

**(Pleaded guilty-Convicted;
Proclaimed person)**

Offence complained off : 420/409/120B IPC
Plea of accused : Not guilty (except accused
Satish Kumar Singh)
Date of Judgment : 27.06.2022

Argued by: Sh. Anuraj Kumar; Sh. Manish Kaushik and Sh. Manoj Kumar,
Ld. APPs for the State.

Sh. Pramod Sharma, Ld. Counsel for complainant ICAI.
Sh. Nishant Lohia, Ld. Counsel for accused Bhawna.
Sh. Prashant Mehendiratta, Ld. Counsel for accused Diksha.
Sh. Ajay Kumar Mayer, Ld. Counsel for accused Sudesh.

JUDGMENT

INDEX

S.No.	Particulars	Page No.
1	Opening statement	3
2	Supply of chargesheet, charge and plea of accused persons	4
3	Prosecution story	5
4	Prosecution documentary evidence	9
5	Testimonies – Prosecution	11
	PW1 to PW5	11
	PW6 to PW10	27
	PW11 to PW15	42
	PW16 to PW20	45
	PW21 to PW25	50
	PW26 to PW27	55
6	Examination of accused persons u/S. 313 CrPC	59
7	Testimonies – Defence	61
8	Arguments advanced	62

9	Relevant law: discussion	65
10	Appraisal of evidence	71
	Admitted facts	71
	Prior meeting of minds and existence of conspiracy	73
	Sting operation team of India TV news channel and edited sting operation video	74
	Source of leak of attendance sheet and question papers	78
	Falsehood of accused persons	84
	Form C – Report of the Observer and Special Observer	86
	Other defences of the accused	89
11	Findings	91
12	Final Order	93

OPENING STATEMENT

1. Succinctly stated, the Institute of Chartered Accountants of India (hereinafter referred to as 'ICAI') conducts various exams and one such exam Common Proficiency Test (herein after referred to as 'CPT') was to be conducted on 05.08.2007 across India. One centre no.44 was DAV Public School, West Patel Nagar, New Delhi and even before morning session examination at 9 AM was conducted, a sting operation was aired on India TV News channel, that their team of investigative journalist had gone to unearth leak of exam on the intervening night of 4-5th August 2007. The ICAI under Chairmanship of G. Soma Shekher sent representative to ascertain the facts from India TV News Channel and upon finding material of paper leak, lodged the present FIR. Investigation was carried out and considering the gravity of the

same, investigation was taken up by the Crime Branch department. From detailed investigation, School Principal Bhawna Malik, Centre Superintendent Diksha Dhingra were found to have conspired with accused Sudesh Kumar and Satish Kumar Singh to cheat the ICAI as well as thousands of aspirants by opening seal of question paper delivered to DAV Public School on 30th July 2007 and having distributed papers to few aspirants in return of monies. On completion of investigation, the present chargesheet was filed and since accused Satish was absconding, he was later arrested and supplementary chargesheet was filed against him. Thus the chargesheet presented before this Court is under Section 420/409/120B Indian Penal Code (hereinafter referred to as 'IPC') against all four accused.

SUPPLY OF CHARGESHEET, CHARGE AND PLEA OF ACCUSED PERSONS

2. The copy of chargesheet and documents were supplied to the accused in compliance of Section 207 Cr.P.C. Accused Satish was declared Proclaimed Person/ absconder and he was arrested in FIR No. 139/2008 u/S. 420 IPC P.S. Bhopal Pura, District Udaipur, Rajasthan. He was produced before this Court on issuance of production warrants. *Prima facie* case was made out, charge for offence u/s. 409/420/120B IPC was framed against the accused on 31.07.2019 to which accused Bhawna, Diksha and Sudesh pleaded not guilty and claimed trial. Accused Satish however pleaded guilty and he was sentenced to period already undergone. The complainant ICAI, however challenged the Order on Sentence

successfully before the Ld. Revisionist Court and upon rehearing on sentence, convict Satish was sentenced vide Order dated 30.04.2011 to undergo Rigorous Imprisonment for two years and fine of Rs.5,000/- each u/S. 409/120B IPC and 420/120B IPC. The operation of this sentence was suspended till 30.05.2011. One appeal was filed by convict Satish, but the same was dismissed for non-prosecution and since then convict Satish never appeared and was again declared Proclaimed Person/ absconder vide Order dated 15.03.2012.

PROSECUTION CASE

3. The prosecution case in its entirety is that the examination for CPT of Chartered Accountancy course was scheduled at 9 AM morning session on 05.08.2007. 82,000 candidates were appearing in India out of which about 15,000 candidates were to appear in Delhi alone. In the morning of 05.08.2007 India TV news channel carried out a telecast showing a sting operation pertaining to leak of question papers of CPT exam at about 8 AM. On enquiry from Sh. Anuranjan Jha Senior Editor of India TV, he handed over to Sh. V. Sagar, Deputy Secretary (Exam) of the ICAI, the copies of question paper at 11 AM. On 06.08.2007 Sh. Anuranjan Jha also informed to Sh. V Sagar that a sting operation was carried out at House No. 37, Prem Nagar, Najafgarh, New Delhi, during the intervening night of 4/5th August 2007 involving Sh. Sudesh Kumar and others in this racket. The India TV officials handed over to the Deputy Secretary (Exam) - (i) photocopies of two pages of attendance register page 15

and 16 of DAV Public School, West Patel Nagar, New Delhi; (ii) photocopies of section C and D Set A question paper (page 3 – 21); and (iii) photocopies of 2 handwritten pages answer of question 1 to 100 morning session and 1 to 100 afternoon session. On the close examination of the above paper it was found that the same were exam paper as that of the ICAI. Therefore, G. Somashekhar, Sr. Jt. Secretary Exam vide letter dated 05.08.2007 requested SHO Najafgarh to register an FIR and investigate the matter. Upon investigation, statements of complainant/ Sr. Jt. Secretary Exam, ICAI; members of India TV new channel sting operation team and CD/DVD were taken into police possession. Accused Sudesh Kumar was arrested on 08.08.2007 and he in his disclosure statement accepted that he along with Diksha Dhingra, Bhawna Malik and Satish Kumar Singh were involved in CPT exam paper leak. About their modus operandi accused Sudesh Kumar disclosed that he used to fill up forms of Open School of several student and he came in contact with Smt. Bhawna Malik, Principal of DAV Public School, Patel Nagar (West) about one year ago. He made a deal with the School Principal that all the invigilators of upcoming exams will be made available by Sudesh free of cost and invigilators will try to help his students to cheat in the exam. Since, CPT Exam was scheduled on 05.08.2007 at the DAV Public School, West Patel Nagar, New Delhi, accused Bhawna Malik appointed accused Diksha Dhingra as Centre Superintendent. Further, accused Sudesh Kumar was offered Rs.10,000/- per candidate by accused Satish Kumar Singh if he managed to leak the question paper of CPT exam dated 05.08.2007;

also accused Diksha Dhingra was offered Rs.50,000/-. In his supplementary disclosure statement, accused Sudesh disclosed that two sealed envelopes of question paper and attendance sheet were given to him by accused Diksha on the directions of Principal Bhawna Malik. Accused Sudesh further disclosed that he was given question papers on 03.08.2007 and he returned the same on 04.08.2007. Sudesh was paid Rs.15,000/-. On 04.08.2007 Accused Satish came at the residence of the accused at House No. 37, Prem Nagar, Najafgarh along with 9-10 persons and introduced them as students and parents. A deal was done at Rs.40,000/- per candidate and Rs.60,000/- was taken by accused Satish as advance. During investigation xerox question papers, attendance sheet, photocopy machine were recovered from the house of accused Sudesh and statement of other witnesses from school staff were also recorded. Accused Diksha was arrested on 13.08.2007 and in her disclosure statement she stated that she gave attendance sheet of centre no.44 to co-accused Sudesh on 28.07.2007 on the direction of accused Principal Bhawna Malik and the same were returned to her on 01.08.2007. She also disclosed that two sealed question paper envelope were given by her to accused Sudesh, who further give them to accused Satish. On 04.08.2007 accused Bhawna called her in the office, when she entered in the office accused Sudesh was present and question papers were returned. During investigation the used envelopes were seized and same were sent to FSL Rohini for examination but no expert opinion could be given regarding the seal impression and resealing of envelope due to broken nature of

seal impression and badly torn condition of the envelopes. Investigation further revealed that invigilators were paid Rs.150/- per shift by accused Sudesh and not by school administration.

4. Subsequent investigation was transferred to Special Teams, Crime Branch Department. Accused Bhawna was arrested on 09.10.2007 and she accepted her involvement in the leak in her disclosure statement. During investigation, investigating officer seized original question paper of both the Morning and Afternoon sessions of series A, B and C which were involved in leak; attested photocopies of receiving by Mrs Aarti Pahwa who received question paper on behalf of accused Diksha; letter sent by accused Bhawna dated 16.02.2006 and 01.09.2007; list of centres, delivery duty from complainant. Notice under section 91 Code of Criminal Procedure (hereinafter referred to as 'CrPC') was served to India TV news channel for producing original unedited hard disk of sting operation and spy camera through which sting operation was shot. Consumer Application Form (CAF) as well as Call detail report (CDR) of mobile number allegedly used by accused Sudesh and accused Satish were also obtained. Call details also showed that on 28.07.2007 accused Sudesh contacted accused Diksha and there are calls being made to accused Sudesh on 04.08.2007 from the telephone of DAV Public School, West Patel Nagar. Thus the present chargesheet was filed before this Court to try all the accused for criminal breach of trust, cheating and criminal conspiracy.

PROSECUTION DOCUMENTARY EVIDENCE

5. Before proceeding to discuss the testimonies of 27 prosecution witnesses, the case property (table 5.1) and documents exhibited (table 5.2) are provided below -

Exhibit	Description of case property seized
Ex.P1	(1) Original question paper of morning session series A having 12 sheets in 24 pages (2) original question paper of afternoon session series A containing section C and D having 12 sheets (3) attested photocopy of letters sent by Mrs. Bhawna Malik to Secretary Exams dt. 16.02.2006 having two pages, (4) attested photocopies of List of centres for CPT Exams dt. 05.08.2007 having 4 pages, (5) attested photocopies of receipt of confidential material by Mrs. Aarti Pahwa dt. 31.07.2007 having 3 pages, (6) attested photocopies of delivery duty for sending question paper one page and attested photocopy of letter sent by Mrs. Bhawna Malik to Senior Joint Secretary (Exams) on dt. 01.09.2007 one page.
Ex.P2	Documents supplied by PW1 G. Soma Shekher to police alongwith complaint, judicial record page no. 401 to 445
Ex.P3	30 question paper booklets No. 517201 to 517230 morning session (Section A and B)
Ex.P4	30 question paper booklets No. 617261 to 617290 afternoon session (Section C and D)
Ex.P5	Copy of letter sent by PW1 G. Soma Shekher to India TV alongwith CD
Ex.P6	15 question paper booklets No. 753512 to 753526 (Hindi) afternoon session
Ex.P7	15 question paper booklets No. 703512 to 703526 (Hindi) morning session
Ex.P8	13 envelope of morning session (English) which was containing question papers which were received back from centre no. 44 DAV Public School, West Patel Nagar

Ex.P9	13 envelope of afternoon session (English) which was containing question papers which were received back from centre no. 44 DAV Public School, West Patel Nagar
Ex.PX1	Small HP photocopy machine bearing serial no. S/N CN72PGM 2WW
Ex.PW2	Envelop containing twelve envelope showing the centre number as A4

Table 5.1

Witness exhibiting	Identification	Description
PW1 G. Soma Shekher	PW1/A	Written complaint dated 05.08.2007 to police
	PW1/B	Seizure memo dated 14.08.2007
	PW1/C	Seizure memo dated 01.09.2007
PW15 ASI Dinesh Kumar	PW15/1	Arrest memo of accused Sudesh Kumar
	PW15/2	Personal search memo of accused Sudesh Kumar
PW16 ASI Munesh	PW16/A	Arrest memo of accused Bhawna Malik
	PW16/B	Personal search memo of accused Bhawna Malik
	PW16/C	Disclosure statement of accused Bhawna Malik
PW18 Inspector Richpal Singh	PW18/A	Disclosure statement of accused Sudesh Kumar
PW19 Inspector Mahinder Singh	PW19/A	Arrest memo of accused Diksha Dhingra
	PW19/B	Personal search memo of accused Diksha Dhingra
	PW19/C	Supplementary disclosure statement of accused Sudesh Kumar
	PW19/D	Seizure memo of photocopy machine alongwith its instruments and passport of accused Sudesh seized from RZ 37, Prem Nagar, Najafgarh, New Delhi

	PW19/E	Two attendance register and documents produced by Sh. Ramesh Chaudhary
PW20 Ms. Deepa Verma	PW20/A	FSL report wherein no definite opinion was possible due to badly torn condition of seal impression
PW21 Yogesh Tripathi	PW21/A	CDR, CAF and copy of license of customer of mobile no. 9313493262
	PW21/B	Certificate to support documents in Ex.PW21/A
	PW21/C	CDR, CAF and copy of license of customer of mobile no. 9350358550
	PW21/D	Certificate to support documents in Ex.PW21/C
PW25 Sh. Jitender Sehgal	Ex.PW25/A	Rent agreement between Jitender and Satish of shop no. 49, Gaushala Market, 1 st Floor, Mata Road, Gurgaon
	Ex.PW25/B	Seizure memo of rent agreement Ex.PW25/A
PW27 M. Krishna, Assistant Director, GEQD, Hyderabad	Ex.PW27/A	Report bearing no. CCH-228/2008 dated 16.05.2008
	Ex.PW27/B	Letter by Sh. Mohinder Singh, Government Examiner to police alongwith report Ex.PW27/A
	Ex.PW27/C	DVD mentioned in report Ex.PW27/A
	Ex.PW27/D	Copy of DVD Ex.PW27/C
	Ex.PW27/E	Copy of CD mentioned in point no.1 of report Ex.PW27/A
	Mark PW27/X	CD on judicial file which could not be played

Table 5.2

TESTIMONIES – PROSECUTION

6. Prosecution cited 31 witnesses and of which 27 were examined. **PW1 Sh.**

G. Soma Shekhar deposed that he was Additional Secretary, Institute of

Chartered Accountants of India and on 05.08.2007 he was working as Senior Joint Secretary, Examination. He deposed that the examination for CPT of Chartered Accountancy course was scheduled to be held on 05.08.2007 in two sessions at 9 AM and 12:30 PM. He stated that on 05.08.2007 in the morning he received a phone call about telecast of sting operation by India TV news regarding leakage of the question paper of CPT and since the information was not yet verified it was decided to hold examination as per schedule. He sent one officer Mr. V. Sagar, Deputy Secretary (Exam), ICAI to collect the relevant documents which were being telecast on India TV and there he met Sh. Anuranjan Senior Editor of India TV who handed him – (i) copies of attendance sheet No. 15 and 16 of the DAV Public School, West Patel Nagar New Delhi; (ii) photocopies of section ‘C’ and ‘D’ set of question paper from page 3 to 21; and (iv) photocopies of two handwritten pages containing answers of questions 1-100 morning session and 1-100 afternoon session. On close scrutiny the documents were found to be matching with actual papers. Sh. V. Sagar further informed PW1 about the sting operation which was carried out at house No. 37, Prem Nagar, New Delhi during the intervening night of 4-5.08.2007 involving accused Sudesh and others. PW1 deposed to have reported the matter to police station Najafgarh at about 4:20 PM and also supplied the photocopies of the above document to the police along with his complaint. PW1 further deposed that on 05.08.2007 the investigating officer met him and recorded his statement and again he joined investigation on 14.08.2007. PW1 supplied (i) envelope

sealed with his seal containing 30 booklets English, No. 517201 – 517230 pertaining to centre No. 44 morning session; (ii) sealed packet containing total 16 booklets (Hindi) of morning session bearing series No. 703512-703526 pertaining to centre No. 44; (iii) sealed packet contained 30 booklets within Black English afternoon session bearing series No. 617261 – 617290; (iv) sealed packet containing 16 booklets of in the afternoon session bearing series No. 753512 – 753526; (v) sealed envelope containing the DVD relating to the sting operations telecast by India TV news channel and received by PW1 from India TV news channel on 06.08.2007; (vi) sealed envelope containing total 26 (English medium) out of its 31 of CPT examination morning session and 31 of afternoon session. All were taken into possession by investigating officer (hereinafter referred to as 'IO') vide seizure memo. PW1 further deposed that he joined investigation for third time on 25.10.2007 when the IO came to his office to show some photocopies of the question paper and attendance sheet pertaining to DAV Public School centre No. 44 Delhi for CPT scheduled on 05.08.2007 which as per IO were recovered from the residence of the accused Sudesh. PW1 deposed that on comparison with his office record he found the photocopies matching with the original record. On 8.11.2007 IO, Crime Branch again visited PW1 at his Noida office and seized documents vide seizure memo Ex.P1/C bearing his signature at point A. PW1 thereafter identified Ex. P-1, Ex. P-2, Ex. P-3 (earlier seizure memo Ex.PW1/B), Ex. P-4, Ex. P5, Ex. P6, Ex. P7, Ex. P8 and Ex. P9. PW1 was initially cross-examined as nil, however on application

under section 311 CrPC he was recalled for cross examination first by counsel for accused Sudesh wherein he was confronted with this statement which did not record that 'he received a phone call regarding telecast of sting operation on India TV news and yet he decided to hold examination as per schedule'. PW1 was further confronted with his police statement which did not record that 'he sent one officer to India TV for collecting the relevant documents'. PW1 admitted that he did not meet Sh. Anuranjan Senior Editor of India TV and he has no personal knowledge of the conversation between Sh. V. Sagar and Sh. Anuranjan. PW1 also admitted that he has not produced any document that 82,000 students were appearing in the CPT exam and also no document was produced to show how many students appeared in Delhi centres. He further answered that Mr. R.P. Juyal had taken the material in sealed cover and handed over the same at centre No. 44 to one Ms. Aarti against due acknowledgment. PW1 further answered that there were two different sets of question paper A, B and C and there was no provision of having alternate sets of question paper to be used in case of leak of original set of question papers. PW1 answered that there was no report of observer dated 05.08.2007 indicating leakage and the report on record of the observer does not mention about any tampering with the seal. PW1 answered that there was only one observer in the morning session and upon receipt of information of leakage, one special observer was sent for the afternoon session at centre No. 44. PW1 was asked to produce documentary evidence to show if accused Sudesh or anyone known to accused was invigilator

to which PW1 answered that it was the duty of centre superintendent to appoint invigilators. PW1 recalled that investigating officer had met him on three occasions and answered that no other witness was examined in his presence. PW1 pleaded ignorance about the telephone number or the name of the person who called him regarding the leakage and sting operation. PW1 denied the suggestion that Mr. V. Sagar never met Sh. Anuranjan of India TV, and PW1 voluntarily stated that he did not have any reason to disbelieve Mr. V. Sagar. During further cross examination of PW1 for accused Sudesh, PW1 denied various suggestions regarding news received by him of leak of the exam and none involvement of accused Sudesh. PW1 answered that the police was able to seize the same question paper of centre No. 44 as the ICAI does not allow students to take away the question paper and he denied the suggestion that the question paper which were produced before the court were never used and therefore they were sealed. PW1 answered that the question paper returned after the exam, are sealed by the centre superintendent and then received by the ICAI. PW1 denied suggestions that he did not compare the photocopy of the documents recovered by the IO from the residence of accused Sudesh. PW1 was then cross examined by the counsel for accused Bhawna and he answered that he never met accused Bhawna before the exam and even prior to appointment of accused Diksha as centre superintendent. PW1 answered that name of accused Diksha was nominated by accused Bhawna following which all the communications were made with accused Diksha. PW1 accepted that accused

Diksha gave consent in writing on a declaration form to be appointed as centre superintendent. PW1 also admitted as correct that accused Diksha wrote one letter seeking appointment of one additional invigilator. PW1 admitted that question paper were received by one Ms Aarti and he volunteered that the same was on telephonic instruction of accused Diksha who was on leave on the said date. He further answered that Mr. R.P. Juyal had gone to deliver the question paper and he only took acknowledgment of Ms Aarti and there was nothing in writing with respect to telephonic instruction of accused Diksha or accused Bhawna. PW1 admitted that it was the duty of centre superintendent to keep all the material including question paper in safe custody before the examination. PW1 also admitted that there was one Form C which is to be filled at the time of opening of the question paper before commencement of exam and in the present case the Form C mentions the condition of the seal in the presence of observer Mr. Hatender Kumar appointed by the ICAI. PW1 was put to Form C which he admitted to have been prepared by the Centre Observer as well as Special Observer and same were exhibited as Ex.PW-1/XP-2 & Ex.PW-1/XP-3. PW1 also admitted Ex.PW-1/XP-3 i.e. the observation of observer Mr. Hatender that *‘police had come at 11 AM and enquired with Principal and also took written statement that the exam was being held smoothly. Further on request of Principal police protection was provided to regulate entry of candidates for the afternoon session’*. PW1 admitted to have seen the report of Special Observer Ex.PW-1/XP-4 wherein it is mentioned that the seals of the envelopes were seen

to be intact at the time of opening. PW1 admitted as correct that after appointment of centre superintendent the Principal normally has no control over conducting the examination. PW1 thereafter was cross examined by the counsel for accused Diksha wherein he admitted that since 1949 there are specific rules titled as “instructions to superintendents for conduct of exams”. PW1 admitted that police did not to obtain those rules from the Institute. PW1 was then confronted with a statement under section 161 CrPC wherein it was not recorded that Mr. V. Sagar had met Sh. Anuranjan Jha (Ex.PW-1/XP-5 to Ex.PW-1/XP-7). PW1 admitted that normally it is not possible to remove papers from the envelop without hampering the seal and also admitted that it was the duty of the Observer to see whether the seals have been tampered or not. PW1 admitted that based on the information revealed from the sting operations they could not find out the school from where the papers got leaked and also admitted that in the sting operation none of the school staff was named. PW1 answered that attendance register of the candidate is prepared around one week prior to the conduct of examinations and he could not recall as to when the attendance register of candidates were prepared. PW1 stated that these attendance registers are prepared in computer however stated that the police did not take any hard disk, CDs or screenshots of the original register prepared at their office. PW1 also admitted that the operator who had generated the attendance sheet was never questioned by the police. PW1 admitted that he had never met or conversed with accused Diksha and had no idea as to where the question papers

were kept in the school. PW1 denied suggestion that question paper were never leaked but admitted that merely on the basis of sting operation he could say that the papers were leaked from DAV School Centre No. 44.

7. PW2 Arvind Kumar Chatuvedi, Special Correspondent, India TV deposed in his examination in-chief that on 04.08.2007 they received information that question paper of entrance examination of Chartered Accountancy (CA) which was going to be held on 05.08.2007 were being provided by one Sudesh Kumar Yadav at his house No. 37, Prem Nagar, New Delhi. He further deposed that on receiving this information a sting operation team was constituted and visited the above said house along with some guardians and some CA aspirants. PW2 deposed that at the house of accused Sudesh they met him, while identifying the accused present in the court, PW2 deposed that a deal was finalised for providing question paper of CA at initial sum of Rs.60,000/- which was paid to accused Sudesh and he provided photo copy of attendance register that displays No. 15 and 16 of centre No. 44 along with photocopy of question paper from page No. 3 to 21 of section 'C' and 'D' along with photo copy of two handwritten pages containing answers of question 1 to 100 of morning session and afternoon session. Further PW2 deposed that whole transaction was recorded with the help of a spy camera and the transaction was telecast on India TV news channel at 8:30 AM on 05.08.2007. PW2 was initially cross-examined as nil however he was recalled for cross

examination under section 311 Cr.P.C. wherein he answered that he was not supposed to give the information regarding the person who had informed them of the proposed sale of the question paper. PW2 then denied various suggestions put to him about his examination in-chief and answered that he was not seen in the recording in CD Ex. P5 as they were behind the camera. PW2 was unable to recall as to who exactly spoke to accused Sudesh from their team and also as to who made the payment to accused Sudesh from the team after getting the documents, however PW2 answered that it was a matter of record as was shown in the sting operation.

8. PW3 Ms. Aarti Pahwa deposed that she was working in DAV Public School since 1994 and on 31.07.2007 she received the question paper for CPT exam. PW3 deposed that she was on reception duty on that date and one CA official had come to handover the question paper to Ms. Diksha, but she was on leave and Principal Ms. Bhawna was also not present. PW3 deposed that she went to the account office and met Mr. Chaudhary who called Ms. Diksha and she spoke to her. PW3 deposed that on request of Ms. Diskha she received the paper and with the help of peon kept the papers in one of the four almirah lying in the staff room. PW3 deposed that she locked the almirah and on the next date after checking the seals handed over the keys to Ms. Diksha Dinghra. PW3 deposed that for the exam the invigilator were not from school staff but were outsiders arranged by the Principal. At this stage the ld. APP sought permission

to cross examine the said witness which was allowed and witness was confronted with a statement Ex. PW3/XP1 from point A to A1 which records that she had personally handed over the keys of the almirah to Bhawna Malik to which the witness stated that she never made such statement and she never handed over any key to Bhawna Malik. PW3 after being confronted with a statement Ex. PW3/XP-2 from point A to A1 stated that she never mentioned in statement to the police that Principal Bhawna in the meeting of staff stated that invigilator shall not be appointed from the school staff but would come from outside as would be provided by one Mr. Sudesh. PW3 was first cross-examined by the counsel for accused Bhawna and she pleaded ignorance as to why the invigilators would come from outside and she further pleaded ignorance if the school staff were not willing to work on holidays during exams. PW3 was cross-examined after being recalled on behalf of accused Diksha Dhingra and she deposed that on 31.07.2007 there was no other person on reception duty for one period of 35 – 40 minutes and stated the time to be around noon. PW3 upon being asked about entry in any register regarding receipt of the question paper answered that they had a small School and there was no such practice of maintaining registers at the reception. PW3 answered that since the CA Official insisted on receiving the question papers meant to be given to accused Diksha, PW3 alongwith said CA official went to meet accounts officer Mr. Ramesh Chaudhary and it was only after assurance from accused Diksha on telephone that PW3 accepted to receive the question papers. PW3 admitted that she had

not communicated directly with accused Diksha and Mr. Chaudhary had talked to accused Diksha Dhingra in her presence and also admitted that the conversation did not happen on a speaker-phone and thus she did not hear the voice of accused Diksha. PW3 was then confronted with her police statement wherein it was not recorded that Mr. Chaudhary had talked to accused Diksha on mobile phone in her presence. PW3 further answered that there were two sets of keys for the almirah which were lying in the staff room and accused Diksha had given her one set of key a week before 31.07.2007 on the pretext that she would be remaining on leave for any day in the week. PW3 pleaded ignorance in whose possession the other set of keys was on 31.07.2007. PW3 further deposed that teachers do not lock staffroom and stated that it may be locked by the peon or the ministerial staff of the school. PW3 pleaded ignorance as to how many times CA exams were held in the school but she stated that it was conducted twice a year. She also denied a suggestion that prior to year 2007 invigilator from outside the School were engaged. About the keys, PW3 deposed that the police did not inquire from her about the custody of key being with accused Diksha and from knowledge she inferred that accused Bhawna being Principal might have given one set to Diksha but she could not say for certain as to who was carrying the second set.

9. PW4 Sayed Mohisin Haider deposed that he was working with India TV and was posted at night office. He deposed that on the intervening night of

4/5.08.2007 he along with other team members of India TV had gone to house No. 37 Prem Nagar, as they had information that some person was providing question paper of CPT which was to be held on 05.08.2007. PW4 deposed that in the team along with him Anuranjan Jha, Jacob Mathew, Himanshu Mishra, Sapna Thakur, Md. Afsar and one reporter was present. He deposed that he went there as student and asked for papers and there were two person inside the said house and out of the accused namely Sudesh provided them with the question paper of CPT. He deposed that after going through the paper they were assured by both those persons that the papers were genuine. He deposed that accused asked for Rs,40,000/- each from three persons out of the six who went there as a student and that a total of Rs.120,000/- was given as consideration and after going through the papers they left the place at about 4:30 AM in the morning. PW4 deposed that they recorded the entire incident in camera and telecast the same on the next date in the morning bulletin. PW4 then identified accused Sudesh who was present in the court and stated him to be the person who provided them with the question paper. PW4 was first cross-examined by the Id. counsel for accused Bhawna and he answered that they generally handover the video to archive department and it is their duty to preserve the said footage. PW4 pleaded ignorance as to the place where his statement was recorded and he could not recall as to how many times his statement was recorded, but he again said that the statement was recorded once. He denied the suggestion that no sting operation had ever taken place. PW4 was then cross-examined as nil on behalf

of the accused Diksha. PW4 was then cross examined by counsel for accused Sudesh where he answered that he did not remember the place or date on which the statement was recorded by the police but he stated that the statement was recorded once. PW4 admitted that the fact of payment of Rs.120,000/- is not mentioned in his statement given to the police and it only mentions of Rs.60,000/- which was paid to accused Sudesh. PW4 upon being questioned failed to remember the number of stories in house No. 37 and the floor in which they dealt with the accused person and even could not remember the exact location of the house in question or the facing of its direction. PW4 however denied suggestion that he was not seen the sting operation video and hence there was no such sting operation. He stated that sting operation was not doctored and no altercation was done in the said operation conducted by them. PW4 answered that they started from the Noida office in early night hours and they reached Najafgarh at around 11:30 PM. PW4 further answered that negotiations were done earlier and not in their presence and after completion of negotiation sting operation was planned and they went there. PW4 admitted as correct that the above is the reason that they could not state the exact amount which was paid or agreed. PW4 stated that they were going through the paper supplied to them in a different room and after some time money was paid to the accused by one of their team leader in his presence. The witness could not recall as to what was the sitting arrangement in the car used by them but stated that the same was official vehicle of the news channel and thereafter denied the very suggestion put to him

about the negotiation, receipt of money and their presence at house No. 37 till 4:15 AM.

10. PW5 Ram Ashish Yadav deposed that he was watchmen in DAV Public School and he knew accused Sudesh as he had heard from his Principal Madam (accused Bhawna herein) and he correctly identified accused Sudesh present in Court. PW5 deposed that accused Bhawna instructed him to let Sudesh Kumar and some other person's inside the school who would come as invigilators, however he failed to remember the date on which the examination of CPT was to be held. PW5 deposed that on the day of examination some persons were sitting in their vehicle outside the school and as his duty he went to enquire from them, they stated that they were watching as to how the paper was conducted. PW5 further deposed that on that day police came to the school and asked him to open the door and after police personnel with some public persons entered the school, wherein he came to know that the CPT paper was leaked from the school. He further deposed that Sh. Teklal, the driver in the School told him that one person was locked in his room whose name was Sudesh, who once unlocked in the evening hours went to the office of Principal madam. PW5 was sought to be cross-examined by the Ld. PP for the State which was allowed and he stated that his statement to the police on 11.08.2007 and 16.08.2007 were correct, he further stated that exam was held on 05.08.2007. PW5 also admitted that accused Sudesh used to come to their school as an invigilator on the asking of

accused Bhawna and accused Diksha. PW5 also stated that accused Sudesh used to come to their school as invigilator during Open School Examination and that accused Sudesh was well known to accused Bhawna and accused Diksha. PW5 also admitted as correct that accused Sudesh got appointed some invigilator for CPT examination in the School. PW5 also admitted as correct that on the date of examination accused Sudesh and one more person whose name he did not know were locked in the room of Mr. TekLal by accused Bhawna and all the staff members were instructed not to disclose this fact to anyone. PW5 also stated that after both session of CA-CPT examination were over, those two persons were unlocked by accused Bhawna and they were made to escape from the back gate of the school. PW5 was first cross-examined by counsel for accused Bhawna wherein he was confronted with his statement wherein it was not recorded that 'he let accused Sudesh and other invigilators inside the school on the instructions of accused Bhawna'; 'some person were sitting in vehicle outside the school'; 'instructions from accused Bhawna to let police inside'; 'that Teklal informed him that one person was locked in his room'. PW5 answered that he reported for duty at 7 AM on the date of the exam, he could not recall the time when the invigilators reached the school but speculated that it may be 30 – 45 minutes of his reporting to the duty. PW5 answered that he did not count the number of invigilators who reported on the date of exam but stated that two/three invigilators came together and the others came separately. PW5 could not answer as to the time when the exam was to commence but stated that

accused Diksha came to school at 7:30 AM and accused Bhawna came to school at about 9–10 AM. PW5 pleaded ignorance if the exam commenced before the arrival of accused Bhawna but he stated that when she arrived there was a lot of commotion inside and outside the school premises. PW5 stated that accused Bhawna reached the school 10–15 minutes prior to police reaching the spot and the candidates had already entered the school. PW5 admitted that he could not see as to what was going inside the school being on duty at the gate and he did not hear or see accused Bhawna instructing the staff on the day of the exam not to tell about a person locked in the room of Mr. Teklal. PW5 admitted he did not see any person locked in a room. PW5 pleaded laps of his memory if the exam was in one or two sessions and could not remember if the exam was over at about 4–5 PM. PW5 when questioned about commotion, he stated that he meant that some persons were sitting in a car outside the school and taking photograph however he admitted that there was no commotion inside the school and the exam was going on smoothly. PW5 stated that police remained for about half-an-hour and when they left they did not take any person with them and the exam continued even when the police left the school. PW5 stated that he did not see any paper being leaked and came to know about this fact only on overhearing other staff members. PW5 admitted that he had no personal knowledge of the incident that took place in the school. PW5 was then cross-examined by counsel for accused Sudesh and stated that he had never met or seen him and did not even personally see him reaching the school in a car and he was only deposing

as he was informed by someone in the school. PW5 was then cross-examined by counsel for accused Diksha and he deposed that he has not filed on record any appointment letter or attendance register of his employment with DAV Public School. PW5 answered that he was not aware as to how many invigilators were coming.

11. PW6 Mr. Hatinder Kumar, Assistant Secretary, ICAI deposed that on 05.08.2007 he was posted as executive officer, ICAI and his office was at CA-1, Sector-1, Noida when he was appointed as observer to visit DAV Public School on 05.08.2007. He stated that he reached the school at 8 PM where he met accused Diksha, centre superintendent who reached the school at 8:30 AM. PW6 deposed that Diksha took out packets containing OMR sheets and question papers, which she had shown to him from a distance of about 1½m and thereafter accused Diksha unpacked hurriedly. PW6 further deposed that at about 12:10 noon another seal on the packet containing OMR sheets were shown to him in the same manner from a distance of about 1½m and at that time Mr. C.S. Ravi, Deputy Secretary of ICAI and accused Diksha were present. PW6 was first cross-examined by counsel for accused Bhawna and stated that as an observer it was his duty to see that seals were intact. PW6 admitted that in his written report to the ICAI on the next date of the examination he reported that the seals were intact and not tampered with. PW6 stated that he did not mention in his police report that the documents were shown to him from a distance of

one metre and also admitted that in column No. 6 he had not mentioned the name of accused Bhawna being present when seals were opened. PW6 admitted that he had verified the seal of the envelope for both morning and afternoon session and admitted that in column No. 19 he had observed that the police had come around 11 AM, inquired from the Principal and also the exams were held smoothly. PW6 also admitted observing that it was on the request of accused Bhawna that police protection was provided to regulate the entry of candidates for the afternoon session. PW6 stated that he was serving in ICAI since 1980 but he was unsure as to how many times he was appointed as observer; firstly he answered that he was appointed observer for eight or nine times, again said three or four times and then stated that for various exam he was appointed observer for more than 15 fifteen – twenty times. PW6 admitted that he did not make any written complaint to the ICAI that he saw packet from a distance of 1½ m or that the packets were opened hurriedly. PW6 also admitted that his report submitted to the ICAI as correct. PW6 stated that he did not see accused Diskha and accused Bhawna coming together at 8:30 AM but stated that both of them were present together when the packets were opened and denied the suggestion that accused Bhawna could not have been present when the packets were opened for the morning session. PW6 admitted that in his report he did not mention that accused Bhawna was present when the packets were opened for the morning session and he voluntarily deposed that he did not mention the same as accused Bhawna was not present in the room where the packets were opened for the

morning session. PW6 denied the suggestion that he was falsely implicating accused Bhawna and also denied the suggestion that accused Bhawna was called to School at around 10–10:30 AM on the asking of accused Diksha. PW6 denied the suggestion that accused Bhawna had no role in the conduct of examination 05.08.2007 but admitted that the entire responsibility of conducting the exam is with the centre superintendent appointed by ICAI. PW6 was cross-examined as nil on behalf of accused Sudesh and when questioned on behalf of accused Diksha he answered that the envelope containing the question papers were sealed by confidential section of ICAI. PW6 admitted that he had not seen the sealed envelop before the same were sent to concerned School. PW6 admitted that the seal was neither demanded by the police nor was given to them by him. PW6 admitted that in case of a broken or tampered seal he will not let the examination be conducted and admitted that on 05.08.2007 he let both the morning and afternoon session examination to be conducted. PW6 admitted that he had signed the report with regard to conduct of examination at DAV Public School and he did not mention in his report that he was shown the envelope from a distance of 1½ m or that the envelope was open in a hurried manner.

12. PW7 Sh. Ramesh Chand Chaudhary deposed that he was working in DAV Public School since 1996 and before April 2007 the staff of the school was used as invigilator and later accused Bhawna appointed invigilator through accused Sudesh. PW7 deposed that in the same manner invigilator were

appointed for conduct of CA entrance exam on 05.08.2007. About events of 31.07.2007, PW7 deposed that question paper for the entrance exam were received by Ms. Aarti in his presence and on the next date Ms Aarti handed over the same to accused Diksha. PW7 deposed that on 03.08.2007 at about 10 AM accused Bhawna called accused Sudesh and on 04.08.2007 he was again called with two more persons to arrange furniture/desk for the candidates and they remained in the school till 5 to 6 PM. PW7 deposed that on 05.08.2007 the exam was to be conducted and when he reached at about 8:45 AM he saw students waiting outside the gate when they ought to have been entered by 8:30 AM. PW7 further stated that the gatekeeper told him that he had not received the instructions from the head of the School and then PW7 instructed the gatekeeper to allow students to go inside the School. PW7 deposed that question paper were distributed through invigilators who came through accused Sudesh who he identified being present in the court on that date. PW7 further stated that around 9:05 AM he received a call from his daughter informing her that the question paper for the entrance exam of CPT being conducted in their School was leaked as she was watching India TV news channel at that time. PW7 deposed that he inquired about the same from accused Diksha and then accused Bhawna was called by accused Diksha. PW7 stated that accused Bhawna came around 10 AM. and instructed invigilators and other staff members to carry on their respective duties. PW7 deposed that one Mr. Ravi from ICAI called who was outside the school and he had come after hearing the news of paper leak. PW7

also deposed that he took rounds and found two invigilator not being present in room No. 13 and 14 and upon inquiry from Mr. Teklal and Mr. Vijay, both drivers in the school, came to know that they might have gone to washroom. PW7 waited for 5 to 10 minutes but none of the invigilators came and therefore he deputed the above two persons to look after the said rooms. PW7 stated that second shift of exam was over around 5 PM. PW7 deposed that when he went to the washroom he saw accused Sudesh and other invigilator washing their face and upon inquiry accused Sudesh told him that he was locked inside the room of Mr. Teklal. PW7 deposed that when he asked about the matter from accused Sudesh he told that he was being called by accused Bhawna and thereafter they met accused Bhawna. PW7 deposed that accused Bhawna after both shifts of the exam were over, ensured the question paper and answer sheets were sealed and she alongwith accused Diksha took sealed envelops to the CA office in her car. PW7 said that accused Sudesh and other invigilator were made to exit from back gate of the school. PW7 stated that one peon named Seema told him that that accused Sudesh was inside the room of Mr. Teklal till evening and when she brought this fact to the knowledge of accused Bhawna, she threatened her as well as other staff of School not to disclose the said flat to anyone. PW7 reported that the invigilators provided through accused Sudesh used to facilitate cheating to the students of the exam and he had told about this fact to the IO. PW7 was first cross-examined by Id. counsel of accused Bhawna and he admitted that exams were conducted after school hours and on holidays,

however he denied suggestions that the school staff was not interested in doing exam duties. PW7 answered that he was looking after the work of school accounts and also doing the administrative work. PW7 answered that Centre Superintendent for conduct of CPT exam to be held on 05.08.2007 was accused Diskha. PW7 was then successfully confronted from his police statement wherein it is not mentioned that 'question papers were handed over to Ms Aarti in his presence'. PW7 also admitted that question paper were not handed over in his presence by Ms Aarti to accused Diksha. PW7 admitted that accused Bhawna did not make any call to accused Sudesh in his presence on 03.08.2007 and also admitted that in his police statement he did not state that 'candidates were waiting outside school at 8:45 AM'. PW7 then admitted that he did not mention in his police statement about the news of leak being received by him from his daughter; his inquiry from accused Diksha and accused Sudesh; and also of call by accused Diksha to accused Bhawna. PW7 was also confronted from his police statement wherein there was no record of the two invigilators missing from room No. 13 and 14; him appointing Mr. Teklal and Mr. Vijay to look after the room; his meeting with accused Sudesh and other invigilators in the washroom; the fact that he saw accused Bhawna take question papers and answer sheet to the CA office; that accused Sudesh and his invigilator facilitated cheating. PW7 admitted that he did not hear any conversation between accused Bhawna and accused Sudesh and voluntarily stated that he deposed as he perceived from what he observed in the School. PW7 deposed that he did not

make any written complaint to the management of the trust running the school but voluntarily stated that he made oral complaints to Chairman. PW7 also admitted that he did not make any complaint to the ICAI. PW7 was then cross-examined by accused Sudesh and was confronted from his police statement wherein it was not recorded that invigilators were arranged by accused Sudesh; that accused came to school on 04.08.2008 with two persons and arranged furniture/desk and remained in school till 5 PM; Sudesh and other invigilator were called by accused Bhawna in her office and made to exit from back gate of the school. PW7 was then cross-examined by the counsel for accused Diksha and he admitted that he has not placed any record of his work at the school. He admitted that on 31.07.2007 accused Diksha was on leave. PW7 answered that on 31.07.2007 Ms. Aarti received a bag made of cloth which had a lock and key and the said bag was handed over to Ms Aarti which was not opened in his presence. PW7 admitted as correct the suggestion that he could not say whether on 31.07.2008 the bag handed over to Ms Aarti was containing question paper or not and also stated that the bag could not have been opened with a zip and it could only be opened with a key. PW7 deposed that no one told him that the bag would be opened with a key and he voluntarily submitted that he had himself seen the lock on the bag. PW7 answered that police officers never demanded the bag from him and he admitted that he never stated in his statement before police that the question paper were in a bag with a lock and key. PW7 answered that on 31.07.2007 Ms Aarti had opened the almirah with a key and kept the papers in

the said almirah. He stated that there were three other almirahs in the room and the keys of the said almirahs remained with the teachers throughout the day and at the end of the day they were handed over to accused Bhawna. PW7 deposed that 31.07.2007 the bag was handed over to Ms Aarti between 2 and 3 PM and none of the staff members, employee or teachers of the school were frisked or their bags were checked before leaving the school. PW7 answered that there is no register maintained to record in and out time of the teachers. PW7 admitted that he did not see any untoward incident happened in the prior exam conducted by accused Sudesh and his team. PW7 stated that he was not authorised by ICAI or by School management to play any role in the conduct of examination on 05.07.2007 and answered that he had received one phone call from one Mr. Ravi, ICAI, who told him that he will be coming to school as there were media outside. PW7 stated that accused Bhawna came to school between 9:30–10 AM and that accused Diksha had accompanied the accused Bhawna to CA office at 5 PM which he mentioned in his police statement however he was confronted with a statement wherein it was not so recorded. PW7 denied suggestion that he did not know where the keys of the almirah were kept and voluntarily stated that keys of the almirah used to remain with accused Bhawna. PW7 stated that he mentioned this fact to the police however he was confronted from the police statement wherein it was not so recorded. PW7 was also confronted from his statement under Section 161 Cr.P.C. wherein there was no mention of him having found accused Sudesh in the bathroom with one other invigilator and of

them being called to the office of accused Bhawna. PW7 further answered that he was present at 9 AM when bags containing the question paper were opened and further answered that accused Diksha was handing over the bags to the observer after having opened the almirah using key which are taken from the office of accused Bhawna. PW7 deposed that the observer did not say that the bags were already opened or re-sealed and he maintained that it was only from his daughter's call that he came to know about the leak of the question paper. PW7 stated that the police did not question his daughter and stated that mobile phone was allowed to be used on the date of the examination in the Schools as per the rules of the ICAI. PW7 further stated that he told accused Diksha about the examination papers being leaked at 9:15 AM but he did not know as to who told the observer about the said fact. PW7 stated that in total 14 rooms were being used for the conduct of the examination and he was sitting next to the reception, whereas the Observer was sitting in the room where the question papers were kept. PW7 admitted that it was not his duty to take rounds where the examinations were being conducted and admitted that no one from the office of ICAI said anything about stopping the examination to him or to anyone in his presence.

13. PW8 Sh. Teklal Shrestha turned hostile from the very beginning and deposed that he had no knowledge of the present case. He admitted his statement being recorded by the police however he did not remember as to what was stated

by him. The witness was thus permitted to be cross-examined at the instance of Id. APP of the State and he answered that he cannot say if his statement was recorded on 11.08.2007. PW8 stated that he is still employed as driver of the vehicle of Principal of DAV Public School and in April 2007 accused Bhawna was the principal of that school and he used to drive her during school hours. PW8 stated that accused Sudesh might have met accused Bhawna and Diksha 10 to 12 days prior to the date of examination and he stated that invigilator were provided by accused Sudesh ever since he started coming to the school before which school teachers were conducting the exams. PW8 was specifically asked if accused Bhawna had asked him to keep Sudesh Kumar and one other person in his room on the date of examination to which he answered that he did not know if the two persons were kept in a room however he stated that accused Bhawna had asked for keys of his room for two persons to rest who were unwell on the date of examination. Adding further PW8 voluntarily stated that accused Bhawna was not present in the school at that time. PW8 stated that he did not know if accused Sudesh and one other person were locked in his room or if they talked with accused Bhawna or if they were asked to leave from back gate of the School. PW8 stated that media persons were present outside the School on that date but denied the suggestion that he was deliberately not deposing against accused Bhawna and accused Sudesh. PW8 was then cross-examined by the Id. counsel for accused Sudesh and he answered that on the date of the examination he had resumed his duty as driver from the morning and stated that he had no

personal knowledge about appointment of invigilator in the School or of conduct of examination. PW8 denied suggestions that accused Sudesh was connected with games activities conducted in the school and himself voluntarily stated that accused Sudesh used to come in school for the purpose of conduct of examination. PW8 was cross-examined as nil by accused Bhawna and on behalf of the accused Diksha he answered in his cross examination that he was in possession of his appointment letter of DAV Public School but the police did not ask for the same. He stated that he received no pay slip and his salary was directly credited into his bank account. PW8 admitted that he had no document to show his working in the school in the year 2007 and admitted that as a driver he had never gone into the staff room or to the room of the principal or if any keys to the room of the School were given to him however he denied suggestion that no room was allotted to him and voluntarily stated that one room was given to him at the back side of the school. PW8 stated that the said room is about 10–15 feet from the school building on the backside and admitted that the police never visited the said room for investigation. He further stated that there was only one key to the lock and school authorities do not have any keys of the said lock. PW8 denied suggestion that he not had given keys of the room to accused Bhawna on the date of incident and stated that police did not ask for any key from him and he did not know if they had asked for the key from accused Bhawna. PW8 stated that there was an attendance register maintained and police had taken the said register to show that he was present at duty and School on

05.08.2007. He denied suggestions that there was no such register of attendance at the School and that he was not an employee of the school on 05.08.2007. PW8 further deposed that on 16.08.2007 he had told the police that accused Bhawna had taken the keys of his room by saying that some invigilator who has come is not well and wants to rest. PW8 denied suggestion that he was deposing falsely or that he was falsely implicating accused Diksha, however he admitted that he did not know if anyone was actually sent to his room to rest or if anyone was kept locked in his room.

14. PW9 Mr. C.S. Ravi, Joint Secretary, ICAI deposed that on 05.08.2007 he was Deputy Secretary examination in ICAI and DAV Public School was centre no.44 for the CPT exam. He deposed that he reached school at about 9:30 AM and morning session exam was going on. PW9 deposed that Mr. Hatinder was also present with accused Bhawna, the morning session was over at about 11 AM and preparation for afternoon session began. PW9 deposed that as per standard procedure the packets containing the question paper were to be opened after being shown to centre observer, however he deposed that accused Bhawna and Diksha hurriedly opened the packet so they could not detect anything suspicious and thereafter the afternoon session examination was also conducted smoothly. PW9 stated that he received a phone call from Mr. Soma Shekhar and he was asked to inquire if there was any invigilator named Sudesh or Satish, but accused Bhawna stated that there was no invigilator named Sudesh or Satish.

PW9 stated that on 07.08.2007 accused Bhawna called Mr. Soma Shekhar and requested him to send somebody to School as she wanted to tell some facts. PW9 deposed that he was deputed and some other council member to go to school and when they reached accused Bhawna told them that she knew one Sudesh who used to arrange the invigilator to the School for conducting the examination. PW9 was cross-examined first by the Id. counsel for accused Bhawna and he answered that his statement was recorded twice by the police- first about seven days after the exam and second after about a month. PW9 admitted that as per the procedure the entire responsibility for the conduct of the examination is of centre superintendent, he/she is required to receive the question papers and keep them in safe custody in a sealed condition. PW9 admitted that Mr. Hatinder was appointed observer and he must have submitted the report. After seeing Ex.PW1/X-P4 (Form C filled by centre observer and Special observer about afternoon session), PW9 admitted his handwriting and his signature was dated 06.08.2007. PW9 admitted that as per the report there was no tampering. PW9 admitted that he filed no complaint with regard to the manner in which the envelopes were opened. PW9 was confronted with his police statement wherein there was no mention that the envelopes were opened in a hurried manner; there was also no mention of any call dated 07.08.2007. PW9 stated that there was no written confession of accused Bhawna. PW9 then denied suggestion that he was deposing falsely. PW9 was cross-examined as nil

on behalf of the accused Sudesh and on behalf of accused the Diksha he was cross examined as nil.

15. PW10 Ram Prasad Juyal deposed that he was deputed by HOD to deliver papers of the exam of CPT at three centres, one of which was DAV Public School. PW10 deposed that at DAV School he met one Ms. Aarti and refused to hand over papers to her, however, she called principal Bhawna and centre superintendent Diksha and after their authorisation, he handed over the sealed question papers to Ms. Aarti under written receipt. PW10 was cross-examined on behalf of the accused Diksha and he answered that police did not ask him to produce any document wherein he was directed to deliver papers to DAV Public School. PW10 failed to remember as to the room in which he met Ms. Aarti and stated that Ms. Aarti called one office boy to pick the sealed bag. PW10 admitted that he did not ask Ms Aarti to show any identity card and they did not speak to anyone else in that school. PW10 deposed that he never talked to accused Diksha and it was only Ms. Aarti who had spoken and asked them to hand over the question papers to her. PW10 stated that he mentioned this fact in his police statement however when confronted no such statement was found. When asked about the condition of the question paper PW10 after going through judicial file page 259, PW10 stated that word “Sealed packets” is mentioned in the form filled by Ms. Aarti at the time of receiving of question paper. PW10 admitted that at point X at page 259 the signature of the person receiving are not

present and signatures at point Y were not subscribed in his presence. He further admitted page 255 of the judicial file, the acknowledgment was addressed to Senior Joint Secretary and he was not holding that post or was given any authorisation to receive any document or a letter on his behalf. PW10 denied the suggestion that HOD, Examination and the Secretary ICAI did not to distribute sealed envelop containing the question papers, but admitted that police did not take any letter of authorisation or even asked him to provide any such document. PW10 further stated that police did not show him any rubber-stamp of the DAV Public School and deposed that Ms. Aarti had put rubber-stamp on the document which she handed over to him. He stated that the seal was put in his presence and Ms. Aarti had called for the rubber-stamp from the office boy, but he did not know from where the office boy got that stamp. PW10 stated that encircled portion at point X95 was in the handwriting of Ms Aarti. PW10 denied the suggestion that he was carrying unsealed question papers and stated that the envelopes were of brown coloured paper but he did not know the size of the envelopes. PW10 pleaded ignorance if any question paper was sent through speed post and denied that he had put the envelop of question paper in a gunny bag. PW10 stated that gunny bag were also sealed and in the gunny bags there were only articles which were handed over to him in sealed condition. PW10 admitted that gunny bags were not sealed in his presence and he did not remember as to how many gunny bags were delivered to DAV Public School. PW10 also did not know as to how many envelopes were contained in the gunny

bag. PW10 admitted that police did not ask him to produce document to show that he had received the bags from HOD containing question paper to deliver to DAV Public School. PW10 stated that the police never called him to identify or hand over any gunny bag and also stated that no gunny bag was ever seized by the police in his presence.

16. PW11 Advocate Ved Jain was vice president of ICAI in the year 2007 and he stated that there was a joint meeting of examination committee and executive committee held on 05.08.2007 at 6 PM at the office. He stated that accused Diskha and accused Bhawna were present at that meeting and they both told that they do not know any person by the name of Sudesh whose name appeared on the India TV new channel. PW11 also told that empty/used envelopes which contained the exam papers had been destroyed by the sweepers and teams by burning. In his cross examination PW11 denied suggestion that he was not part of the examination committee of ICAI in the year 2007 and denied the suggestion that no such meeting ever took place in the office of ICAI.

17. PW12 Seema Sharma, peon DAV Public School turned hostile from the very beginning and she was cross-examined by Id. APP for the State wherein she answered that CA-CPT exam was conducted in their School on 05.08.2007 but she did not know if the accused Sudesh was present in the school. She deposed that police did come to school and she denied the suggestion that upon arrival of

police accused Bhawna locked Sudesh Kumar in the room of driver TekLal. PW12 denied that on 07.08.2007 a meeting was called in Principal's office with the teachers and there was discussion in respect of accused Sudesh. PW12 further denied suggestion that accused Bhawna instructed teachers that accused Sudesh was not present in the school and that accused Bhawna scolded and asked every teacher to keep their mouth shut. PW12 denied making her police statement and denied suggestion that she was deliberately saving the accused. In view of her statements she was not cross examined by any of the accused.

18. PW13 Manish Kumar also turned hostile that police never came to him in respect of the present case. PW13 denied having taught in AOC coaching Centre and further denied being asked by accused Sudesh to invigilate in CPT exam at DAV Public School. PW13 denied making any statement before the police and denied that he was deliberately not deposing against the accused. He also was not cross examined by the accused side.

19. PW14 Himanshu Mishra deposed that he was working in India TV as correspondent in the year 2007 and upon receipt of leakage of the paper he was part of the sting operation team. He deposed that the seller was in contact with Anuranjan Jha and Jacob Mathew; and their sting operation team went to Najafgarh in office cars. PW14 deposed that one person name Satish met them near HDFC bank ATM, team member Sapna Thakur, Mohd. Afsar, Mousin

Haider were projected as prospective students and he, Anuranjan Jha and Jacob Mathew were projected as parents/elder brother. PW14 deposed that accused Satish let them to one house on foot and a deal was struck between Anuranjan Jha and accused Satish in respect of CA-CPT paper for Rs.40,000/- per candidate. PW14 stated that two other persons were present in the house of which one was serving water and another hand over paper to Jacob and told him to note down the papers as it was not allowed to be taken outside. PW14 deposed that they stayed in the house for 1–1½ hour to note down the papers and further deposed that they were told about the sequence of the questions which would come in different sets and were also assisted with the answers. PW14 further stated that they handed over money to accused Satish who met them at the ATM and all these events happened on 04.08.2007. Due to passage of more than 10 years PW14 could not recall as to the persons on whom the spy camera were installed and also failed to identify 2 or 3 persons in the above house. PW14 was questioned by Id. APP for the State as to name of the accused however he could not say with certainty if the name of the other accused was Sudesh. PW14 was then allowed to be cross examined by the Id. APP for the State and he failed to identify accused Sudesh due to passage of time and stated that he must have been seen in the camera footage but he could not identify due to passage of long time. PW4 was cross-examined by Id. counsel for accused Sudesh and he answered that his statement was recorded by the IO through telephonic conversation and stated that he was unable to read the contents of his

statement as recorded by the IO. PW14 stated he was unable to recall in verbatim as to his whole conversation with IO, however, he denied suggestion that IO recorded his statement at his own will.

20. PW15 ASI Dinesh Kumar deposed that on 08.08.2007 he was posted at police station Najafgarh And he along with SI Richpal and Ct. Ram Kumar went in respect of investigation of the present case where they found accused Sudesh at house No. 37, Prem Nagar, Najafgarh. He further deposed that accused Sudesh was apprehended, he admitted his guilt and he was arrested. PW15 identified arrest memo and personal search memo of the accused Sudesh. PW15 was cross-examined by counsel for accused Sudesh and he denied that the papers were prepared in the police station at the instance of the IO.

21. PW16 ASI Munesh deposed that on 19.10.2007 he was posted at Prashant Vihar (crime section) and he alongwith IO SI S.K. Jha went to Mayur Vihar, Phase-II to meet accused Bhawna. He stated that IO arrested accused Bhawna and thereafter he identified arrest memo, person search memo and disclosure statement of accused Bhawna. PW16 was cross examined by the counsel for accused Bhawna and he denied suggestions that proper procedure while arresting accused were not adopted, and further denied suggestion that he did not visit on the date mentioned in the arrest memo and that the disclosure statement was not voluntarily given by the accused Bhawna.

22. PW17 ASI Vinod Kumar was posted at PS Najafgarh and he deposed to have taken two envelop which were sealed with the seal of G. Soma Shekher to official FSL, Rohini and deposited the same. He stated that the RC was handed over to MHC(m) and that his statement was recorded by IO Mahender Singh. He deposed that there was no tampering as long as *pulanda* remained in his possession. During cross examination on behalf of accused Sudesh and accused Diksha PW17 admitted that in his statement to the IO there is no specific mention of seal of G. Soma Shekher. He stated that he recorded his departure and arrival entry at the police station but was unable to tell the DD Numbers. PW17 denied the suggestion that he did not go to FSL to hand over *pulanda*.

23. PW18 Inspector Richpal Singh deposed that he was posted as Sub-Inspector at PS Najafgarh and on 05.08.2007 he lodged FIR in the present case, he inquired from complainant G. Soma Shekher and reporters from India TV new channel who conducted the sting operation. He further deposed that he arrested accused Sudesh vide arrest memo and conducted his personal search. He also identified the disclosure statement of the accused Sudesh. PW18 in his cross examination denied the suggestion that accused Sudesh was made to sign on blank papers and answered that his disclosure was recorded on 08.08.2007 and clarified that in accused Sudesh's disclosure statement date of 25.08.2007 is mentioned which is a clerical mistake and the correct date was 25.08.2006.

24. PW19 Inspector Mahinder Singh was handed over investigation in the present case on 13.08.2007 and he deposed that when he was assigned investigation, accused Sudesh was already in custody. He stated that he along with SI Richpal, W/Ct. Anita and Ct. Ram Kumar went to arrest the accused Diksha and on pointing out by accused Sudesh, accused Diksha was arrested from park in front of her house no. C-336, Vikas Puri, New Delhi. PW19 identified person search memo and disclosure statement of accused Diksha. PW19 further deposed that at the instance of accused Sudesh they went to 1st floor of house No. RZ-37, Prem Nagar, Najafgarh, New Delhi where they found one photocopy machine kept in the drawing room. The said machine along with passport of accused Sudesh were seized. PW19 met complainant G. Soma Shekher and Sh. SK Rai on 14.08.2007 at the police station who handed over one bag, four packets and one envelope all sealed with the seal of institution. All were seized and their statements were recorded. PW19 also stated that on 16.08.2007 Sh. Ramesh Chaudhary and other staff of DAV Public School met him at the police station, Sh. Ramesh handed over two attendance registers and some documents which were seized and statement of witnesses were recorded. PW19 on 02.09.2007 questioned the reporters from India TV news channel namely Jacob Mathew, Sapna Mishra, etc and recorded their statements. PW19 on 07.09.2007 sent all exhibits to FSL, Rohini through HC Vinod and recorded statement of HC Vinod and MHC(m). Continuing his investigation, PW19 on

12.09.2007 went to ICAI, ITO, met Hitender Kumar and C.S. Ravi and recorded their statement. PW19 then identified the photocopy machine, four envelopes as was produced by the MHC(m). PW19 was first cross examined by counsel for accused Diksha and he answered that the twelve envelopes from one of the four packets of Ex.P2 were given to him by Sh. Soma Shekhar. PW19 admitted that all sealed envelopes with the seal of NA were in torn condition. PW19 failed to remember if Sh. Soma Shekhar provided any document to identify the DAV Public School as one of the centre. PW19 also failed to remember if he recorded the serial number of the envelopes containing the question paper of DAV Public School received from ICAI. PW19 admitted that Ex.P3 to Ex. P8 were given to him in sealed condition by Sh. Soma Shekhar. PW19 denied various suggestions that accused Diksha had come with a lawyer to the police station to participate in investigation or that the disclosure statement of accused Diksha was not recorded in his presence. PW19 stated that the register given by Sh. Ramesh Chaudhary was of teachers performing duties as invigilators. PW19 admitted as correct that he did not ask Mr. Jacob, Ms. Sapna and Mr. Mishra to produce any original recording instrument or unedited recording of the sting operation. PW19 also admitted that till 13.08.2007 he had not seen any CD containing the sting operation or till date he has not seen the same. PW19 also admitted that he had not seen any document and same were given to him by Sh. Soma Shekhar in sealed condition. PW19 further admitted that he had not asked anyone to switch start the photocopy machine at the house of accused Sudesh to verify if it was

operational or not. He further submitted that accused Sudesh himself had switched started the photocopy machine but he could not say if the said machine could save documents in its hard disk or anywhere else. PW19 was then cross examined by counsel for accused Sudesh and he denied that accused Sudesh did not make any disclosure statement. PW19 admitted that he was no expert of photocopy machines and he had not taken any expert opinion with regard to the machine in the present case. He answered that he had not obtained any expert opinion to the fact if the photocopy machine was used or not however he voluntarily submitted that accused Sudesh had switch started the machine. PW19 admitted that he has not placed on record the ownership of the said machine and that the seizure memo did not record the serial number of the said machine however he voluntarily submitted that the model number of the machine was mentioned in the seizure memo. PW19 admitted that the ownership document of the property house No. RZ-37, Prem Nagar, Najafgarh, New Delhi was never brought on record but denied suggestion that accused had no concern with the said house.

25. PW20 Deepa Verma was the Director FSL, Rohini, New Delhi and she exhibited her report vide which she opined that the seal impression were in bad condition and therefore no definite opinion was possible. She was cross examined as nil.

26. PW21 Yogesh Tripathi was the nodal officer of Reliance Communication Ltd and he placed on record the CDR and CAF along with affidavit under section 65B Evidence Act of mobile number 9313493262 and 9350358550. In his cross examination PW21 answered that number 9312493262 was issued in the name of Ashima Telecom and he stated that original were not available as company destroys the CAF record after three years of discontinuation of number.

27. PW22 Anuranjan Jha, was working as Senior Editor in India TV news channel in the month of August 2007 and he received information from a senior that CA-CPT exam has been leaked. He stated that they agreed to conduct sting operation and constituted a team consisting of Senior Editor Jacob Mathew, reporters- Sapna Thakur, Himanshu Mishra, Mosin Haider and Afsar. He deposed that they went to a house in Najafgarh, however he did not remember the house number. PW22 deposed that among them some were playing the role of parents and some of students and there they met another person whose surname he recalled as Kumar who told them that he was working as PT teacher in some school that he is in possession of question papers of CA-CPT exam which was to be conducted on the next date. PW22 stated that they videographed the whole incident and the person Mr. Kumar told them that he was not giving them question paper to take away but was only allowing them to see the papers. PW22 further stated that the person then made a call to a lady

who he told was Principal of School and thereafter the sting operation team came back to the office, telecast the edited sting operation on the next morning and following the operation the exam was cancelled. PW22 identified accused Sudesh present in Court during his deposition as the person whom they met whose surname he remembered as Mr. Kumar. PW22 after watching CD Ex. P5, identified accused Satish at 1 minute 48 seconds and the person standing behind him as accused Sudesh. PW22 again identified accused Sudesh at 39:25 and also identified witness Sapna Thakur and Mohsin Haider at 39:25. PW22 was first cross examined by counsel for accused Sudesh and he answered that he met the investigating officer after 10 days of the sting operation and his name was S.K. Jha, who met him again after 3 months when he came to his office. PW22 answered that he did not tell the description of the person who met them at the time of sting operation or the person who gave them the information about the leak. PW22 could not produce his employment record with India TV new channel. PW22 failed to recall the vehicle used or attendance of person involved in the operation but denied that he was tutored to depose in the present case. PW22 denied giving the spy camera to the police officers and voluntarily stated that they deposited the same in the office. PW22 denied that no sting operation was conducted or that he was deposing falsely or that CD was doctored. PW22 was then cross-examined by the counsel for accused Bhawna and he answered that he told about accused Bhawna when he first met with SK Jha however he admitted that he never met or talked to accused Bhawna. PW22 answered that

mobile phone from which call was made to accused Bhawna either belong to Singh or Kumar. He also said that accused Sudesh assured them that he had spoken to accused Bhawna on phone and stated that he knew her and she is involved with them in this. He stated that the call was made at 12:30 AM and further stated that it was the first week of August and he remain at the place for about 5 – 6 hours.

28. PW23 Jacob Mathew deposed that he was part of the sting operation team consisting of 6 to 7 people and they were called in PS Najafgarh. At 12 midnight where they met one person who came on bike and he took them to one house. PW23 stated that at the house they met two people and one family was only present there. He stated that after some time they brought the bundle of question papers and asked that they cannot take the question paper out but they can see them there only. He stated that three people from the team were playing the role of students and others as guardians. PW23 further stated that they were asked to give Rs.40,000/- for each student but later they agreed for Rs.60,000/- for three students and that the team remained at the house till 6–7 AM and recorded all the incident in the spy camera whereafter they reached the office and after consulting the senior aired the video at 9 AM. PW23 correctly identified and named accused Sudesh and told the name of other person in the house of sting operation as Satish. PW23 similar to PW22 identified accused Satish at 1:48 and person behind him as Sudesh. He also identified Sudesh as

appearing at 39:25 and team member Sapna Thakur and Mohsin Haider at 39:23. PW23 was cross examined by counsel for Sudesh and he failed to tell the date, month or year of sting operation. He answered that information of paper leak was received in the Office but he could not tell the name. He stated that the information was received at about 11:30 AM or 12 noon and they left the office at around 2:30 PM. He admitted that they did not inform any police or public person prior to conducting the sting operation but denied suggestions that no sting operation was carried out. He said the money for conducting the operation was released by the accounts department. He stated to have met the investigating officer after 10 to 15 days of the incident but he could not tell the name or designation of the officer. He stated that he did not give any appointment details, employment or attendance proof of any of the team member in India TV new channel. PW23 failed to recall the serial number of currency notes given to the accused and pleaded ignorance if the senior officials had prepared on record.

29. PW24 Sapna Thakur deposed that she was working with India TV news channel as correspondent and was part of the sting operation team where she along with Afsar and Haider were playing the role of students and senior member of the team appeared as parents. PW24 stated that the accused persons had the question paper, but did not allow them to take it outside and asked them to see the question papers in the house. She stated that while they were reading the question paper the seniors were discussing about money consideration and

when they came back to the office they aired the sting operation. She stated that on the next day she came to know about the name of the two person as Satish and Sudesh and she identified accused Sudesh present in court during her testimony. She also identified accused Sudesh and Satish in CD Ex.P5 and also herself and team members. PW24 was cross examined by Id. counsel for accused Sudesh wherein she answered that she met police officers after one month of the investigation at the office of India TV for about 15 – 20 minutes but she could not tell the name or designation of the police official. She could not tell as to who all other member of sting operation team were examined and said that she did not provide any document of her appointment and working with the India TV but she voluntarily stated that she was not asked by the IO for the said documents. The witness was then confronted with her police statement where there was no record that the team gathered at Raddison, Mehrauli before proceeding to Najafgarh and also that she came to know about the names of accused on next day. PW24 deposed that she was informed about the sting operation at 5:30 PM, they left office between 7:30 – 8 PM and sting operation was concluded at around 3–4 AM. She admitted that the original video containing the raw footage was edited which was played in the news. PW24 denied suggestion that no sting operation was conducted as she was deposing falsely in order to support India TV new channel. She admitted that the date shown on internal clock of the CD was 01/01/2000 however voluntarily stated

that the same was technical default which is the date format of the device and not the actual date of recording.

30. PW25 Jitender Sehgal was landlord of accused Satish Kumar and he deposed that he came to know in the month of August 2007 that Satish was involved in CA–CPT exam question paper leak. He stated that since then he's absconding and his goods were lying in the premises which were taken by the police and some articles were taken away by Satish's father. PW25 stated that accused Satish used to run a coaching institute in the name of BM Academy at his shop and he identified the rent agreement he gave to the IO vide seizure memo.

31. PW26 ASI Sanjay Kumar was called to identify the handwriting and signature of SI Santosh Kumar Jha, Special Team Crime Branch, Prashant Vihar. However during examination in chief the accused side did not dispute the handwriting and signatures of SI S.K. Jha and therefore PW26's deposition was limited

32. PW27 Mr. M. Krishna deposed that in the present case he received at his laboratory vide letter no. 291/R/ACP/ST/C&R dated 26.03.2008 which contained two sealed parcels having digital camera, one black coloured shed and a DVD. He deposed that SD memory card was removed from the digital camera

and imaged. He stated that the image was analysed and he recovered four video footage. He stated that he copied the contents of DVD onto a new DVD and his findings were available in his report bearing No.CCH-228/2008 dated 16.05.2008. He also identified the signatures of Ms. Krishna Sastry Pendyala who verified the results of the report. He stated that the report was sent to the police with a forwarding letter bearing the signature of Mr. Mohinder Singh, the then Government Examiner whereafter he identified Mr. Mohinder's signature. PW27 deposed that the memory card did not contain any active file and four deleted videos were recovered by using a photo recovery software and the soft copy of these file were provided in the CD marked CCH-228/2008-CD. He deposed that the DVD which contains a video footage regarding the breaking news of sting operation is also provided in a DVD marked CCH-228/2008-DVD and his finding in this regard were part of his report dated 16.05.2008. The MHC(m) produced one sealed *pulinda* with the seal of SKS (Court Seal) and upon opening the same, DVD-R marked CCH-228-2208-DVD is present. The said DVD was played and was found identical to CD Ex. P5 which contained the footage of news item run by India TV containing the exert from the sting operation. PW27 identified the DVD at the same which is mentioned in this report and DVD as well as report were duly exhibited. Another packet from the *pulinda* was opened wherein DVD-R marked Q2 make Moserbaer no. 7131564-RED-269 was taken out and run, and PW 27 stated that the said DVD was received in their lab marked Q2 and the said DVD was then identified as

Ex.PW27/D. Another packet from the *pulinda* was opened containing CD-R marked CCH-228-2008/CD and PW27 identified the CD as the one mentioned in point No.1 of his report Ex.PW27/A. The said CD was identified as Ex.PW27/E. The said CD however did not play despite repeated attempts and another CD on the judicial file was also not played but identified as Ex.PW27/X. PW27 deposed that the SD memory card did not have any active files but they used software to recover the deleted files. The witness was then specifically asked if the SD memory card as mentioned in the report from which four video files were recovered was having unedited footage of the sting operation, to which the witness replied that one of the recovered file was pertaining to the checking of the video recorder by the user; another video file was with regard to somebody standing near the door of a car; third one was small chunk of video from which one cannot make out anything; and fourth had most of school building shooting where once Sardarji is talking while taking rounds of the school. PW27 stated that no file pertaining to the unedited video of the sting operation was there. PW27 was then cross examined by the counsel for accused Diksha and he accepted as correct that Government Examiners of Questioned Documents (GEQD) received only two articles from police in the case (i) one video recorder camera which contained one SD Memory card; and (ii) one DVD. PW27 admitted that the memory card could not be played and the DVD only contained this news item which was played in the court then. PW27 also admitted that GEQD, Hyderabad never received any unedited sting operation

video, and only video which was received was of news item played by India TV. PW27 admitted that in the report did not mention the time length of the video which was received from Delhi Police in the DVD marked 'Q2' and further admitted that from the DVD 'Q2' they copied contents on hard disk on one of the computer in their office before making a copy to be given to the IO of this case but they have not mentioned in the report which computer they copied the contents from. PW27 admitted that they do not mention in the report as to who owned the software ISO Buster 2.3 and also admitted that they did not mention as to who owned the photo recovery software of LC technology. PW27 deposed that they received camera from the Delhi Police, the said camera did not have any storage media (hard disk). PW27 deposed that camera is separate and was connected through a wire to a video recorder which contained the storage media i.e. SD card but does not contain the hard disk. PW27 admitted he did not measure the length of the wire. PW27 answered that SD memory card was already in the video recorder when they received the same and capacity of the SD memory card was 1 GB but there was no active playable files/ video on the SD memory card. PW27 pleaded ignorance as to the size of the video which was played in DVD 'Q2' received from Delhi police and he could not say if the size of the video was more than 1 GB. PW27 stated that he did not recall during his cross examination if the DVD and CD which were sent to the investigating officer and the Court were re-writeable or writeable CDs/ DVDs.

EXAMINATION OF ACCUSED PERSONS UNDER 313 CrPC

33. Statement of all the accused persons were recorded on 27.03.2018 and 28.03.2018 wherein all the incriminating evidence were put and accused Bhawna defended that when she took up the charge of DAV Public School there was total financial crunch and based on her idea the management committee allowed conduct of examinations in the school on holidays and also sub-let the School premises in the evening hours to some coaching institutes. Accused Bhawna also defended that Ms. Dikhsha, communicated with ICAI officials for conduct of CPT examination and since she was on leave on 31.07.2007 the papers were delivered in the school to Ms. Aarti on the instructions of Ms. Diksha. She defended that the question paper were never in her custody and she never accessed the same. She also stated that on 05.08.2007 she got a call from Ms. Diksha at about 10 AM saying that there were many news van outside the school and she reached at 10:40 AM wherein she took a round with Sh. CS Ravi and found that the examination was being held in proper manner and subsequently second session also started peacefully wherein the packets of paper were intact and sealed. She stated that on the request of CA officials she accompanied Ms. Diksha to deliver the sealed question papers and answer sheets to the CA office, Noida in her car. She defended that she was being falsely implicated and she had no concern with holding the CA-CPT examination and deputing of invigilators.

34. Accused Diksha in her defence stated that question papers were not handed over to her and she was only informed that they were kept in almirah by Ms. Aarti. She further stated that 05.08.2007 she took the keys of almirah from the Principal Ms. Bhawna and the envelopes containing question papers were opened in the presence of Mr. Hatender, Assistant Secretary, ICAI. Accused Diksha also stated that Mr. Chaudhary informed that some official from ICAI had come to deliver sealed bags related to CPT exam on 31.07.2007 and after talking to the principal Ms. Bhawna the same had been received by Ms. Aarti. She stated that she did visit ICAI office to submit question papers and answer sheet however stated that no inquiries were made with regard to any person named Sudesh. She further stated that she was made in charge of the examination on the instructions of the Principal and although she was not the senior most of the school she managed the entire examination on the instructions and guidance of the Principal. She further stated that she did not know co-accused Sudesh and he was not one of the invigilator in the CPT examination conducted on 05.08.2007. She further stated that the almirah in which question papers were kept was opened on the date of the examination after taking the keys from the office of principal in the presence of Mr. Hatender, Mr. Chaudhary and two other peons of the school. She stated that the envelopes were handed over to Mr. Hatender who himself filled Form C and there was no report of tampering of any seal or any observation/objections raised by Mr. Hatender.

35. Accused Sudesh defended that he has no concern with the above said School and the other co-accused. He stated that he never worked as an invigilator in any school ever for any examination and further stated that on 05.08.2007 he was present at his workplace i.e. Rama Public School, Nanak Wali Piau, Najafgarh, New Delhi. He further stated that he was never associated with DAV Public School, he was not present during the aforesaid sting operation and it was not he who appeared in the CD.

TESTIMONIES – DEFENCE

36. Accused Bhawna and Diksha did not lead any defence evidence. Accused Sudesh however, in his defence called in evidence **DW1 Om Prakash** who deposed that in the year 2007 accused Sudesh used to live in house No. RZ-38, Prem Nagar, Najafgarh, New Delhi and further deposed that his grandfather was using house no. RZ-37, Prem Nagar, Najafgarh, New Delhi as a cattle house and only a tin shed was built upon the said premises in the year 2007. He further deposed that in the year 2007 accused Sudesh was working in Rama Public School as a PT teacher and on 08.08.2007 he alongwith Sh. Dharampal and father of accused Sudesh namely Sh. Rohtash had produced accused Sudesh before the SHO P.S. Najafgarh. During cross examination by State, DW1 answered that he did not know till what date accused Sudesh worked with Rama Public School. DW1 further answered that he came to know that police was looking for Sudesh through TV new wherein accused Sudesh was being shown

indulging in question paper leakage at RZ-37 and further stated that at present RZ-37 is one and half storey house. He also expressed inability to produce any photograph to show that in the year 2007, house no. 37 was only a tin shed construction.

37. DW2 Sh. Sri Krishan was also called in by accused Sudesh who deposed that he started Rama Public School at H Block, Gopal Nagar, Najafgarh, New Delhi-110043 and he was looking after the said school as Manager till 2010. He stated that accused Sudesh was his real brother and was working as PET teacher in the said School from 2003 till 2007 and he was even a national player of net ball. DW2 was cross examined wherein he stated that accused Sudesh had done his B.Ped from Nagpur and he submitted his credentials at the time of appointment. DW2 however expressed inability to produce any record regarding appointment of accused Sudesh as PET teacher with Rama Public School. DW2 deposed that they used to issue salary slip however, DW2 again expressed inability to produce any salary slip of accused.

ARGUMENTS ADVANCED

38. Learned Assistant Public Prosecutor for the State argued that the prosecution has proved its case beyond all reasonable shadow of doubts by examining all the material witnesses who have supported the prosecution version in material aspects. The prosecution has argued that the entire chain has

been established. There are witnesses from School to prove Sudesh was involved in examinations held in School. There are also testimonies of reporters, correspondents and news editor that they saw Sudesh and Satish leak question papers on evening before the exam and same was accompanied with attendance sheet of DAV Public School, West Patel Nagar, Najafgarh. Prosecution has relied on edited sting operation which has been proved by the GEQD, Hyderabad to not have been tempered with and retaining its hash value. Prosecution has also relied on the CDR of accused Sudesh proving that he was in contact with accused Bhawna and Diksha on relevant dates i.e. 28.07.2007, 03.08.2007, 04.08.2007 and 05.08.2007. Prosecution has also relied on the statements of the accused Bhawna and Diskha who made attempts to pass burden on each other with regard to possession of key of almirah where the papers were kept till the date of examination. Accordingly, conviction of accused persons was prayed.

39. On the other hand, learned counsel for the accused Bhawna has argued that the prosecution has failed to prove its case beyond all reasonable shadow of doubts and the case of the prosecution has lacunae at many places. Defence has argued that sting operation is not believable as the original unedited video was never paced on record; PW22 alongwith other persons from news channel deposed that no question paper was allowed to be taken away and hence the very basic fact of prosecution story is not established. It was extensively argued that

there is no proof of tampering of seal. The report of Centre examiner especially the Form C shows no tampering for either of the question paper of two sessions despite presence of additional special observer. It is also argued that accused Bhawna Malik had no role to play in the conduct of the CA-CPT examination since centre superintendent was Diksha Dhingra. Further it was argued that from the deposition of PW3 Aarti Pahwa it is clear that the keys of the almirah were never handed over to accused Bhawna by Ms. Aarti.

40. Accused Diksha through her counsel prayed acquittal on the following amongst other grounds – that she was not qualified to be centre superintendent and she herself is victim. It was also argued that accused Diksha herself wrote letter for appointment of second centre superintendent. It is also argued that it was Ms. Aarti who received the question papers and it was only on exam date that the same were opened in front of centre observer, who made no report of tampering of seal. Accused Diksha moved to dismiss the testimonies of PW7 who deposed contrary to others that question paper were delivered in cloth. It was further argued on behalf of accused Diksha that the original sting operation was never produced on record and V. Sagar was never examined although his role in obtaining first information from India TV was pivotal. It is further argued that second set of keys could never be proved to be in possession of Diksha or Bhawna and even there could be no expert opinion as to seal of the envelopes.

41. On behalf of accused Sudesh acquittal on merits is prayed on the grounds that – the original unedited CD was never placed on record, further statement of India TV cannot be read against accused since documentary evidence was available but never placed on record. The photocopy machine recovered was checked if was in working condition, it was never sent to FSL for forensic examination and matching the ink used. It was extensively argued that accused is not residing in house no.37 and the passport alleged recovered by the police itself shows a different address.

RELEVANT LAW: DISCUSSION

42. The offences under prosecution in this case are Section 420/409/120B IPC. The Sections are reproduced below for reference:

409. Criminal breach of trust by public servant, or by banker, merchant or agent.

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

415. Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to

cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

420. Cheating and dishonestly inducing delivery of property

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

120A. Definition of criminal conspiracy.

When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

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

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

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

120B. Punishment of criminal conspiracy.

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

43. The prosecution to bring home its case, is duty bound to prove all the essential ingredients of the above stated provisions. To summarise, the prosecution to prove the offence of criminal breach of trust has to prove –

- (i) the accused was public servant;
- (ii) she was entrusted in such capacity with property;
- (iii) that she committed breach of trust i.e. -
 - (a) she either misappropriated or converted to her own use that property, or
 - (b) used or disposed off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged,
 - (c) or used or disposed of the property in violation of any legal contract (express or implied) which she has made touching the discharge of such trust,
 - (d) or wilfully suffered any other person to do so; and
- (iv) such misappropriation or user or disposal was dishonest or sufferance was wilful.

44. Further for the offence of cheating and dishonestly inducing delivery of property the prosecution has to establish beyond reasonable doubt that –

- (i) accused cheated i.e. -
 - (a) fraudulently or dishonestly induced;

- (b.i) delivery of property to accused or victim consenting retaining of property by accused, or
- (b.ii) victim intentionally induced to do or to omit to do anything which he would not do or omit if he was not so deceived
- (c) in case of (b.ii) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property;
- (ii) deceived person is induced delivered the property;
- (iii) deceived person is induced to make, alter or destroy, the whole or any part of a valuable security or, anything which is signed or sealed and which is capable of being converted into a valuable security.

45. The prosecution lastly shall have to establish elements criminal conspiracy i.e. -

- (i) an object to be accomplished;
- (ii) a plan or scheme embodying means to accomplish that object;
- (iii) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means; and
- (iv) in the jurisdiction where the statute required an overt act.

46. Before proceeding further based on the sections charged, it is necessary for this Court to reproduce the binding judgment passed by the Hon'ble High Court of Delhi in **Wolfgang Reim & Ors v. State & Anr; Crl. M.C. No. 1942 of 2004**, speaking through Hon'ble Mr. Justice V.K. Shali vide Order dated 02.07.2012 it was held –

'34. Further, a person cannot be charged with the offence of cheating and criminal breach of trust simultaneously for the same transaction because for the offence of cheating, it is a prerequisite that dishonest intention must exist at the inception of any transaction whereas in case of criminal breach of trust, there must exist a relationship between the parties whereby one party entrusts another with property as per law, therefore, for commission of criminal breach of trust, the dishonest intention comes later, i.e., after obtaining dominion over the property by the accused person whereas for commission of cheating, dishonest intention of the accused has to be present at the inception of the transaction '

47. Further, the evidence are overwhelmingly circumstantial, although the prosecution wishes this Court to believe the direct evidence presented by the sting operation team of a news channel, the edited version of the said sting operation to show evidence of leak; the existence of prior communication between all the accused person; the testimonies of the school staff. However, still the case is circumstantial and there is no direct evidence to entire chain of events. Thus before proceeding further, the law pertaining to 'circumstantial evidence' needs discussion. Any incident which happens may have several incidental 'events' surrounding the 'fact in issue'. These 'events' may have logical and legal connectivity with each other and also with 'fact in issue'. Each

of this ‘events’ may form a chain and said chain may itself be a ‘fact in issue’ or may prove ‘fact in issue’. These chain of events is called ‘circumstantial evidence’ and when seen together may prove to be sufficient for conviction. Further, from a plethora of judicial pronouncements the essential guiding principles to prove guilt of the accused accused by circumstantial evidence are as under –

- (i) every circumstantial evidence has to be a duly proved relevant fact;
- (ii) each circumstantial evidence should form a complete chain and must not only exclusively but also conclusively establish the guilt of the accused;
- (iii) all the circumstantial evidence should be consistent with guilt of the accused and specifically inconsistent with innocence of accused;
- (iv) all circumstantial evidence exclude every possible hypothesis excepting the guilt of the accused.
- (v) a person may lie but facts duly proved will not lie.

48. Reference be made landmark judgments rendered by the Hon’ble Supreme Court of India in **Shripad Shivram Kulkarni v. State of Maharashtra:** (1980) 4 SCC 491; **State of U.P. v. Dr. Ravindra Pratap Mittal:** AIR 1992 SC 2045; **Bodhraj @Bodha and Others v. State of Jammu and Kashmir:** AIR 2002 SC 3164; **Santosh Kumar Singh v. State through CBI:** (2010) 9 SCC 747.

49. In the present case, the ‘fact in issue’ is leak of CA-CPT exam on 05.08.2007 from centre no.44 DAV Public School, West Patel Nagar, New Delhi which was entrusted to its Principal Bhawna Malik and Centre Superintendent Diksha Dhingra, who in connivance and in conspiracy with Sudesh Kumar and Satish Kumar Singh for wrongful gains sold papers before exam was held. For proving the above ‘fact in issue’, it is clear that there are no direct evidence and therefore the prosecution is to prove (a) that attendance sheet of centre no.44 was delivered to DAV Public School before hand which was given by accused Bhawna and accused Diksha to accused Sudesh on 28.07.2007; (b) question papers were delivered duly sealed from the CA Office in concerned School on 31.07.2007 and between 31.07.2007 to 04.08.2007 the accused Diksha herself or in connivance with accused Bhawna gave the question papers to accused Sudesh; (c) accused Sudesh alongwith accused Satish photocopied the question papers and sold them to candidates even before the exam was held; and (d) there exists a prior conspiracy between all four accused persons to fulfil the above object. These are the relevant facts the prosecution has to prove beyond reasonable doubt so that the entire chain is established which can prove the ‘fact in issue’.

APPRAISAL OF EVIDENCE

Admitted facts

50. Before, discussing the facts and evidence, it is relevant to bring out admitted facts – (a) attendance sheet of centre no.44, DAV Public School was

delivered by Sh. H.R. Malik, office attendant to accused Bhawna Malik on 27.07.2007; (b) question papers in sealed envelop were received at the concerned School on 31.07.2007 by Ms. Aarti Pahwa and Mr. Ramesh Chaudhary who is UDC in DAV Public School was also present then and same is even admitted by both accused Bhawna and Diksha; (c) a sting operation was telecast on India TV news channel about leak of question paper of CA-CPT Exam from House No.37, Prem Nagar, Najagfarh, New Delhi and even DW1 admitted that he saw the video on news involving accused Sudesh in some question paper leak; (d) accused Sudesh resided in House No.38, Prem Nagar, Najagfarh and adjacent House no.37 was owned by his grandfather; (e) the attendance sheet of centre no.44, morning and afternoon session question papers of both – English and Hindi medium were in the open by 11AM on 05.08.2007 although ICAI retains the OMR answersheet as well as question papers and same was stated by both accused Diksha and Bhawna that they handed over sealed question papers and OMR sheets at CA Office, Noida; (f) Diksha was using mobile number 9871109126 as stated in letter dated 16.02.2006 by accused Bhawna Malik to ICAI as well as stated by accused Diksha in her acceptance-cum-declaration form for superintendent to ICAI dated 19.07.2007; (g) Bhawna was using mobile number 9818028779 as stated in confidential list of centre superintendents of ICAI for CPT exam on 05.08.2007.

Prior meeting of minds and existence of conspiracy

51. To prove prior meeting of minds and prior conspiracy between the accused persons, prosecution has relied on testimonies of PW5 Ram Ashish Yadav (watchman), PW6 Ramesh Chand Chaudhary, PW7 Teklal (driver) who deposed that accused Sudesh was in contact with accused Bhawna and they even deposed accused Sudesh came with invigilators for various examinations. Prosecution first proved the numbers used by accused Bhawna and accused Diksha which is undisputed from the documents exchanged between the two accused persons and ICAI. Next, the prosecution proved by Consumer Application Form (CAF) that Satish was using mobile number bought under the care of BM Academy, which was run by accused Satish. Prosecution next proved the number used by Sudesh, which although not proved from CAF, but said number was recovered from accused Sudesh when he was arrested and there were numerous calls between Satish and number used by Sudesh. In this backdrop, prosecution moved to rely on CDR details wherein calls were made between accused Sudesh to accused Diksha on 23.07.2007 at 14:39:43; on 27.07.2007 at 08:51:34; on 28.07.2007 at 08:08:01 & five calls between 11:19:11 to 11:26:04; on 01.08.2007 four calls between 14:07:18 to 12:15:53; on 04.08.2007 at 13:01:53; on 05.08.2007 at 07:43:32 & 07:53:26. In between five calls on 28.07.2007 between accused Sudesh and accused Diksha, accused Sudesh also made one call to accused Bhawna at 11:25:02. Apart from above there are also calls between two office phones of DAV Public School (numbers

25881101 and 25886238) and accused Sudesh as seen from CDR details on 20.07.2007 at 09:06:58; on 26.07.2007 at 12:01:11; on 01.08.2007 at 12:30:34; on 04.08.2007 at 10:15:41 & 10:16:23. Further, accused Sudesh was in regular contact with accused Satish as seen from CDR details between 20.07.2007 to 05.08.2007. Prosecution also relied on unshaken testimony of PW11 who deposed that both accused Bhawna and Diskha denied having known any person named Sudesh who appeared in the sting operation telecast on news channel, however the above evidence overwhelmingly suggest that not just accused Sudesh was in contact with both accused Bhawna and Diksha but as per testimony of School staff, accused Sudesh was actively involved in conduct of various examination in the concerned School.

Sting operation team of India TV news channel and edited sting operation video

52. As regards the sting operation team of India TV news channel, prosecution relied on testimony of PW2, PW4, PW14, PW22, PW23 and PW24. All the above except PW14 identified accused Sudesh present in Court as the person who handed them question papers to see and infact PW14 also testified that he could not recall face and name of accused due to passage of time but same was captured in the sting operation. All persons deposed that team members Sapna, Afsar, Mousin were projected as candidates and Himanshu, Anuranjan and Jacob played role of guardians/parents. PW22, PW23 and PW24 all saw the sting operation played and identified their team members as well as

accused Sudesh and Satish. Defence has pointed out some discrepancies arising in the testimonies of team members, pertaining to them reaching the house, timings deposed about the operation, non-disclosure of name of informer, actual money paid. Such minute intricacies can be attributed to natural variation as well as time lapsed from actual event to deposition before the Court. Nevertheless, detailed scrutiny of the testimonies of these six witnesses firmly establishes that the sting operation team met accused Satish near ATM and he took all of them to accused Sudesh at house no.37. Accused Sudesh allowed candidates to see question paper and although demand was made of Rs.40,000/- for each of the three candidates, but finally Rs.60,000/- was paid in total. However, the essential part of their testimonies of presence of accused Sudesh at the place, existence of attendance sheet, question papers for the exams and payment is unshaken. The same is supported by testimony of PW22 Anuranjan Jha who handed over these documents to Sh. V. Sagar of ICAI who went to India TV new channel office at the behest of complainant PW1 G. Soma Shekhar. The availability of these papers at the office of India TV new channel by 11 AM on 05.08.2007 leaves no scope of doubt that exam paper was leaked and none of the six witnesses from the news channel were shaken from their testimony detailing the events of 4-5.07.2007 in house no.37. Same is even supported by the disclosure statement of accused Sudesh and recovery effected from the house no.37.

53. Next piece of evidence relied by the prosecution is the sting operation itself. PW22, PW23 and PW24 have identified the entire recording telecast and all three identified members of their team and both accused Sudesh and Satish in the video. PW27 who deposed that the memory card was received which had no active file, but four files were recovered using specific softwares and further identified both CD Ex.P5 and DVD-R marked CCH-228-2008-DVD, both of which contained footage of news item run by India TV containing the exert from the sting operation. PW27 even exhibited GEQD, Hyderabad report Ex.PW27/A which authenticated the integrity of digital evidence storage media vide its MD5 hash value, and further authenticated the DVD to have been written with Sony DVD recorder. The GEQD also did not doubt the edited footage of sting operation and since GEQD is Government Institution, this Court has no doubt on the genuineness of report of PW27 and other senior officer. The report in details mentioned all the software and hardwares used in the process and it fulfills the conditions of Section 65B Evidence Act. The report of the GEQD, Hyderabad is also admissible as per Section 293 CrPC. Accused Sudesh did however deny that he was not appearing in the footage and alleged the footage was morphed, however from the video itself there is no merit in this defence. There is no iota of evidence to disprove the sting operation or the report authenticating the same. Accused Sudesh was even identified by five members of the sting operation team in the Court, which leaves no scope of discredit to

the operation. The said six witnesses are independent and have no enmity or motive to falsely implicate accused Sudesh.

54. The defence has vehemently argued that the full footage was never produced before the Court and hence merely the sting operation being edited version cannot be read in evidence being contrary to Evidence Act. The said defence has no merits. Prosecution has relied on the edited footage of the sting operation and itself never relied on the unedited footage. The IO was unsuccessful in getting the unedited footage from the India TV news channel. There is written reply by the India TV New channel that the camera was sent to other places and was not available. It is further stated in the written reply that there was no hard disk in the camera and there was only SD memory card which was erased and both sent for further news assignment. Despite service of notice and even after receipt of oral as well as written replies, India TV new channel failed to prove unedited footage. The IO can be faulted for not taking coercive action against India TV news channel for failure to comply with notice/ order of a public servant, however his efforts to obtain the unedited and complete footage cannot be faulted. Be that as it may, GEQD, Hyderabad has authenticated the spy camera, the SD memory card as well as edited footage, which shows no signs of tampering, image morphing or manipulation with respect to its audio or video, and therefore, in the absence of the above, a duty is itself cast on the accused Sudesh to disprove the authenticity of the footage. Accused Sudesh in

his defence stated that he was not appearing in the footage and his photo was morphed, however mere words cannot disprove the footage as well as testimonies of six witnesses of the sting operation team as well as of Government Examiner PW27.

Source of leak of attendance sheet and question papers

55. The fact that accused persons were in contact with each other and accused Sudesh was in possession of question papers as well as attendance sheet of centre no.44 is thus established. The pivotal question which arises is if accused Sudesh got the said documents through either or both from accused Diksha or Bhawna and if not, then any other possible source for accused Sudesh to receive such documents. It is true that attendance sheet, question papers and answersheet would otherwise not have gone public even after exams were over. It is proven on record through testimony of PW1, PW9 and PW10, that ICAI used to send attendance sheet in advance for Schools to make seating arrangements. Further, the question papers were handed over to the Centre Superintendent only and were to be opened in the presence of centre supervisor of ICAI only 30 minutes prior to examination. Further, after completion of exam, the OMR answersheet and question papers were to be sealed and deposited in CA Office. Thus both the OMR answersheet as well as question papers were not to be retained by the candidates or exam centre even after completion of examination. PW7 even deposed that accused Sudesh alongwith

two other persons came to the School for arranging seats for the exam on 04.08.2007. There are also evidence that accused Sudesh was in contact with accused Diksha and Bhawna. Further, there is disclosure statement of both accused Bhawna, Sudesh and Diksha of handing over of attendance sheet on 28.07.2007, which later was successfully recovered by the IO from accused Sudesh. PW2 also deposed that he was handed over attendance sheet no. 15 and 16 pertaining to centre no.44 by the accused Sudesh. Prosecution even relied on CDR records to show that attendance sheet was supplied to accused Sudesh on 28.07.2007 and returned on 01.08.2007 when there is call data traffic between the accused persons. The above facts are relevant under Section 8 of the Evidence Act, since these are elements of preparation as well as previous and subsequent conduct of the accused persons.

56. Moving on, the most arguable fact in the present case is the circumstances surrounding handing over of sealed envelope on 31.07.2007 till opening of the same on 05.08.2007. PW10 was deputed to give sealed papers to centre superintendent of centre no.44. The said centre superintendent accused Diksha was on leave on 31.07.2007 and even the Principal Bhawna was on leave. PW10 thus having met PW3 Ms. Aarti Pahwa handed over the papers to her only after assurance from accused Diksha over call. Further, PW7 and PW3 deposed that it was PW7 who conversed with Ms. Diksha. There is written letter with duly filled form that PW3 received the sealed question paper and kept them in one of

the four almirah kept in the staff room. Both PW7 and PW3 deposed that these envelopes were received in the afternoon. PW3 deposed that on next date she handed over the keys to Diksha Dhingra after verifying the seal of the question papers. PW7 when question in his cross examination about the facts of 31.07.2007 deposed that Ms. Aarti received the sealed bags and kept them in almirah which was locked. PW7 also deposed that teachers during the day had keys of the four almirah kept in the staff room and in the evening they are handed over to Bhawna Malik. The defence argued that there were discrepancies between witnesses of description of sealed packets received, some stated it was white cloth, some said it was envelop and few said it was gunny bag. The written documents clearly states that there were five gunny bags with seal and locks which could only be opened with keys. Further, the written acknowledgment has been duly signed by PW3 Ms. Aarti. There has been considerable time between the alleged incident till the witnesses were called to depose before the Court and there can be different connotation to term 'bags', 'envelop' or 'cloth', at times 'gunny bag' may be understood to mean 'cloth bag' and some may say it as 'envelop' which contained the question papers. Be that as it may, PW3 deposed about intact seal and lock on the five bags were kept them in almirah. PW3 further deposed that she verified the said seal and locks on the next day when they were handed over to accused Diksha. This part of testimony of PW3 has been unshaken and it is true that on 01.08.2007 the keys were handed over to Ms. Diksha and she being centre superintendent herself did

not raise any objection about the status of seal. Moreover, it can safely be said that PW3 Aarti had no knowledge that bags contained question papers, OMR answer sheets or attendance sheet since she was nowhere involved in the exam process. Only accused Bhawna as Principal and accused Diksha as Centre Superintendent were privy to information pertaining to CPT exam processes. Further, there seems not sufficient time for Ms. Aarti between between 31.07.2007 to 01.08.2007 to know that bags contained question papers, contact accused Sudesh and to conspire to leak the question papers. Moreover, there is no communication between accused Sudesh and Aarti on 31.07.2007 and 01.08.2007. It can safely be said that PW3 didnot have enough to conspire with accused Sudesh. Moreover, even if for once it is presumed that PW3 Ms. Aarti supplied question paper to accused Sudesh then it does not prove how come PW3 Aarti would be able to provide attendance sheet of the centre which was in possession of accused Bhawna. Furthermore, accused Sudesh was in regular contact with accused Diksha as well as Bhawna, it can be said that he either conspired with one or both to leak the question papers between 01.08.2007 to 04.08.2007. The prosecution to fill this gap relies on telephonic communication between accused persons and testimony of PW8 Teklal and PW7 Ramesh. PW8 deposed that accused Sudesh met accused Bhawna and Diksha 8-10 days before the date of examination and PW7 deposed that accused Sudesh was present in School on 03.08.2007 and on 04.08.2007. These facts conclusive prove that prosecution has closed its case water tight that accused Sudesh was able to get

hands on the question paper through accused Diksha and accused Bhawna on either 01.08.2007 itself or on 03.08.2007 and further when he came back on 04.08.2007 when the question papers may have been returned.

57. Finally on 05.08.2007, PW5 deposed that he saw accused Sudesh on date of exam and he entered with invigilators. PW5 also deposed that accused Sudesh had earlier also worked as invigilator in Open School examinations and this part was unshaken even during cross examination. PW7 also deposed that he saw accused Sudesh in the washroom in the evening and further that he was hidden in servant room by accused Bhawna and was made to exit from back gate of the school. PW8 although declared hostile, however on cross examination by the Id. APP for the State supported the prosecution story that accused Sudesh used to provide invigilators for the examinations in DAV Public School. When specifically asked if accused Sudesh and one other invigilator stayed in his room in the School, PW8 stated that he could not tell, but accused Bhawna had asked for keys of his room for two invigilators to rest as they were unwell. Accused Bhawna and accused Diksha despite all the evidence above, failed to come out clean and intentionally hid their knowledge of knowing accused Sudesh. Further, they did not state their frequent communication with accused Sudesh. Despite testimonies of PW7 and PW8, accused Bhawna did not mention the fact of knowing accused Sudesh in meeting with ICAI Officer as deposed by PW11. Accused Bhawna and even accused Diksha failed to clear as to who were the

two invigilators who got sick and need rest in the room given to PW8. Accused Diksha being centre superintendent ought to have made a report of appearing invigilators and if two invigilators had fallen sick, there ought to have been record of substitute invigilators. From the documents given by PW7 about names of invigilators, neither accused Diksha nor accused Bhawna raised any objection and as per the said list there were only 14 invigilators, one invigilator for each room, and hence if two invigilator were unwell, centre superintendent Diksha ought to have made report in this regard. Accused Diksha stated in her defence that she carried out her superintendence task under the guidance of Principal Bhawna and when there was news of paper leak, she called her to the School by 10:40 AM (as stated by accused Bhawna herself). In this same sequence, it appears that two invigilator who got unwell must have been brought to the notice of accused Bhawna and thus she might have sought keys from PW8 for providing rest room for the two unwell invigilators. However, there is no report of any two invigilators being unwell or any two new invigilators being called to substitute.

58. The above findings, leaves no scope of doubt in the prosecution case. The possession of accused Sudesh of attendance sheet no.15 and 16 of centre no.44 DAV Public School with question papers; the identification of accused Sudesh in DAV Public School on various days before the exam; insufficient time with Ms. Aarti Pahwa to conspire with accused Sudesh; no communication between

accused Sudesh and PW3 Aarti Pahwa; attendance sheet being in possession of accused Bhawna; intact seal of question papers on 31.07.2007 and 01.08.2007; repeated communication, especially on relevant dates, by accused Sudesh with both accused Bhawna and Diksha; unsuccessful attempt by accused Bhawna and Diksha to deny knowing accused Sudesh, are proven facts which conclusively prove that attendance sheet and question paper in possession of accused Sudesh was not only leaked from DAV Public School, but was done in conspiracy with accused Bhawna and accused Diksha.

Falsehood of accused persons

59. As already discussed, accused Bhawna and accused Diksha deposed to not have known accused Sudesh at all. PW11 even stated that in meeting at the ICAI office on 05.08.2007 both accused denied having known accused Sudesh. In her written reply to ICAI dated 01.09.2007 accused Bhawna denied having any knowledge of conduct of the examination. She further stated that question paper of the examination were kept in custody of accused Diksha till 05.08.2007. The same statement was made in her examination u/S. 313 CrPC. Accused Diksha also stated that she did not know accused Sudesh and he was not invigilator for the examination. Accused Diksha in her examination under Section 313 CrPC stated that she handed over the keys to the almirah where question paper bags were kept to accused Bhawna and it was opened in her presence as well as in presence of centre observer on 05.08.2007. Accused Sudesh also denied having

any connection with other two accused persons, he also stated that he neither was invigilator in any School nor provided any invigilators to any School. Accused Sudesh even deposed that he has no concern/ connection with DAV Public School. There is apparent falsehood in the statement of all the accused persons. There are CDR details which prove that each accused was not just in communication but was communicating on relevant dates when fact occurred be it 28.07.2007, 01.08.2008, 04.08.2007 or 05.08.2007. There a numerous calls made to each accused on mobile numbers as well as calls made to accused Sudesh from the landline number of School which were mentioned in the letterhead of the Principal. Relevant is to point out one suggestion asked by Counsel for accused Sudesh to PW8 Teklal wherein PW8 denied that accused Sudesh was only connected with games activities conducted in the school and then PW8 voluntarily submitted that accused Sudesh used to come in School for the purpose of conduct of examination. The said cross examination itself on behalf of accused Sudesh tried to link him to games activities in the School. Further, in his defence accused even stated that he himself came to police station to surrender, whereas later he called in two defence witnesses to depose that they two brought accused Sudesh before police to surrender. None of the three accused persons Bhawna, Diksha and Sudesh have tried to depose truthfully before this Court. Both Bhawna and Diksha tried to pin the blame on each other and none of there statement concur, needless to say that when other evidences are considered, both are proved to have given false narrative. Right against self-

incrimination is a fundamental right and it is correct that statement made under Section 313 CrPC cannot be used as substantive evidence. However, it is also settled that such statement do carry corroborative value and in a case based on circumstantial evidence apparent falsehood will only tighten the naught spun by the prosecution. Also the statements given by the accused can be used to fill in the gaps. From the statement of the accused persons, there is no dispute that PW7 Mr. Ramesh Chand Chaudhary was working in the School. The said fact is relevant to establish since school staff witnesses were cross examined as to their appointment letter and working certificate in the DAV Public School. Each School staff witness i.e. PW3, PW5, PW7 and PW8 have confirmed each other presence in the school and thus proves there working in the capacity as deposed by them and PW7 was himself admitted by both accused to be working as UDC managing accounts as well as managerial post.

Form C – Report of the Observer and Special Observer

60. The single pivot fact which can prove defence or disprove prosecution is report of PW6 and PW9. PW6 Sh. Hatinder is the centre observer and PW9 Sh. C.S. Ravi was special observer appointed for afternoon session in centre no.44 after the news of leak was aired. PW6 as well as PW9 in their report Ex.PW1/X-P2 and Ex.PW1/X-P3 did not mention any signs of tampering with the seals. Defence has extensively relied on the said fact to argue that no leak happened from the School and the source of leak of paper could be some place else. It is

settled by now that accused Sudesh was in possession of question papers of CA-CPT much before the exam happened, which otherwise is not available even after the exam is conducted. Further, it is in evidence that accused Sudesh alongwith question papers was in possession of attendance sheet no. 15 and 16 of centre no.44. Further he was in constant contact with accused Bhawna and accused Diskha. He was seen in DAV Public School, West Patel Nagar, New Delhi in previous exams as well as on days before and on date of CPT exam in question. In the backdrop of above facts, cross examination of PW6 is perused, who deposed that accused Bhawna was present when the morning session question paper seal was opened. The said version is inconsistent with testimonies of PW5, PW7, PW8 and defence of accused Bhawna. Further, when asked about having shown the seal of question papers, PW6 deposed that he has not seen the gunny bags at the time of sealing or before they were transported to DAV Public School. Such testimony casts a serious doubt on the efficiency of PW6 as centre observer. A centre observer must have been actively trained to distinguish a seal from any sort of tampering or mutilation, further, centre observer if allowing centre superintendent to remove seal must carefully check the same. From the above testimony of PW6 it can be inferred that he either was not present when the question papers were de-sealed in the morning session on 05.08.2009 or he was not careful enough to note the condition of bags, especially the seal. As regards the opening of question paper in the afternoon session, both PW6 and PW9 as a matter of practice were not aware of a sealed

gunny bag at the ICAI office. None carried any sample seal reference or had seen seal at the ICAI office before the question paper was transported to DAV Public School. PW6 and PW9 both testified that seal was opened in the afternoon session by accused Diksha in presence of accused Bhawna in a hurried manner and they could only see the seal from a distance of 1-1/2 metre and thus they could not see anything suspicious. The said statement is oversight and things taken too casually by PW6 and PW9, however there may be possibility that accused persons managed to remove seal safely enough to avoid suspicion, since it is proved that accused Sudesh was in possession of confidential document which were only in possession of accused Diksha and accused Bhawna.

61. The testimony of PW6 and PW9 although does not exactly support the prosecution in its most important piece of evidence, however, evidence discussed prior are overwhelmingly against accused persons and mere conduct of two witnesses cannot rob the prosecution of its credibility established from other evidences. There can be no contradiction to the fact that exam paper was leaked and accused Sudesh was also in possession of attendance sheet of DAV Public School. Accused Sudesh was in contact with accused Bhawna and Diksha and there is call data traffic on relevant dates i.e. 28.07.2007, 01.08.2007, 03.08.2007, 04.08.2007 and 05.08.2007. There is even witnesses testimony that accused Sudesh was involved in conduct of the examination in DAV Public

School and was repeatedly seen days before conduct of CPT exam on 05.08.2007 at the School. The evidence of leak is clear, whereas there is also probable cause for PW6 and PW9 to miss tampering of seal, since they never saw bags when sealed, they did not carry sample seal or deposed to have been trained to distinguish between tampered and proper seal. Presence of PW6 is also doubted at the place when question papers were opened, since he deposed that accused Bhawna Malik was present when seal was opened, and on the contrary it was proved from deposition of PW7, PW8 and even stated by accused Bhawna that she never reached School before 10 AM and she was in fact called by accused Diksha.

Other defences

62. Lastly before returning findings on this case, it is relevant to discussion certain defences of the accused side. Common defences of the accused side is non-production of unedited sting operation before the Court; the report of the centre observer and special observer found no signs of tampering or broken seal; non-examination of Sh. V. Sagar who communicated with PW22 in the India TV news channel; no proof of payment of money to accused Sudesh. Apart from the above, defence for accused Bhawna that she had no role to play in conduct of examination as soon as centre superintendent was appointed; and she reached School on 05.08.2007 after being called by accused Diksha due to the news. Defence of the accused Diksha has been on discrepancies in describing the

gunny bags, absence of expert opinion on seal. Further, defence of accused Sudesh is not being in possession of house no.37. Some of the above defences have been considered and discussed above, however at the perils of repetition it is reiterated that sting operation was one piece of evidence, but even in its absence, role of accused Sudesh was categorically deposed by PW2, PW4, PW22, PW23 and PW24. Although PW14 failed to recognise him, but he supported the entire sting operation. True that unedited footage of the sting operation would be preferred over edited sting operation run on the morning news, however the edited footage does not show any tampering, morphing or manipulation in its audio or video. Further, six witnesses from the sting operation deposed that money was discussed and paid by three senior team members and although PW4 stated a figure of Rs.1,20,000/- being paid however he clarified that he was not the senior member who discussed about money and when shown his police statement admitted that his police statement of payment of Rs.60,000/- is correct. Remaining five witnesses categorically stated that Rs.60,000/- was paid. Further, the accused Sudesh came in possession of paper much before exam was held and atleast on 04.08.2007 and therefore he had all the opportunity to leak the papers to other aspirants. As regards non-examination of Sh. V. Sagar, it need not be stressed enough since both PW1 and PW22 appeared and deposed about the facts of this case. More witnesses to prove same fact is never the intent or requirement of law and it is a settled law that even one witness can be sufficient to prove a fact. As regards the residence of accused

Sudesh, he admits to be residing in House no.38 and the adjacent house no. 37 is possessed by his grandfather. Although vide DW1 attempt was made to show that house no.37 is nothing but cattle shed, however DW1 failed to prove the said fact. Further even if depositions of DW1 and DW2 are admitted, the same does not disprove facts that – accused Sudesh was in communication with accused Bhawna and Diksha; accused Sudesh was not present in DAV Public School on days before CPT examination; that accused Sudesh was not involved in the sting operation.

FINDINGS

63. The prosecution has thus been able to establish that accused persons Sudesh, Bhawna and Diksha were in contact much prior to examination which was something they tried to hide. Accused Sudesh has been providing invigilators to DAV Public School, West Patel Nagar, Najafgarh. During this period DAV Public School was selected centre no.44 for conduct of CA-CPT examination on 05.08.2007. Accused Bhawna appointed accused Diksha as Centre Superintendent although there were much qualified and experienced teachers than Diksha in the School. Accused Sudesh came in contact with accused Satish who was running BM Academy in Gurgaon, Haryana and he even proposed accused Sudesh of money if he managed to leak the paper of CA-CPT Examination. In furtherance of the criminal conspiracy, accused Bhawna handed over attendance sheet for CA-CPT Exam on 28.07.2007 to accused

Sudesh who returned the same on 01.08.2007. Further, question papers received on 31.07.2007 by Ms. Aarti were handed over to Ms. Diksha on 01.08.2007, which were handed over to accused Sudesh by accused Diksha on instructions of accused Bhawna between 01.08.2007 to 03.08.2007 and received back on 04.08.2007. Accused Diksha received Rs.50,000/- for the same. Accused Sudesh and accused Satish leaked the said papers with handwritten answers and on 04.08.2007 they were captured by India TV news channel in their sting operation. Each of the above fact have been exclusively and conclusively proven by the prosecution by convincing evidence. The evidence presented by the prosecution further negates innocence of each of the accused. Based on the same evidence forming part of the chargesheet accused Satish Kumar Singh pleaded guilty and absconded after he was sentenced by this Court.

64. Bearing the above facts in mind, this Court finds that ingredients of Section 420 IPC are established. Accused Bhawna while appointing accused Diksha induced ICAI to believe she was capable and willing to work as Centre Superintendent. Both accused Diksha and accused Bhawna further dishonestly induced ICAI to deliver attendance sheet of centre no.44, question papers of CA-CPT exam. Since all accused persons premeditated to leak the question paper, the said fact if known to ICAI, would not have continued keeping DAV Public School as its centre no.44. The ICAI, due to actions of the accused persons, had to cancel the examination held on 05.08.2007 and conduct fresh

examination. The ingredients thus of cheating are fulfilled. As against accused Sudesh, he criminally conspired to carry out the above object and towards the said object, accused Sudesh committed overt acts such as receiving attendance sheet and question papers, making photocopies of the same, providing answers and selling the same for wrongful gains. Accused Bhawna and Diksha have cheated ICAI as well as thousands of students. Accused Sudesh have criminal conspired with other accused persons to accomplish the illegal object.

65. As following from the *Wolfgang Reim Case* (*supra*), there are evidence of prior meeting of minds between the accused persons, there was premeditated conspiracy between to bring about criminal object and overt acts were carried out. Since there are elements of premeditated conspiracy, the alternate charge of criminal breach of trust does not stand and there can be no finding on said offence. All the accused persons are **acquitted** of the offence punishable **under Section 409 IPC**.

FINAL ORDER

66. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has proved the case beyond reasonable doubt. Accordingly, accused persons **Bhawna Malik** and **Diksha Dhingra** are hereby **convicted** of the offence punishable under **Section 420 IPC**. Further accused persons

Bhawna Malik, Diksha Dhingra and Sudesh Kumar are hereby **convicted** of the offence punishable under **Section 120B IPC**.

**Announced in Open Court
on this June 27, 2022**

**(Paras Dalal)
MM -01, South West
Dwarka Court, New Delhi**