on 8-9-1997 attended by Mr. J.S. Syiem, Planning Adviser (PW 7), Shri N.D. Varma, the then Director of ICAR (who had died before framing of the charge and hereafter referred to as "the deceased Director") , Mr. Pramode Kant, Adviser (Forest) (PW 19), NEC, Mr. K.N. Hazarika, Adviser (Industries), NEC and Mr. Gautam Sen, Financial Adviser, NEC (PW 8) in which it had been decided not to include plantation of *texus bacatta* in the NEC Scheme as it was felt that *texus bacatta* could be promoted only by the Government and not by individuals as such plantation required effective maintenance and marketing.

3. It is also the allegation of the prosecution that though the recommendation of the Committee dated 8-9-1997 was agreed to by A-1 himself on 13-10-1997, but he together with A-2 and A-3 subsequently arbitrarily picked and chose the application filed by the Society for processing and thereafter sanctioned `4,79.500/- and released a substantial amount to the tune of `2,39,750/- as grant-in-aid by ignoring all the official transaction norms and the objection raised by PW 7, who had suggested the processing of the said application along with the other applications received at the same time and, that too, after finalization of the scheme under process by PW 19 and Adviser, Agriculture. PW 7 also categorically advised A-2 not to put up individual applications. The investigation further revealed that the application of the Society was signed by NA-2, who is the wife of A-3, who processed the application fraudulently and dishonestly by suppressing

the fact that his father-in-law and his wife were the President and Secretary of the Society and that he himself was a member of the Society. The date of receipt of the application in the NEC was not even maintained. The Society was not a registered society on the date of the application; the Society was registered only on 4-9-1997. Yet, A-3 processed the application on 5-9-1997 and fraudulently inserted the registration certificate in the file subsequently. The project estimate attached to the application was counter-signed by the Executive Engineer, PWD on 4-9-1997, which suggested that the same was not submitted to the Forest Department along with the application and was inserted in the file by A-3 while processing the application. A-3 thereafter recommended sanctioning of the grant by suppressing material facts and put up the file to A-1 through A-2. According to the prosecution, the cost of the medicinal plant in North Eastern Region as per Ministry of Environment and Forest Letter No. 11-59-43/RONE-MZ/964 dated 30-7-1999 was fixed at `10,260/- per hectare with an additional amount of up to 50% of the basic cost and thus for 0.5 hectare, the raising cost was fixed at `7,695/. The allegation of the CBI is that notwithstanding the exclusion of plantation of *texus bacatta* from the scheme of intensive cultivation and the scheme with respect to Forest Sector, A-1 proceeded to mark the file to the deceased Director for examination and whereafter A-2 forwarded the application of the Society for the grant amounting to `14,94,327/- to the deceased Director for examining the technical suitability and economic viability of the proposal and A-3 himself carried the file to the concerned officer to get the sanction.

4. It is also the allegations of the CBI that A-1, A-2, A-3 and the deceased Director processed the application of the Society and sanctioned a sum of ` 4,79,500/- to the Society on 16-11-1997 for plantation over a land measuring only

0.5 hectare even though in the case of similar cultivation by M/s Occupational Therapy Welfare Service-cum-After Care Hostel for Handicapped, A-1 had on 29-11-1997 sanctioned only a lump sum grant of ` 50,000/- on the recommendation of PW 19 and PW 8 at the rate of ` 20,000/- only per hectare thereby showing undue favour to the Society. Out of `4,79,500/-, an amount of `2,39,750/- was released through cheque bearing No. A-913176 dated 9-12-1997 in favour of NA-2 issued by A-2, and the same was deposited by NA-2 with the United Bank of India, Laban Branch and the deposited amount was withdrawn by NA-2 on different occasions. As per item No. 4 of the sanction order, the Society was required to submit quarterly report on the progress of the scheme up to the time of return received by the Society, but the Society never submitted the quarterly return of the progress nor did the appellants ever form a Committee to monitor the progress of the project. During inspection, it was found that the Society did not execute the project even after the lapse of 2½ years and that the Society submitted fake cash memos pertaining to bill No. 184 dated 22-5-98 for ` 22,000/- and bill No. 112 dated 6-2-98 for ` 35,000/- and bill No. 103 dated 5-2-98 to NEC as proof of utilization of money by way of purchasing *texus bacatta* cuttings and seeds from one M/s Thapa Nursery, Kurseong which is a fictitious firm. On completion of the investigation, the CBI filed the charge-sheet against the appellants and the non-appellants under Sections 120-B/420/409 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The learned Special Judge/CBI Court, Shillong framed those charges against the appellants and the non-appellants. It may at this stage be noted that one of the co-accused, namely, Mrs. Batsheva Goldee Pyngrope had been discharged at the time of consideration of the charge. The appellants and the non-appellants pleaded not guilty to the charges and claimed to be tried. In the course of trial,

the CBI examined 28 witnesses, exhibited 53 documents, 10 paper marks while the defence exhibited two paper marks. After examination of the prosecution witnesses, the appellants and non-appellants were examined under Section 313 CrPC; no defence witness was, however, adduced. At the conclusion of the trial, the trial court passed the impugned judgment of conviction and acquittal as well the impugned judgment of sentence.

5. I have carefully perused the judgment under challenge and the other materials on record including the original lower court records. Mr. D. Das, the learned senior counsel for A-1 and Mr. S.P. Mahanta, the learned counsel for A-2 and A-3 as well as NA-1 and NA-2, have been extensively heard on different dates. The crucial findings of the trial court leading to the conviction of the appellants may be reproduced herein below:

> **"On evaluation of the evidence as discussed above in its totality, it is understood and appears that the accused VK Lyngdoh and his family members forms an association in the name and style of M/s Save Environment and Humanity, which is Ext. 39 speaks that Mr. K.M. Roy is the Presidnt, Mrs. Darilin Pyngrope is the Secretary. Mr. Bul Lyngdoh is the Tresurer, Mr. Dondor Pyngrope, member, Mr. Dennis Tariang, Member, Mr. Vijay Kr. Lyngdoh, member and Miss Bathsheba G. Pyngrope, Member.**
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> **So from the memorandum of the Association it is clear and understood that the accused Mr. VK Lyngdoh is one of the Member and Mrs. Darilin Pyngrope his wife is the Secretary and Mr. K.M. Roy his father-in-law as President. And Ext.13 speaks that it is Mr. V.K. Lyngdoh, who proposed, recommended and processed the official file as ARO Planning for grant-in-aid in favour of Save Environment and Humanity that means he is an interested party and processing his own file shows that he has misused his official position. From Paper Mark 2 at item No. 5 and from the deposition of the Planning Adviser Mr. J.S. Syeim (P.W. No. 7) and deposition of Mr. Promode Kant (P.W. No. 19) and other witnesses it is clear that the *Texus Bacatta* was not recommended by the Advisers meeting on 8-9-1997, which was totally ignored. In Paper Mark 2 the Advisers of NEC recommended for adopting certain guidelines which has been completely ignored. Furthermore from the note of the Planning Adviser Ext. 11 it**

is clear that he has suggested for examining all the applications at a time, that has also been ignored. From Ext. 15 (in Special Case No. 4/2002 at page 115) by Mr. Promode Kant (P.W. No. 19) it further appears that when Mr. Promode Kant called the file of *Texus Bacatta* from the ARO Mr. V.K. Lyngdoh did not put up the file rather replied that the file cannot be put up before him which shows lack of transparency.

Now the question comes, when there were huge money was involved how the grant-in-aid has been approved to a selected person without considering the other applicants. From the deposition of different witnesses and exhibits discussed above, it appears that the grant-in-aid has been approved without following any procedure or rule. If at all there was no guideline they should have framed some rules for selecting and approving the applications as public money is involved. But in this instant case it appears that the grant-in-aid was issued whimsically as they like. Further, Mr. V.K. Lyngdoh being a Member of Save Environment & Humanity himself processed the file and proposed and recommended the application and the Under Secretary (Planning) ignoring the note of the Planning Adviser put up the matter before the Secretary and get approved, and after approval to send to Finance for approval clearly shows that the accused Takap Ringu, Mr. Jatin Dutta and Mr. V.K. Lyngdoh abused their official positions. Moreover, when the Adviser vide Paper Mark 2 did not recommend for *Texus Bacatta* and suggested for certain rules the accused persons should have considered the recommendation. And if at all they were not agreed with the recommendation of the Advisers they should have framed some rules for selecting and disposal of applications, to as to maintain transparency but nothing has been done. And it appears that accused persons selected and approved the applications as they like. The Secretary NEC might have discretionary power and authority, but such discretionary power and authority cannot be exercised arbitrarily specially when there is suggestion for adopting certain norms in Paper Mark 2 and objection raised by the Planning Adviser (P.W. 7).

Therefore talking into consideration the evidence as discussed above in its totality and the act of the accused Takap Ringu, the Secretary, Mr. Jatin Dutta the Under Secretary (Planning) and Mr. V.K. Lyngdoh ARO Planning from Ext. 13,11,14,39 and Paper Mark 2 (in Spl. Case No. 2/2001) and Ext. 15 (in Spl. Case No. 4,2002) shows that they have by-passed all the Sectoral Heads and without any reason or justification get approved the application of Save Environment & Humanity and released a sum of `2,39,750/- (Rupees two lakhs thirty nine thousand seven hundred fifty) only. From such an act on the part of the accused persons shows that they have abused their official position, and had

dishonest intention and conspired and get approved the application of Save Environment & Humanity.

Section 120(A) IPC defines criminal conspiracy as "When two or more persons agreed to do, or cause to be done-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except and agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

It is a settled principle of law that a criminal conspiracy can be established either by direct evidence or by circumstantial evidence. .....

In the instant case from the conduct of the accused easily inference (*sic*) can be drawn that they are not only abuse (abusing?) their official position but also conspired among themselves to get approved the application of Save Environment and Humanity (Society?).

Therefore, I find the accused Mr. Takap Ringu the then Secretary, NEC Mr. Jatin Dutta the Under Secretary (Planning) and Mr. V. K. Lyngdoh ARO Planning are guilty of commission of offence of criminal conspiracy as such, three of them are convicted under section 120(B) IPC.

Similarly, from the evidence as discussed above, it is clear and appears hat Mr. Takap Ringu, Mr. Jatin Dutta and Mr. V.K. Lyngdoh had abused their official position as public servants as such, I find them guilty for abusing their official position while working as Secretary NEC, Under Secretary (Planning) and ARO Planning as such, I find them guilty of committing offence of abusing of their official position under section 13(1)(d)(*ii*) of P.C. Act, 1988.

Quantum of sentence will be decided only after hearing prosecution and defence counsel.

However, while going through the evidence as discussed above, I do not find sufficient materials to satisfy and to record reasons for awarding conviction against the private accused persons Mr. K.M. Roy, Mrs. Darilin Pyngrope as such accused Mr. K.M. Roy and Mrs. Darilin Pyngrope are acquitted on benefit of doubt."

6. Unfolding his submissions, Mr. D. Das, the learned senior counsel for A-1, argues that the question of A-1 deviating from any rules of procedure does not arise on the facts of this case inasmuch as no set of guidelines was formulated by the Government at the relevant time, and the finding of the trial court to that effect is, therefore, untenable and perverse; this alone is enough to set aside the impugned judgment of conviction. He further submits that the CBI has miserably failed to prove that A-1 obtained a valuable thing or pecuniary advantage to himself or to any other person for the simple reason that none of the prosecution witnesses have ever made any allegation to that effect; the question of A-1 abusing his position as a public servant or by means of corrupt or illegal means to obtain for himself or for any other person any valuable thing or pecuniary advantage cannot, on the facts found in this case, arise at all. He maintains that all the bills passed from NEC have financial concurrence followed by sanction order and that on the evidence of some of prosecution witnesses, it has been established that all the Sectoral Heads were involved in sanctioning the application of the Society and in releasing the first instalment amounting to ` 2,39,750/- (out of the sanctioned amount of ` 4,79,500/-) to the Society, and the application was processed through proper channels; the findings to the contrary recorded by the trial court are, therefore, based on no evidence. The learned senior counsel, therefore, submits that the impugned judgment of conviction cannot be sustained in law and is liable to be set aside.

7. Mr. SP Mahanta, the learned counsel for A-2 and A3, while supporting the contentions of learned senior counsel for A-1, also makes additional submissions. In the first place, he submits that the evidence of PW 7 (who was at the relevant time the Planning Adviser to NEC), who had called for the meeting on 8-9-1997

vide Paper Mark 2 would go to show that the minutes of the meeting dated 8-9-1997 (Paper Mark 2) was never approved by the Secretary, and the same was only a record of the discussion, a fact corroborated by the evidence of PW 19 and, as such, there is no evidence to show that *Texus Bacatta* was not included as a medicinal plant in the annual plan of NEC. In any case, contends the learned counsel, Paper Mark 2 is merely a Xerox copy, and is not admissible in evidence and the trial court has acted illegally in relying on this inadmissible evidence to convict the appellants. It is also contended by the learned counsel that the project of the Society was carried out around the last part of December, 1997 whereas the inspection was held only in January, 2000, and when no further instalment was released, many of the *Texus Bacatta* plants had naturally died by the time the inspection was done; the trial court has completely overlooked this vital fact and has in the process wrongly concluded that there was hardly any plantation of *Texus Bacatta*. On the other hand, points out the learned counsel, the evidence of PW 18, 20 and 21 clearly established that there were 600-700 plantation of *Texus Bacatta* along with a Green House, Water Tank, Guards Wall, Nursery as reflected in Ext-32 thereby demonstrating that the first instalment had been utilized to the maximum by the Society. It is also the contention of the learned counsel that A-3 did not violate the provisions of Central Civil Service (Conduct) Rules, 1965 for being a member of the society in view of Rule 15(2) of the said rules, which is also corroborated by the evidence of PW 24, more so, when he had already informed his Office about his joining of the Society on 5-8-1997, a fact also brought to the knowledge of the CBI.

8. The learned counsel also refers to the evidence of PW 5 to refute the case of the CBI that the application of the society was never forwarded by the Government of Meghalaya and submits that PW 5 corroborates the case of the

appellants by deposing that she had forwarded the application of the Society together with another ten applications of farmers of different cultivations to the NEC on 18-8-1997, which was also the last date for receipt of such applications. According to the learned counsel, the trial court has completely disregarded the evidence of PW 7 (Planning Adviser) in respect of the sending of the sanction letter meant for financial assistance to the Society to the Planning Wing as per Official procedures, against which he did not raise any objection and of the authority of the Secretary, NEC has to decide the question of sanctioning the grant-in-aid and has in the process wrongly convicted the appellants, who are entitled to be honourably acquitted. As Paper Mark 2 is merely a record of discussion and was never approved by the Secretary, NEC (A-1), so submits the learned counsel, it has no legal force, and A-2 and A-3 could not, therefore, be faulted with for processing the file of the Society, and no case of conspiracy or abuse of their official positions can, under the circumstances, be established against them. Finally, the learned counsel argues that the trial court could not have convicted the appellants when it acquitted the beneficiaries, which will more than demonstrate that there was never any conspiracy amongst the appellants and those acquitted beneficiaries to cause wrongful losses to the Government and wrongful gain to the acquitted beneficiaries. He, therefore, concludes that the impugned judgment of conviction suffers from various infirmities and results in grave miscarriage of justice and is, therefore, liable to be set aside.

9. Mr. V.K. Jindal, the learned senior counsel for the CBI, however, vehemently supports the findings of the trial court in respect of A-1,A-2 and A-3 and submits that the trial court has correctly appreciated the evidence on record. He contends that the evidence i.e. the documentary evidence exhibited by the CBI and fully corroborated by the evidence of official witness and other evidence on

record clearly establishes the commission of the white collar crimes and the manner in which they were committed, for which the interference of this Court is not called for. According to the learned senior counsel, quoting from the decision of the Apex court, the expression "proof beyond reasonable doubt" is merely a guideline, not a fetish, and the prosecution is not required to meet any and every hypothesis put forward by the appellants. He further submits that a reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based on reason and common sense; man may lie but documentary evidence will never. He also agrees with the submission of the learned counsel for the appellants that the trial court, while convicting the appellants, could not have or ought not to have acquitted the private accused i.e. NA-1 and NA-2 when the evidence on record is sufficient to conclude that there was criminal conspiracy amongst the appellants on the one hand and NA-1 and NA-2 on the other: there was no question of giving benefit of doubt to these non-appellants. It is pointed out by the learned senior counsel that the trial court has completely ignored the admitted position of the parties that NA-1 and NA-2 are the President and Secretary respectively of the Society while NA-1 is the father-in-law of A-3 and NA-2 his wife and that A-3 is also a member of the Society. The learned senior counsel also points out that as per the evidence of PW-24, who was the Registrar of Societies at the relevant time, the Society was registered only on 4-9-1997 while the evidence of PW 9 established that the application of the Society was signed by NA-1 as late as 18-8-1997 and, therefore, submits that the application of the Society for the grant-in-aid was not even a registered society on 18-8-1997 when the application was submitted: PW 5 (who was the Principal Chief conservator of Forest at that time) revealed that the application of the Society was forwarded by him on 18-8-1997.

10. The learned senior counsel also points out from the evidence of PW 10 that the application of the Society was not entered in any of the registers maintained by the NEC thereby implying that the application was directly handed over to A-3, which demonstrates that NA-1 and NA-2 were all along working hand in glove with A-3 by abusing his official position to help the Society run by them to obtain undue pecuniary benefits amounting to ` 2,39,750/- at the expense of the Government. The learned senior counsel argues that the trial court has failed to notice the glaring evidence from the depositions of PW-26 (Shri Sudip Mehta, Manager of the UBI, Laban Branch at the relevant time) that it was NA-2 who operated a Bank account in the name of the Society in which account the said amount disbursed by the NEC got credited and who subsequently withdrew those amount by different withdrawal slips and that NA-1 admitted in his examination under Section 313 CrPC that he was one of the beneficiaries of the said grant. The learned senior counsel for CBI submits that from the evidence of PW 28, the IO of the case, it has been established that the Society submitted fake cash memo towards utilization of money for purchasing *Texus Bacatta* cutting and seeds from M/s Thapa Nursery, Kurseong, which was found to be non-existent. The learned senior counsel further contends that the trial court acquitted NA-1 and NA-2 without taking into account the evidence of PW 18 and PW 20 as well as the memorandum of site inspection at Exhibit-32 prepared on the spot which clearly demonstrate that the financial assistance was not utilized for the purpose for which it was granted. He, therefore, concludes that the evidence adduced by the CBI are sufficient to prove beyond reasonable doubt that NA-1 and NA-2 hatched a criminal conspiracy along with A-1, A-2 and A-3, who by abusing their official positions have thus caused wrongful loss to the Government and wrongful gain to

them (NA-1 and NA-2) to the order of ` 2,39,750/-, which is punishable under Section 120-B IPC and Section 13(2) read with Section 13(1)(iii) of the Prevention of Corruption Act, 1988. The learned senior counsel, therefore, strenuously urges this Court to affirm the impugned judgment of conviction and sentence against A-1, A-2 and A-3, reverse the impugned judgment of acquittal in respect of NA-1 and NA-2 and impose similar sentences upon them.

11. I have carefully gone through the impugned judgment and other materials on record. I have also given my anxious consideration to the submissions advanced by the learned counsel appearing on behalf of the rival parities. The first question for determination is, whether the offence of Section 13(2) of the Prevention of Corruption Act, 1988 ("the Act" for short) has been committed by A-1, A-2 and A-3. Undoubtedly, these three appellants are public servants coming within the purview of Section 2(c) of the Act. Section 13(2) is the penal section for the offence of criminal misconduct while Section 13(1)(*d*) explains the offence of criminal misconduct. Section 13(1)(*d*) is in the following terms:

> **"13. (1) A public servant is said to commit the offence of criminal misconduct**
>
> **(*d*) if he,—**
>
> **(*i*) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or**
>
> **(*ii*) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or**
>
> **(*iii*) while holding office as a public servant, obtains for any person any valuable thing or [pecuniary advantage without any public interest;**

* * * *

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than nine year but which may extend to seven years and shall also be liable to fine."

Thus, to attract the provisions of Section 13(1)(*d*) of the Prevention of Corruption Act, public servant should obtain for himself or any other person any valuable thing or pecuniary advantage

(i) by corrupt or illegal means, or

(ii) by abusing his position as a public servant.

12. The term "abuse" is explained by the Apex Court in M. Narayan Nambiar v. State of Kerala, AIR 1963 SC 1116, to mean "misuse i.e. using his position for something for which it is not intended". In the instant case, from the evidence of PW 7, 8, 13, 15 and 19, it has been established that no set of guidelines was framed by the NEC or the Ministry of Home Affairs for selecting the beneficiaries for intensive plantations which included plantation of medicinal plant called *texus bacatta*. In my opinion, the absence of guidelines cannot give a license to A-1, A-2 and A-3 to act arbitrarily or pick and choose any individual or society for granting financial assistance. Moreover, the evidence of PW 8, PW 13, PW 19 and PW 25 unerringly established that any scheme received from the State Governments should have to be processed by the Planning Advisor and Planning Section through Sectoral Heads (various Advisors) dealing with the subjects and the concurrence of the Financial Advisor should also have to be obtained before the approval of the Secretary. Coming now to the *modus operandi* adopted by A-3, who is none other than the husband of NA-2 and the son-in-law of NA-1 and who is also a member of the Society, personally took the initiative of preparing the note dated 5-9-1997 vide Ext. 13 by recommending the case of the Society for the financial grant and

endorsed the same to A-2, who, in turn, vide Ex. 14 recommended 90% of the cost of the project *i.e.* `9,81,661/- and endorse the file to PW 7. At this stage, it cannot be overlooked from the evidence of PW 5 (who was at that time the Principal Chief Conservator of Forest, Meghalaya) that till 18-8-97, he did not receive any instruction from the Government of Meghalaya with regard to NEC Scheme for plantation within the State of Meghalaya and that on 18-8-97 at 2 PM, he received the letter dated 18-8-97 from the Deputy Secretary, Forest, Government of Meghalaya by which the Government of Meghalaya had forwarded the letter dated 11-8-97 on the NEC Scheme for intensive cultivation in the North East and had requested him to forward the applications of farmers by 1-8-97 to NEC and that in compliance with this letter, he had forwarded the application of NA-2 by his letter dated 18-8-97.

13. From the evidence of PW 5, the inference is inevitable that the application of the Society was not even examined by the State Government; instead the application was forwarded by PW 5 to the NEC on the instruction of the Government of Meghalaya. In other words, PW 5 was merely used as the Post Office between the Society and the NEC; this could not have been the established practice and procedure. The said forwarding letter dated 18-8-1997 is exhibited as Ext. A wherein PW 5 observed that "*species like Tung and Acacia Manjium have not been tried scientifically by our Department. The proposal for the plantation including the afore-mentioned two species have not been appraised for financial viability and optimum productivity. I am, however, forwarding this application for necessary action. The Forest Department does not undertake any inputs for these scheme*". In other words, not even the comment of State Government was sought for although the application had to be routed through them. Surely, the role of the

State Government, in the scheme of thing, could not have been reduced to that of a rubber stamp. Nevertheless, A-3 initiated the processing of the file. When the file was put up before PW 7, he, however, in his note dated 27-10-97 at Ext. 11 observed that the application should have to be examined along with all other applications received and advised A-2 not to put up individual application like that. Instead of following the advice of PW 7, A-2 vide the note at Ext. 22 directly placed the matter before A-1, who desired that the matter be examined by the the deceased Director (Advisor to NEC) and not by the Forest Advisor and opined that the same be limited to 4/5 hectares initially. A-2 then vide his note at Ext. 15 strangely endorsed the same to the deceased Director for technical clearance and detailed A-3 to carry to file and explain the proposal as he had "a knowledge on *texus bacatta*". This note is dated 4-11-97.

14. The deceased Director then recommended that 90% of the cost of ` 10,90,737/- might be given as NEC support. A-2 thereafter endorsed the file to A-1 by requesting him to approve the proposal. A-1 vide Ext. 16, however, approved the sanctioning of only ` 4,79,500/- and it was only after the sanction by A-1 that financial concurrence was obtained. From the sequence of events leading to the sanctioning of grant, it is crystal clear that the Planning Advisor or the Financial Advisor was deliberately kept out of the loop in the decision-making process. Instead of getting the proposal examined by the Forest Advisor to NEC, the opinion of the deceased Director, who was not the Sectoral Head, was conveniently sought for. This must be considered against the background of the question raised by PW 7 about the processing of the application of the Society alone by A-2 and A-3 and the observation of PW 7 in the meeting held on 8-9-1997 that *texus bacatta* could be promoted only by the Government and not by

individuals since it required effective maintenance and also extraction and marketing of the *taxal* (taxal of the plant is used for cancer treatment of a patient). True, the original minutes of this meeting was not exhibited and the same is merely a copy of the minutes which was exhibited and the same is not admissible in evidence. It is also true that the minutes of that meeting was admittedly not approved by A-1 and could not, therefore, bind the NEC. However, apart from challenging the admissibility of the contents of Paper Mark 2, there is, however, no denial on the on the part of the appellants that there was serious reservation voiced by PW 7, PW 8 and 19 about the feasibility of supporting plantation of *texus bacatta* as proposed by the Society. Obviously, A-1, A-2 and A-3 have conveniently by-passed the Planning Advisor and other important Sectoral Heads with a view to help the Society received the financial assistance by any means. It is also important to note that the file was never put up before the Financial Advisor (PW 8) which is against the established practice and procedure in the NEC that it was after the file went through the Sectoral Heads like Forest Advisor and Planning Advisor to consider whether the proposals fit into the scheme that the matter should go to the Financial Advisor for financial concurrence where after the same was to be placed before the Secretary NEC for his final decision. Obtaining prior financial concurrence cannot be a substitute for post facto approval as was done in this case.

15. It is also interesting to note that PW 19 in his examination-in-chief deposed that although he was the Forest Advisor to the NEC, technical examination of the scheme including the costs and the likely benefit was not be done by him as the file was put up by A-2 directly to A-1. He further deposed that on 19-3-98 i.e. after the first instalment had been released, he vide his note at Ex. 15 had called

for the file containing the administrative approval order for the application of the said financial assistance, but he did not receive it and instead he received from A-3 a note seeking clarification. A-3 thereafter gave the clarification on the said note on 19-3-98 specifically asking for files of the Society as well as the file relating to the proposal for *Agar*. According to him, on the next day *i.e.* 20-3-98 he received the note from ARO (A-3) informing him that the files could not be sent to him as the subject was dealt with by the deceased Director; that he had also discussed the issue with A-1 who had directed that the present system should continue. True, Ext. 15 which is not the original document is not admissible in evidence and cannot be taken into consideration. But PW 19 confirmed in his cross-examination that he had asked for the file in writing as per exhibit 15 after release of the first instalment and prior to that he had called for the files many times since 1997 and that he had also discussed the issues with A-1 in person and only after that he put the matter in writing. He also re-affirmed in his cross-examination that it was the duty of the NEC Secretariat to ensure that the concerned file reached the Sectoral Heads for appropriate technical advice and the said procedure has been evolved in NEC to ensure that the technical advice of the Sectoral Head was obtained before decisions were taken. Instead of demolishing the evidence of PW 19, the cross-examination of this witness fortifies the case of the prosecution that A-1, A-2 and A-3 not only deliberately by-passed all the Sectoral Heads including Advisors but they have also made every possible efforts to cover-up their unusual transactions. In this context, the testimony of PW 16 is revealing and is reproduced hereunder ad verbatim:

> **"In this particular case, if we look into the file No. NEC/Plantation/1-40/97 which is Ext. 12 in the instant case (Ext. 9 in Spl. Case No. 2/2001, Ext. 10 in Spl. Case No. 4/2002 this is not the route/procedure which is actually followed by which I mean the normal channel of submission**

of file is not followed. What has happened in this case is that the then Under Secretary Mr. Jatin Dutta has sumitted the file directly to the Secretary on 1/12/97 and the Secretary gave approval on 12/12/97.

Ext. 12/1 is the office note dt. 1/12/97 put up by the then Under Secretary to the Secretary and Ext. 12/2 is the signature of the Secretary dt. 12/12/97 at pahe 5 of the note side of Ext. 12.

On the tour note of the Financial Adviser the Secretary instructed hat I should look after the works of the Financial Advisor during the period when F.A. was on official tour. I do not recollect the date but it was around 20th or 21st December 1997. My understanding is that the Financial Adviser is not on leave but on official tour which meant he was on duty and since there cannot be two F.A. during the given period my duty only involve routine work works which did not involve substantive decision. Hence, I have not given any financial concurrence in respect of the case of Barak Hills Tribe Tribal Development Council.

What happened in this instant case was the file was submitted by the Under Secretary directly to the Secretary and the Secretary gave approval to the proposal submitted as in the note 1-12-97, on 12-12-97 and based on the approval of the Secretary a draft sanction order was prepared and put up by the Under Secretary on 23-12-97 to the Financial Adviser and Ext. 12/3 is the said note dt. 23-12-97 at page 5, 6 and 7 of the note sheet. Hence, the issue here is not financial concurrence but to see whether the draft sanction order was in order and the same was simply marked to S.O. Finance, as the proposal had already been approved by the Secretary. And there was definitely procedural lapses"

16. It is in the evidence of PW 5, who was the Principal Chief Conservator of Forest, Meghalaya, that he forwarded the application of NA-2 for plantation of *Texus Bacatta* received from NA-2 to the NEC vide the letter dated 18-8-97. This is not denied by the appellants. On the other hand, PW 24, who was the Registrar of Societies, Meghalaya, categorically affirmed that the Society was registered on 4-9-1997. There can thus be no dispute that the said application for the financial assistance was submitted by NA-2 even before the Society was registered. Such an application from an unregistered society should not have been entertained and

should have been rejected at the threshold inasmuch as an unregistered society is non-entity in the eye of law. Nevertheless, A-3, who himself is a member of the Society, personally processed with much enthusiasm and unusual speed and favourably recommended the application and endorsed it to A-2, who, perhaps in show of his solidarity with a colleague or with expectation of some pecuniary benefit, which is not uncommon these days, recommended the case to A-1, who also readily by-passed all Sectoral Heads including Planning Advisor and chose to directly got the application examined, of all the Sectoral Heads, by the deceased Director instead of the Forest Advisor (the application of the Society had been forwarded by the Principal Chief Conservator of Forest, Meghalaya and not by the Director of Agriculture, Meghalaya). The original proposal of A-2 was for sanctioning `14,79,498/- as cost for plantation of *texas bacatta* out of `10,90,735/- as the total cost of the project. The Director of ICAR also agreed with the proposal of A-2. Finally, A-1 sanctioned `4,79,500/- as the financial support but without indicating how much amount was to be utilised for plantation and how much for construction of the green house, labour charges, etc. As per the initial proposal of A-3, it is evident that over fifty percent of the cost of the project was to be utilised for construction of green house, cost of equipment, fencing, water tank, labour charges for three years and that the plantation was to be carried on over 1 or 2 hectares of land vide Ext. 22.

17. It is in the evidence of PW 14, who was the Deputy Conservator of Forest, Akot Wild Life Division, Maharashtra, that the plantation cost for non-forest produce including medicinal plants such as *texas bacatta* and *Agar* species which was applicable to the entire North Eastern States in the year 1997-98 to 2000-01 and the total plantation cost per hectare prevailing during that period was `

10,260/- which could be increased to a maximum of 50% if all other activities and other cost were also undertaken. She exhibited her letter dated 30-7-99 addressed to the DSP, CBI to that effect as Ext. 28. According to her, the contents of Ext. 28 was not based on her personal experience but was based on the letter dated 16-3-98 of the Ministry of Environment & Forest, Government of India. An attempt was made in her cross-examination to debunk the aforesaid rate quoted by her, but the attempt failed inasmuch as such rate recognised by the Government of India, in the absence of sufficient rebuttal evidence, should be presumed to be correct. In my opinion, A-1 in sanctioning a sum of ` 4,39,500/- for plantation of *texus bacatta* in an area of land measuring 1 or 2 hectares as against the approved cost of `10,260/- for such plantation has acted arbitrarily. There is no evidence to show that he had taken the pain of inquiring the exact cost of plantation of *texus bacatta*. The fact that no plantation worth ` 2,39,750/- was ever carried on over the plantation site has been proved by the evidence of PW 18 and PW 20 both of whom have categorically testified that hardly 600/700 plants of *texas bacatta* were planted as against 20,000 projected to be planted. In the light of the adverse evidence given by PW 18 and PW 20, the least expected from the appellants and non-appellants (NA-1 and NA-2) was for them to adduce evidence to rebut the evidence of these prosecution witnesses, who cannot be said to be bias or have animus against all or any of them (the appellants and non-appellants). The fact that the first instalment of ` 2,39,750/- was disbursed to and drawn by NA-2 has been proved by PW 26, who was the Manager of UBI, Laban Branch. In any case, this is not a disputed fact. Similarly, the money sanctioned was not utilized for the purpose for which it was intended, namely, to utilize it for plantation of *texus bacatta*. In the light of the facts found by me, the inference is irresistible and the conclusion inescapable that A-3 together with A-1 and A-2 have abused their

respective official positions and helped NA-1 and NA-2 to obtain undue pecuniary advantage to them to the tune of ` 2,39,750/- (a considerable amount in those days), which is punishable under Section 13(2) of PC Act. From the facts and circumstances clearly established by the CBI, it has been proved to the hilt that it was at the behest of A-3 that the application of the Society was initiated when it was not even registered under the Societies Registration Act, 1860; that the application of the Society was made the subject of pick and choose for processing despite objection raised by the Planning Advisor as well as Forest Advisor; that in their anxiety to conceal their decision-making process, the Planning Advisor, Financial Advisor, Forest Advisor and other concerned officials were never allowed by A-1, A-2 and A-3 to examine the application of the Society against the established official transaction norms; that the financial grant was sanctioned at an inflated rate and that the fund was not utilized for the purpose for which it was granted, namely, *texus bacatta* plantation and finally the financial grant has been granted at the initiative of and due to the unusual personal interest taken by A-3 with the active support and cooperation of A-1 and A-2. On the facts thus clinchingly established by the prosecution, the CBI has proved beyond reasonable doubt that A-1, A-2, A-3 have improperly exercised the discretionary powers vested in them by law and have in the process abused their respective official positions to enable NA-1 and NA-2 to obtain wrongful gain to the tune of ` 2,39,750/- and, conversely, caused wrongful loss to the NEC. A sum of ` 2,39,750/- has been misappropriated by NA-1 and NA-2 with the active help of A-1, A-2 and A-3. This was nothing but crony capitalism. Looting public money by officials, who are trustees of public office, to help their respective families and friends on quid pro quo basis among themselves has, unfortunately, been the order of the days and is becoming more and more pronounced in every public

office doling out State largesse. Help my family, relatives and friends and I will help yours: this appears to be their mantra. This is how development funds are siphoned off by bureaucrats and politicians to enrich themselves and their cronies at the expense of the intended beneficiaries. I am, therefore, of the firm view that A-1, A-2 and A-3 are guilty of the offence of Section 13(1)(d)(*ii*) of the P.C. Act, which is punishable under Section 13(2) of P.C. Act. Even though the essential ingredients of the offences punishable under Section 420/409 IPC have also been made out by the prosecution, the appellants cannot be convicted thereunder inasmuch as no charges were framed against them by the trial court in this behalf.

18. The next question which called for consideration is whether A-1, A-2, A-3 together with NA-1 and NA-2 committed criminal conspiracy to do an illegal act. The law relating to criminal conspiracy is no longer *res integras*: the difficulty lies in applying the law to the facts obtaining in a particular case. Be that as it may, I still deem it necessary to refer to the law of criminal conspiracy as lucidly explained by the Apex Court in ***Mohd. Khalid v. State of W.B., (2002) 7 SCC 334***:

> "*17. It would be appropriate to deal with the question conspiracy. Section 120-B IPC is the provision which provides for punishment for criminal conspiracy. Definition of "criminal conspiracy" given in Section 120-A reads as follows:*
>
> *"120-A. When two or more persons agree to do, or cause to be done,—*
> *(1) an illegal act, or*
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
>
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."*

The element of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See ***American Jurisprudence****, Vol. II, Sec. 23, p. 559). For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication. The offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise,* ***actus contra actum****, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.*

18. No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of the offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

*** *** ***

*26. We may usefully refer to **Ajay Aggarwal v. Union of India**[10]. It was held:*

*"8. … It is no necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of "criminal conspiracy" was first stated by Denman in **Jones case**[11] that an indictment for conspiracy must 'charge a conspiracy to do an unlawful act by unlawful means' and was elaborated by Willies, J on behalf of the Judges while referring the question to the House of Lords in **Mulcahy v. R.**[12] and House of Lords in unanimous decision reiterated in **Quinn v. Leathem**[13]:*

'A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; and punishable if for a criminal object, or for use of criminal matters.'

*9. This Court in **E.G. Barsey v. State of Bombay**[14] held:*

'The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done had not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law.'

*In **Yash Pal Mittal v. State of Punjab**[15] the rule was laid down as follows: (SCC p. 543, para 9)*

'… The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy so long as they are co-participators in the main object of the conspiracy. <u>There may be so many devices and techniques adopted to achieve the common goal of the conspiracy</u>

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[10] (1993) 3 SCC 609: 1993 SCC (Cri) 961: JT (1993) 3 SC 203
[11] R. v. Jones, (1832) 4 B & Ad 345: 110 ER 485
[12] (1868) LR 3 HL 306
[13] 1901 AC 495
[14] AIR 1961 SC 1762: (1961) 2 Cri LJ 828
[15] (1977) 4 SCC 540: 1978 SCC (Cri) 5

> *and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The relevant factor is that all means adopted and all illegal acts must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators.'*
>
> *10. In* ***Mohd. Usman Mohd. Hussain Maniyar v. State of Maharashtra***[16]*, it was held that for an offence under Section 120-B IPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication."*
>
> (Underlined for emphasis)

19. It is true that there was no express agreement among A-1, A-2, A-3, NA-1 and NA-2 to break the law. However, the indisputable facts remain that the application of an unregistered society like the Society was submitted by NA-1 and NA-2, which was forwarded at a lightning speed to the NEC directly at the table of A-3, who, as found by me earlier, had a stake in the affairs of the Society, and who, when objected by PW 7 as to the manner in which it was sought to be processed by him, apparently convinced A-1 to circumvent the established practice and procedure and by-pass PW 7 and other Sectoral Heads and got it processed through A-2, who was always anxious to 'help' a colleague perhaps on quid pro quo basis. As observed by the Apex Court in ***Mohd. Khalid*** (*supra*), law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. After considering the circumstances before, during and after the occurrence such as the refusal by A-2 to hand over the file in question requisitioned by PW 19 (Forest Advisor) on 19-3-1998 (Ext. 15), in my opinion, the prosecution has proved the guilt of A-1, A-2, A-3, NA-1 and

[16] (1981) 2 SCC 443: 1981 SCC (Cri) 477

NA-2 for the offence of Section 120-B IPC beyond reasonable doubt. The learned Special Judge is correct in convicting the three appellants under Section 120-B IPC and Section 13(2) of P.C. Act, but grossly erred in acquitting NA-1 and NA-2 when they are proved to be the active participants in, and acting in concert with the appellants, in the criminal conspiracy to obtain pecuniary advantage to the order of `2,39,750/-. The encouragement and support which A-1 and A-2 actively gave to A-3 in enabling NA-1 and NA-2 to receive undue financial assistance, which, if left to A-3's individual effort, would have been impossible, furnished for visiting conspirators and abettors with condign punishment. Consequently, the acquittal by the trial court of NA-1 and NA-2 of the offence punishable under Section 120-B IPC cannot stand, and is liable to set aside. Desperate attempts have been made by Mr. S.P. Mahanta, the learned counsel for A-2 and A-3, to create a number of doubts in the case of the prosecution, but, in my judgment, such doubts are merely in realm of possible doubts. Such argument of doubts is completely answered by the Apex Court in the ***State of Punjab v. Karnail Singh, (2003) 11 SCC 271*** in the following manner:

> *"12. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty is not doing justice according to law. (See **Gurbachan Singh v. Satpal Singh**[12].) The prosecution is not required to meet any and every hypothesis put forward by the accused. (See **State of U.P. v. Ashok Srivastava**[13].) A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond doubt is a guideline, not a fetish. [See **Inder Singh v. State** (**Delhi***

[12] (1990) 1 SCC 445: 1990 SCC (Cri) 151: AIR 1990 SC 209
[13] (1992) 2 SCC 86: 1992 SCC (Cri) 241: AIR 1992 SC 840

> ***Admn***[14]***.****]. Vague hunches cannot place of judicial evaluation. "A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in* ***Stirland v. Director of Public Prosecution***[15] *quoted in* ***State of U.P. v. Anil Singh***[16]*, SCC p. 692, para 17.) Doubts would be called reasonable doubt if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. (See:* ***Shivaji Sahabrao Bobade v. State of Maharashtra***[17]*,* ***State of U.P. v. Krishna Gopal***[18] *and* ***Gangadhar Behera v. State of Orissa***[19]*.)*

20. For the reasons stated in the foregoing, Criminal Appeal No. 1(SH), 4(SH) and Criminal Appeal No. 5(SH) of 2009, being devoid of merit, are, therefore, dismissed. As there is no appeal against the quantum of sentence, the sentence imposed upon each of the appellants by the trial court is not interfered with. The three appellants (A-1, A-2 and A-3), whose bail-bonds shall stand cancelled forthwith, are directed to surrender before the learned Special Judge, CBI, Shillong on or before 19-2-2013 to serve out their respective sentences. Criminal Appeal No. 9(SH) of 2009 is allowed. Consequently, the impugned judgment acquitting the two non-appellants i.e. NA-1 and NA-2 are set aside. On the contrary, both of them are hereby convicted under Section 120-B IPC read with Section 13(2) of PC Act. Both the non-appellants i.e. NA-1 and NA-2 are directed to appear before this Court on 22-2-2013 for sentence hearing. The Registry is to open and register a new separate miscellaneous case for the sentence hearing of NA-1 and NA-2. Transmit the L.C. records forthwith.

JUDGE

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[14] (1978) 4 SCC 161: 1978 SCC (Cri) 564: AIR 1978 SC 1091
[15] 1944 AC 315: (1944) All ER13 (HL)
[16] 1988 Supp SCC 686: 1989 SCC (Cri) 48: AIR 1988 SC 1998
[17] (1973) 2 SCC 793: 1973 SCC (Cri) 1033: (1974) 1 SCR 489
[18] (1988) 4 SCC 302: 1988 SCC (Cri) 928: AIR 1988 SC 2154
[19] (2002) 8 SCC 381: 2003 SCC (Cri) 32: (2002) 7 Supreme 276