

Ashok Kumar Mujoo and ors. Vs. the State of Jharkhand

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Court : Jharkhand

Decided On : Nov-16-2004

Reported in : 2005CriLJ1795

Judge : Hari Shankar Prasad, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2); [Prevention of Corruption \(Amendment\) Act, 1988](#) - Sections 13(1) and 13(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 120B and 409

Appeal No. : Crl. A. Nos. 24, 25 and 26 of 2003

Appellant : Ashok Kumar Mujoo and ors.

Respondent : The State of Jharkhand

Advocate for Def. : Rajesh Kumar and; Amrita Sarkar, Advs.

Advocate for Pet/Ap. : D. Jerath,; O.P. Mishra and; S.S. Kumar, Advs.

Disposition : Appeal dismissed

Judgement :

Hari Shankar Prasad, J.

1. These three appeals are directed against the judgment of conviction and order of sentence dated 23rd December, 2002 passed in R.C. Case No. 20 of 1987

whereby and whereunder the learned 7th Additional Judicial Commissioner-cum-Special Judge, Ranchi, held the appellants of all the three appeals guilty under Section 120B/409 of the Indian Penal Code as well as under Section 5(1)(c) of the [Prevention of Corruption Act, 1947](#) which corresponds to Section 13(2) of the Prevention of Corruption Act, 1988 and convicted and sentenced them to undergo R.I. for one year under Section 120B, IPC and two years under Section 409, IPC each with a fine of Rs. 10,000/- under Section 5(1)(c) of the [Prevention of Corruption Act, 1947](#) corresponding to Section 13(1)(c) of the Prevention of Corruption Act, 1988 and in default of payment of fine, to undergo S.I. for three months each. They were further sentenced to undergo R.I. for two years under Section 5(2) of the [Prevention of Corruption Act, 1947](#) corresponding to Section 13(2) of the Prevention of Corruption Act, 1988. However, sentences were directed to run concurrently.

2. Prosecution case in brief is that Shrawan Kumar, Dy. S. P., CBI, Ranchi got a reliable information and lodged an FIR against S.R. Sharma (accused). Project Officer, Lapanga Colliery and A.K. Muzoo (accused), Superintendent of Mines, Lapanga Colliery, C.C.L., Barkakana within the District of Hazaribagh and other unknown on the allegation that they were parties to a criminal conspiracy among themselves with other unknown persons for misappropriating coal weighing 52,334 MT produced in Lapanga Colliery during the financial year 1985-1986. It is said that in pursuance of the said criminal conspiracy, persons named above, are personally responsible for misappropriating the said coal which is a property of the Government. On this confidential piece of information, the entire stock of coal of Lapanga Colliery was physically verified by a team of officers of C.C.D. on 1-10-1985. During the aforesaid verification, a shortage of 40605.60 MT of coal was found between the book balance and the ground balance. On this report, a team of officers of Coal India also verified the stock on 1-11-1985 and a further shortage of 11,748.40 MT of coal was detected by them. In pursuance of the physical verification of the entire coal of Lapanga Colliery, a total shortage of 52,354 MT of coal was found and the value in terms of Rupees was estimated on Rs. 1,23,03,190/-. Thereafter a case was registered under Section 120B, IPC read with Section 409, IPC and under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, against them. In course of investigation, materials

were collected against one J. N. Singh (accused) also and, therefore, charge-sheet was submitted under the aforesaid sections against both named accused and one Mr. J. N. Singh and the Special Judge, (CBI), Ranchi, on the basis of charge-sheet and after perusal of the same, took cognizance of the offence by his order dated 23-11-1991.

3. Prosecution has examined altogether sixteen witnesses. PW-6 Ruplal Thakur, PW-7 Jagdish Prasad and PW-12 Nanhu Singh have been tendered for cross-examination. PW-16 is Shrawan Kumar. He is I.O. of the case, PW-14 is Tapan Kumar Mazumdar, he is Personal Assistant, C.I.L., (Vigilance), Calcutta. He is a formal witness but he has proved the sanction order for prosecution and other witnesses namely, PW-1, Ravikant Pathak, PW-2 Bhogendra Lal Karn, PW-3 Ram Pravesh Singh, PW-4 Baijnath Ram, PW-8 Ghanashyam Singh, PW-9 Diwakar Banerjee, PW-10 T.B. Sarkar, PW-11 J.P. N. Jha, PW-13. Darshan Singh and PW-15 Oriandam Saha are material witnesses. PW-3 Ram Pravesh Singh, PW-4 Baijnath Ram, PW-8 Ghanashyam Singh, PW-9 Diwakar Banerjee and PW-10 T.B. Sarkar are the witnesses on the point of excavation of coal from the mines and manner of maintaining of its stock.

4. PW-1 is Ravikant Pathak. He was the Project officer of Lapanga Colliery during the period of June 1997 to July 1999. As he was the Project Officer he was acquainted with the work of Colliery Manager and the process of production of coal of the mines. According to him, Manager and Project Officer are jointly responsible for the production of coal, storage of coal, dispatch of coal. Further according to him, mining are done in two ways; one way of mining is underground mining and other way of mining is open cast mining and the Lapanga Colliery is situated within the District of Hazaribagh. Both systems of mining are applied in Lapanga Colliery. According to him, appellant S.R. Sharma was the Project Officer of coal cast mining from the month of April 1985 to January 1986 and the Manager was appellant S.K. Muzoo and appellant J.N. Singh was the Manager of underground mining of Lapanga Colliery. According to him, Project Officer remains overall incharge of production, costing and dispatch and without permission from Project Officer, coal cannot be transported outside the mines. In open cast mines, shift incharge happens to be the man of formen grade and one record is prepared

as to how much trips of coal are extracted from mines by the Dumper and report is prepared which is called forman's reports. This report in sheet-wise is sent to Excavation Engineer and he compiles report of three reports received by him and prepares a report everyday and sends the same to the colliery officer. Immediately coal brought from underground mines through the coal tubs is noted by Munshi and that report is called Munshi Report and the shift incharge examines all the three reports which is received sheet-wise and the Incline Incharge prepares a hand report of all the three sheets and sends the same to the Colliery Office and in the colliery office, report from different mines are received and a common daily production report is prepared and is sent to the Area Office and Area Office is called General Manager Office and Area Office sends that report to the C.C.L. Office and in the colliery office, report relating to the production as well as dispatch which comes from Area Office, sent to Area Office and at the fag end of the month, a report is prepared which contains figures of production of coal and figures of dispatch of coal, and is sent to the Area Office. Further, at the end of month. Accounts Department prepares a cost sheet which contains figures relating to expenditure incurred on the production of coal and thus, expenses including depreciation of machine, tools and plant utilized and on the basis of expenditure incurred, a report is prepared as to how much expenditure was incurred over production of one ton of coal and these figures are also sent to the Area Office.

5. Further according to this witness, coal from underground mines brought to the surface by coal tub and 576 tubs are unloaded on a truck and weight of truck is measured by bringing the same on weight bridge machine which gives the weight figure of 576 tub of coal and weight is divided and weight of coal of one truck is calculated. In open cast mine, medium coal is brought to the surface by Dumper and about ten tons of medium coal loaded on several dumpers and in this way, weight of coal in tons is measured. He has proved document of Lapanga Colliery which is daily production report of underground mines which is in the month of July 1985 and this report is maintained in official course of business and the report bears signatures of Shri A.K. Banerjee, Colliery Manager and also bears signature of respective officers. This is marked Ext. 1. This daily report of Excavation is from 2-8-1985 till 31-8-1985. The Excavation report of August, 1985 is marked Ex. 1/1, excavation report of Superintendent is marked Ext. 1/2 and excavation report of

daily production of June is marked Ext. 1/3. In that way, the daily production report of May 1985 and April 1985 are marked Exts. 1/4 and 1/5 respectively. This witness has also proved the measurement books of Lapanga and Bhurkunda Collieries which is marked Exts. 2 and 2/1 respectively and he has proved annual coal stock measurement book dated 1-4-1986 of Bhurkunda Colliery which is marked Ext. 3. This witness has further proved annual coal stock measurement book dated 1-4-1985 which is marked Ext. 4 of which page Nos. 1 to 21 are signed by the Chief Surveyor and Assistant Survey Officer, Lapanga Colliery and signature put by appellant A. K. Muzoo as Manager is marked as Ext. 4/1 and the annual stock measurement is Ext. 5. According to him, this witness has also proved signatures of Assistant Survey Officer on page Nos. 56 and 57 which is marked as Ext. 5/1 and the signatures put by appellant J.N. Singh and S.B. Sharma on page No. 35 and these documents is marked Ext. 5/2 and their signatures on page Nos. 80 and 95 is marked as Exts. 5/3 and 5/4. According to this witness, when a private party wants to purchase coal, he has to take orders from Sale and Marketing Office and for that, he has to deposit money in advance and thereafter he gets such order and further, thereafter coal is allotted to him. According to this witness, during the course of blasting in the mines, the seam and band are created. This witness has admitted that during the period 1983 to 1986, Mr. M.S. Gujral was the Chairman of the Coal India and there had been directions issued by him to give report on production of coal at the enhanced rate of 2.6% because during those periods, there was a circular to show excess production. He has admitted two stock measurement reports produced on behalf of defence which has been marked as Exts. A to A/2.

6. Bhogendra Lal Karn is PW-2. He is the Upper Division Clerk in Lapanga Colliery during the period under consideration. He admits that as per direction to prepare the stock measurement of coal from the month of April to November 1985, he prepared the reports after inspection with Darshan Singh (PW-13). He has also proved the statement of underground mines (Ext. 7). According to him, coal delivery order of C.C.L. is obtained from the Head Office, Darbhanga House, Ranchi after depositing Bank Draft and the account is maintained by the Sales Officer and no party can take more coal than the quantity of coal mentioned in the D.O. Further according to him, round the clock movement of coal is watched by

security guard and whatever amount of coal is transported by the truck and the number of truck are noted by the security men. This witness has admitted that there was direction to give the figure of production at enhanced rate to the tune of 2.6% and this direction was in operation from one year before the date of occurrence. He has admitted that such direction has been received from Head quarter through wireless. He has further admitted that he had made entry in the account in respect of the production register and found that on 1-4-1985 there was entry in the stock register book of the coal is 3,56,281 MT and till 31-3-1985 there had been production of 3,28,553 MT of coal in Lapanga Colliery and during that period, coal weighing 2,34,185 MT of coal was dispatched.

7. PW-13 is Darshan Singh. He was the companion of the aforesaid persons who have also participated in preparing the statement. He is the Assistant in Lapanga Colliery and he has specifically stated that Bhogendra Lal Karn (PW-2) called him to Ranchi for preparation of statement and he had participated in the preparation of reports. Further according to this witness, he has given statements showing details of coal production of various units of C.C.L., Lapanga Colliery during the months of April 1985 to November 1985 (Ext. 6).

8. PW-8 is Ghanashyam Singh. He was posted as Dy. C.S.O. in Survey Division, Ranchi during the relevant period. According to him, as per direction of C.M.E., Committee was constituted in which he was one of the members. S.P. Singh, Superintendent of Mines, Barkakana Area and N.K. Dutta, were also members besides him and Shri J. P.N. Jha, Dy. C.M.E., Division-1, was the Chairman of the Committee. This committee was constituted to verify the report of Project Officer and said committee had given the report (Ext. 11). Annexures of this report are marked Exts. 11 and 11/2 respectively. This witness has admitted that he has got training in survey matters and that carpet coal itself is a coal lying on surface which is calculated as length into width into height.

9. PW-9 is Diwakar Banerjee. He is cashier in Lapanga Colliery. He has proved statement prepared by him. (Ext. 12). He has admitted that the report is with the statement which is based on the report of the Manager's office on Form-1.

10. PW-10 is T.B. Sarkar. He was the Assistant Engineer, Excavation. He remained posted from November 1984 to September 1996 and he used to send daily production report to the Project Officer, Lapanga colliery. On the basis of report of the Foreman, he used to prepare daily production report of coal which is brought on the surface from the underground and which is stocked, is called in production. The coal and the stones which come out as a result of blasting are brought on the surface and the stones which come with the coal is called bad coal and the stone is separated from the coal by the labourers. The coal which is brought by dumper from the mines is counted and coal is stocked in stock.

11. PW-11 is J.P.N. Jha. He was on 30-1-1986 posted as Dy. C.M.E. in Darbhanga House, C.C.L., Ranchi. On 23-1-1986 also he was posted in that very post. On that very day, C.M.E. had constituted a committee of five members and he was the Chairman of that committee. This committee had measured three collieries falling within Barkakana, Bhurkunda, Sondadih and Urramari collieries and had submitted a report to the company whereupon Project Officer has reported to C.M.D. that C.C.L. team measured coal stock of his collieries and this fact was to be inspected. He went with the members of the committee to the aforesaid collieries and inspected the collieries and thereafter, committee submitted a report to the C.M.E. (Ext. already marked). Mr. Sah was also the member of the committee. Since he has not gone with the members of the committee to the aforesaid collieries for inspection and, therefore, he has not put his signature on the report. He said that no tape measurement was done and visual and technical assessment of the stock was made on the stepping. He had not made separate verification nor verification was made by stepping. He had not done separate verification of the open cast and underground mines. He admits that ash contents are not measured separately and coal was not measured in weight. He also could not measure as to how much quantity of coal was under water.

12. PW-14 is Tapan Kumar Mazumdar. He is a formal witness but has come to say that he typed draft sanction order. He has not stated that sanction order was typed by him and it bears the signature of P.L. Tondon, Chairman of Coal India (Ext. 14).

13. PW-15 is Oriandom Saha. He is Senior Survey Officer. He was posted from 1972 to 1987 as Survey Officer in C.C.L. Office, Darbhanga House, Ranchi. According to him, stocks of all the coal under C.C.L. are measured at least twice a year and for the aforesaid work, team from Darbhanga House is made ready and team used to visit concerned collieries for measurement and the officers of the collieries with survey officer in the team visit collieries and measurement is done. He says that measurement in Lapanga Colliery was done under his supervision on 4th and 5th July 1985. He has proved measurement book (Ext. 4) which is prepared by survey team. He proved other documents relating to entries made in the measurement book. He has proved Ext. 15 which is entries in respect of the report which is mentioned at Page No. 52 of Register No. 49 which is in his hand writing. He has further stated that on 31-12-1985 and 2-1-1986 also, stock of Lapanga Colliery was measured in respect of which entries is at page Nos. 72 to 85 in the handwriting of M.N. Moin, Head Surveyor in Ext. 2. He has identified his signature at page No. 85. He says that on 4th and 5th July, the team which inspected Lapanga Colliery, found shortage of 8905 MT of coal in the stock on measurement. This shortage was up to the period of 1-4-1985. He further says that in the measurement done on 31-12-1985 and 2-1-1986, stock was found short of up to 1-10-1985 by 14605.60 MT of coal. He admits that measurement of stock was done in all the collieries under Barkakana Area under his supervision and Lapanga Colliery is under Barkakana Area. He admits that measurement is done under some guidelines and terms fixed in C.C.L. He admits that in his report, what percentage of stone was mixed with coal that has not been mentioned and whatever quantity of coal was brought on the surface was measured and that coal is sold outside and this coal contains bad coal also. From there, coal is loaded on the truck and is sent outside. He has seen loading of coal on truck. He further says that C.C.L. authorities get bad coal separated from other coal and remaining coal is sold to the purchaser. He says that visual measurement was done but coal was not weighed. He admits that coal gets self ignited and coal ash is measured by tape. He also admits that visual measurement does not meet the correct measurement. He admits that on 1-10-1985, bad coal was not assessed by him and he cannot say as to who has done this. Carpet coal is generally found in a railway siding and coal is carried from the colliery to the railway siding by the truck

and by the siding of big vehicles, the coal dumber in railway siding gets coal crushed and thus coal is converted into carpet coal. He cannot say width of the carpet coal in the Lapanga Colliery. He admits that entire coal stock was not measured in presence of members and on that very basis, he has given his report. He gives figure as to how much of coal was found short on inspection of other colliery. He admits that he has done calculation of coal stock on the reported figure of collieries and submits that report regarding production. He says that closing stock means blasting of mines and dispatch everyday and for ascertaining the correct coal stock, actual pit production and obstack (sic) are ascertained and thereafter correct stock position is found out.

14. PW-16 is Shrawan Kumar. He is I.O. of the case. According to him, he instituted this case on 2-9-1987 against the accused persons and he took up the investigation of the case and examined a number of witnessses. He also seized the relevant documents. He found on physical verification of the stock of coal on 1-4-1985 to the extent of 1,77,145.35 MT and in course of investigation he also found that the accused persons, who are appellants here, had indulged in over-reporting of the production of coal between the period 1-4-1985 to 30-9-1985 and, therefore, he got the actual figure of production based on daily reports, since the stock book of coal was not given a definite figure of the stocks. According to this witness, there was shortage of 111190 MT of coal in Lapanga colliery and total stock of coal in Lapanga colliery upto 30-9-1985 was to the extent of 288335.35 MT and out of that quantity of coal about 200014.30 MT of coal was either dispatched or used for domestic consumption between the said period and in that view of the matter, opening stock of coal on 1-10-1985 should have been to the extent of 88325.00 MT. In course of investigation it was also found that measurement of stock of coal of Lapanga colliery was conducted by coal stock measurement team by Sri A. Saha, who was Chief Surveyor Officer of C.C.L. Headquarter, Ranch! According to this witness, he found that physical coal stock at Lapanga Colliery was to the extent of 48892.00 MT only and, therefore, there was shortage of the stock to the extent of 39,429.05 MT. This witness has also stated that the said committee had found that due to loss in fire and generation of D stock, there could have been shortage of 8500.00 MT and only even on consideration of this aspect of shortage, he found that there was shortage of

30929.00 MT of coal. This witness has further stated that he got sanction for prosecution against the accused persons (Ext. 14) and after getting the sanction from the authority concerned he submitted charge-sheet (Ext. 15) against the accused persons. He prepared seizure list (Exts. 16, 16/1 and 16/2). This witness has admitted that stock figure, which was found on 1-4-1985 was taken by him from physical measurement of that date of Lapanga Colliery and this part of investigation was made on the basis of report submitted by Mr. A. Saha, who conducted the joint, measurement of stock of coal of Lapanga Colliery on 1-4-1985. This witness has further admitted that he has not made the physical measurement of the stock of coal after measurement made by the survey officer and he further admitted that he did not make verification presuming that the report of the expert is proper and he further admitted that no C.C.L. Officer has complained of any shortage at Lapanga Colliery.

15. Learned counsel appearing for the appellants submitted that the learned Court below has come to a wrong finding and convicted the appellants in view of the fact that he did not consider this aspect of the matter that by order of the Chairman the authorities were directed to give figures of enhanced production @ 2.64% and neither the investigating officer nor the learned Court below took note of this fact and held the appellants guilty. He referred to the evidence of some witnesses including PW-13, who has come to say that as per order of the Chairman, authorities and Incharge of production were directed to give enhanced production than the actual production @ 2.64% and a wireless message to that effect was also received. If this enhanced production than the actual production is taken into consideration then out of shortages, which have been shown, will come down by 6000-7000 MT. It was further pointed out that besides there are other reasons for showing shortages such as stone production because at the time of production some stone also comes out during mining operation and that stone is excluded in actual production and entries accordingly made in the register but at the time of delivery, this stone is separated from the coal by labourers and then measured and delivery is made and if this loss due to separation of stone from coal is taken into consideration, it will come in several thousand MT but this loss has not been considered. It was further pointed out that the loss due to fire and burning has also not been considered and, therefore, the shortages have been found to be like that.

It was also argued that dispatch of coal in excess than the actual order for delivery cannot be made because there is so much strictness in the check post of colliery that excess quantity of coal than the actual quantity of coal cannot go out and because the shortages, which have been found, will require thousands of trucks for carrying the same and it is not possible to carry that much of excess coal than the actual delivery of coal and, therefore, the shortages of coal, which have been found in course of investigation, are not proper and is not correct because the investigating officer has not pointed out the way as to how this much quantity of coal was delivered outside or how did it pass through the check post from where trucks were passed and since this has not been pointed out by the investigating officer, it cannot be said that this much quantity of coal was actually sent out without proper entry in the register meant for delivery of coal. The investigating officer should have examined this aspect also in course of investigation that this is the way the coal is sent out after extraction from the mines and without the notice of the check post personnel because the quantity of coal, which have been found short, will require more than thousand of trucks to carry that much of coal without the notice of the security personnel and that is not possible at all. It was also pointed out that Ext. 15 is the basis, which shows that it is wholly a wrong calculation. It was further pointed out that from perusal of Ext. 15 it would be evident that on physical measurement of stock as on 4-7-1985 was 91,788.15 MT of coal and from perusal of Ext. 8, which is daily dispatch month-wise entry, it would be evident that dispatch including off-take from 1-4-1985 to 4-7-1985 was to the tune of 1,28,136.00 MT and the following figures will show that 1,28,136.00 MT was dispatched out :

April, 1985 32369.00 MT

May, 1985 41958.00 MT

June 1985 50730.00 MT

Up to 4th. July, 1985 3079.00 MT

128136.00 MT

16. From perusal of Ext. 13 with Ext. 6, it would be evident that pit production from 1-4-1985 to 4-7-1985 was 79037.00 MT and not 65202.00 MT as shown in Ext. 15 and this will be clarified from the following figures :

April, 1985 41570.00 MT

May, 1985 27602.00 MT

June, 1985 8711.00 MT

Upto 4th July, 1985 1154.00 MT

79037.00 MT

17. Therefore, the book stock on 1-4-1985 will be equal to measured physical stock on 5-7-1985 + dispatch from 1-4-1985 to 4-7-1985 - production from 1-4-1985 to 4-7-1985 is equal to $91788.15 + 128136 - 79037 + 128136 - 79037$ and that comes to 140887.15 MT and this has been confirmed by Shri A. Saha, PW-15, during his deposition on 9-8-1994 and, therefore, Ext. 15 is based on incorrect production and dispatch figures, which is evident from Exts. 13, 8 and 6 and the figure, which PW-15 has mentioned in his deposition as 177145.35 MT should be 140887.15 MT and if this figure is accepted as correct figure, then there will be no shortage at all and in fact, this is the actual figure and appellants are entitled to acquittal as there is no shortage at all.

18. But, on the other hand, learned counsel for the CBI submitted that the case is based on the documentary evidence, on the basis of Exts. 13 and 14. According to him, these are documents, on the basis of which sanction (Ext. 14) has been given. It was submitted that measurement of the coal was made by the team and when they said that measurement was found correct, sanction for prosecution was given, vide Ext. 14. In the sanction letter a shortage of 88321.05 MT has been shown and if loss of coal due to fire, burning, lying of coal under water and other shortages are taken into consideration, even then there will be shortage of about more than 20,000 MT of coal.

19. One thing is clear that these verifications were made by persons, who were aware of the working of the coal sector and were also aware of day-to-day working of the collieries. They know that when coal is extracted from the mines what sort of loss may occur and they must have taken into account these losses occurring in the natural process of extraction such as loss due to fire, burning, coal lying under water etc. and all these losses occur in natural process and the team should have actually made verification and submitted report about the losses as they were not unknown persons and unaware of the procedure of extraction of coal from the mines and other factors attached with this procedure and, therefore, whatever report they submitted, they should have submitted after considering all the factors and, therefore, at this stage it cannot be accepted that Ext. 15 gives incorrect statement of coal stock. It is true that learned counsel for the appellants tried to show on the basis of statement of production, dispatch etc. month wise that figure 1,77,000/- and odd MT given by PW-15, which should be 1,40,000/- and odd MT and when this figure is held to be true then there will be no shortage, but question is while preparing Ext. 15 they calculated the figures of production and dispatch and also took into account loss due to the D. stock etc. and other losses due to some of the quantity of coal going under water and separation of stone from the actual coal, but the figure will not come down to less than 20,000 MT, which is in fact shortage, which has been found on verification of the relevant documents. PW-16, who is I.O. of the case, has also examined several documents and came to a finding about the loss, which according to PW-16, has been misappropriated by the accused persons in connivance with other persons. The fact that there is strictness in the check post of the collieries and no quantity more than actual quantity, for which D.O. is issued, can go out, cannot be believed because the person, who verified the coal stock, is also aware of the fact and if this could have been the position then there was no question of any verification of measurement of stock merely basing the claim that due to strictness in the check post, coal cannot be carried out more than the actual quantity, for which D.O. is issued. Further the letter or wireless message, which is said to have been received by the authorities, wherein it is mentioned that Chairman directed the authority to give figures of production at the enhanced rate of 2.6% has not been brought on record and simply by saying that exaggerated figure, as per direction of the Chairman, was

given and i.e. the reason why in the relevant registers excess production has been shown @ 2.6% but on actual verification that figure has not been found to be true and further the letter or wireless message has not been brought on record, although some witnesses have admitted that there was such a direction. Even if that percentage is subtracted from the shortage, which has been found on verification, still then there will be a shortage of about, 20,000 MT of coal and such a big shortages cannot be attributed due to loss of fire, burning, due to coal going under water and due to coming of stone along with coal and due to loss in the D. stock etc. and, therefore, it is clear that on actual verification these losses have been found to be there, for which no plausible explanation or concrete fact has been brought on record on behalf of the defence.

20. The prosecution has certainly proved that shortages of coal have occurred due to misappropriation of coal in huge quantity by the accused persons in connivance with other persons and the learned Court below has discussed the case law on this point reported in 1990 (2) PLJR 285 and 2001 (2) East Cri C 118 (SC) but did not place reliance on them, as conviction is not based on probability or suspicion because the prosecution has succeeded in proving shortages to the extent of 52,487.75 MT and even if the plea of defence such as loss of coal due to fire, burning, coal lying under water, loss due to D. Stock, over reporting of production to the extent of 2.6% is taken into consideration and subtracted from the actual shortages, still then shortage of over 20,000 MT will be found but in fact, these losses must have been taken into consideration while verifying stock and thereafter losses were estimated at 52,487.75 MT and this is the actual shortage which from the evidence of witnesses as well as from the investigation by the I.O. has been found and has been established by the prosecution.

21. Considering the submissions of the parties and going through the evidence both oral and documentary led on behalf of both the sides. I am of the view that the judgment of the learned Court below does not require any interference and these appeals are accordingly dismissed.