

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 1740 of 2018

Md. Wahed Ali

... Appellant

-Versus-

The State and another

... Respondents

with

Criminal Appeal No. 1824 of 2018

Md. Mojibur Rahman @ Mojibur Rahman

...Appellant

-Versus-

The State and another

... Respondents

with

Criminal Appeal No. 1851 of 2018

Md. Tayeb Hossain Khondaker

...Appellant

-Versus-

The State and another

... Respondents

with

Criminal Appeal No. 1854 of 2018

Nazrul Islam

...Appellant

-Versus-

The State and another

... Respondents

Mr. M.G. Mahmud (Shaheen), Advocate

...For the appellant

(In Criminal Appeal No. 1740 of 2018)

Mr. S.S. Arefin Junnun, Advocate

...For the appellant

(In Criminal Appeal No. 1824 of 2018)

Mr. Md. Hasan Rajib Prodhan, Advocate

...For the appellant

(In Criminal Appeal No. 1851 of 2018)

Mr. Abdur Razaque Khan, Advocate with

Mr. Md. Hasan Rajib Prodhan, Advocate

...For the appellant

(In Criminal Appeal No. 1854 of 2018)

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan (Manna), A.A.G

...For the State (In all criminal appeals)

Mr. ASM Kamal Amroohi Chowdhury, Advocate

...For the Respondent No. 2,

Anti-Corruption Commission (In all criminal appeals)

Heard on 03.12.2023, 07.12.2023 and 10.12.2023
Judgment delivered on 12.12.2023

The above-mentioned criminal appeals have arisen out of the impugned judgment and order of conviction and sentence dated 31.01.2018 passed by Special Judge, Rangpur in Special Case No. 03 of 2009 arising out of Hatibandha Police Station Case No. 07 dated 06.08.2005, G.R. No. 93 of 2005 (Hati) convicting the appellants under Sections 409/109 of the Penal Code, 1860 and sentencing them to suffer rigorous imprisonment for 1(one) year and a fine of Tk. 5,000, in default, to suffer rigorous imprisonment for 1(one) month and convicting the appellant Nos. 1. Md. Wahed Ali, 2. Md. Mojibur Rahman and 3. Md. Tayeb Hossain Khondaker under Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing them to suffer imprisonment for 1(one) year which will run concurrently and confiscating Tk. 99,190 in favour of the State directing each of them to pay Tk. 24,797.50 which is recoverable following the law.

The prosecution case, in a nutshell, is that the accused Md. Tayeb Hossain Khondaker is the Manager of Rupali Bank Ltd, Borakhata Branch, Hatibandha, Lalmonirhat, accused Md. Wahed Ali is the Accountant, accused Md. Mojibur Rahman is the UDA-Cum-Cashier of Rupali Bank Ltd of the said branch and accused Md. Nazrul Islam is an account holder of the said branch. When they were discharging their duty in the said branch, the accused Md. Mojibur Rahman and Md. Wahed Ali credited Tk. 2,00,000 on 03.01.2004 in Current Account No. 439 of the said branch maintained in the name of accused Md. Nazrul Islam by a false entry in the ledger and increased the balance of the said account. On 03.01.2004 balance of the said account was 1,81,060 and by false entry of Tk. 2,00,000 the accused Md. Mojibur Rahman and Md. Wahed Ali increased the balance to Tk. 3,81,060. After that, on the same date i.e. 03.01.2004, the accused Md. Nazrul Islam issued Cheque No. 0126290 for payment of Tk. 3,60,000 and accused Md. Mojibur Rahman posted the

said cheque in the ledger and day book and accused Md. Wahed Ali approved the cheque. Subsequently, on 28.02.2004 Tk. 1,00,000 was deposited through the day book. The accused Md. Nazrul Islam issued said cheque in connivance with the accused Md. Wahed Ali and Md. Mojibur Rahman and illegally withdrew excess Tk. 99,190 from the said account and thereby committed an offence under Section 409 of the Penal Code, 1860.

P.W. 15 S.I Md. Hipjur Alam Munsif of Hatibandha Thana took up the investigation of the case. During the investigation, he visited the place of occurrence, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, seized documents and after completing the investigation submitted charge sheet on 31.05.2006 against accused Md. Mojibur Rahman and Md. Wahed Ali under Sections 420/ 409/ 468/109 of the Penal Code, 1860 and submitted final report against the account holder Md. Nazrul Islam. Subsequently, by order dated 31.01.2007 the case was sent to the Anti-Corruption Commission for further investigation and P.W. 18 Md. Khairul Huda was appointed as Investigating Officer and after completing the investigation, he obtained the sanction and submitted a supplementary charge sheet against accused persons (1) Md. Wahed Ali, (2) Md. Mojibur Rahman, (3) Md. Nazrul Islam and (4) Md. Tayeb Hossain Khondaker under Sections 409/ 406/ 420/ 468/109 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947.

After that, the case record was sent to the Senior Special Judge, Lalmonirhat who by order dated 26.10.2008 took cognizance of the offence against the accused persons. During the trial, the charge was framed on 31.03.2009 against the accused persons under Sections 409/ 420/ 468/109 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 which was read over and explained to them and they pleaded not guilty to the charge and claimed to be tried following the law. During the trial, prosecution examined 18(eighteen) witnesses to prove the charge 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 declined to examine any D.W. After concluding the trial, the trial Court by impugned judgment and order convicted the accused persons as stated above against which the accused-persons filed the instant appeals.

P.W. 1 Md. Elias Hossain is the Manager of Rupali Bank Ltd, Borakhata Branch, Hatibandha, Lalmonirhat. He stated that from 30.04.2005 to 01.06.2009, he was discharging his duty as Manager, Rupali Bank Ltd, Borakhata Branch, Hatibandha, Lalmonirhat. During audit inspection from 27.04.2005 to 07.06.2005 misappropriation of Tk. 99,190 of the said branch was detected. The accused Md. Wahed Ali, Md. Mojibur Rahman and Tayeb Hossain Khondaker were discharging their duty as Second Officer, Cash Officer and Manager respectively. While they were discharging their duty from 03.01.2004 to 28.02.2004, the accused Nazrul Islam, account holder of the Current Account No. 439 of the said branch in connivance with each other misappropriated Tk. 99,190 by forging and breach of trust. The accused persons by showing a false deposit of Tk. 200000 on 03.01.2004 increased the balance in the Account No. 439 of accused Md. Nazrul Islam and on the same date through Cheque No. 0126290 drawn on the said account had withdrawn Tk. 360000. The accused Md. Mojibur Rahman made a false entry of Tk. 2,00,000 in the ledger and accused Md. Wahed Ali affirmed the balance by signing in the ledger. The accused Md. Mojibur Rahman posted the said deposit in the ledger and day book and accused Md. Wahed Ali approved the cheque and accused Md. Tayeb Hossain Khondaker canceled the cheque twice. The accused Nazrul Islam issued said cheque for payment of Tk. 3,60,000 by false deposit of Tk. 2,00,000. Subsequently, on 28.02.2004, the accused Md. Mojibur Rahman without entry in the ledger deposited Tk. 1,00,000 in Account No. 439 of accused Nazrul Islam by making entries in the day book and the cashbook. The accused Md. Wahed Ali signed the day book. The accused persons in connivance with each other had withdrawn an excess amount of Tk. 99,190 by false deposit of Tk. 2,00,000. P.W. 1 proved the FIR as exhibit 1 and his signature on the FIR as exhibit 1/1. The Investigating Officer seized 5

items of documents on 14.12.2005 and prepared the seizure list. He signed the seizure list. He proved the seizure list as exhibit 2 and his signature as exhibit 2/1. On the same date by jimmanama (bond) dated 14.12.2005, the said documents were handed over to his custody. He proved the jimmanama (bond) as exhibit 3 and his signature as exhibit 3/1. He proved the alams (1) the current ledger, total 100 pages, and the relevant page No. 481, (2) current day-book, page No. 95 dated 03.01.2004 (3) cash receipt book, pages 127 and 128 dated 03.01.2004 (4) cashbook, page No. 82, dated 03.01.2004 (5) cheque No. CFLB 0126290 of Current Account No. 439 dated 30.12.2003 as material exhibits I to V respectively. During cross-examination, he stated that accused Wahed Ali was the Accountant and Mojibur Rahman was the UDA-Cum-Cashier. The accused Wahed Ali and Mojibur Rahman were transferred from the Borakhata Branch to Rupali Bank Ltd, Patgram Branch. When a similar forgery was detected in Patgram Branch, the audit team inspected the place of occurrence i.e. Rupali Bank Ltd, Borakhata Branch. He affirmed that the accused Tayeb Hossain Khondaker was not involved with the false deposit and illegal withdrawal of money. During cross-examination on behalf of accused Nazrul Islam, he stated that there was a regular transaction in Account No. 439 from 2001 to 2005. On 30.12.2003, there was a total balance of Tk. 1,81,060 in Current Account No. 439. He also affirmed that there was no regular deposit in the said account and on the next day, the deposit was posted in the ledger. He denied the suggestion that on 03.01.2004, there was more balance than the amount withdrawn by the accused. During cross-examination on behalf of Wahed Ali, he stated that during the inquiry, he was the Manager of the Borakhata Branch and he had no personal knowledge about pocket banking and based on the departmental audit he lodged the FIR and at the time of the audit, the accused Wahed Ali was discharging his duty in another branch. The accused Mojibur Rahman used to receive the money by signing the deposit slip. He affirmed that accused Mojibur Rahman posted Tk. 2,00,000 on 03.01.2004 in the ledger and accused Wahed Ali signed the voucher. The disputed cheque was cancelled second time by the Manager. During cross-

examination on behalf of accused Mojibur Rahman, he stated that the signature of Mojibur Rahman is known to him but he did not write and sign in his presence. The handwriting on page No. 481 and page 509 of the material exhibit I are not identical. After signing the deposit slip, the UDA-Cum-Cashier sent the same to the second officer and after examining the deposit slip, the second officer signed the same and preserved the counter file. He denied the suggestion that the accused Mojibur Rahman was not involved with the alleged misappropriation.

P.W. 2 A.B.M. Shamsujjaman is the Senior Principal Officer, General Banking Division, Rupali Bank Ltd, Head Office, Dhaka. He stated that on 29.05.2008, the Investigating Officer seized 18 pages of the inquiry report in his presence and prepared the seizure list. He proved the seizure list as exhibit 4 and his signature as exhibit 4/1. During cross-examination, he stated that he proved photocopy of the seizure list.

P.W. 3 Md. Jasim Uddin is an Officer of Rupali Bank Ltd, General Banking Division, Head Office, Dhaka. He stated that on 29.05.2008, the inquiry report (total 18 pages) was seized by the Investigating Officer and S.P.O Md. Nurul Amin presented the inquiry report and he signed the seizure list. He proved the seizure list as exhibit 4 and his signature as exhibit 4/2. The defence declined to cross-examine P.W. 3.

P.W. 4 Md. Abdul Quddus Pramanik is the Second Officer, Rupali Bank Ltd, Borakhata Branch, Lalmonirhat. He stated that on 14.12.2005, he was discharging his duty at Rupali Bank Ltd, Borakhata Branch. On that day, the Investigating Officer seized 5 items of documents and prepared the seizure list. He proved his signature on the seizure list as exhibit 2/2. During cross-examination on behalf of Wahed Ali, he stated that when he was posted at the Borakhata Branch, a departmental inquiry was held and at the time of the departmental inquiry, accused Wahed Ali was present in the disputed branch.

P.W. 5 Md. Ikhtiar Uddin is a Security Guard, Rupali Bank Ltd, Aditmary Branch, Lalmonirhat. He stated that on 09.10.2005, the Investigating Officer seized documents and the Manager of the Rupali Bank Ltd, Borakhata Branch presented those documents. He signed the

seizure list. He proved the seizure list as exhibit 5 and his signature as exhibit 5/1. The seizure list is laying along with the records of Special Case No. 7 of 2009 and the photocopy is laying with the record of the instant case. The defence declined to cross-examine P.W. 5.

P.W. 6 Ulap Chandra Sarker is the Senior Principal Officer, Rupali Bank Ltd, Ramna Corporate Branch, Dhaka. He stated that from 14.07.2004 to 25.06.2005, he along with the Senior Principal Officer Md. Ashraf Ali and Principal Officer Mostafa Afiz Uddin audited Rupali Bank Ltd, Borakhata Branch from 27.04.2005 to 09.06.2005 and submitted a report on 18.06.2005. He proved the audit report as exhibit 6. He proved the page No. 34 of the said report as exhibit 6(Ka) and his signature as 6(Ka)/1. The original report was submitted in Special Case No. 02 of 2009 and the attested copy of the said report was filed in this case. During cross-examination, he stated that at the time of the audit, the accused Wahed Ali and Mojibur Rahman were discharging their official duty. Their handwriting was not examined by the handwriting expert. He affirmed that on the fourth line of page No. 4 of the said report, the audit team mentioned the Current Account No. 439 of Md. Nazrul Islam and nothing mentioned in the said report as regards the misappropriation of money through the Current Account No. 439. He denied the suggestion that the audit report was not correct.

P.W. 7 Mostofa Afiz Uddin is the Principal Officer (retired), at Rupali Bank Ltd. He was tendered by the prosecution and declined by the defence.

P.W. 8 Md. Abdul Mazid Basunia is the UDA-Cum-Cashier, Rupali Bank Ltd. He stated that from 03.01.2004 to 28.02.2004 the occurrence took place. He joined on 27.02.2005 in the disputed bank. At the time of the audit, he came to know that the money of the bank was misappropriated. The accused Mojibur Rahman and Tayeb Hossain Khondaker were discharging duty at the relevant time.

P.W. 9 Md. Abdur Razzaque Pradhan stated that in 2005, he was discharging his duty as Manager of Rupali Bank Ltd, Patgram Branch. On 20.03.2005 and 20.04.2005, the accused Mojibur Rahman and Wahed Ali

respectively were transferred from Rupali Bank Ltd, Borakhata Branch to Rupali Bank Ltd, Patgram Branch. After joining, the accused Mojibur Rahman and Wahed Ali started pocket banking at Patgram Branch. On 21.04.2005 misappropriation of Tk. 7,48,000 was detected as regards the transaction of a cheque and Tk. 5,48,000 was instantly deposited. He informed me about the misappropriation of Tk. 7,48,000 to the higher authority. After that, the accused Mojibur Rahman absconded. The higher authority sent an audit team and after the audit, the FIR was lodged. He affirmed that he was not aware about the occurrence took place at Rupali Bank Ltd, Borakhata Branch.

P.W. 10 Md. Iqbal Shafi is the Officer-in-Charge, Hatibandha Thana. He stated that he filled up the FIR form. He proved the FIR form as exhibit 7 and his signature as exhibit 7/1.

P.W. 11 Md. Mosharaf Hossain is the Second Officer at Rupali Bank Ltd, Borakhata Branch. He stated that from 16.03.2005 to 2007 he was posted as Second Officer of Rupali Bank Ltd, Borakhata Branch. Before that accused Wahed Ali was the Second Officer of the said branch. After his joining, he came to know that the money of the said branch was misappropriated. The accused Wahed Ali and Mojibur Rahman misappropriated the money from different accounts. At the time of discharging his duty, a few account holders came to deposit money and he found that those money were already deposited. After that, he reported the matter to the manager. The manager instructed me to receive the money by vouchers which were misappropriated earlier. He could not say how much amount was deposited. The cash book was written with the joint signature of the manager.

P.W. 12 Md. Ashraf Ali is the Senior Principal Officer, at Rupali Bank Ltd. He stated that in 2005, he was discharging his duty as Senior Principal Officer, Rupali Bank Ltd. From 27.04.2005 to 09.06.2005, he audited the Rupali Bank Ltd, Borakhata Branch and submitted a report (40 pages) on 18.06.2005 and on page No. 34 of the said report, the occurrence of the instant case was mentioned. He signed each page of the

audit report. He proved his signatures on the audit report as exhibit 6/Kha series. The defence did not cross-examine P.W. 12.

P.W. 13 Md. Tofayel Hossain was discharging his duty as Senior Principal Officer at the time of occurrence at Rupali Bank Ltd, Head Office. He stated that he conducted the inquiry of Rupali Bank Ltd, Patgram and Borakhata Branch and submitted a report (9 pages) on 20.06.2005. The report was submitted in Special Case No. 2 of 2009. He proved the attested copy of the inquiry report dated 20.06.2005 as exhibit 8. He affirmed that he was the head of the inquiry committee and Md. Abdul Khaleque was a member of the inquiry committee. During cross-examination on behalf of the accused Md. Tayeb Hossain Khondaker, he affirmed that he did not find any involvement of the accused Md. Tayeb Hossain Khondaker.

P.W. 14 Md. Abdul Khaleque is the Senior Principal Officer, at Rupali Bank Ltd, Head Office, Dhaka. He stated that on 30.04.2005, he obtained the office order for inquiry and Tofayel Hossain was the head of the inquiry team. Both of them visited the Patgram Branch on 02.05.2005 and Borakhata Branch on 07.05.2005 and submitted the inquiry report on 20.06.2005. The report was submitted in Special Case No. 2 of 2009 and he signed the inquiry report. During cross-examination on behalf of accused Tayeb Hossain Khondaker, he affirmed that he did not find any involvement of accused Khondaker Tayeb Hossain.

P.W. 15 Md. Hipjur Alam Munsif is the Sub-Inspector, Hatibandha Thana. He stated that he was appointed as an Investigating Officer and after completing the investigation he submitted charge sheet. Subsequently, the Anti-Corruption Commission investigated the case. During cross-examination, he stated that on 31.05.2006, he submitted charge sheet.

P.W. 16 Mozammel Haque stated that while he was discharging his duty in 2005 at Head Office, he was a member of the demand finalization committee. On 29.09.2005, he visited the branch and submitted the report on 23.10.2005. The report was submitted in Special Case No. 2 of 2009. The attested copy is submitted in the instant case and

he signed the report. He proved the report as exhibit 9. During cross-examination on behalf of accused Khondaker Tayeb Hossain, he stated that as a member of the demand finalization committee, he made the audit. During the investigation, he did not find any involvement of the accused Khondaker Tayeb Hossain.

P.W. 17 Md. Majibar Rahman (retired) is the AGM, Rupali Bank Ltd, General Loan Division. He stated that on 22.09.2005, he was discharging his duty in the General Loan Division. On 22.09.2005, he received a letter from head office wherein it was mentioned that the forgery was committed in the Rupali Bank Ltd, Borakhata Branch, Lalmonirhat. On that day, a three-member inquiry committee was formed headed by me. After inquiry, the inquiry committee submitted the report on 23.10.2005. The Second Officer accused Wahed and Cash Officer accused Mojibur Rahman committed the forgery and Manager Tayebur Rahman of the said branch was not involved with the forgery. Two accused persons misappropriated total Tk. 20,29,955.75 of 20 accounts. He proved the inquiry report dated 23.10.2005 as exhibit 9. He proved his signature as exhibit 9/1. During cross-examination on behalf of accused Tayeb Hossain Khondaker, he affirmed that from 30.04.2001 to 17.03.2005, the accused persons misappropriated the money by forgery.

P.W. 18 Md. Khairul Huda is the Deputy Director of the Anti-Corruption Commission, Dhaka. He was appointed as Investigating Officer. He stated that on 24.06.2008, he took up investigation of the case and visited the place of occurrence, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. The FIR was lodged on 06.08.2005 and at that time, the police was not authorized to investigate the case and after investigation, the police submitted charge sheet. Subsequently, the learned Court sent the records to the Anti-Corruption Commission and he was appointed as Investigating Officer. During the investigation, he seized the documents seized in Special Case No. 2 of 2009 by the Investigating Officer, Akter Hossain. He also seized the documents seized by the police on 14.12.2005 and 09.10.2005 as the alamat of the instant case. Those documents were exhibited in the case.

After completing the investigation, he found the truth of the allegation against the four accused persons and submitted charge sheet against them after getting approval. He proved the letter of approval dated 7.10.2008 as exhibit 10. During cross-examination, he stated that five FIR was lodged and he investigated the three FIR. The disputed cheque was cancelled by Wahed Ali and Md. Tayeb Hossain Khondaker. During cross-examination on behalf of accused Nazrul Islam, he stated that according to the statement of account Tk. 2,00,000 was deposited on 03.01.2004 and Tk. 3,60,000 was withdrawn by a cheque but there was no deposit slip, the money was not deposited. He denied the suggestion that the bonafide accused issued the cheque for payment of Tk. 3,60,000. During cross-examination on behalf of the accused Mojibur Rahman, he stated that the accused Mojibur Rahman was the Officer (Cash). He denied the suggestion that the accused Mojibur Rahman did not make any entry in the ledger. He did not send the handwriting to the expert to ascertain the handwriting of the particular officer. The specimen signature of the accused Mojibur Rahman was kept with the bank. He did not compare the signature of the accused kept in the register and ledger. He denied the suggestion that the disputed entry was not made by accused Mojibur Rahman and he was not also involved with the alleged misappropriation.

Learned Advocate Mr. S.S. Arefin Junnun appearing on behalf of the accused Md. Mojibur Rahman @ Mojibur Rahman submits that the informant P.W. 1 Md. Elias Hossain did not discharge his duty along with the accused Md. Mojibur Rahman and his signature was not known to P.W. 1 and during the investigation, the handwriting of the accused Md. Mojibur Rahman was not sent to the expert to ascertain his alleged signature on the deposit slip, the daybook and cashbook and all the inquiry committees submitted the reports (exhibits 6, 8 and 9) without ascertaining the signature of the accused Md. Mojibur Rahman. The prosecution failed to prove the charge against the accused beyond all reasonable doubt. Therefore, he prayed for acquittal.

Learned Advocate Mr. M.G. Mahmud (Shaheen) having filed a supplementary affidavit on 07.12.2023 annexed a death certificate as

Annexure-G stating that during the pendency of the appeal, the accused Md. Wahed Ali died on 23.06.2021.

Learned Advocate Mr. Md. Hasan Rajib Prodhan appearing on behalf of accused Md. Tayeb Hossain Khondaker submits that the accused Md. Tayeb Hossain Khondaker is neither named in the FIR nor charge sheet was submitted by P.W. 15 Md. Hipjur Alam Munsu against him. He further submits that three committees submitted separate reports which were proved as exhibits 6, 8 and 9 and none of the inquiry committee made any allegation against the accused Md. Tayeb Hossain Khondaker. He also submits that the prosecution witnesses also did not say anything against the accused Md. Tayeb Hossain Khondaker. Therefore, he prayed for acquittal.

Learned Advocate Mr. Abdur Razaque Khan appearing along with learned Advocate Mr. Md. Hasan Rajib Prodhan on behalf of the accused Nazrul Islam submits that the accused Nazrul Islam is an account holder of the Rupali Bank Ltd, Borakhata Branch and there was regular transaction in his account at the relevant time and he bonafide issued the disputed cheque for payment of Tk. 3,60,000 and there was an available balance in his account. After the issuance of the disputed cheque, the bank informed nothing to the accused Nazrul Islam as regards the excess withdrawal of money which is only recoverable from the accused following law. He further submits that the FIR was lodged after conducting an audit by the audit team appointed by the Head Office but the name of accused Nazrul Islam was not mentioned in the FIR. He further submits that the First Investigating Officer P.W. 15 did not send up the accused Nazrul Islam in the charge sheet and P.Ws. 13 and 17 in their evidence stated that only the accused Wahed Ali and Md. Mojibur Rahman is involved with the pocket banking of Rupali Bank Ltd, Borakhata Branch. Learned Advocate having drawn attention to the evidence of P.W. 17 submits that accused Md. Mojibur Rahman deposited Tk. 1,00,000 in the account of accused Nazrul Islam wherefrom it is clear as daylight that only banking staff of the bank were involved with the pocket banking. The prosecution failed to prove the charge against the accused beyond all reasonable doubt. In support of

his submission, the learned Advocate also relied on the decision made in the case of Safdar Ali Vs. The crown 5 DLR 64, Md. Luqman Vs. The State 21 DLR (SC) 461 para 2 and Muslimuddin and ors. Vs. The State 38 DLR (AD) 311. He prayed for acquittal.

Learned Advocate Mr. ASM Kamal Amroohi Chowdhury appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that by cross-examining P.W. 1, the defence affirmed that the signature of the accused Mojibur Rahman is known to P.W. 1 and three inquiry committee in their reports (exhibit 6, 8 and 9) opined that accused Mojibur Rahman and Md. Wahed Ali is involved with the pocket banking and alleged misappropriation of Tk. 99,190. He further submits that accused Nazrul Islam issued the disputed cheque for withdrawal of Tk. 3,60,000 knowing fully well that at the relevant time, there was no sufficient balance to honour the cheque. Therefore, all of them are equally responsible for the alleged misappropriation of Tk. 99,190. He prayed for the dismissal of the appeals.

I have considered the submissions of the learned Advocates Mr. S.S. Arefin Junnun, learned Advocate Mr. M.G. Mahmud (Shaheen), learned Advocate Mr. Md. Hasan Rajib Prodhan and learned Advocate Mr. Abdur Razaque Khan who appeared on behalf of the appellants and the submissions of the learned Advocate Mr. ASM Kamal Amroohi Chowdhury who appeared on behalf of the respondent No. 2, Anti-Corruption Commission, perused the evidence, death certificate annexed as Annexure-G to the supplementary affidavit dated 07.12.2023, the impugned judgment and order passed by the trial Court and the records.

At the very outset, it is noted that at the time of the hearing, a supplementary affidavit sworn on by Ashikuzzaman, son of accused Md. Wahed Ali was filed on 07.12.2023 stating that accused Md. Wahed Ali died on 23.06.2021. A death certificate was also annexed with the supplementary affidavit as Annexure-G. The supplementary affidavit was not opposed by anyone. Since during the pendency of the appeal, the accused Md. Wahed Ali died, the appeal so far relates to the impugned judgment and order of conviction passed against accused Md. Wahed Ali

is abated in view of the provision made in Section 431 of the Code of Criminal Procedure, 1898 and the appeal filed by accused Md. Wahed Ali so far relates to the sentence of fine is required to be disposed of considering the merit of the case.

P.W. 1 stated that on 03.01.2004 the accused persons credited Tk. 2,00,000 by false deposit in the Current Account No. 439 of accused Md. Nazrul Islam. During cross-examination of P.W. 1 on behalf of the accused Nazrul Islam, the defence affirmed that on 30.12.2003 there was a balance of Tk. 1,81,060 in his Current Account No. 439. The accused Mojibur Rahman posted the false entry of Tk. 2,00,000 in the ledger and accused Md. Wahed Ali counter-signed the ledger and confirmed the balance. After that, the accused Nazrul Islam issued Cheque No. 0126290 for payment of Tk. 3,60,000 and the accused Md. Mojibur Rahman posted the said cheque in the ledger and daybook and the accused Md. Wahed Ali approved the cheque which was cancelled twice by the accused Md. Toyeb Hossain Khandaker. Subsequently, on 28.02.2008 the accused Md. Mojibur Raham without giving entry in the ledger deposited Tk. 1,00,000 in the said account of accused Md. Nazrul Islam making entries only in the daybook and cash receipt book.

On perusal of the records, it appears that the alleged occurrence took place from 03.01.2004 to 28.04.2005 at Rupali Bank Limited Borakhata Branch, Hatibandha, Lalmonirhat. After the alleged occurrence, three committees were formed. A three-member audit team after conducting an audit by P.Ws. 6, 7 and 12 submitted report on 18.06.2005 (exhibit 6). Another departmental inquiry was also held by P.Ws. 13 and 14 who submitted their report on 23.10.2005 (exhibit 8). Finally a build-up-cum demand finalization committee conducted by P.Ws. 16 and 17 after inquiry submitted report on 23.10.2005 (exhibit 9). In all the reports, it has been opined that accused Md. Mojibur Rahman and accused Md. Wahed Ali are responsible for the pocket banking and alleged misappropriation of Tk. 99,190. Nothing stated in the said reports submitted by three committees (exhibits 6, 8 and 9) as regards accused Nazrul Islam. In the said reports nothing has been mentioned against

accused Md. Toyeb Hossain Khandaker, Manager of the said branch. Furthermore, P.Ws. 1, 13, 14, 16 and 17 stated that they did not find any involvement of the Manager accused Md. Toyeb Hossain Khandaker.

It is found that the accused Md. Mojibur Rahman is the mastermind of the false deposit dated 03.01.2004 of Tk. 2,00,000 and subsequently, without making any entry in the ledger, he also deposited Tk. 1,00,000 on 28.02.2004 only giving entry in the daybook and cash receipt register. The accused Nazrul Islam was well aware that on the date of withdrawal of Tk. 3,60,000 on 03.01.2004 there was no sufficient balance in his account to honour the cheque issued for payment of Tk. 3,60,000. Despite that, he issued a cheque for payment of the excess amount. Therefore, the accused Nazrul Islam is also involved in the misappropriation of Tk. 99,190.

The Bank Officials are the custodian of the money of the account holders. In the instant case, the accused Md. Mojibur Rahman in connivance with Md. Wahed Ali by a false deposit of Tk. 200000 on 03.01.2004 in the register malafide increased the balance in the account of Nazrul Islam and on the same date, the accused Nazrul Islam malafide by issuing Cheque No. 0126290 in connivance with accused Md. Wahed Ali and accused Md. Mojibur Rahman had withdrawn Tk. 3,60,000 and misappropriated Tk. 99,190. Therefore, I am of the view that the accused Md. Nazrul Islam, accused Md. Wahed Ali and accused Md. Mojibur Rahman in connivance with each other made a false deposit of Tk. 2,00,000 and misappropriated Tk. 99,190.

It is found that the accused Md. Toyeb Hossain Khandaker, the then Manager of the Bank, only counter-signed the cheque and in all the inquiry reports (exhibits 6, 8 and 9) and P.Ws. 1, 13, 14, 16 and 17 consistently stated that he is not responsible for pocket banking. Therefore, I am of the view that the prosecution failed to prove the charge against the accused Md. Toyeb Hossain Khandaker.

In view of the above observation, findings, reasoning and proposition, I am of the view that the prosecution proved the charge

against the accused Md. Mojibur Rahman, accused Md. Wahed Ali and accused Md. Nazrul Islam to the hilt beyond all reasonable doubt.

The accused Md. Tayeb Hossain Khondaker is found not guilty to the charge. The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Md. Tayeb Hossain Khondaker is hereby set aside.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court is modified as under;

The accused Md. Mojibur Rahman @ Mojibur Rahman is found guilty of the offence under Section 409 of the Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947 and he is sentenced under Section 5(2) of the Prevention of Corruption Act, 1947 to suffer rigorous imprisonment for 6(six) months and fine of Tk. 50,000.

The Criminal Appeal No. 1740 of 2018 is abated and accused Md. Wahed Ali is sentenced to pay a fine of Tk. 24,797.50 under Section 5(2) of the Prevention of Corruption Act, 1947.

The accused Nazrul Islam is found guilty of the offence under Section 5(2) of the Prevention of Corruption Act, 1947 read with Section 109 of the Penal Code, 1860 and he is sentenced to pay a fine of Tk. 30,000.

The sentence of fine awarded against the accused persons are recoverable following law.

In the result, the Criminal Appeal No. 1851 of 2018 is allowed. The Criminal Appeal Nos. 1854 of 2018 and 1824 of 2018 are disposed of with modification of sentence. The Criminal Appeal No. 1740 of 2018 so far it relates to conviction is abated and the sentence of fine is modified.

Send down the lower Court's records at once.