

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)**

Present:

Mr. Justice Md. Shohrwardi

Criminal Appeal No. 8306 of 2017 with

Criminal Appeal No. 8307 of 2017 with

Criminal Appeal No. 8308 of 2017

Md. Nurul Islam

Appellant in all the appeals

-versus-

The state and another

Respondent in all the appeals

Mr. Ashok Kumar Banik, Advocate with

Mr. Amio Chackraborty, Advocate

.... For the appellant in all the appeals

Mr. Shaheen Ahmed, Advocate

.....For respondent No. 2 in all the appeals

Mr. S.M. Golam Mostofa, DAG with

Mr. Md. A. Mannan, AAG

....For the State in all the appeals.

Heard on 11.05.2023, 25.05.2023, 01.06.2023,

14.06.2023 09.08.2023, 10.08.2023, 14.08.2023.

Judgment delivered on 21.08.2023.

The above-mentioned criminal appeals have arisen out of the impugned judgments and orders dated 16.5.2017 passed by the trial court against the appellant. Therefore, all the appeals were heard analogously and disposed of by this single judgment.

The criminal appeals mentioned hereinabove are directed under section 10 of the Criminal Law Amendment Act, 1958(Act No. II of 1958) challenging the legality of the impugned judgment and order dated 16.05.2017 passed by Special Judge, Bogra in Special Case Nos. 08 of 2012, 09 of 2012 and 10 of 2012 arising out of Khetlal Police Station Case No.3 dated 09.04.2008 corresponding G.R. No. 36 of 2008(Khetlal) convicting the appellant in all cases under Section 409 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 05 (five) years and also convicting him under section 5(2) of the Prevention of Corruption Act, 1947 in all cases and sentencing him thereunder in all cases to suffer rigorous imprisonment for 05(five) years and to pay a fine of Tk. 1,11,840, in default, to suffer rigorous imprisonment for 03(three) months in Special Case No. 8 of 2012, to pay a fine of Tk. 6,05,705, in default, to suffer rigorous imprisonment for 03(three) months in Special Case No. 9 of 2012 and to pay a fine of Tk. 5,37,160, in default, to suffer rigorous imprisonment for 03 months in Special Case No. 10 of 2012. All the sentences will run concurrently.

The prosecution case, in short, is that the accused Md. Nurul Islam is the Jamadar-cum-Messenger, Sonali Bank Limited, Khetlal Branch, Joypurhat and prepared vouchers for withdrawing the allowances of the old, widow, insolvent and disabled persons from the bank since 16.03.2004 and he was also assigned to deliver the money to the beneficiaries. From 16.03.2004 to 22.04.2007, the accused prepared false vouchers for withdrawal of the allowances of those persons and had withdrawn total Tk. 12,42,595 and in connivance with the Harun-Or-Rashid, Sub-Assistant Accountant (Agriculture) and Ali Akbar and others misappropriated the said amount without distributing the allowaness to the beneficiary. When the above matter was detected, the accused had given an undertaking to pay the misappropriated amount and accordingly, he paid Tk. 10,000 on 24.04.2007 and Tk. 10,000 on 26.04.2007 by challans. The matter was reported to the authority of the bank. After that, an enquiry committee was formed and after scrutiny of the records, the enquiry committee found that the accused

misappropriated total Tk. 12,62,595 and deposited total Tk. 20,000. Md. Abdul Mozid Sheikh, Manager in Charge, Sonali Bank, Khetlal Branch, Joypurhat lodged FIR on 09.04.2008 at 12.15 against accused Md. Nurul Islam under sections 409/420 of the Penal Code, 1860.

P.W. 7 Md. Kamrul Hasan, Deputy Director, Anti-Corruption Commission, Bogra took up investigation of the case. During investigation, he visited the place of occurrence, seized the documents, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, the investigating officer found the truth of the allegation of misappropriation against accused No. 1. Md. Nurul Islam 2. Md. Ali Hasan 3. Md. Mojibur Rahman 4. Saidur Rahman and 5. Md. Harun-or-Rashid. During the investigation, Md. Akbar Ali and Md. Reaz Uddin Mollah died for which they were not sent up in the charge sheet. The Anti-Corruption Commission, Head Office, Dhaka vide separate memos dated 06.06.2011 approved to submit 3(three) charge sheets against the accused persons under sections 409/420/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947. After that, the investigating officer submitted 3 (three) charge sheets against five accused persons. After submission of the charge sheets, the case records were sent to the Senior Special Judge, Bogra and the cases were registered as Special Case No. 8 of 2012, 9 of 2012 and 10 of 2012 and after taking cognizance of the offence against the accused persons sent those cases to the Special Judge, Bogra for trial.

During the trial, charge was framed against the accused persons in all the cases under sections 409/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 and the charge was read over and explained to accused persons and they pleaded not guilty to the charge and claimed to be tried following the law. In Special Case No. 8 of 2012, the prosecution examined total 9 witnesses, in Special Case No. 9 of 2012, the prosecution examined total 11 witnesses and in Special Case No. 10 of 2012, the prosecution examined 10 witnesses to prove the charges against the accused persons. After examination of the prosecution

witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898 and they pleaded not guilty to the charge and declined to adduce any D.W. After concluding the trial, the trial Court by impugned judgments and orders convicted the accused Md Nurul Islam as stated above and acquitted the accused Md. Ali Hasan, Manager, Sonali Bank Limited, Khetlal Branch, 2. Md. Mojibur Rahman, former Manager, Sonali Bank Ltd. Khetlal Branch 3. Md. Saidur Rahman, Senior Officer, Sonali Bank, Khetlal Branch and 4. Md. Harun-or-Rashid Sub-Accountant (Krishi), Sonali Bank Limited, Khetlal Branch from the charge framed against them.

Prosecution witnesses examined in Special Case No. 8 of 2012.

P.W. 1 Abdus Sattar Khan is the Principal Officer (retired), Sonali Bank, Khetlal Branch. He stated that from 04.03.2007 to 19.06.2008, he was posted at Sonali Bank Ltd, Khetlal Branch, Joypurhat. The allowances for the old, widow, insolvent and disabled persons used to distribute from the said branch after each 03 months. During his tenure, it was found that Tk. 12,54,705 was misappropriated from 16.03.2004 to 22.04.2007. The accused Md. Nurul Islam had given an undertaking as regards the misappropriation of the said money. The bank employees 1. Md. Nurul Islam 2. Saidur Rahaman 3. Harun-or-Rashid and 4. Abdur Rahman misappropriated Tk. 11,840 from 16.3.2004 to 15.03.2005 by creating forged documents. The accused Md. Nurul Islam deposited Tk. 20,000. He proved the photocopy of the letter of confession written by accused Md. Nurul Islam as exhibit-1 and his signature on the photocopy as exhibit-1/1. The bank employee Ali Akbar died. 1. The accused Md. Nurul Islam, 2. Harun-Or-Rashid and 3. Md. Saidur Rahman discharged their duty along with me in the bank. He proved the attested photocopy of the deposit slip of Tk. 20,000 as exhibit 2. During cross-examination, he stated that there was a duty register in the bank and Ali Akbar was one of the officers of the bank and he is now dead. He stated that Md. Ali Akbar was responsible for the distribution of the allowances and the office order was kept with the bank and accused Md. Nurul Islam was the Jamadar-Cum-Messenger of the

bank. A messenger discharged his duty inside and outside the bank. The second officer and the cashier jointly disbursed the cash. As per the office order, accused Md. Nurul Islam was not discharging his duty for payment of money. The Upazilla Welfare Officer and the Women Affairs Officer were assigned for the payment of the allowances and there is a passbook in the name of the recipient of allowances. They prepared the muster roll for payment of allowances. From Junior Officers up to Managers used to pass the vouchers. He denied the suggestion that the accused Md. Nurul Islam did not deposit Tk. 20,000. He admitted that no expert opinion was taken as regards exhibit 1. He denied the suggestion that he along with all officers of the bank misappropriated the money and falsely implicated the accused Md. Nurul Islam in the case. During cross-examination, he stated that accused Md. Saidur Rahman and Harun-or-Rashid retired from the service. He admitted that as per the order of the higher authority, the FIR was lodged on 30.07.2007. He denied the suggestion that accused Md. Saidur Rahman and Harun-or-Rashid were not involved with the distribution of the allowances.

P.W. 2 Abdus Samad is the Senior Officer, Sonali Bank, Kalai Branch. He stated that the occurrence took place from 16.3.2004 to 15.03.2005 and he was a member of the enquiry committee. After enquiry, the enquiry committee submitted a report to the Area Office, Joypurhat. He proved the photocopy of report dated 13.01.2011 as exhibit-5 and his signature as exhibit-5/1. He proved the photocopy of the enquiry report as exhibit-6 and his signature as exhibit-6/1. During enquiry, he found the truth of misappropriation against the accused persons. During cross-examination, he stated that he did not record the statement of the beneficiary of the allowances and none of the beneficiaries made any allegation to the effect that they did not get the allowances. He affirmed that at the time of disbursement of the allowances initially in the register and finally in the ledger the matter of disbursement of the allowances were mentioned and an officer was entrusted to discharge the said duty. There is no nexus between the draft register and the ledger of 2004 regarding the

payment of allowances. The accused Md. Nurul Islam was not involved with the work done relating to the ledger.

P.W. 3 Abdul Mazid Sheikh stated that on 30.07.2007 he was the Manager-in-charge of Sonali Bank, Khetlal Branch and accused Md. Nurul Islam was a Messenger. From 16.03.2004 to 22.04.2007 he received cash from the cash counter and distributed the allowances for the old, widows, insolvent and disabled persons. He withdrew Tk. 12,62,595 and misappropriated. Subsequently, he deposited Tk. 20,000 by two instalments in the sundry deposit skim. He made confessional as regards the misappropriation. After informing the matter to the higher authority, an enquiry committee was formed and the enquiry committee found that he misappropriated total Tk. 12,62,595. He proved the FIR as exhibit-3 and his signature as exhibit-3/1. The investigating officer found the involvement of the accused Abdur Rahman, Md. Saidur Rahman and Harun-or-Rashid. During cross-examination, he stated that he could not remember who was responsible for the distribution of the allowances during his period. By order of the head of the branch, the work was distributed. In the daily register, the total amount of disbursement of allowance was mentioned and accused Md. Nurul Islam is the Jamader-cum-Messenger. The second officer of the branch used to approve the vouchers. The accused Nurul Islam was not empowered to pass any voucher. The manager and the second officer used to pass the vouchers. The name of the beneficiary of the allowances was sent by the Social Welfare Officer and the representatives. The officer was responsible for posting in the ledger. The manager is responsible for the supervision of the daily allowances. He denied the suggestion that the accused Md. Nurul Islam is not responsible for the misappropriation of allowances. He also denied the suggestion that accused Md. Nurul Islam did not deposit any money in the sundry account. He admitted that as per the order of the authority he lodged the FIR. He denied the suggestion that he and other officers of the bank were involved with the alleged misappropriation.

P.W. 4 Md. Atiqul Islam is the Senior Officer, Sonali Bank Limited. He stated that on 28.01.2011, he was posted at Sonali Bank Ltd, Khetlal Branch, as Officer (Cash). On that day at 1.30 pm, Manager Samsul Alam presented documents in his presence which were seized and the seizure list was prepared. He along with Officer Amzad Hossain signed the seizure list. He proved the seizure list as exhibit-4 and his signature as exhibit-4/1.

P.W. 5 S. M. Samsul Alam is the Senior Principal Officer, Sonali Bank Ltd. He stated that on 23.01.2011 he was posted as Manager, Sonali Bank Limited, Khetlal Branch. On that day, the investigating officer seized the documents from him. The documents mentioned in the seizure list were given to his custody. During cross-examination, he stated that he had no personal knowledge about the documents.

P.W. 6 Bishawnath Singh is a retired officer of the Sonali Bank. He stated that in 2011, he was posted at the Area Office, Joypurhat and he was a member of the enquiry committee formed to enquire into the allegation of misappropriation of Sonali Bank, Khetlal Branch. He along with Abdus Samad submitted the summary sheet and the report. During the enquiry, he found the truth of the allegation against the accused persons. He proved his signature in the report as exhibit-6/2. During cross-examination, he stated that none of the beneficiaries of the allowances made any allegation during the enquiry. Initially, the names of the beneficiaries of allowances were sent from the office of the Social Welfare. He denied the suggestion that the accused was not involved with the alleged occurrence.

P.W. 7 Md. Kamrul Ahasan is the Deputy Director of the Anti-Corruption Commission. He stated that in 2011 he was posted at the Anti-Corruption Commission, Rajshahi Division. He was appointed as investigating officer of the case vide memo dated 09.02.2011. After completing the investigation, he obtained the approval and submitted charge sheet against the accused Md. Nurul Islam, Md. Abdur Rahman, Md. Saidur Rahman and Md. Harun-or-Rashid under sections 409/109 of the Penal

Code read with section 5(2) of the Prevention of Corruption Act, 1947. He denied the suggestion that he did not investigate the case properly.

P.W. 8 Dilip Kumar Ghosh is the Auditor of Sonali Bank Limited. He stated that while he was discharging his duty at head office on 05.11.2007, he conducted an audit in the office of the Sonali Bank Ltd, Khetlal Branch and submitted a report on 05.11.2007 and during his enquiry, he found truth of misappropriation against the accused persons. He proved the report dated 05.11.2007 as exhibit-7 and he proved his signature as exhibit-7/1.

P.W. 9 Rabindranath Chaki is the Assistant Director, Anti Corruption Commission. He stated that he was posted at Bogra from 22.04.2009 to 31.08.2011. At that time, he was appointed as investigating officer of the case. During the investigation, he seized 06 items of documents on 23.01.2011 at 13.30. The Manager of Sonali Bank Ltd, Khetlal Branch, Joypurhat presented those documents. He prepared the seizure list and took the signatures of the witnesses on the seizure list. He proved his signature as exhibit-4/1. He proved the photocopy of ledger No. 1, (pages Nos. 1 to 700), as material exhibit-I. He proved the copy of the statement of accounts of the allowances for the old, widow and others as material exhibit-II. He proved a copy of the register of the acid burning and disabled persons (7 pages) as material exhibit-III. He proved the photocopy of the payment of the allowances of the freedom fighters (6 pages) as material exhibit-IV. He proved the photocopy of the draft register (20 pages) as material exhibit V. He proved the photocopy of 340 debit vouchers as material exhibit IV and photocopy of the D-half as material exhibit I to VII. After investigation, he found the truth of the allegation against the accused persons and submitted a memo of evidence. During cross-examination made on behalf of the accused Harun-or-Rashid and Md. Saidur Rahman, he admitted that the name of the accused Harun-or-Rashid and name of Md. Saidur Rahman was not mentioned in the FIR and recommended to discharge them from the case. During cross-examination on behalf of the accused Md. Nurul Islam, he affirmed that during the

investigation, none of the beneficiaries of the allowances made any allegation. He affirmed that during the investigation, he did not seize the office order issued as regards distribution of the work. Harun-or-Rashid was responsible for the distribution of the allowances. He affirmed that no document was seized during the investigation as regards the disbursement of the allowances by the accused Md. Nurul Islam. No opinion was taken from the expert as regards the confession of the accused Md. Nurul Islam. The departmental action was taken against the officers of the bank who distribute the allowances. The submitted documents were not attested by the officers of the bank. He denied the suggestion that accused Md. Nurul Islam was falsely implicated in the case. The exhibited documents were not attested by the officer of the bank.

Prosecution witnesses examined in Special Case No. 9 of 2012.

P.W. 1 Abdul Mazid Sheikh is the informant. He stated that the occurrence took place from 2004 to 2007. From 16.03.2005 to 15.03.2006 accused Md. Nurul Islam misappropriated total Tk. 6,05,705 out of total misappropriation of Tk. 12,62,595. The accused Md. Nurul Islam admitted in writing that he misappropriated the amount. Subsequently, he deposited Tk. 20,000 on two dates. After enquiry, the Area Officer found the total misappropriation of Tk. 12,62,595 against the accused Md. Nurul Islam and he deposited Tk. 20,000. He misappropriated total Tk. 12,42,595. After getting approval from the authority, he lodged the FIR. He proved the photocopy of the FIR as exhibit-1 and his signature on the photocopy as exhibit-1/1. During cross-examination, he stated that in 2005, he joined the office of the Sonali Bank, Khetlal Branch and at the time of misappropriation, he was the Manager-in-Charge of the Bank. Officer Akbar Ali was responsible for the distribution of the allowances. The list of the beneficiary of the allowances was sent by the Office of Social Welfare and there is a passbook in the name of each beneficiary. The paid amount is mentioned in the passbook, draft book and the ledger. An officer is assigned to post the allowances. He admitted that the Second Officer and Manager used to pass the vouchers. The accused Md. Nurul Islam is the Messenger-

cum-Jamader. He is responsible for the distribution of the letters and as the Messenger has no authority to pass any voucher. The beneficiaries of the allowances did not make any allegation to him and the assigned officer signed the register. Money Suit No. 1 of 2009 was filed in the Court of Joint District Judge, First Court, Joypurhat against accused Md. Nurul Islam for recovery of money. He along with the officer lodged the FIR. He denied the suggestion that since he along with the officer lodged the FIR, the officers of the bank were not implicated as accused in the FIR. He denied the suggestion that he along with the officers were involved with the misappropriation and that accused Md. Nurul Islam did not deposit any money. During cross-examination on behalf of the accused Md. Saidur Rahman and Harun-or-Rashid, he affirmed that the accused Md. Saidur Rahman and Harun-or-Rashid were not involved with the distribution of the allowances and they obtained all service benefits.

P.W. 2 Md. Akmal Hossen is the Inspector of Police. He stated that on 09.04.2008 he was posted as Officer-in-Charge, Khetlal Thana and on that day, he recorded the FIR. He proved his signature in the FIR as exhibit-1/2. He proved the photocopy of the form of FIR as exhibit-2 and his signature on the photocopy as exhibit-2/1. During cross-examination, he affirmed that after getting approval from the Anti-Corruption Commission, he lodged the FIR on 09.04.2008.

P.W. 3 Dilip Kumar Ghosh stated that on 05.11.2007 he was posted as Branch Inspector, Sonali Bank Limited, Head Officer, Dhaka. He conducted a special audit in the office of Sonali Bank Ltd. Khetlal Branch as regards the payment of allowances of the old, widows, disabled etc. During the audit, he found that the accused Md. Nurul Islam misappropriated the money and accused Md. Ali Ahasan, Mujibur Rahman and Harun-or-Rashid are responsible for negligence of duty. The accused Md. Nurul Islam admitting the guilt deposited Tk. 20,000 by 02 installments and he also had given an undertaking to deposit the misappropriated amount. He submitted an audit report as regards the responsibility of the accused and the officers. He proved the forwarding as

exhibit-3(photocopy) and the photocopy of the audit report as exhibit-4. He proved his signatures on the photocopy of 12 pages as exhibits-4/1 to 4/12. During cross-examination on behalf of the accused Md. Saidur Rahman and Harun-or Rashid he affirmed that the original audit report is available at the head office. During cross-examination on behalf of the accused Md. Nurul Islam, he stated that accused Harun-or-Rashid was responsible for the distribution of the allowances and accused Akbar Ali passed the vouchers and there was no written order upon the accused Md. Nurul Islam to distribute the allowances but illegally he distributed the allowances. He denied the suggestion that accused Md. Nurul Islam was not involved with the distribution of the allowances. He affirmed that during his audit, he found the signature of the accused Md. Nurul Islam but he did not seize those documents. The accused Md. Nurul Islam was the Jamader-cum-Messenger and he has no authority to pass any voucher. The accused Nurul Islam did not sign the allowance book and D-half.

P.W. 4 Md. Abdus Sattar Khan is the Manager, Sonali Bank Ltd., Joypurhat Branch. He stated that from 04.03.2007 to 19.06.2008 he was the Manager of Sonali Bank Ltd, Joypurhat Branch and at that time Md. Ali Akbar was discharging his duty for distribution of the allowances for the old, widow etc. After his joining, the matter of misappropriation was detected. The accused Md. Nurul Islam misappropriated the allowances and in writing admitted the fact of misappropriation and had given an undertaking to deposit the amount. Subsequently, he deposited Tk. 20,000 by 2 installments but he did not deposit the entire amount. The area office of the bank formed an enquiry committee headed by Abdus Samad and Bishowjit was a member of the committee. After enquiry, the enquiry committee submitted its report against the accused Md. Nurul Islam and others. Subsequently, the head office of the Bank also formed a two-member enquiry committee and submitted a report. He proved the photocopy of the letter of confession written by accused Md. Nurul Islam as exhibit-5 and his signature on the photocopy as exhibit-5/1. He affirmed that accused Reazuddin and accused Ali Akbar died. He denied the

suggestion that accused Md. Nurul Islam did not deposit Tk. 20,000 and he was not involved with the misappropriation of money. He denied the suggestion that accused Md. Nurul Islam did not distribute the allowances. The Jamadar-cum-Messenger discharged his duty as an internal messenger. He affirmed that Md. Ali Akbar is responsible for the distribution of the allowances and none made any allegation stating that he did not get the allowance. He affirmed that the accused Md. Nurul Islam had written the undertaking. He denied the suggestion that accused Md. Nurul Islam did not write the undertaking.

P.W. 5 S.M. Abus Samad is the Senior Officer, Sonali Bank Ltd, Khalai Branch. He stated that on 20.05.2007 he was posted at Sonali Bank, Area Office, Joypurhat. On 20.05.2007 on the basis of the memo No. 1089 a two members committee was formed headed by him and Bishawnath Singh was the member of the committee to enquire into the occurrence that took place at Sonali Bank Ltd, Khetlal Branch, Joypurhat from 16.03.2004 to 20.04.2007. They enquired about the irregularity as regards the payment of allowances of the old, widow and the distressed lady and submitted a report. During the enquiry, it was found that at the time of the distributor of the allowances, the D-half was not filled up and without making an entry in the draft register intentionally prepared the vouchers and the same D-half has been mentioned more than once in the register and few forged D-half was also mentioned in the register. During the enquiry, they found irregularity as regards the withdrawal of Tk. 12,62,595. The accused 1. Md. Nurul Islam 2. Harun-or-Rashid 3. Md. Mojibur Rahman 4. Md. Ali Hasan and 5. Md. Saidur Rahman are responsible for the irregularity. All of them are present in court. He proved the photocopy of the enquiry report as exhibit-6 and his signature on the photocopy of each page of the report as exhibits-6/1 to 6/28. On 30.01.2011, he submitted a report for each year to the investigating officer. He proved the photocopy of the report as exhibit-7 and his signature on the photocopy as exhibits-7/1 and 7/2. During cross-examination, he stated that money was withdrawn through the vouchers. After the distribution of the allowances, it is required to be mentioned in the

passbook and D-half and also in the register of the bank. There was an office order to that effect. No muster roll was prepared in the case and no allegation of the recipients of the allowances was taken and the officers are responsible for entry in the passbook, D-half and ledger. Bank officer Harun-or-Rashid was responsible for the distribution of allowances. He admitted that during the enquiry, he did not find any office order to the effect that accused Md. Nurul Islam discharged the duty to distribute the allowances. He is a fourth class employee. No beneficiary of the allowances made any allegation and the list of the beneficiaries was supplied by the Office of Social Welfare. He affirmed that the officers of the bank passed the vouchers for payment of the allowances. He denied the suggestion that accused Md. Nurul Islam was not involved in the misappropriation.

P.W. 6 Bishawnath Singh is an Officer (retired), Sonali Bank Ltd, Area Office, Joypurhat. He stated that on 20.05.2007, he was posted at the Area Office of Sonali Bank, Joypurhat. He along with P.W. 5 S.M. Abdus Samad enquired as regards irregularity regarding the distribution of the allowances from 30.03.2004 to 20.05.2007. He proved his signature in the photocopy of the enquiry report (exhibit-6) as exhibit-6/29 to 6/56 and submitted the report accordingly for each year. He proved his signature on the photocopy of the report (exhibit-7) as exhibits-7/3 to 7/4. The accused Md. Nurul Islam misappropriated Tk. 12.62,595 and there was an office order that Harun-or-Rashid would distribute the allowances but he did not discharge his duty and through the accused Md. Nurul Islam, he discharged his duty. The accused Saidur Rahman was also responsible for the distribution of the allowances. The accused Ali Hasan and Mojibur Rahman also did not discharge their duty. During cross-examination, he affirmed that he did not find the passbook of the beneficiary of the allowances. In the D-half, the addresses of the beneficiaries of the allowances were mentioned. There was a rule to mention the payment of allowances in the D-half and passbook after making entries in the draft register and the ledger. The officer who distributes the allowances is responsible for making entries in

the draft register. He denied the suggestion that accused Md. Nurul Islam was not involved in the misappropriation.

P.W. 7 Atiqul Islam is the Officer Cash, Sonali Bank, Syedpur Branch, Nilphamari. He stated that on 23.01.2011, he was the Officer-Cum-Cash, Sonali Bank, Khetlal Branch, Joypurhat. On that day, the documents were seized from the Manager of the Bank. He proved the photocopy of the seizure list as exhibit-8 and his signature on the photocopy of the seizure list as exhibit-8/1 and handed over the seized documents to the custody of the Manager of the Bank.

P.W. 8 Md. Kamrul Ahasan is the Deputy Director of Anti-Corruption Commission. He stated that on 09.02.2011, he received the case docket from the investigating officer Rabindra Nath. After obtaining approval from the higher authority, he submitted a police report against the accused 1. Md. Nurul Islam 2. Ali Hasan 3. Mojibur Rahman 4.Saidur Rahman and 5.Harun-or-Rashid under sections 409/109 of the Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947. During cross-examination, he stated that he only perused the records but he did not investigate the case. He denied the suggestion that without any investigation, he submitted a charge sheet as he wished.

P.W. 9 Md. Abdul Baset is the Director of the Anti-Corruption Commission (retired). He stated that on 15.03.2010 he was posted at Bogra and at that time, he was appointed as investigating officer of the case. During the investigation, he was transferred and handed over the documents to the subsequent investigation officer. Defence declined to cross-examine P.W. 9.

P.W. 10 S.M. Samsul Alam is the Senior Principal Officer, Sonali Bank. He stated that on 23.01.2011, he was posted as Manager, Sonali Bank Ltd, Khetlal Branch. On that day, at 1/1.30 pm investigating officer seized 06 sets of documents, prepared the seizure list and handed over those documents in his custody. The documents mentioned in the exhibit-8 were given in his custody. During cross-examination, he affirmed that the officer

who passed the vouchers is responsible for the payment made through the vouchers and the manager is not responsible. Manager Ali Hossain and Mojibur Rahman were discharged from the departmental proceedings brought against them.

P.W. 11 Rabindranath Chaki is the Director of the Anti-Corruption Commission, Pabna. He stated that while he was posted at Bogra from 26.4.2009 to 31.01.2011 as investigating officer, he visited the place of occurrence, recorded the statement of witnesses and seized the documents. On 23.01.2011 at 1.30 pm in the presence of witnesses, he seized the current ledger-1 dated 01.01.2004 from the Sonali Bank, Khetlal Branch. He seized 20 registers as material exhibit-I series. He proved the report dated 05.11.2007 submitted by Dilip Kumar Ghosh, Branch Inspector. He proved the enquiry report dated 05.11.2007 submitted by Dilip Kumar Ghosh as material exhibit-II. He proved the register as regards the payment of allowances of old, widows and others, total 341 pages, as material-III. He proved the enquiry report submitted by P.W. 5 Abdus Salam and P.W. 6 Bishownath Singh dated 30.07.2007 as material exhibit-IV. He proved the D-half of total 1165 persons as material exhibit-V. He found the truth of the allegation against the accused persons and submitted a memo of evidence. During the investigation, he found the truth of the allegation against the accused Md. Nurul Islam, Md. Ali Hossain, Mojibur Rahman, Md. Saidur Rahman and Harun-or-Rashid and submitted a memo of evidence on 29.01.2011. He denied the suggestion that there was no supervising officer in this case. He stated that he seized the GD dated 01.08.2007. He affirmed that none made allegation as regards the nonpayment of allowances. He affirmed that he did not get the office order regarding the distribution of the allowances. Harun-or-Rashid discharged his duty as regards the distribution of the allowances and Md. Saidur Rahman was responsible for posting the register. He affirmed that the Manager of the Bank used to pass the vouchers. No document was seized to show that Md. Nurul Islam distributes the allowances. He denied the suggestion that he deposed falsely.

The evidence of prosecution witnesses adduced in Special Case No. 10 of 2012.

P.W. 1 Md. Mazid Sheikh is the informant. He stated that the occurrence took place from 16.03.2004 to 22.04.2007 and accused Md. Nurul Islam was the Jamadar-cum-Messenger, Sonali Bank Ltd, Khetlal Branch, Joypurhat. He used to make payment of the allowances of the old, widows and distressed ladies. He withdrew the excess amount and misappropriated the allowances by creating forged vouchers. He admitted the fact and deposited Tk. 20,000 in 2 equal instalments on 24.04.2007 and 26.04.2007 and informed the matter to the authority. An enquiry committee was formed by the Area Office. The enquiry committee found the truth of the allegation of misappropriation of Tk. 12,62,595 and accused Md. Nurul Islam deposited Tk. 20,000. Subsequently, he lodged the FIR on 30.07.2007 against the accused. Initially, the Thana authority made a GD Entry and subsequently lodged the FIR. He proved the photocopy of the FIR as exhibit-1 and his signature on the photocopy as exhibit-1/1. The original FIR is available with the records of Special Case No. 8 of 2012. During cross-examination, he stated that he joined in 2006 and at the time of occurrence, he was not the manager of Sonali Bank, Khetlal Branch. He admitted that the head of the branch issued the office order as regards the distribution of the work of the officers and the office order is preserved in the office. He admitted that based on the vouchers, the payment was made and the paid amount was mentioned in the register. He admitted that accused Md. Nurul Islam used to distribute the letter and he has no authority to pass the vouchers. The Manager and the Second Officer used to pass the vouchers. No office order was issued to show that none of the recipients of the allowances made any allegation. He denied the suggestion that accused Md. Nurul Islam did not misappropriate the money and he also did not make any confession.

P.W. 2 Md. Akmol Hossain is the Inspector of Police. He stated that on 09.06.2008 he was posted at Khetlal Thana and he filled up the FIR. He proved the photocopy of the FIR form as exhibit-2 and his signature on the

FIR form as exhibit-2/1. In the FIR, he mentioned the GD No. 20 dated 01.08.2007 and the GD was seized along with the FIR.

P.W. 3 S.M. Abdus Samad is the Senior Officer, Sonali Bank Ltd, Adamdighi Branch, Bogra. He stated that while he was discharging his duty as an Officer, Joypurhat in 2007, the authority in writing instructed him and Bishawnath Singh to enquire into the allegation made as regards the irregularity regarding payment of the allowances of the old, widows and the distressed people. During the enquiry, the enquiry committee found the irregularity and truth of misappropriation of Tk. 12,62,595 against the accused Md. Nurul Islam. The accused Harun-or-Rashid, Md. Saidur Rahman, Abu Taleb and Akbar Ali were also involved in the occurrence. The enquiry committee submitted the report on 01.07.2007. He proved the photocopy of the report dated 01.07.2007 as exhibit-3 and he proved his signature on the photocopy of the said report as exhibit-3/1. There was a rule to enter in the ledger and the register after payment of the allowances. There was a passbook in the name of each beneficiary of the allowances. After payment of the allowances, the same is mentioned in the passbook and one copy of the passbook was preserved by the bank. The office order regarding the duty of the officers and employees was passed by the Manager. He affirmed that the accused Md. Nurul Islam was the Jamader-Cum-Messenger and he had no authority to pass any voucher and the Second Officer was authorized to pass the vouchers. He stated that he found the signature of the accused Md. Nurul Islam on each voucher. He denied the suggestion that there was no signature on the vouchers and none of the beneficiaries of the allowances made any allegation.

P.W. 4 Dilip Kumar Ghosh is the Senior Principal Officer. He stated that in 2007 he was posted as Audit Officer, Head Office, Sonali Bank Ltd. At that time, at the instruction of the Sonali Bank, Head Office, he visited the Sonali Bank Ltd, Khetlal Branch to conduct an audit regarding the irregularities of the said branch and after conducting the audit submitted the audit report on 05.07.2011. He proved a photocopy of the audit report as exhibit-4 and he proved his signature as exhibit-4 and 4/1. During cross-

examination, he stated that at the relevant time, Ali Akbar was the responsible officer of the Sonali Bank and accused Md. Nurul Islam was the Jamader-Cum-Messenger. Based on the vouchers, the money was withdrawn and there was a passbook against each beneficiary of the allowances and photocopy of the passbook is called D-half. He affirmed that the accused Md. Nurul Islam had no authority to pass any voucher and none of the beneficiaries of the allowances filed any complaint. He denied the suggestion that accused Md. Nurul Islam did not misappropriate any amount.

P.W. 5 Bishawnath Singh is the officer of Sonali Bank, Joypurhat Branch. He stated that in 2007 he conducted an enquiry as regards the financial irregularity of the Sonali Bank Ltd, Khetlal Branch, Joypurhat. After enquiry, he submitted a report on 01.07.2007. He proved his signature in the said report as exhibit-3/2. During cross-examination, he affirmed that he found excess withdrawal of allowances amounting to Tk. 8,26, 675. He denied the suggestion that he submitted the report as he wished.

P.W. 6 Md. Atiqul Islam is the Senior Officer, Sonali Bank Ltd. He stated that on 23.01.2011 he was posted as Officer (Cash), Sonali Bank Ltd, Khetlal Branch, Joypurhat. On that day at 1/1.30 pm the investigating officer seized documents from Samsul Alam and prepared the seizure list. He proved the photocopy of the seizure list as exhibit-5 and his signature on the photocopy as exhibit-5/1. During cross-examination, he affirmed that the ledger book was seized and the concerned officer of the bank maintained the ledger and he has no personal knowledge about the seized documents.

P.W. 7 Md. Abdus Sattar Khan stated that from 04.03.2007 to 19.07.2008 he was posted at Sonali Bank Ltd, Khetlal Branch, Joypurhat and at that time, the Senior Officer, Ali Akbar was in charge of distribution of the money of the old, widows and the disabled persons. He stated that after taking charge, he found that the excess amount was withdrawn from 2004 and at that time, he interrogated the Jamader-Cum-Messenger Md.

Nurul Islam and he admitted the fact of misappropriation and by applying admitted that from 16.03.2004 to 22.04.2007 he withdrew total TK.12,62,595 by creating forged vouchers. The accused Md. Nurul Islam deposited Tk. 20,000 in two equal instalments on 20.04.2007 and 26.04.2007. He affirmed that the matter was reported to the higher authority who instructed to lodge the FIR. Subsequently, the Manager-in-Charge lodged the FIR. During cross-examination, he affirmed that the accused was the Jamadar-Cum-Messenger of the Bank. At the relevant time, he distributed the work along with the officers and employees of the bank and he also produced the list of distribution of work to the investigating officer and as per the list of distribution work Ali Akbar was entrusted to disburse the allowances. The list of the beneficiaries of the allowances was supplied by the office of the Social Welfare and there was a passbook against each beneficiary of the allowances and the photocopy of the passbook is called D-half. After the disbursement of the allowances, the bank officials made an entry in the register. An enquiry was held against Ali Akbar. He denied the suggestion that accused Md. Nurul Islam did not misappropriate any amount.

P.W. 8 S.M. Samsul Alam is the Manager (SPO), Sonali Bank Ltd, Sonatala Branch, Bogra. He stated that on 23.1.2011 he was posted at Sonali Bank Ltd, Khetlal Branch, Joypurhat. On that day at 1.30 pm, the investigating officer seized 06 sets of documents and handed over those documents to his custody. He signed the seizure list, he proved his signature on the seizure list as exhibit-5/2. During cross-examination, he stated that he had no personal knowledge about the seized documents.

P.W. 9 Md. Kamrul Ahasan is the Deputy Director, Anti-Corruption Commission. He stated that from 01.06.2010 to 15.01.2014 he was posted at Bogra. He stated that after the transfer of the previous investigating officer, by order of the Anti-Corruption Commission, he took up investigation of the case and he perused the memo of evidence submitted by the previous investigating officer. After approval by the Anti-Corruption Commission for submitting the charge sheet he perused the docket and

submitted the charge sheet against the accused 1. Md. Nurul Islam 2. Md. Saidur Rahman 3. Abu Taleb and 4. Harun-or-Rashid. During cross-examination, he affirmed that the accused Md. Nurul Islam was the Jamader-Cum-Messenger and there was no written order that accused Md. Nurul Islam distributed the allowances.

P.W. 10 Rabindranath Chaki is the Assistant Director of, the Anti-Corruption Commission. He stated that from 26.04.2009 to 31.01.2011 he was posted at Joypurhat. Following the order dated 22.07.2010 of the Anti-Corruption Commission, he took up investigation of the case and on 23.01.2011 at 13.30 he seized 06 sets of documents from the Manager, Sonali Bank Ltd. He seized the ledger book No. 1 dated 01.01.2004, total pages 1 to 700, and at pages 412,418,415 and 473 the payment of allowances for the old, widows and disabled people were mentioned. He proved the current ledger page Nos. 412,418 and 473 as material exhibit-I, the draft register of the allowances for the old, widows and disabled people (total 10 pages, photocopy) as material exhibit-II series. The register of the allowances for the old, widows and others as material exhibit-III series. Register of payment of the allowances of the old, widows, and disabled people as material exhibit-IV. The report submitted by Dilip Kumar Ghush dated 05.11.2007 as exhibit-4, debit vouchers, total 340 pages, as material exhibit-V. The report submitted by Abdus Samad dated 30.07.2007 as material exhibit-VI and the photocopy of the D-half as material exhibit-VII. He proved his signature on the carbon copy of the seizure list dated 23.01.2011 as exhibit-5/3. During cross-examination, he stated that Harun-or-Rashid was responsible for the distribution of allowances and during the investigation he did not seize the office order regarding the distribution of the work of the officers and employees of the Bank. He affirmed that the bank authority has taken action against the persons responsible for the distribution of the allowances. He did not seize any document to show that accused Md. Nurul Islam distributed the allowances. He did not send the handwriting of the officers who made the posting after disbursement of the allowances. He affirmed that the accused Md. Nurul Islam had no authority

to distribute the allowances. The list of the beneficiaries of the allowances was supplied by the Office of Social Welfare, Khetlal.

The learned Advocate Mr. Ashok Kumar Banik appearing along with learned Advocate Mr. Amio Chackraborty on behalf of the appellant submits that the appellant is a Jamader-Cum-Messenger of the Sonali Bank and admittedly officers Harun-or-Rashid, Akbar Ali and Md. Saidur Rahman was assigned to prepare and pass the vouchers for payment of the allowances of the old, widows and the distressed people and no document was proved by the prosecution to show that accused Md. Nurul Islam misappropriated the money. He further submits that photocopies of the documents regarding payment of allowances for the old, widows and distressed people were seized by the investigating officer and the prosecution intentionally and malafide did not produce original documents to shield the officers of the Bank. He also submits that the appellant did not deposit any amount by instalment and no expert opinion was taken from the CID to ascertain the signature of the appellant on the undertaking exhibit-I. In support of his submission, he relied on the decision made in the case of Dudh Meher vs Jobed Ali Pahlowan reported in 16 BLC 432, Bangladesh vs. Mirpur Semipucca Kalayan Samity reported in 54 DLR 364.

The learned Advocate Mr Shaheen Ahmed appearing on behalf of respondent No. 2 submits that by creating forged vouchers the accused Md. Nurul Islam withdrew the allowances for the old, widows, disabled and distress people and without distributing allowances misappropriated total Tk. 12,62,595. The prosecution proved the audit report dated 05.11.2007 and 03.08.2011 and the audit team of the bank found the truth of the allegation of misappropriation of total Tk.12,62,595 against the appellant. He further submits that appellant by applying (exhibit-I) admitted that he withdrew excess Tk.12,62,595 and also had given the undertaking to pay the entire amount and subsequently by 2 equal instalments deposited Tk. 20,000 on 20.04.2007 and 24.06.2007(exhibit-2) and misappropriated Tk. 12,42,595. He also submits that accused Md. Nurul Islam admitted his guilt and his original confession was lying with the Head Office of the bank and

the photocopy of the documents was exhibited without any objection. There is no illegality in the impugned judgment and order passed by the trial Court.

I have considered the submission of the learned Advocates of both parties, evidence of the prosecution witnesses, perused the impugned judgments and orders passed by the trial court and the records.

On perusal of the records, it appears that the accused Md. Nurul Islam is the Jamader-Cum-Messenger and he discharged his duty inside and outside the bank and carried out the orders of the officers of the bank. Admittedly, he has no authority to distribute the allowances of the old, infirm, disabled and distressed people. The prosecution case is that although the accused Md. Nurul Islam is a Jamader-Cum-Messenger, he prepared the vouchers and on the opposite side of each voucher, he signed and received the allowances and misappropriated the same.

On perusal of the records, it reveals that the photocopy of register and all the documents relating to the withdrawal of Tk. 12,62,595 were proved as material exhibits-I-VII. Except FIR, no original document was proved by the prosecution. A scrutiny of the photocopy of the vouchers, further reveals that there is no signature of the accused Md. Nurul Islam on the opposite side of the vouchers. By giving suggestions to the prosecution witnesses, the accused Md. Nurul Islam denied that he did not sign exhibits 1 and 2 which are photocopies of the original. No expert opinion was taken by the investigating officer as regards the signature of the accused Md. Nurul Islam to prove that he signed exhibits 1 and 2. After the occurrence, an enquiry committee was formed headed by Abdus Samad and Bishawnath Singh who were examined as P.Ws. 2 and 6 in Special Case No. 8 of 2012, P.Ws. 5 and 6 in Special Case No. 9 of 2012, and P.Ws. 3 and 5 in Special Case No. 10 of 2012. The enquiry committee submitted a report on 30.01.2011 (two pages) and the audit report on 5.11.2007. The photocopy of those reports were proved as exhibit-7 in Special Case No. 8 of 2012, exhibit-3 in Special Case No. 9 of 2012 and exhibit-4 in Special Case No.

10 of 2012. The photocopy of report dated 30.01.2011 was proved as exhibit-5 in Special Case No. 9 of 2007.

Section 64 of the Evidence Act, 1872 states that documents must be proved by primary evidence except in the cases hereinafter mentioned. Primary evidence means the document itself produced for the inspection of the court. In the instant case, no original document was produced before the court and during the investigation, the investigating officer also did not seize any original document. The secondary evidence may be given of the existence, condition or the contents of the document in the cases mentioned in section 65 of the Evidence Act, 1872. The prosecution failed to prove any of the exception mentioned in section 65 of the Evidence Act, 1872.

In the case of BEPZA vs Abdul Mannan reported in 66 DLR (2004) 86 para 20 it has been held that;

“As regards admissibility of the photocopies of some documents of the tender file which were marked as Exhibits-1 series, in the instant case the High Court Division elaborately discussed the relevant provisions of law as to the admissibility of documentary evidence. The photocopies of some documents of the tender file are secondary evidence. Admissibility of secondary evidence is regulated by section 63 of the Evidence Act, 1872. The High Court Division rightly noticed that admittedly the original tender documents are in the possession of the defendant-petitioner. Section 65 of the Evidence Act provides that secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person legally bound to produce it, or when the existence, condition or

contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest.”

In the case *Bangladesh vs Mirpur Semipucca Kalyan Samity Semi* reported in 54 DLR 364 para 18 it has been held that;

“Secondary evidence of documents mentioned in section 65(a) may be given if the procedure laid down in section 66 is strictly complied with. Before the reception of secondary evidence, it must be proved that the documents were in possession of a person against whom it has been sought to be proved and such person though noticed has failed to produce it.”

In the case of *Dudh Meher vs Jobed Ali Pahlowan* report in 16 BLC 431 it has been held that Para 24, 26

“Furthermore, the plaintiff challenged the wasiatnama it appears that the original wasiatnama has not been produced by the defendant before the Court and a certified copy was marked exhibit No. 1 but said certified copy of the wasiatnama has not been proved in accordance with law. The defendants claim the property and for the RS record created by dint of said wasiatnama but original of the said wasiatnama never seen the light of the sun. Furthermore there is no explanation regarding non filing of the original wasiatnama of the defendants and thus said wasiatnama has not been acted upon.”

“It has been held in the case of *Hazi Waziullah alias Waziullah Miah vs The Additional Deputy Commissioner, Revenue, Noakhali and Assistant Custodian of Vested and Non-Resident Property*

reported in 41 DLR (AD) 97, that "Secondary evidence of a document is admissible in the case mentioned in section 65 of the Evidence Act and if the original is not available, reason for non-availability must be given."

On perusal of the records, it transpires that none of the recipient of the allowances made allegation that they did not obtain the allowances. The departmental action was taken against the officers of the bank who distributed the allowances. PW 1 Abdus Sattar Khan is the Principal Officer of the Sonali Bank Ltd. In Special Case No. 8 of 2012, he stated that accused Ali Akbar Khan was responsible for the distribution of allowances. PW. 1 Abdul Mozid in Special Case No. 9 of 2012 stated that the Second Officer and Manager used to pass the vouchers. PW. 3 Dilip Kumar Ghosh stated in Special Case No. 9 of 2012 that Harunur Rashid was responsible for the distribution of allowances and accused Akbar Ali passed the vouchers. He also stated that accused Md. Nurul Islam had no authority to pass vouchers and he also did not sign the passbook and D-half. PW. 6 Bishownath Debnath stated that the accused Saidur Rahman was responsible for distribution of allowances. The investigation officer PW. 11 Rabindra Nath Chaki stated that Harunor-Rashid was responsible for distribution of allowances and accused Md Saidur Rahman was responsible for posting in the register. The Manager of the Bank used to pass the vouchers. No document was exhibited to prove that accused Md. Nurul Islam distributed the allowances. The above evidence of the prosecution witnesses depicts that accused Md. Nurul Islam was not involved in the distribution of the allowances. The concerned officers of the Bank and the Managers who discharged their duty at the relevant time are responsible for the misappropriation of the allowances for the old, women, infirm and distressed persons. The accused Md. Nutul Islam is a scapegoat.

The prosecution proved the photocopy of alleged letter of admission of guilt of the accused Md. Nurul Islam as exhibit-1 and the photocopy of the deposit slips as exhibit-II. No original letter of admission of guilt and

deposit slip was proved by the prosecution. Admittedly all the documents lie with the Sonali Bank Ltd. Neither the investigating officer seized those documents nor any original document was proved by the prosecution. Furthermore, the investigation officer PW. 9 Rabindranath Chaki stated that seized documents were not attested by any officer of the bank. The prosecution failed to give any explanation under section 66 of the Evidence Act, 1872 for not producing original documents. No evidence was adduced by the prosecution to show that the original document was lying with the accused Md. Nurul Islam. Therefore, exhibits- 1, 2, 4, 5, 6 and 7 in Special Case No. 8 of 2012, exhibits- 2 to 7 in Special Case No. 9 of 2012, and exhibits 1 to 5 in Special Case No. 10 of 2012 are not admissible in evidence.

Because of the above evidence, facts and circumstances of the case, I am of the view that the prosecution failed to prove the charges framed in Special Case Nos. 8 of 2012, 09 of 2012 and 10 of 2012 against the accused Md. Nurul Islam beyond all reasonable doubt.

In find merit in the appeals.

In the result, all appeals are allowed.

The impugned judgments and orders of conviction and sentence passed by the trial court against the accused Md. Nurul Islam in Special Case Nos. 8 of 2012, 09 of 2012 and 10 of 2012 are hereby set aside.

The accused Md. Nurul Islam is acquitted from the charges framed against him.

Send down the lower Court's record at once.