

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

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Criminal Appeal No. 8723 of 2017**

**In the matter of:**

An Appeal under Section 10 of the Criminal  
Law Amendment Act, 1958.

**And**

**In the matter of:**

Mukti Rani Chakroborti

...Convict-Appellant

-Versus-

The State and another

...Respondent

Mr. Md. Khurshid Alam Khan, Senior Advocate  
with

Mr. Md. Moniruzzaman Rana with

Mr. Sanjana Arvy with

Mr. Robiul Islam with

Mr. Manik Chan and

Mr. Imran Hossain, Advocates

...For the Appellant

Mr. S.M. Iqbal Bahar Bhuiyan, Advocate

...For the Respondent No.2

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hemayth Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

**Heard on: 02.03.2026, 19.04.2026, 04.05.2026  
and 07.05.2026**

**Judgment on: 13.05.2026**

This appeal, preferred under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the judgment and order dated 14.12.2015 passed by the learned Special Judge, Special Judge Court No. 10, Dhaka in Special Case No. 11 of 2014 re-numbered from Special Case No. 169 of 2013 arising out of Darus Salam Police Station Case No. 15 dated 07.12.2011 corresponding to A.C.C. G.R. No. 125 of 2011 convicting the appellant under Section 409 of the Penal Code and sentencing her to suffer simple imprisonment for 03 (three) months with a fine of Taka 1,36,637/- in default to take action for the recovery of fine by attachment and sale of any movable/immovable property belonging to the convict-appellant-petitioner as per provision of section 386 of the Code of criminal Procedure.

The facts, relevant for disposal of the appeal, in short, are that one Lotifa Begum, Hostel Super of Nawab Foyjunnessa Karmajibi Women Hostel lodged a First Information Report (FIR) with Darus Salam Police Station, alleging *inter alia* that the accused collected seat rents and security deposits from the boarders but failed to deposit the same into the concerned bank account. Thus, she misappropriated a sum of Taka 1,36,637/- during the period from 26.08.2010 to 21.12.2010. She was

suspended on 21.12.2010 and pursuant to the direction of the higher authority the instant case was instituted against the accused.

A seizure list was prepared on 19.11.2012 by a Sub-Assistant Director of the Anti Corruption Commission in connection with the case.

On closure of the investigation and with the approval of Anti Corruption Commission vide Memo No. 10175 dated 10.04.2010 Darus Salam Police Station, DMP, Dhaka submitted charge sheet No. 136 dated 22.04.2013 against Mukti Rani Chakroborti and Mamataz Begum under Sections 409 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Subsequently, the case was transferred to the learned Special Judge, Court No. 10, Dhaka and registered as Special Case No. 11 of 2014. Accused No. 2, Mamataz Begum filed an application under Section 241A of the Code of Criminal Procedure. Upon hearing the parties, the learned Special Judge discharged her from the case on 07.05.2014 and thereafter framed charge *in absentia* against the appellant under section 409 of the Penal Code read with section 5(2) of the Prevention of Corruption

Act, 1947. The accused could not be examined under Section 342 of the Code of Criminal Procedure since she remained absconding.

In the course of the trial, 06 prosecution witnesses were examined while the defence examined none.

Upon conclusion of trial and hearing the parties, the learned Special Judge, Special Judge Court No. 10, Dhaka convicted the accused under Section 409 of the Penal Code and sentenced her to suffer simple imprisonment for 03 (three) months along with a fine of Taka 1,36,637/-.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence the convict-appellant preferred this instant Criminal Appeal before this Court. This Court enlarged the appellant on bail till disposal of the appeal on 08.10.2017.

Mr. Md. Khurshid Alam Khan, the learned Senior Advocate assisted by Mr. Moniruzzaman Rana, the learned Advocate appearing on behalf of the appellant contends that although the alleged period of occurrence was from 26.08.2010 to 21.12.2010, the appellant assumed charge of her post on 30.08.2010, whereas

the FIR was lodged on 07.12.2011 without any satisfactory explanation for such inordinate delay.

He further submits that none of the boarders, from whom the seat rents and security deposits had been collected, was examined during investigation or trial, nor their statements was recorded under Section 161 of the Code Criminal Procedure.

He next contends that although the charge sheet was submitted against both Mukti Rani Chakrabarti and Mamataz Begum (Hostel Super), the latter was discharged from the case, despite the prosecution case alleging their joint involvement in the alleged misappropriation.

He further argues that Exhibit 2 clearly demonstrates that the appellant had deposited the collected seat rents and security deposits to Sonali Bank Limited, Mirpur-1 Branch, Dhaka and as such no offence of criminal breach of trust was made out against her, therefore the judgment of conviction and sentence is liable to be set aside.

The learned Advocate additionally submits that the appellant is an unfortunate woman who, after losing her employment, was compelled to return to her native district Gaibandha leaving Dhaka due to extreme financial hardship. According to him, she and her

family have been suffering severe economic hardship, mental agony and emotional distress for more than 15 years on account of this case, although she was falsely implicated therein.

He finally prays for allowing the appeal and for setting aside the judgment and order of conviction and sentence.

In support of his contention, he refers to the decisions passed in the case of *Shahin Vs. The State*, reported in 19SCOB(2024)AD 148, *State Vs. Lalu Miah and another*, reported in 39DLR(AD)117, *Matru Vs. State of U.P.*, reported in AIR (1971) SC 1950, *Abdus Salam Vs. The State*, reported in 14 BLD(1994)99, *State Vs. Md. Tohurul Islam @ Azizul Haque and others*, reported in 66 DLR(2014)386, *State Vs. Jashim Uddin alias Iqbal and another (absconding)*, reported in 70 DLR(2018)211, *Md. Jamsed Ahmed Vs. The State*, reported in 14 BLD(1994) 301 and *Malai Miah Vs. The State*, reported in 13 BLD 277.

*Per contra*, Mr. S.M. Iqbal Bahar Bhuiyan, the learned Advocate appearing on behalf of the respondent No. 2, contends that the alleged occurrence took place during the period from 26.08.2010 to 21.12.2010 and the accused was suspended on 21.12.2010. Thereafter, upon completion of departmental

proceedings, the competent authority directed to lodge criminal proceedings, which occasioned the delay in filing the FIR.

He also contends that PW 1 proved the allegation of misappropriation of Taka 1,36,637/-. PW 4 and PW 6 corroborated the evidence adduced by PW 1. Moreover, conviction can legally be based even upon the testimony of a single trust worthy witness. Misappropriation has also been established by the departmental inquiry. Departmental inquiry report has been marked as Exhibit 4.

He next submits that the informant joined the place of occurrence on 15.06.2011 which negates any suggestion of personal enmity between the accused and informant.

He further submits that the trial was conducted in absentia and the continued abseconcence of the appellat demonstrates her guilty mind and culpability.

He additionally contends that the convict-appellant and the discharged Hostel Superintendent, Mamta Begum did not stand on same footing because the accused was responsible to maintain the cash and accounts as she was accountant cum cashier whereas Mamata Begum was responsible to supervise the hostel but she was not responsible for maintaining the accounts and cash.

Accordingly, he submits that the conviction and sentence imposed by the trial Court is lawful and proper and calls for no interference by this Court. Finally, he prays for dismissal of the appeal.

I have considered the submissions of the learned Advocates for both sides, perused the impugned judgment and order passed by the trial Court and the materials on records.

For proper adjudication of the matter and to analyze the facts, let me review the evidence of the prosecution's case.

PW 1, Latifa Begum, Hostel Superintendent and informant of the case stated that she joined the service on 15.06.2011. Accused Mukti Rani Chakrabarti served as Hostel Accountant Cum Cashier. She collected seat rent and security deposit from the boarders amounting to Taka 1,36,637/- during the period from 26.08.2010 to 21.12.2010 but she misappropriated the said amount without depositing the same into the concerned bank account. Subsequently, she was dismissed from service and pursuant to official instruction, she lodged the case. She proved the seizure list as Exhibit 2 and the *Jimmanama* as Exhibit 3. She was not cross-examined as the accused was absconding.

PW 2, Mahfuza Aktar, Assistant Hostel Super, is a seizure list witness. She proved the seizure list as Exhibit 2.

PW 3, Md. Hasan Kabir Khan, Constable, Anti-Corruption Commission is another seizure-list witness. He proved his signature appearing on the seizure list, marked as Exhibit 2/3.

PW 4, Md. Lutful Kabir, District Women Affairs Officer, Jamalpur, conducted the departmental inquiry into the matter. Upon inquiry he found irregularity in respect of Taka 1,36,637/-. He submitted inquiry report and proved the same as Exhibit 4.

PW 5, Helena Parvin, Sub-Inspector of Police who filled up the FIR form, proved the FIR as Exhibit 5.

PW 6, Md. Mofazzal Hossain Hawlader, investigating officer stated that the accused collected seat rents from the boarders but she misappropriated the collected money without depositing the same into the bank account. He submitted charge sheet No. 136 dated 22.04.2013. He proved seizure list as Exhibit 2, the *Jimmanama* as Exhibit 3 and the sanction letter as exhibit 6.

It appears from the charge sheet that the investigating officer submitted the same against both Mamataz Begum, the Hostel Superintendent and Mukti Rani Chakrabarti (the appellant). The investigating officer opined that Mukti Rani Chakrabarti and Mamataz Begum in collusion with each other embezzled the money collected from the boarders without depositing the same

into the bank account. Mamataz Begum did not sign the three months monthly report, cash register and daily income register for blaming Mukti Rani Chakrabarti. The opinion runs as follows:

“এভাবে আসামী মুক্তি রানী চক্রবর্তী এবং হোস্টেল সুপার পরস্পর যোগসাজশে এক বোর্ডার এর নিকট থেকে ভিন্ন ভিন্ন পছায় টাকা গ্রহণ করে রেজিস্টারে যথাযথভাবে উত্তোলন না করে এবং ব্যাংকে জমা প্রদান না করে আত্মসাত করেছেন। আত্মসাতের দায় সম্পূর্ণরূপে এজাহার নামীয় আসামী মুক্তি রানী চক্রবর্তীর উপর চাপানোর অসৎ উদ্দেশ্যে হোস্টেল সুপার মমতাজ বেগম অপরাধ সংঘটনের তিন মাসের মাসিক প্রতিবেদন, ক্যাশ রেজিস্টার, দৈনন্দিন্য আদায় রেজিস্টারে স্বাক্ষর করেননি এবং কর্তৃপক্ষকে বিষয়টি অবগতও করাননি। হোস্টেল সুপার মমতাজ বেগম বোর্ডারদের সিট ভাড়া পাওনা থাকা সত্ত্বেও এবং উক্ত পাওনা টাকার বিষয়টি রেজিস্টারে উল্লেখ থাকা সত্ত্বেও চেকের মাধ্যমে বোর্ডারদের জামানতের টাকা পরিশোধ করেছেন। আলোচ্য ক্ষেত্রে উল্লেখিত সিট ভাড়ার টাকা আত্মসাত আসামীদ্বয় পরস্পর যোগসাজশে আত্মসাত করেছেন মর্মে প্রতীয়মান হয়। বিভাগীয় তদন্তে এবং আমা কর্তৃক তদন্তকালে জন্মকৃত রেকডপত্র পর্যালোচনায় আসামীদ্বয় পরস্পর যোগসাজশে ১,৩৬,৬৩৭/- টাকা আত্মসাত করা হয়েছে মর্মে প্রাথমিকভাবে প্রতীয়মান হয়েছে।”

However, accused Mamataz Begum was discharged from the case by the trial Court on 08.12.2014. The appellant stood on the same footing with said discharged Mamataz Begum, yet she was convicted merely because she could not appear before the Court during trial. Since the co-accused (Hostel Superintendent) was

discharged, this Court finds inconsistency in maintaining conviction only against the accused who was the cashier/accountant.

It is now a settled principle of law that the Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In this regard, reliance may be placed upon the decision passed in the cases of *Shahin Vs. The State*, reported in 19 SCOB (2024) AD 148 and *Yogarani Vs. State by the Inspector of Police*, reported in AIR 2024 SC 4641. In *Jabed Shaukat Ali Qureshi Vs. State of Gujarat* reported in MANU/SC/1012/2023:2023: INSC: 827 wherein it has been held:

“When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This Principle means that the Criminal Court should decide like cases alike, and

in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.”

The prosecution failed to establish exclusive entrustment and dishonest misappropriation by the appellant independent of the supervisory failures of the discharged co-accused.

It is transpired from Exhibit 2 that the appellant deposited the most of the collected seat rents and security deposits into Sonali Bank Limited, Mirpur-1 Branch, Dhaka. Moreover, it was also the duty and responsibility of the then hostel superintendent, namely, Mamataz Begum to supervise and ensure whether the collected rents were duly deposited to the concerned bank account. However, the trial Court convicted the appellant without considering these material aspects of the case.

While convicting the accused the trial Court observed that the accused remained absconding during trial, which according to the Court, reflected a guilty mind. However, the learned Advocate for the appellant submits that after losing her employment the appellant left Dhaka and returned to her native district, Gaibandha owing to extreme poverty and lack of livelihood, and therefore her absence cannot ipso facto establish guilt.

It is established precedent that absconding alone does not prove guilt. In this connection, reliance may be placed on the decisions passed in the cases of *State vs. Lahu Miah and another*, reported in 39 DLR (AD) (1987) 117 and *Shahin Vs. The State*, reported in 19 SCOB (2024) AD 148, *Abdus Salam Vs. The State*, reported in 14 BLD(1994)99, *State Vs. Md. Tohurul Islam @ Azizul Haque and others*, reported in 66 DLR(2014)386, *State Vs. Jashim Uddin alias Iqbal and another (absconding)*, reported in 70 DLR(2018)211, *Md. Jamsed Ahmed Vs. The State*, reported in 14 BLD(1994) 301 and *Malai Miah Vs. The State*, reported in 13 BLD 277. In *State vs. Lahu Miah and another* (supra), wherein the Apex Court held:

“ Absconson by itself is not an incriminating matter for even an innocent person may abscond for his safety.”

Earlier a similar view was taken in the case of *Matru Vs. State of UP*, reported in AIR 1971 SC 1050 wherein it has been held:

“Mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent may feel panicky and try to evade arrest when wrongly suspected of a grave crime; such is the instinct of self-preservation. The act of

absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case.”

Considering the gravity of the alleged offence, the facts and circumstances of the case, and the *ratio* passed in the above-mentioned decisions, I am of the considered view that the judgment and order of conviction and sentence cannot be sustained in law and is liable to be set aside.

I find merit in the appeal and substance in the submission advanced by the learned Advocate appearing on behalf of the appellant.

In the result, the appeal is allowed.

The judgment and order dated 14.12.2015 passed by the learned Special Judge, Special Judge Court No. 10, Dhaka in Special Case No. 11 of 2014 re-numbered from Special Case No. 169 of 2013 arising out of Darus Salam Police Station Case No. 15 dated 07.12.2011 corresponding to A.C.C. G.R. No. 125 of 2011 is hereby set aside.

The appellant is acquitted of the charge brought against her.

The convict-appellant is released from her bail bond.

Let the judgment along with the lower Court's records (LCR)  
be communicated to the Court concerned forthwith.

(Md. Bashir Ullah, J.)

Md. Ariful Islam Khan  
Bench Officer