

A

STATE OF HIMACHAL PRADESH

v

JAI LAL AND ORS.

SEPTEMBER 13, 1999

B

[K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

Criminal Law:

Evidence Act, 1872: Section 45.

C

District Horticultural Officer—Examined as expert witness—For assessing the fruit bearing capacity of apple orchards—Such expert witness made no scientific study or research in assessing the productivity of apple trees—Credibility of such expert evidences—Held: Testimony of such an expert witness cannot be given the label of expert evidence—Criminal Trial.

D

Penal Code, 1860: Sections 120-B and 420.

Criminal conspiracy—State Government took policy decision to purchase diseased fruits and destroy the same—Allegations that accused persons prepared false records showing inflated quantities of scabbed apple and thereby caused loss to the State exchequer—No proof of conspiracy—Allegations sought to be established by expert evidence—Such evidence found unreliable and inadequate—Held :In the circumstances of the case, High Court rightly acquitted the accused persons—Prevention of Corruption Act, 1988, S.5(2).

E

F

Words and Phrases:

“Experts”—Meaning of—In the context of S.45 of the Evidence Act 1872.

G

The respondents-accused were convicted by the trial court under Sections 120-B and 420 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1988 read with Section 120-B IPC. However, the High Court acquitted the accused persons .Hence this appeal.

H

According to the prosecution, a disease called 'Scab' rendering the fruits unfit for human consumption afflicted the apple orchards in different

areas of the State. The State Government, therefore, took a policy decision to purchase the diseased fruits and destroy the same. It was decided that procurement and destruction of diseased apples would be done at different centres throughout the State by teams comprising of officials and non-officials. A

It was alleged that the accused persons had brought much lesser quantities of scabbed apple than the quantity entered in the official records and received amount in lieu of the same and thus entered into a criminal conspiracy with a view to cheat the State Government. B

At the trial the prosecution case was sought to be proved by circumstantial evidence which was brought on record by the testimony of the District Horticulture Officer who was examined as an expert for assessing the fruit bearing capacity of the orchards in question. According to the prosecution, the evidence of this expert showed that the quantity of scabbed apple brought by the accused to the procurement centres as reflected in the records was grossly inflated. From the evidence the prosecution sought to establish the case that the whole transaction was an outcome of a criminal conspiracy to cheat the State Government and to misappropriate public funds and the public servants concerned having been parties to the conspiracy, the purpose could be easily achieved. C
D

Dismissing the appeal, the Court E

HELD: 1. An expert witness is one who has made the subject upon which he speaks a matter of particular study, practice or observation; and he must have a special knowledge of the subject. [324-B]

2.1. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions. [325-E-F] F
G

2.2. The report submitted by an expert does not go in as evidence H

A automatically. He is to be examined as a witness in Court and has to face cross-examination. [325-G]

Hazi Mohammed Ikramul Haque v. State of WB, [1959] SCR 488, relied on.

B 3.1. In the present case, the expert witness has not stated anything in his testimony to show that he had made any scientific study or research in assessing the productivity of apple trees in the State. He does not even state whether he had undertaken any such work prior to the present case. No doubt as an officer of the Horticulture Department of the State Government he might have acquired some experience in the matter but that is not sufficient to make him an expert in the field and to give the label of "expert evidence" to his testimony. [326-A-B]

C 3.2. Further, there is no evidence, direct or circumstantial, in support of the charge of conspiracy amongst the accused persons to cheat the State exchequer and with that object having entered inflated quantities of scabbed apple brought by the growers. [326-F]

D 4. The evidence of the District Horticulture Officer is beset with many unsatisfactory features which renders it clearly unreliable and in any case inadequate to establish the charges levelled against the accused persons. Hence, the High Court rightly acquitted the accused persons. [327-C]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 530 of 1997 Etc.

F From the Judgment and Order dated 2.5.96 of the Himachal Pradesh High Court in Crl. A. No. 353 of 1990.

Ms. Meenakshi Arora for the Appellant.

Dr. K.S. Chauhan for the Respondents.

G The Judgment of the Court was delivered by

H **D.P. MOHAPATRA, J.** Though the cases from which these appeals arise were disposed of by judgments rendered by the High Court of Himachal Pradesh on different dates the questions of fact and law involved in all the cases are similar. With the consent of learned counsel for the parties all the cases were heard together and they are being disposed of by this common

judgment.

The State of Himachal Pradesh is well known throughout the country for its apples. In the State there are large tracts of apple orchard and a good number of persons are engaged in growing apples. The apple season in the State is between the months of July to October. In the year 1983 the apple orchards in different areas of the State like Jubbal and Rohru were afflicted by a disease called "scab" rendering the fruits unfit for human consumption. Feeling concerned about the heavy financial loss which apple growers in the State were facing and keeping in view the danger to public health if the scab affected apples are sold in markets, the State Government took a policy decision to purchase the diseased fruits and destroy the same. For implementation of the policy a set of modalities were formulated in which it was provided *inter alia* that procurement and destruction of diseased apples will be done at different centres throughout the State by comprising of teams of officials and non-officials. Each team was headed by a Gazetted Officer of the State Government and Pradhans, Up-Pradhans of the local Panchayats were included in the team. Arrangements were made for weighing the Scab affected apples at the Centres and for its destruction. The growers were asked to bring the diseased apples from their orchards to the Centre for procurement and destruction. Precaution was taken to ensure that the procured apples were not re-cycled. The underlying idea was that the growers are to bring the apples produced in their orchards and not to bring fruits purchased or collected from others. This was in keeping with the purpose of rendering assistance to the growers facing heavy financial loss. In this operation about 30000 tons of Scab affected apple were procured and destroyed at 195 centres set up for the purpose and compensation @ 50 paise per kilogram was paid to the concerned growers.

Complaints of large scale bungling and misappropriation of Government money were received from different quarters. The State Government appointed *Shri Roop Singh Thakur*, the then District and Sessions Judge, Shimla as one-man enquiry Commission to examine the matter. The Commission came to the conclusion that some persons had obtained false payments by showing inflated quantities of scabbed apple and had, thereby cheated the State Government. The Commission had also come to the conclusion that the bungling had been done in connivance with the members of the team engaged in the procurement and destruction of the fruits. On the basis of the said enquiry report a number of criminal complaints were lodged against the public servants who were members of the team and also the concerned growers. The

A cases were sent to the court of the special Judge, Shimla for trial .

In these cases it was alleged *inter alia* that the accused persons entered into a criminal conspiracy with a view to cheat the State Government by preparing false records showing inflated quantities of scabbed apple brought by the growers and thereby caused loss to the Government exchequer.

B The gist of the prosecution case was that the growers had brought much lesser quantities of scabbed apple than the quantity entered in the official records and received amount in lieu of the same. On these allegations all the accused persons were charged for offences punishable u/s 468, 420, 120-B of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1988.

C The accused persons denied the charges. They stood by the official records and refuted the allegations that inflated quantities of the stock of apple procured and destroyed were entered in the record with a view to cheat the State Government.

D At the trial the prosecution case was sought to be proved by circumstantial evidence which was brought on record by the testimony of Shri P. C. Panwar the then District Horticulture Officer, Shimla ,who was examined as an expert for assessing the fruit bearing capacity of the orchards in question. According to the prosecution the evidence of this expert showed

E that the quantity of scabbed apple brought by the accused to the procurement centres as reflected in the records was grossly inflated. From the evidence the prosecution sought to establish the case that the whole transaction was an outcome of a criminal conspiracy to cheat the State Government, and to misappropriate public funds and the public servants concerned having been

F parties to the conspiracy, the purpose could be easily achieved. It is relevant to note here that no direct evidence was produced for showing the apple crop of the orchards in question during the year 1983. It is on record that Shri P. C. Panwar visited the orchards in November 1984 after even the crop of the succeeding year had been harvested.

G On behalf of the defence Shri D.R. Thakur a retired professor of Horticulture and Shri Shamsher Singh a grower, were examined to counter the evidence of Shri Panwar.

The learned trial Judge accepted the evidence of Shri P. C. Panwar and held that the prosecution was able to bring home the charge under Sections

H 120-B and 420 IPC against all the accused persons and in addition, Section

5 (2) of the Prevention of Corruption Act read with 120-B IPC against the public servants concerned . The trial court further found that the change under Section 468 IPC was not established. A

On appeal, the High Court of Himachal Pradesh differed from the trial court and took the view that the prosecution had failed to establish any of the charges against the accused persons. The High Court was of the view that the evidence of Shri P.C. Panwar fell very much short of the requirement of law and therefore could not be relied upon. Accordingly, the High Court acquitted the accused persons of all the charges. Hence these appeals filed by the State of Himachal Pradesh. B

The main contention of Shri Altaf Ahmad, learned Senior Counsel appearing for the appellant was that the learned trial judge had thoroughly discussed the evidence and given cogent reasons for accepting the prosecution case while the High Court without closely examining the reasons stated in the trial court judgment, on a superficial approach has rejected the prosecution case and acquitted the accused persons. C D

Learned counsel appearing for the respondents strongly urged that the prosecution has utterly failed to bring home any of the charges against the accused persons and the High Court has rightly acquitted them. Referring to the evidence of Shri P.C. Panwar, the learned counsel contended that he can neither be taken as an expert for assessment of maximum productive capacity of apple trees nor does his evidence reveal that inflated stock was entered in the official records. According to the learned counsel the quantities of scabbed apple were correctly entered in the official records. It was the further contention of the learned counsel for the respondents that under the modalities of the scheme the public officials in the team were not responsible for ascertaining whether the quantity of diseased apples brought by the grower was out of the crop grown in his orchard or it was procured from some other source. The non-official members of the team i.e. Pradhan, Up-Pradhan and Panchas were to identify the grower and also certify that the stock brought by him was from his orchard. On such certification the public officials were to weigh and enter the quantity in the official records. After destroying the stock an entry to that effect was also to be made in the record. E F G

From the case of the parties, the findings recorded by the courts below and the contentions raised at the hearing before us the core question that arises for determination is whether the evidence of Shri P.C. Panwar has examined by the prosecution as an expert to prove the optimum productive H

A capacity of the orchards in question could be believed or not. Indeed the entire prosecution case rests on his evidence.

An expert witness, is one who has made the subject upon which he speaks a matter of particular study, practice, or observation; and he must have a special knowledge of the subject. Shri P.C. Panwar in his evidence has stated that he passed B.Sc. (Agriculture) Hons. from University of Delhi in 1959; thereafter he did his M.Sc. (Hort.) in 1967 from Punjab University. He joined the Agricultural Department in the year 1969 as a Research Assistant; he was promoted as Horticulture Development officer in the year 1973 and at the time of the assessment he was working as District Horticulture Officer, Shimla. He has also stated that in the year 1986 he attended a 3 months training course on apple technology in the University of Tasmania Australia. The assessment in the Orchards in question were made on different dates in November 1984. He has fairly accepted the suggestion that he had not received any training with respect to assessment of apple crop but that has been a part of his job. The witness could not state the number of scab cases in which he had been called upon to make assessment. He has specifically stated in the case against Jai Lal and others that was his first and last assignment till date as a commission for assessing productivity of an apple orchard.

Coming to the assessment made by Shri Panwar he has said that he based it on the number of spurs which were existing on each of the apple trees in the Orchard. He accepted the suggestion that in his report he did not mention the number of spurs which were existing on each tree nor did he mention the total number of spurs which were existing on all the trees in an orchard. According to this witness the productivity of an apple tree depends upon various factors; but he had not referred to any such factor in his report. The witness admitted that sometime the crop is lean and sometimes it is a bumper crop and that a bumper crop can yield twice the average crop expected.

On a perusal it is clear that many entries in the report need to be explained. Many of the trees of the orchards; their expected production of the tree is shown as nil. No reason whatsoever is stated in the report why the witness felt that the tree had no productive capacity. The assessment made by this witness appears to have been made on some sort of calculation the basis of which is not stated in the report; nor does the report disclose the reason for the end-result arrived at by the assessor. While judging the acceptability and reliability of the report it is to be borne in mind that Shri Panwar visited the Orchards only in the succeeding year and that too after

the apple season of that year was over. Judged in this background the High Court cannot be faulted for having held that the report of the assessor is based more on surmises and conjunctures than actual observations or on scientific reasons. A

The High Court also expressed doubt whether Shri Panwar can at all be accepted as an expert on this subject of assessment of productive capacity of apple orchards. Here too the finding of the High Court cannot be said to be erroneous. B

Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identify of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. C D

An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions. E F

The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination. This Court in the case of *Hazi Mohammed Ikramul Haque v. State of West Bengal*, AIR [1959] SCR 488 concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons. G

The question for consideration is whether the evidence of Shri P.C. Panwar who was examined as an expert witness measures up to the well accepted principles for judging the credibility of such an evidence. As noted H

- A** earlier, Shri Panwar has not stated anything in his testimony to show that he had made any scientific study or research in assessing the productivity of apple trees in the State of Himachal Pradesh. He does not even state whether he had undertaken any such work prior to the present case. No doubt as an officer of the Horticulture Department of the State Government he might have acquired some experience in the matter but that is not sufficient to make him an expert in the field and to give the label of 'expert evidence' to his testimony.
- B** A perusal of the report submitted by Shri Panwar glaring omissions and inadequacies come to light. From the report it appears that against several trees in the orchards in question the productive capacity is shown as nil. It is neither explained in the report nor in the evidence of the expert in what circumstance some trees in the orchard were branded by him as non-productive.
- C** The entire basis for the assessment of productivity as evident from his deposition is counting of spurs on the trees the details of which are wanting in many of the data sheets attached to the report. Even taking his evidence on its face value, in some of the cases the maximum yield of the orchard works out at quantities much more than the stock purchased from the grower which prima facie goes to show that there has been no inflation of the stock brought by the grower to the procurement centre which was purchased from him. At the cost of repetition it may be stated here that the defence has adduced the evidence of Shri Thakur, a retired professor of Horticulture of the University of Shimla and Shri Shamsher Singh a grower of apple fruits whose opinion run counter to the evidence by Shri Panwar. Comparing the evidence of the experts brought on record by the parties, it is difficult to come to a definite conclusion that the accused persons have deliberately entered inflated quantities of scabbed apple produced in the orchard in question which were purchased by the State Government.
- D**
- E**
- F** Further there is no evidence, direct or circumstantial, in support of the charge of conspiracy amongst the accused persons to cheat the State exchequer and with that object having entered inflated quantities of scabbed apple brought by the growers as already stated. It was the duty of the non-official members of the team to certify about the genuineness of the growers and the stock of scabbed apple brought by them having been grown in their orchards.
- G** There is no stipulation in the modalities to show that the public servants who are strangers to the area had no role to play in this matter. Therefore, the prosecution case, as contended by the learned Additional Solicitor General, was that the quantity of scabbed apple stated to have been purchased from the accused growers could not have been produced in their orchards and the
- H** inflated quantity of stock leads to an inference that while the exercise was a

part of criminal conspiracy to cheat the State Government particularly when the accused growers accepted the position that they have sold quantities of appeals as entered in the records and received the amount as price thereof. But the crucial factor is that they denied allegation that the stock brought by them to the procurement and destruction centre was not grown in their orchard. This crucial factor is sought to be proved by drawing an inference from the evidence of Shri Panwar. As noted above Shri Panwar's evidence is beset with many unsatisfactory features which renders it clearly unreliable and in any case inadequate to establish the charges levelled against the accused persons.

On a close scrutiny of the entire case we have no hesitation to hold that the High Court was right in taking the view that the prosecution has failed to establish the charges against the accused persons and rightly acquitted them of the same. In the result, the appeals being devoid of merits are dismissed.

V.S.S.

Appeals dismissed.