Supreme Court of India
A.Jayaram & Anr.Etc.Etc vs State Of Andhra Pradesh Byc.B.I on 13 July, 1995
Equivalent citations: 1995 AIR 2128, 1995 SCC Supl. (3) 333
Author: G Ray
Bench: Ray, G.N. (J)

PETITIONER:
A.JAYARAM & ANR.ETC.ETC.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH BYC.B.I.

DATE OF JUDGMENT13/07/1995

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
FAIZAN UDDIN (J)

CITATION:
1995 AIR 2128 1995 SCC Supl. (3) 333
JT 1995 (5) 238 1995 SCALE (4)393

ACT:

HEADNOTE:

JUDGMENT:

THE 13TH DAY OF JULY, 1995 Present:

Hon'ble Mr. Justice G.N.Ray Hon'ble Mr. Justice Faizan Uddin Mr.K.T.S.Tulsi, Additional Solicitor General, Mr. K.Madhava Reddy and Ms.Amreshwari, Sr. Advs., Mr.K.R. Choudhary, Mr.G.Narasimhlu, Mr. V.V.Vaze Mr.D.Satyanarayan, Mr.R.P. Srivastava, Mr. Hemant Sharma, Mr. W.A.Quardi, Mr. P.Parmeswaran and C.B.Babu, Advs. with them for the appearing parties.

J U D G M E N T The following Judgment of the Court was delivered: IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO. 310 OF 1989 A.Jayaram and Anr.

Versus State of Andhra Pradesh By C.B.I.

WITH Criminal appeals Nos.308 and 309 of 1989, 311 to 317 of 1989, 163 to 166 of 1994 and Criminal Appeals Nos. 184 to 185 of 1994.

J U D G M E N T G.N. RAY.J.

All the aforesaid appeals were heard analogously because the criminal proceedings instituted against the appellants in these appeals, being the officers of the State Government of Andhra Pradesh and dealers of fertilizers in the State of Andhra Pradesh related to an alleged scandal in transporting imported fertilisers from the ports of Tamil Nadu and Andhra Pradesh to different destinations in the State of Andhra Pradesh. A tabular statement indicating the numbers of the appeals in this Court, corresponding numbers of the appeals in the Andhra Pradesh High Court and corresponding numbers of the criminal cases in the trial court out of which the appeals in the High Court arose is given below:

Government and others are dealers.

The Special Judge for Fertilizers Transport Cases (A.P.) acquitted all the accused in the criminal cases instituted against the officers and dealers. But on appeals by the State of Andhra Pradesh, the High Court of Andhra Pradesh by the impugned judgments reversed the orders of acquittal and convicted all the appellants. As the Criminal Appeal No. 310 of 1989 was taken up first for hearing and was argued at length as the main appeal and learned counsel appearing for the appellants in the other appeals supplemented the arguments by drawing attention of this Court to the special facts relating to such appeals, we propose to deal with the arguments advanced in Criminal Appeal No. 310 of 1989 at length.

Criminal Appeal No. 310 of 1989 has been preferred by Accused No. 2 District Agricultural Officer Nandiyal (DAO) and Accused No. 3 Assistant Agricultural Officer Nandiyal (AAO) Accused No.1 who was a dealer in fertiliser was also convicted by the High Court. Both A-2 and A-3 have been convicted by the High Court under Section 120B read with Section 420 I.P.C. and sentenced to pay a fine of Rs.100/- and in default to undergo rigorous imprisonment for one month. They were further convicted under Section 5(2) read with Section 5(1) (d) of prevention of Corruption Act and sentenced to pay a fine of Rs.100/- and in default to undergo rigorous imprisonment for one month. They were also sentenced to imprisonment till the rising of the Court. The dealer accused No.1 was however convicted under Section 477- A I.P.C. and was sentenced to pay a fine of Rs.100/- in default to unergo rigorous imprisonment for one month. He was also sentenced to detention till the rising of the Court. It may be indicated here that the Government Officers in the other appeals were sentenced similarly on similar evidence. Accordingly submissions on behalf of such appellants were also more or less on similar terms.

The impugned judgments of the High Court reversing the orders of acquittal and convicting the appellants in these appeals have been assailed by the learned counsel for the appellants by contending that although an appellate Court has jurisdiction to interfere with the finding of fact and reverse such finding on proper appreciation of evidence adduced in the trial, as a rule of prudence, court of appeal should not interfere with the order of acquittal are not perverse of against the weight

of the evidence addced in the case and the basis of judgment is founded on a reasoning which can not be held to be one of the possible views which may be reasoning which can not be held to be one of the possible views which may be reasonably taken by the Court. The learned counsel have submitted that the guidelines or the principles justifying interference by the Court of appeal against an order of acquittal have been well settled by a number of decisions of this Court indicating that rules of prudence dictate that unless a very strong case for interference against a well reasoned order of acquittal is made out, the court of appeal will refrain from making its own assessment of the evidence for taking one of the possible views, different from the view taken by the trial court. It has been submitted that although High Court has rightly pointed out the principles justifying interference against the order of acquittal it failed to appreciate the facts and circumstances of the cases and the evidences adduced in the trial and has reversed the decisions of the trial court cotrary to the well established principles justifying such interference. The contention of the learned counsel appearing for the appellants in Criminal Appeal No. 310 of 1989 are to the following effect:-

(a) The High Court in this case has totally ignored the reasons given by the Trial Court and totally overlooked the several admissions made by the prosecution witnesses in their Cross- examination which wholly demolisnes the value of their evidence in examination- in-chief. Except discussing one aspect, namely that owners of the shops are competent witnesses to identify the handwriting of their clerks who made the entries in the account books, there is no discussion regarding several other reasons given by the Trial Court for not accepting the evidence of the prosecution witnesses.

(b) The High Court has gone by surmises. The High Court has, in reversing the Trial Courts Judgement of acquittal nowhere found that on the evidence adduced the view taken by the trial court could not have been taken. The High Court, sitting in appeal, ought not to have reversed the acquittal without displacing the findings of the Trial Court merely because a different view was also possible. The High Court has nowhere considered how the officers, A-2 and A-3, could be held guilty of conspiracy without a categorical finding that no fertilizer was received by the AAD (A-3). It has not adverted to the admissions made by the prosecution witnesses in their cross examination which were referred to by the Trial Court for acquitting them.

(c) The High Court has failed to notice that not a single witness of the prosecution has stated that there was no stock of fertilizers on the day when it was recorded in the stock register by A-

3.

(d) The High Court failed to see that upto the date of issuance of the impugned certificates, there was no obligation to verify the registration numbers of the trucks in which the fertilizers were transported.

(e) The High Court failed to consider that the District Agricultural Officer in Nandiyal which is in Kurnool District, has neither jurisdiction nor the staff to monitor each lorry transporting fertilizers lifted from Kakinada port which is five districts away at a distance of nearly 600 kms. from his place of posting. He (A-2,DAO) was to take the certificate given by A-3 (AAO) and issue a certificate verifying the distance and reasonableness of Rate after verifying the stock which he did. There is no evidence to the contrary.

(f) The High Court has erred in nothing the DAO's (A-2) contention. It was never argued for A-2 that he had no obligation to verify the stock.

(g) The High Court failed to notice that there is an entry in the stock register of the respective stock on the particular day and A-(3) (AAO) gave the certificate. Prosecution has not examined any witness even to say that no truck came and no fertilizer was delivered to A-2 on that day.

(h) No witness was examined to prove that on the day the entry was made, any inspection was done either on that day or within a reasonable time thereafter to hold that no stock was received and certificate given by A-2 and A-3 are false.

(i) No witness was examined to show that attempt was made to ascertain if any stock was in the godown contemporaneously with the date of the entry in the stock Register or the issuance of the certificate; nor was there any specific complaint to this effect.

No one was examined to prove that there was no stock on the relevant date.

(j) The High Court totally ignored the evidence of PWs. 13 and 15 who categorically stated that fertilizers were freely available in the market which fact was specifically referred to and relied upon by the Trial Court to acquit the appellant. With the limited jurisdiction of A-2 and A-3 they could only verify the stock brought to them and enter in the stock register. They had no machinery to verify whether it was the self same stock which was lifted by A-1 from Kakinada or some other stock. For that purpose A-2 was required only to verify the port documents showing lifting at this port. It is the admitted case of prosecution that Dealer A-1 did lift fertilizer from Kakinada. Hence some fertilizer was delivered to A-2. Even if it was not the same, A-2 and A-3 were bound to issue the certificates. Hence they cannot be held guilty. There is no evidence that fertilizer was not delivered at all. When fertilisers were freely available the dealers could even after selling away fertilizers lifted at port could very well have purchased fertilizers locally and delivered it to A-2. Unless this hypothesis, which is highly probable is excluded by positive evidence A-2 and A-3 cannot be found guilty.

(k) The trial court further held that the alleged sales by dealer (A-1) at Bubbili and Sompeta was not established. The trial Court also held that the identify of the

fertilisers sold is not established. In the absence of such evidence, the trial court refused to believe that the fertilisers were not transported from Kakinada to Allagadda in Kurnool District. Dealing with this aspect, the High Court has observed that the partner of the shop has been examined and in some cases clerk has been examined and accounts in which the sale transactions are entered are proved and hence sale by A-1 is proved. In coming to that conclusion, the High Court failed to notice that:

i) day books were not filed and only ledgers were filed.

ii) In the ledgers there is no entry of A-1 selling the fertilisers.

iii) There is also no entry to identify the fertilisers sold, nor even that it was imported fertiliser taken delivery of at Kakinada by A-1. The day book in which such entries are said to have been made was not produced.

iv) That the registration number of trucks were not entered in the ledger and are said to have been entered in the day book but that day book was not produced. The witnesses examined admitted that they did not travel in the trucks which transported the fertilisers purchased by them.

v) The drivers were not examined.

vi) The trip sheets of the trucks were not filed. A few filed are loose sheets. Witnesses admitted that they were not maintained for all trips. Refering to the decision in State of Kerala versus Thomas Alias Boby (1986 (2) SCC 411) it was contended that trip sheets were not worthy of credence because loose sheets properly maintained and kept not in any book form, have no evidentiary value. No liability can be imposed on the basis of mere entry in the account books and such trip sheets. All these facts were taken note of by the trial court in holding the sales not proved.

vii) The High Court in reversing the findings has only made a general reference to the examination-in-chief of those witnesses and wholly ignored the damaging admissions made by each one of the witnesses in cross-examination.

viii) The High Court has only pointed out that partners of the firm which purchased fertilisers were competent witnesses to identify the signature of the clerks who made these entries. That by itself does not establish the identity of the fertilisers lifted from Kakinada port nor does it establish that A-1 had sold those fertilisers.

ix) The High Court has placed reliance on entries at the check posts. Judicial notice of the fact could be taken note of that for several trucks moving on road there are no entries in the check post regions. When these fertilisers are admittedly not liable for sales tax. If no entries are made, no inference adverse to the accused could be drawn.

1) The ingredients of the offences charged against the appellants have not been established for the following reasons:

a) A-2 and A-3 are charged with the offence of giving false certificates. For bringing home the charge of 120-B read with 420 against A-2 and A-3, the prosecution in this case must establish that they had conspired with A-1 to cheat. There is no direct evidence on this aspect. Of course, it can be established by circumstantial evidence. The most essential ingredient of the offence of cheating is deceiving any person and inducing that person to deliver any property. In this case there is no proof of non delivery of fertiliser. The certificate issued by A- 2 and A-3, could be said to be false only if no fertiliser was received by A- 3 and yet A-3 entered in the stock register and issued the certificate. There is no finding of the High Court that the stock of fertilisers was not received. It may be noted that there is no duty cast upon A-3 to certify that a particular type of fertiliser has been received or imported fertiliser has been received or the very same stock lifted from Kakinada port was received by him. A-3 was only to certify the quantity of fertiliser received. It was not within the power of A-3 to monitor the transport all the way from Kakinada to Allagadda over a distance of 600 kms. His jurisdiction is limited to one of the several talukas of the district while the fertiliser was to be transported over 5 districts. When fertiliser was freely available in the market, it may very well be that A-1 disposed of the fertiliser lifted from Kakinada at Kakinada or at any other place nearby, purchased other fertilisers freely available in the market and delivered to A-3 and A-3 who having received the same entered in the stock register and issued the certificate. The certificate so issued could not be said to be false or given to deceive anyone unless it is established that no fertiliser at all was received on the particular day a certificate issued cannot be said to be false. There is no such evidence; hence A-3 cannot be held guilty.

b) A-2, DAO, issued certificate certifying the distance from Kakinada to Allagadda and the reasonable rate which could be paid per ton of fertiliser per km. It is not the case of the prosecution that the certificate of distance and reasonable price is false or untrue. The case is that the fertilisers were not transported at all and that no fertiliser was reversed on the day when it was entered in the stock register. A-3 was to give the certificate certifying the distance and the rate for transport after verifying the stock after obtaining the certificate issued by A-3. If the certificate issued by A-3 is not false, as submitted above, when there is no evidence that DAO A-2 has not verified the stock, A-2 also cannot be held guilty. Even assuming that A-1 has disposed of the fertiliser lifted from Kakinada at any other place and did not actually transport it to Allagadda, so long as it is not established that on the day when the entry is made in the stock register, there was no stock received by A-3 neither A-2 nor A-3 can be held guilty. The prosecution has failed to prove positively that there was no fertiliser on the relevant date. The prosecution however wants the court to draw an inference against the accused on the evidence of sale of certain fertilisers by A-1 the dealer, at some other place. There is no basis for such an inference especially when plenty of fertilisers were freely available in the market and even after disposing of the

fertilisers at a different place, the dealer (A-1) could have purchased fertiliser from the nearby market and delivered the same to A-3. A certificate issued by A-3 on receiving such fertilisers cannot be said to be falsely issued with an intent to deceive the government to secure benefit for A-1. A-2 also could not therefore be found guilty.

The prosecution, however, says that in the circumstances only negative evidence could be adduced that fertiliser were disposed of elsewhere and positive evidence of fertiliser not having been delivered on the relevant date to A-3, could not be adduced. This contention cannot be accepted for several reasons.

i) The evidence of anyone who inspected the godowns as they are expected to be inspected periodically could have been adduced. Not a single witness has been examined by the prosecution to prove this.

ii) Evidence of persons of the locality where the godown was situated, could have been adduced to show that no trucks came and no fertilisers were received at that godown on that day or a day or two earlier or later.

iii) A-3 had certified that A-1 dealer has taken delivery at Kakinada as per port documents and that he has delivered certain quantity of fertiliser.

iv) The conspiracy is said to be of the DAO (A-2) and AAO, (A-3) with the dealer (A-1). The conspiracy is not between any officer above the level of DAO and yet none of those higher officers have been examined to show that in or about the relevant date, these fertilisers were not available in the godown.

v) While the offence is alleged to have taken place in october 1968. FIR was registered on 24.6.1970 and the chargesheet was laid in 1973. The charge sheet does not say that any Officer higher in hierarchy to A-2 was involved. Yet none of them has been examined to prove that fertilisers were not in the godown on the day when they were purportedly received by A-2.

It has been very strongly contended by the learned counsel for the appellant that the prosecution pleaded an excuse for not leading better evidence to establish all the ingredients of the offence on account of inordinate delay in making proper investigation and filing the charge sheet and contended that adverse inference should be drawn against the accused. The learned counsel for the appellants has contended that such contention being against all cannons of criminal jurisorudence should not have been accepted by the Court. It was the unfailing obligation of the prosecution to lead convincing and unimpeachable evidence to prove the charges levelled against the accused. Failure of the prosecution to establish such charge for any reason whatsoever cannot but ensure to the benefit of the accused particularly when the delay in investigating the case and filing chargesheet was not attributable to the accused.

It has also been contended that the conviction was sought to be based on circumstantial evidence are well settled by decisions of this Court in a catina of cases. Referring to the decision made by this Court in Janar Lal Das versus State of Orissa (1991 (3) SCC 27), the learned counsel has submitted that this court has indicated that in order to sustain conviction on circumstantial evidence, three conditions must be fulfilled namely;

> (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.
>
> (ii) those circumstances should be definite unerringly pointing towards the guilt of the accused:
>
> (iii) the circumstances, taken cumulatively, should from a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.
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> In cases depending largely upon circumstantial evidence there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstanced in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. When the main link goes, the chain of circumstances gets snapped and other circumstances cannot in any manner establish the guilt of the accused beyond all reasonable doubts. It is at this juncture the court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes unconsciously it may happen to be a short step between moral certainty and legal proof. At times it can be a case of `may be true'. But there is a long mental distance between `may be true' and `must be true' and the same divides conjectures from sure conclusions.

It has been contended that there is no convincing and unimpeachable evidence which unerringly points out to the guilt of the accused and in the facts of the case, no conclusion other than complicity of the accused for the offence charged, is possible. Hence, conviction of the appellant on proobability, surmise or conjecture was not warranted.

The learned counsel for the appellant has submitted that the appellants had no special knowledge as to whatroute had been actually followed by the dealer or transporter in bringing the fertilisers to government godown. The appellants had the duty to certify shortest route between the point of lifting and point of delivery and certify reasonable rate on the basis of such shortest route.

It has been contended that the appellants being government officers responsible at the receiving point were required to ensure that fertilisers had in fact delivered at the receiving point. On receiving the fertilisers, the appellants have discharged their duties in certifying the receipt of fertilisers. Nobody had verified the stock received at the godown on the day of delivery or even

within a reasonable time. If a dealer or transporter disposes of fertilisers lifted at port on route and brings a new consignment of fertiliser by procuring elsewhere, the government officers at the receiving and had nothing to do. If on receipt of the fertilisers delivered at the destination, such officers had issued certificates, no offence charged against them could be held to have been established.

Circulars issued subsequent to 1.11.68 would go to show that A-2 (DAO) nor A-3 (AAO) were required to verify the Registration number of trucks in which the fertilisers were actually transported to Allagadda. That was prescribed only subsequent to the date of the alleged offence. Under the earlier circulars there was no such requirement. Reliance was placed by the prosecution on circular dated 5.2.68 at page 29 to 31 of paper book, Vol.II which require the A-2 (DAO) to conduct physical verification of stocks received in the district and the manure mixing firm and report the same in a cover addressed to the Director of Agriculture by name.

There was no failure to verify on the part of A-2 when he issued such a letter. That letter is extracted at page 70 of the High Court judgment, Ex.P-87. No evidence is adduced by the prosecution to show that no stock was received by A-3 and that A-2 did not physically verify the stock. Not one witness has so stated. The prosecution only insists upon the court to draw adverse inference against the accused from the fact that A-1 had disposed of some fertilisers somewhere at Kakinada, Bubli, or Sompeta after lifting from Kakinada. When several complaints were made that officers were delaying in issuing the certificates the procedure was modified by circulars dated 27.6.1966 Ex.P-1 at page 149 and circular dated 12.3.1968 Ex.D-48 page 155. Ex.D-48 specifically says that DAO (A-2) should ensure that the parties have actually moved the stock and for this purpose the DAO may obtain the certificate of verification from Agricultural Extension Officer (A-3). A-2 has obtained such certificate. Further, the Agricultural Extension Officer (A-

3) should furnish the stock book entry of the depot concerned. Admittedly such an entry is found and it is furnished by A-3 to A-2 and A-2 in turn has forwarded the same to the higher authorities. Further, Agricultural Extension Officer (A-3) is required to make the stock book entry basing on the material furnished in proforma 1 issued at the ports. It is the admitted case of the prosecution that proforma 1 issued at the ports was so furnished. Hence the certificate issued by A-3 cannot be said to be false when for the purpose of ensuring actual movement of stocks, these alone were to be taken into account. As regards the certificate to be issued by A-2 (which is at page 152 of the Special Leave Petition paper book), circular dated 27.6.1966, states that in view of the clarification given by the Government of India, the following procedure is prescribed for certification regarding rates and distance. That procedure was followed. There is no evidence of the prosecution that that procedure was not followed. There is no allegation that distance and rates certified are not correct.

Circular dated 5.2.1968 only emphasises the physical verification. There is no evidence that he has not physically verified issuing the certificate of distance and route in the covering letter addressed to the Director of Agriculture. It does not prescribe verifying Registration Number of trucks.

The learned counsel appearing for the appellants who are government officers have submitted that charges against the government servants could not be established. Even if the transporters or

dealers in fertilisers had committed guilt they were liable to be convicted for the part played by them but on account of any guilt on the part of the dealers, the officers could not be prosecuted. Hence, there was no occasion to convict such officers by reversing the orders of acquittal.

The learned counsel for other appellants who are government officers have submitted that facts and circumstances in other cases are more or less similar. No varification of stock at the receiving and had been done immediately after receipt of the goods or even within a reasonable time. Therefore, the appellants for the grounos indicated in Criminal Appeal No.310 of 1989 should be acquitted by setting aside the unjust and improper order of conviction and sentence passed by the High Court.

The learned counsel appearing for the dealers in their appeals have submitted that it was alleged that the dealers, pursuant to the conspiracy with other accused namely the government officers had preferred false claims for reimbursement of the road transport charges. It has been contended that the dealers had obtained certificates about the receipt of the goods transported at the destination issued by the competent government official. It had not been established that such goods had in fact not been received by leading any convincing positive evidence about the stock position at the relevant time. No one had verified the stock at the receiving end either on the date of delivery or within reasonable time thereafter. Hence, it cannot be contended that goods in question had not been transported at all but false claim for such transportation charge had been made. It has been contended that the High Court allowed the appeals against the dealers mainly on the ground that there were no entries at the checkposts and that there was evidence of sale of some fertilisers. Absence of entries in chekposts ipso facto did not establish that the lorries did not ply through the routes in question. It could not be established beyond all reasonable doubts that invariably in all cases appropraite entries in checkposts had been made. It has been established that checkpost entries had not always been properly maintained. Hence, absence of entry in the checkpost could not be held to be conclusive evidence about non transportation of goods.

It has also been contended that transportation of goods by alternative route was not prohibited. The only embargo was that transportation charge should be paid on the basis of shortest route certified by competent government official. The learned counsel have contended that evidence about sale of fertilizers at some places had been led by the prosecution. Such fact ipso facto, does not establish conclusively and beyond reasonable doubt as to whether the goods to be transported had been sold and as such the same had not been delivered at the destination. No proof has been given by the prosecution as to what quality of fertilisers had been sold. There is also no evidence that no fertiliser was available in the market in the entire region. It has been contended by the learned counsel for the appellants that after a long lapse of time, an uproar was made in the State Assembly and in the media about large scale manipulation in the transportation of fertilisers. It was only because of public pressure that long after transportation was effected enquiries were sought to be made. It was unfortunate that the government could not place reliance on the State's police and because of public uproar, C.B.I. was entrusted to cause enquiry into the allegation of scandal with the transportation of fertilisers. Admittedly, such enquiry had been made at a very belated stage when hardly there was any material or evidence to substantiate the charges against the accused. It has been contended that knowing fully well that such allegations about the scandal in dealing with fertilizers could not be established for want of proof, the government in order to pacify public demand initiated the

criminal cases against the appellants. The trial court by giving detailed reasons acquitted all the accused in the criminal cases instituted against them. But as aforesaid, the High Court reassessed the findings of the trial court and convicted the appellants mainly on the basis of suspicion, surmise and conjectures. It has been contended that the token punishment given by the High Court amply demonstrates that the High Court also entertained a feeling that the guilt had not been established in a fully convincing manner. In the aforesaid facts, the learned counsel have submitted that the impugned decisions of the High Court have occasioned grave injustice and should be set aside by this Court.

The learned counsel appearing for the State of A.P. in these appeals have, however, seriously disputed the contentions made on behalf of the appellants. The learned counsel for the State in Criminal Appeal No.310 of 1989 has contended that transportation of fertilisers had to be made from the port of Kakinada to Allagadda in Karnool District. It is the prosecution case that such fertiliser had not been transported to the destination but the goods were sold at Kakinada itself and at some intermediate places and the dealers made a false claim of transportation charge for a sum of Rs.13,972.50. A-3 who was the Agricultural Assistant Officer and consignee of the goods made a false entry in the stock register to the effect that the fertilizers were received at Allogadda and on the oasis of certificate used by A-3 since endorsed by A-23, the District Agricultural Officer about actual transportation of the fertilizers through shortest route, the claim of the dealer was allowed by the government. The prosecution alleged that there had been conspiracy and connivance between A-2 and A-3 and A-1 to defraud the Government.

Learned counsel for the State respondent in support of the judgment has submitted that the prosecution in support of its case examined the owners of the lorries alleged to have transported the goods from Kakinada to Allagada as PWs. 6,7,8,16 and 22. It is the prosecution case that the fertilisers stated to have been carried to the destination at Allagada had been disposed of at Kakinada. Such purchasers of fertilisers were examined as PWs. 1-4, 13-15, 21, 24, 29, 30, 34 and 35. The officials of the check post on the regular route between Kakinada and Allagada were also examined by the prosecution being PWs. 26-28 and 31. It has been contended by the learned counsel for the respondent that unfortunately after long laspe of time it was not possible to lead direct evidence about the actual position of stock of fertilisers at the destination point on the date of alleged receipt of fertilisers or immediately thereafter. It has been submitted that it was a large scale scandal in the matter of transportation of imported fertilisers at various destinations at State of Andhra Pradesh and because the fraud was perpetrated with the active connivance of the government officials entrusted to receive the fertilisers at the destination, such fraud could not be detected immediately. He has submitted that it is unfortunate that the C.B.I. had to be entrusted for causing enquiry because effective enquiry could not be made by the State agencies. Such enquiry had been held long after the incident of fraud. Naturally, the C.B.I. was handicapped to a great extent but despite the same the C.B.I. has done excellent job and by examining the lorry owners, the persons purchasing the fertilisers stated to have been transported and the officials in the check post. It has been conclusively established from depositions of such witnesses that the fertilisers in question had in fact not been transported to destination. The learned counsel has submitted that once this fact is clearly established that the fertilisers which had been lifted at the port and was scheduled to be transported at the destination Allagada had not been transported by the lorries

through which it was said to have been transported and it is also proved that fertilisers had in fact been sold elsewhere and such lorries did not pass through the usual route to be followed for such transportation, there will be no difficulty in holding that the certificate which was issued by the government officials about the actual transportation of the said fertilisers by the shortest route was false and fabricated and such certificate had been issued without actually receiving the goods. On the basis of such evidences since accepted by the High Court, the order of conviction by the High Court by reversing improper judgment of acquittal passed by the trial court is wholly justified and no interference is called for. The trial court proceeded on surmise and conjecture. The learned counsel has submitted that the High Court was fully aware of the appeal court's responsibilities and duties in dealing with the judgment of acquittal. Since the finding of the trial court was completely against the weight of the evidence and such finding could not be held to be based on a reasonable view which could be taken on the basis of evidence adduced in the case, the High Court felt that such order of acquittal could not be sustained. Accordingly, the impugned orders of conviction of sentence have been passed. It has been submitted by the learned counsel for the respondent that the trial court erred in drawing adverse inference against the prosecution case because the drivers of the lorries had not been examined but only the lorry owners were examined. The trial court also draw an adverse inference because the clerks of the lorry owners who made entries about the movement of the lorries in question had not been examined. The learned counsel has submitted that such view of the trial court was wholly erroneous and unjustified. The lorry owners were competent to say whether the lorry owned by them had been engaged for the transportation of the fertilisers in question and it was not necessary to examine the drivers who actually drove the lorries. The owners of the lorries were expected to know the hand writings of the clerks engaged by them in the registers maintained in their office. To prove such entries about the movement of lorries, the clerks were not required to be examined and no adverse inference was required to be drawn for not examining the clerks. It has been submitted that the High Court observed that there were several Circulars issued prior to March 12, 1968 and subsequent to March 12, 1960 and such circulars only indicated the responsibilities of the Agricultural Officer. It has been submitted that the High Court elaborately dealt with the circulars and held that despite specific guidelines given, the accused A-2 and A-3 deliberately failed and neglected to perform their official duties. The learned counsel has submitted that in a case governed by the circumstantial evidence it is often very difficult to prove when the minds of the accused met and it is only from the facts proved, the reasonable inference can be drawn about the collusion between A-2 and A-3, namely, the government officials and the dealer in fertilisers A-1. It has been contended by the learned counsel for the respondent that the owner of lorry PW.6 was examined by the prosecution. The said owner was the best person to speak about the fact whether his lorry had been taken on hire at the relevant time for transporting the goods. The lorry owner is not expected to maintain the trip sheets written some time in 1968 when he was examined after several years. P.W 35 the clerk in the shop of G. Surya Narayana stated that he had purchased 340 bags of urea from PW 30 Bhoja Dharam Raju & Company, Kakinada and by making an entry he took delivery of the said 340 bags of urea. PW 30 was also examined to prove that Bhoja Dharma Raju and Company had sold 340 bags of urea. Ex.P.164 and P.167 are the sale bills issued by Dharma Raju. Ex.P.65 and P.67 are the two sale bills which were also sent with the lorries and by which the stocks were sent. Such bills clearly established that the lorry did not proceed on the same date to Kakinada and any statement to that effect was false. Ex.P.164 is the seal of Ramabhadrapuram check post entry. It has been contended by the learned counsel for the

respondent that if the lorry in question had in fact travelled by any other route, such fact was within special knowledge of the accused trader. In that event, the burden shifts to the accused to prove the special facts within his knowledge. The owner of the lorry had been examined as PW 7 and the said owner had proved the entry Ex.P.20 in the day book maintained by him on 9.10.1968. The trip sheet Ex.P.21 dated 11.10.1968 shows that the lorry made a trip from Kakinada to Sompeta. Sompeta is situated within Srikakulam District which is at one end of the State of Andhra Pradesh touching the border State of Orissa. It has been established by examining the officials of the check posts that there is no entry in any of the check posts between Kakinada and Allagada in respect of the lorry in question namely lorry bearing No. A.P.W.4926. Ex.P.39 is the account book dated October 10, 1968 showing that fertilizers belonging to A-1 were loaded in the said lorry. The account book of P.W.30 shows that they purchased the fertilisers on October 10, 1968 and the trip sheet shows that the fertilisers had in fact been transported to a different place. From such evidences a reasonable conclusion can be drawn that the said lorry did not reach the destination. P.W.1 is the husband of the owner of lorry No. APP 8379. The said witness has stated that Ex.P.1 is the trip sheet and his lorry did not transport any fertiliser to Allagadda and he does not know whereabout of his driver Rama Rao. P.W.22 is the clerk who identified the signatures of Rama Rao, Driver. P.W.33 gave evidence to the effect that the lorry made a trip from Kakinada to Amatalagalsa and identified Ex.P.58 the way bill and stated that the vehicle did not transport any fertiliser for Thallam Trading Company namely A-1 from Kakinada to Allagadda on October 10, 1968. So far as the transporter of fertilisers of lorry No. APV 7335 is concerned, the owner of the lorry P.W 24 has proved that the Ex.P.28 is the trip sheet dated January 10, 1968 which shows that the lorry transported from Kakinada to Rajam. Rajam is in Srikakulam District. Such fact clearly indicates that the fertiliser in question had not been transported by lorry No. APV 7335. The learned counsel has submitted that even if transportation by one of the lorry appears to have not been conclusively proved, there is no difficulty in convicting the accused if non delivery of the fertiliser at the destination on other occasions is established. The learned counsel has submitted that ingenuous plea has been taken for raising unfounded doubts to the effect that the case had not been established beyond all reasonable doubts. Accordingly, the benefit of doubt should go to the accused. Such case of the accused, however, should not be accepted for the simple reason that the prosecution has established by examining the purchasers of fertilisers, the lorry owners, the officials of the check posts that such lorries had not transported the fertiliser at the destination and the lorries had in fact transported different goods at other destinations. On the basis of such evidence, only conclusion can be drawn that a false certificate was procured by the dealer A-1 and false certificates were given by the local government officials, A-2 and A-3 in perpetrating a deep rooted conspiracy to defraud public exchequer. It has been contended that the learned counsel for the State that the Assistant Agricultural Officer was the consignee of the goods. He was required to make an entry in the stock register after physically verifying that the goods had in fact been transported. It was on the basis of such receipt of goods that he was required to issue certificate that the goods had reached the destination. The other accused namely the District Agricultural Officer had to satisfy himself about the physical arrival of goods for the purpose forwarding the claim of the dealer for payment.

The learned counsel has further submitted that several circulars were issued from time to time by the competent authorities with regard to the verification of stocks and certificate to be issued on the genuineness of the claim. Between 1958 and 1968, different circulars have been issued on different

dates. The subsequent circulars issued after the commencement of offence however need not be considered for these appeals Ex.P.83, the circular dated June 24, 1964 requires that the Assistant Agricultural Officer should satisfy himself that the goods were actually transported by shortest route through the mode of transport claimed in the bill and the rates mentioned said Assistant Agricultural Officer had verified the same and found correct. Such certificate only points out that he was a party to conspiracy and when the goods had in fact not reached the destination, he issued a false certificate only for the purpose of defrauding public exchequer. It has been also submitted by the learned counsel for the respondents that the trial court failed to consider some of the relevant materials and it had also considered some materials improperly. It is because of such errors and omissions that the High Court was fully justified in considering the evidences and setting aside the orders of acquittal passed against the weight of the evidence. It has been submitted by the learned counsel for the State that a very lenient sentence by the High Court has been passed but such lenient sentence by no means establishes that the accused are not guilty. The Court in awarding sentence takes mitigating circumstances into consideration. The case continued for long because large number of documents had been exhibited and large number of witnesses were examined. The Government officials had to suffer because of the pendency of criminal cases. Considering such mitigating circumstances, it is quite likely that a lenient sentence has been passed by the High Court. The learned counsel for the respondent submits that there is no merit in the appeals and the same should be dismissed.

The facts and circumstances of the case in the other appeals are more or less the same. The prosecution by examining the purchasers of the fertilizers the owners of the transport, officials of the check posts on usual routes, tried to establish that the fertilisers in question had not in fact been carried to the destination. Hence, no bill for such transportation could be presented by the dealers and no certificate about transportation of such goods by the shortest route at a reasonable cost could be issued by the government officials. Accordingly, it was contended by the learned counsel for the state that the conviction in all the cases should be upheld and this Court should dismiss the appeals preferred by the accused.

After giving our anxious consideration to the facts and circumstances of the case and considering the judgments by both the courts and evidences adduced in the case through which we have been taken by the learned counsel for the parties, it appears to us that a large scale fraud had been committed in the matter of transportation of fertilisers from the ports of arrival to various destinations in the State of Andhra Pradesh. Such fertilisers had been brought at a point of time when the State was in dire need of good quality of fertilisers for cultivation. It is the case of the prosecution that large scale fraud had been committed by a large number of government officials in conspiracy with the dealers in fertilisers who were entrusted to take the fertilisers from the port to various government godowns. The prosecution case is because there was a conspiracy involving reasonable government officials, the fraud could not be detected earlier. Thereafter, when the State Police was entrusted with the enquiry, for some inexplicable reasons, the enquiry appeared to be tardy. In the meantime, uproar was made in the State Assembly and the newspapers published the news of large scale scandal relating to transportation of fertilisers. The embarrassed State Government thereafter entrusted the C.B.I. to make enquiries. The C.B.I. made enquiries and charge sheets were filed. There is no manner of doubt that by that time it was quite late and the C.B.I. was

handicapped in causing more effective enquiry. Despite such fact, it appears to us that the C.B.I. has done excellent job by examining the lorry owners, the clerks of the lorry owners, the officials of different check posts and also the purchasers of fertilisers at different places for the purpose of showing that the fertilisers lifted from the port and stated to have been transported at different destinations had in fact not been transported in the manner alleged but on the basis of false entries made by the government officials and also by issuing false certificate of such transportation payments had been made. Unfortunately, no evidence has been led whether fertilisers in fact had not been delivered on the relevant date at the destination by proving the stock register at the relevant time. It is really unfortunate that in a case of such magnitude senior officials of the concerned department were not examined. No witness from the locality of the godown was also examined to show that on the relevant dates no delivery of fertiliser at the destination had taken place. Unless by unimpeachable and convincing evidence, the factum of non delivery of such fertilisers with reference to actual stock position on the relevant date can be clearly established, in our view, it becomes very difficult to proceed on the footing that the concerned government officials issued false certificate about receipt of the goods on the dates in question. There is force in the contention of the learned counsel for the appellants that it was not unlikely that some fertilisers had in fact been delivered to the government officials at the destination. On the basis of such delivery, the certificates had been issued by them. It ois not the case of the prosecution that the quality of the fertilisers was required to be examined by the officers at the receiving end and they had proper infrastructure to make such exercise. It has been rightly contended that it was not established that the fertilisers was not available anywhere in the locality so that it was not possible to replace the quantity of fertiliser after selling the original consignment. Simply on the basis of evidence given by lorry owners that their lorries did not carry the fertiliser or such lorries had gone to different places and some fertilisers were sold by the dealers to other persons, non delivery of fertiliser at the destination by other means can not be fully ruled out. The circumstances are undoubtedly very intriguing and raise considerable doubt but in the absence of unimpeachable direct evidence about the actual stock position at the receiving end, the indirect circumstantial evidences, in our view do not establish the prosecution case beyond all reasonable doubts. It is true that there is no absolute standard of proof in a criminal trial and the court should not nurture fanciful doubts by exaggerated devotion to the rule of benefit of doubt but in a case of circumstantial evidence all the links in the chain of events from which irresistible conclusion about the guilt of the accused for the offence alleged can be drawn, must be established beyond the pale of reasonable doubt. The court has to be watchful and avoid the danger of allowing suspicion to take the place of legal proof. Conviction can not be based on circumstances indicating that the prosecution case is quite likely to be true. For basing the conviction in a case governed by circumstantial evidence, the facts established must rule out any likelihood of innocence of the accused. The exact stock position on the alleged date of delivery of fertiliser which would have repelled any other possibility is unfortunately not forthcoming. It does not appear that any attempt to establish the actual stock position of fertiliser in the godown in question on the relevant date or soon thereafter with reference to register of stock or any other contemporaneous document has been made. It is only through negative and indirect evidence the prosecution is attempting to establish that the fertiliser had not been delivered. Such evidence would have been very convincing to corroporate the direct evidence about the stock position in the event the correctness of such stock position was challenged. So long the possibility of some other conclusion cannot be fully ruled out, the prosecution case remains in the realm of

probability.

In the facts of the case, we are of the view that the government officials who are appellants in some of these appeals cannot be held to be guilty with all certainty and they are entitled to get the benefit of doubt. The appeals, preferred by the government officials therefore, should be allowed by setting aside the conviction of sentence passed against them by the High Court. It appears to us that although the High Court reversed the orders of acquittal in convicting the government officials, the High Court perhaps felt that some convincing evidences were lacking and it is not unlikely that for the said reasons, although the High Court convicted the government officials for serious offences charged against them only a token sentence of fine of Rs.100/- and detention till the rising of the Court had been passed which sentence normally should not have been passed.

So far as the appeals preferred by the dealers of the fertilisers are concerned, it appears to us that direct and positive evidences have been led by the prosecution to show that the fertilisers were not transported by the dealers in the manner alleged by them. If the dealers had transported the fertilisers by a different route or by any other transport and if they had sold different fertilisers, such facts were within their special knowledge and in the facts of the case, the dealers ought to have satisfied the court that the fertilisers had in fact been transported by other transports and in a manner different from what was mentioned in the bills. The evidence adduced by the prosecution by examining lorry owners, clerks of such owners, officers of the check posts on the usual routes convincingly point out that the fertiliser was not transported in the way it appeared in the bills since certified by the government officials at the destination. If some fertilisers of equal quantity had been handed over at the destination, it was not unlikely that the government officials having taken delivery of such fertilisers without appreciating the fraud and with reference to the record of loading of the fertiliser at port, would be justified in issuing certificate about transportation at reasonable rate by the shortest route. As the possiblity of delivering fertiliser of similar quantity which may not be qualitatively same, by procuring them locally, when non availability of fertiliser in the region had not been established by the prosecution, cannot be fully ruled out, the government officers, in our view, were entitled to benefit of doubt. But in the facts of the case, such benefit will not be available to the dealers. We, therefore, do not find any reason to interfere with the orders of conviction passed against the dealers and their appeals being Criminal Appeals Nos.163,165,166,184 and 185 of 1994 are dismissed. Criminal Appeal No.164 of 1994 has been preferred both by the dealers and the government officials. Such appeal stands allowed in part and conviction and sentence passed against the government officials being appellants Nos. 3 to 5 stand set aside and they are acquitted. But the appeal preferred by appellants Nos. 1 & 2 stands dismissed.

It is really unfortunate that in fertiliser scandal of such magnitude, appropriate steps at the right time had not been taken and for want of convincing and unimpeachable evidence, the accused who were government officials have been acquitted by giving them benefit of doubt. It appears to us that such large scale scandal in transporting imported fertiliser would not have occurred if larger number of government officials and others than prosecuted were not involved. It is not unlikely that superior government officials had also played a vital role in perpetrating the said fraud or concealing the same. The tardy enquiries made by the State police thereby necessitating an enquiry by the C.B.I. at a belated stage is only a sad commentary on the efficiency of the police administration. We may only

hope that in future there will be proper vigilance and scandal of this type may not take place.