

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 825 of 2021

Md. Shafiqul Islam

...Appellant

-Versus-

The State and another

...Respondents

with

Criminal Appeal No. 897 of 2021

Khandaker Shahidul Islam

...Appellant

-Versus-

The State and another

...Respondents

Mr. Md. Shamsul Islam, Advocate with

Mr. Shamsur Rahman, Advocate

...For the appellant

(In Criminal Appeal No. 825 of 2021)

Mr. Md. Nazimuddin, Advocate

...For the appellant

(In Criminal Appeal No. 897 of 2021)

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G

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

Mr. ASM Kamal Amroohi Chowdhury, Advocate

...For the Respondent No. 2 (ACC) (In both criminal appeals)

Heard on 25.05.2025, 30.06.2025, 01.07.2025,
23.07.2025, 27.07.2025 and 29.07.2025

Judgment delivered on 31.07.2025

The above-mentioned two criminal appeals have arisen out of the impugned judgment and order passed by the trial Court. Therefore, both the appeals were heard analogously and disposed of by this single judgment.

The above mentioned criminal appeals have been filed against the impugned judgment and order of conviction and sentence dated 23.12.2020 passed by Special Judge, Court No. 9, Dhaka in Special Case No. 22 of 2017 (Metro Special Case No. 58 of 2017) arising out of

Tejgaon Police Station Case No. 9(10)15 corresponding A.C.C. G.R No. 646 of 2015 convicting the accused Khandaker Shahidul Islam under sections 409/109 of the Penal Code, 1860 and sentencing him thereunder to suffer imprisonment for 02(two) years and fine of Tk. 10,000, in default, to suffer imprisonment for 01(one) month and convicting the accused Md. Shafiqul Islam under section 409 of the Penal Code, 1860, and sentencing him thereunder to suffer imprisonment for 03(three) years and fine of Tk. 10,000, in default, to suffer imprisonment for 01(one) month and also fine of Tk. 3042020 against each.

The prosecution's case, in short, is that the accused Md. Shafiqul Islam is the Project Director of the BFDC Modernization and Extension Project, and FIR-named accused Pijush Bandopaddhay was the Managing Director of BFDC. The accused John Noel is the CEO of Novelco (M) SDN BHD, a company registered in Malaysia, and the accused Khandaker Shahidul Islam was the proprietor of Messrs Khadiza International and the local agent of Novelco (M) SDN BHD. The BFDC invited an International Tender on 30.12.2012 for modernization and extension of the BFDC through the Modernization and Extension Project by purchasing Digital Audio Dubbing, Mixing and Re-recording Equipment, and Digital Audio Optical Transmission Machine at a price of Tk. 3,75,00,000. Pursuant to the said tender, Novelco (M) SDN BHD, along with two others, submitted the proposal to supply the said machinery/equipment. In the meeting of the tender evaluation committee held on 04.06.2013, the Novelco (M) SDN BHD, Malaysia, was selected as the lowest tenderer to supply the equipment at 3,38,000 URO, equivalent to Tk. 3,46,58,520 and recommended to issue the Notification of Award. Thereafter, on 12.06.2013, in the meeting of the Managing Committee of the BFDC, considering the recommendation of the evaluation committee issued the notification of award was issued on 06.06.2013. The Project Director accused Md. Shafiqul Islam, in violation of the provisions of made in section 27(3), 27(4) of the Public

Procurement Rules, 2008, clause 30.1 of the General Condition of Contract (GCC), and clause 64.1 of the Instruction to Tender (ITT), and the condition No. 2 of the notification of award accepted the performance security. No guarantee was received from the Standard Chartered Bank by the Project Director. On 29.06.2013, an agreement was executed between the accused Khandaker Shahidul Islam, Proprietor of Khadiza International Novelco, and the BFDC. After that, the L.C. No. 188213010087 dated 30.06.2013 was opened with the One Bank Ltd, Karwan Bazar Branch to supply the machinery. The accused Md. Shafiqul Islam and Pijush Bandopaddhay, in connivance with each other received the equipment of Chinese origin supplied in place of the USA and Japan, and paid 80% of the L.C value on 10.12.2013 and 20% of the L.C value on 24.02.2014, violating the Rule 38 of the Public Procurement Rules 2018, the contract and GCC showing false recommendation of the equipment received committee. The equipment was not supplied following the tender schedule of the M/S Novelco, and the accused Md. Shafiqul Islam and Pijush Bandopaddhay misappropriated total Tk. 3,46,58,520 by receiving the equipment supplied, violating the terms and conditions of the contract. The accused Khandaker Shahidul Islam, Proprietor of Messrs Khadiza International, abetted the accused Md. Shafiqul Islam and Pijush Bandopaddhay in misappropriation of the said amount by supplying the equipment, violating the terms and conditions of the tender and the contract executed between the BFDC and the Novelco (M) SDN BHD.

The Anti-Corruption Commission, by office memo dated 05.11.2015, appointed Deputy Director Md. Farid Ahmed Patwary as Investigating Officer of the case. During the investigation, he seized documents and received the report regarding the occurrence, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After investigation, he found the prima facie truth of the allegation made against the accused Mr. John Noel,

Khandaker Shahidul Islam, and Md. Shafiqul Islam submitted charge sheet against them on 02.03.2017 under sections 409/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947, and submitted final report in favour of the accused Pijush Bandopaddhay. Thereafter, the Chief Metropolitan Magistrate, Dhaka, by order dated 20.03.2017, sent the case to the Metropolitan Senior Special Judge, Dhaka, who took cognizance of the offence against the accused persons under sections 409/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947. Subsequently, the case was sent to the Special Judge, Court No. 9, Dhaka.

During the trial, charge was framed against the accused persons under sections 409/109 of the Penal Code, 1860, and section 5(2) of the Prevention of Corruption Act, 1947, which was read over and explained to the accused Md. Shafiqul Islam and he pleaded not guilty to the charge and claimed to be tried following the law. At the time of framing charge, accused John Noel and Khandaker Shahidul Islam were absconding. The prosecution examined 21(twenty-one) witnesses to prove the charge against the accused persons, and the accused Md. Shafiqul Islam cross-examined those witnesses. After examination of the prosecution witnesses, the accused Md. Shafiqul Islam was examined under section 342 of the Code of Criminal Procedure, 1898, and he submitted the written statement and declined to adduce any D.W. After concluding the trial, the trial Court by impugned judgment and order convicted the accused persons and sentenced them as stated above, against which the accused Md. Shafiqul Islam and Khandaker Shahidul Islam preferred the above-mentioned appeals.

P.W. 1 Deputy Director (retired) Hamidul Hasan is the informant of the case. He stated that during the enquiry of the Nathi No. ACC/B, enquiry and investigation-1/42-2014, it is found that a notification of award was given on 16.06.2013 in favour of M/S Novel co (M) SDN BHD to supply the Digital Audio Dubbing Mixing and Re-recording

Equipment for Modernization and Extension Project, BFDC violating section 27(3), 27(4) of the Public Procurement Act, 2008 and condition No. 301 of the General Condition of Contract, the accused Md. Shafiqul Islam, without any performance security, received the equipment from the Novel Co. No guarantee was taken by the accused Md. Shafiqul Islam from the Standard Chartered Bank Gulshan Branch, Corresponding Bank, of the performance security and executed a contract on 29.06.2013 with the Novel Co and subsequently opened the L.C on 30.06.2013. During the enquiry, it was found that the Chinese equipment was supplied by the Novel co International in place of the USA and Japan origin. The accused Md. Shafiqul Islam and Pijush Bandopaddhay paid 80% of the L.C value on 10.12.2013 and 20% of the L.C value on 24.02.2014, and cost loss of Tk. 3,46,58,502 of the government. He lodged the FIR with prior approval of the ACC. He proved the FIR as exhibit 1 and his signature on the FIR as exhibit 1/1. He proved the approval dated 07.10.2015 as Exhibit 2. During cross-examination, he stated that the tender value of the Digital Audio Dubbing, Mixing, and Re-recording Equipment was Tk. 3.75,00,000, but he could not say the total value of the tender. Subsequently, stated that total tender value was Tk. 3,75,00,000. He did not receive any expert opinion on the disputed equipment. A three-member committee was formed by the Ministry and submitted a report stating that Chinese equipment was supplied in place of USA or Japan. He denied the suggestion that the equipment was supplied following the tender schedule. In the tender, total of 28 items have been mentioned for purchase. He affirmed that the equipment received committee did not receive the equipment. During his enquiry, the BFDC did not receive the goods. He admitted that two tenders were invited to purchase the Digital Audio Optical Transfer Machine and Digital Audio Dubbing, Mixing, and Re-recording Equipment. He denied the suggestion that following the P.P.R. and the Rules, the equipment was purchased. He admitted

that, as an international tender, the Standard Chartered Bank was the associate bank. He denied the suggestion that Standard Chartered Bank issued the security. He admitted that a notification of award was issued to purchase the Digital Audio Dubbing, Mixing, and Re-recording Equipment at a price of Tk. 3,46,58,520. He denied the suggestion that, without any expert report and without enquiry, he recommended lodging the FIR.

P.W. 2 Md. Moniruzzaman Khan is the Chief Engineer of FDC. He stated that on 25.10.2016 at 11.00, he discharged his duty as Assistant Engineer of the said office. On that day, the Investigating Officer, Md. Farid Ahmed Patwary visited his office and seized the documents mentioned in column No. 05 of the seizure list in his presence. He signed the seizure list. He proved the seizure list as exhibit 3 and his signature on the seizure list as exhibit 3/1. The seized documents were handed over to his custody by Jimmanama. He also signed the Jimmanama. He proved the Jimmanama as exhibit 4 and his signature on the Jimmanama as exhibit 4/1. Subsequently, he handed over those documents on 11.12.2016 to Mamunur Rashid, Assistant Chief Director. The defence declined to cross-examine P.W. 2.

P.W. 3 Mohammad Abdus Sobahan is the Sub-Assistant Engineer (Electricity) of BFDC. He stated that on 25.10.2016, the Deputy Director Md. Farid Ahmed Patwary of ACC visited his office. He seized the documents mentioned in serial No. 5 of the seizure list presented by his staff Moniruzzaman. He signed the seizure list. He proved the seizure list as exhibit 3 and his signature on the seizure list as exhibit 3/2. The seized documents were handed over to the custody of Mr. Farid. He also signed the Jimmanama. He proved the Jimmanama as exhibit 4 and his signature on the Jimmanama as exhibit 4/2. The defence declined to cross-examine P.W. 3.

P.W. 4 Md. Saidul Alam was the Project Director. He stated that when he was discharging his duty as Project Director, a tender was

invited to purchase a Digital Audio Dubbing, Mixing, and Recording Digital Audio Optical Transfer Machine. The detailed descriptions of the equipment have been furnished in the specification. During cross-examination, he stated that he could not remember whether tender was invited to purchase 02 sets of digital audio dubbing, mixing, and recording equipment. He could not remember whether the tender value was Tk. 2,12,25,780 for the Digital Audio Optical Transfer Machine. He did not know the tender notice. He was transferred.

P.W. 5 Dr. Md. Imamul Hasan Bhuiyan is the Professor of Electronics and Electrical Engineering at BFDC. He was a member of the Technical Committee of the BFDC Modernization and Extension Project. At that time, he was an Associate Professor. On 08.05.2013, a meeting of the Technical Evaluation Committee was held. The tender of three tenderers was selected as competent tender. He only evaluated the technical matter. Three tenders were found responsive and technically competent. Accordingly, they submitted the valuation report on 12.05.2013. He proved the report as exhibit 5 and his signature on the report as exhibit 5/1. During cross-examination, he stated that the tenders were submitted following the tender notice.

P.W. 6 Md. Jane Alam was the Chief Sound Engineer of BFDC. He was tendered by the prosecution. During cross-examination, he affirmed that the supplied equipment is functioning till today.

P.W. 7 Mosharaf Ahmed stated that he was the Chief Engineer of the BFDC. He was tendered by the prosecution and declined by the defence.

P.W. 8 Helal Uddin was the Audit Officer of the BFDC. He stated that on 25.10.2016, the Deputy Director Md. Farid Ahmed Patwary of ACC visited his office and seized documents. The Assistant Engineer Md. Moniruzzaman presented the documents. He prepared the seizure list in his presence, and he signed the seizure list. He proved the seizure list as exhibit 3 and his signature on the seizure list as exhibit 3/3.

Subsequently, he handed over the seized documents to the custody of Md. Moniruzzaman. He proved the Jimmana as exhibit 4 and his signature on the Jimmana as exhibit 4/3. During cross-examination, he stated that there is no case number on the page on which he signed. The seized documents were not produced in Court. He admitted that he is not aware of the seized documents.

P.W. 9 Md. Shahidul Islam is the Additional Director (Purchase) of BFDC. He stated that in 2013, when he was discharging his duty in the said office, a tender was invited in 02 newspapers to purchase Digital Audio Dubbing Mixing Recording, and Digital Audio Optical Transfer Machine. The tender notice was published in the Daily Star and the Daily Janakantha. Three tenders were submitted. A seven-member committee was formed to evaluate the tender. He was a member of the evaluation committee. After evaluation, the committee submitted the report. They recommended giving the notification of the award in favour of the lowest tenderer. He proved the recommendation as exhibit 6 and his signature on the recommendation as exhibit 6/1. The committee recommended in favour of M/S Novel Co (M) SDN BHD, which is registered in Malaysia. During cross-examination, he admitted that the BFDC is using the supplied equipment till today (as on 21.08.2019). He admitted that the BFDC is using the equipment without any complaint.

P.W. 10 A.M. Mostafa Taher is the Deputy Chief Information Officer of Dhaka WASA. He stated that he was a member of the evaluation committee formed to purchase Digital Audio dubbing, Mixing, and Re-recording equipment for BFDC. Three tenders were submitted. Considering all aspects, the committee recommended to give the notification of award in favour of M/S Novel Co (M) SDN BHD. He proved the report as exhibit 6 and his signature on the report as exhibit 6/2. During cross-examination, he affirmed that after considering all the aspects, the equipment was purchased. He admitted that the equipment is still used till today.

P.W. 11 Md. Saiful Islam is the Executive Engineer of BFDC. He was tendered with P.W. 10. The defence declined to cross-examine P.W. 11.

P.W. 12 Md. Shahjada Selim is the Station Engineer of Station Betar-3. He was tendered with Chief of P.W. 10. The defence declined to cross-examine P.W. 12.

P.W. 13 Sheikh Mahiuddin Ahmed was the Lab Chief of FDC. He stated that from May 2013 to August 2015, he discharged his duty as Assistant Project Director. He was not involved with the present project. He was a member of the equipment received committee. A pre-shipment report was submitted regarding the equipment. The PSI Agent of FDC submitted the report. There was some variation in the report. The model number of the equipment was changed. A few pieces of China were supplied in place of Japanese origin. At that time, the Project Director issued a letter for explanation to the company that supplied the equipment. After receipt of the explanation with prior approval of the M.D, the Project Director accepted the explanation. After that, three meetings of the equipment received committee were held. The committee found the variation in the equipment. The committee did not agree to receive the equipment, and a draft resolution was prepared. None of the members of the committee signed the resolution and received the equipment. The equipment received committee conducted meetings on 09.12.2013, 09.01.2014, and 10.02.2014, but he could not show any resolution of the meeting. The committee did not send any notice to the company that supplied the equipment. He affirmed that the equipment was received and those are now being used. He denied the suggestion that although the equipment was correctly supplied but the equipment received committee did not receive those. He admitted that the German-origin goods were correctly supplied. He admitted that the M.D received the goods since the PD was satisfied. He denied the suggestion that the equipment was correctly supplied, for which M.D

received the equipment. He stated to the Court that he, along with nine other members of the committee, received the equipment. He affirmed that he found the variation regarding the model and the country of origin. No resolution was taken by the committee that the equipment was not correctly supplied.

P.W. 14 A.T.M. Rezaul Karim was the Lab Super of BFDC. He was tendered by the prosecution. During cross-examination, he stated that he was a member of the equipment receiving committee. Three meetings were held, but no resolution was taken. He could not say whether the equipment was supplied following the tender or the equipment was received following the tender schedule. During his tenure in the service, the supplied equipment was used by the BFDC.

P.W. 15 S.K. Firoj Ahmed was the Joint Secretary of the Ministry of Information. On 01.07.2014, a project for the modernization of the BFDC under the Ministry of Information was adopted. A few equipment, like Digital Audio Dubbing, Mixing and Recording Digital Audio Optical Transfer Machine, were purchased. On 01.07.2014, a three-member committee was formed regarding the irregularity of the purchase. He was a member of the enquiry committee. Two other Deputy Secretaries were the members. One Deputy Secretary was on leave for training, for which another Deputy Secretary was included. After physical inspection, the committee submitted a report on 10.08.2014. He proved the report as exhibit 7 and his signature on the report as exhibit 7/1. During the enquiry, it was found that Chinese equipment was supplied in place of USA and Japan origin. The equipment received committee informed that they did not receive the equipment. The Project Director did not take any action against the supplier. During cross-examination, he stated that he is not aware of the fact that BFDC is using the equipment. He is not aware whether four officers visited Germany to purchase the equipment. He denied the

suggestion that no irregularity was made in supplying the equipment. He is not aware whether the money was misappropriated.

P.W. 16 Md. Laisur Rahman is the Additional Secretary of the Ministry of Public Administration. In 2014, he was the Deputy Secretary of the Ministry of Information. On 01.7.2014, a three-member committee was formed to enquire about the irregularity regarding the purchase of BFDC. He was a member of the committee. After the enquiry, on 10.08.2014, the committee submitted the report. He proved his signature on the report as Exhibit 7/2. During the enquiry, the committee found that the country of origin of the goods had changed. The Digital Audio Machine of China was supplied. The equipment receiving committee did not receive the goods. He affirmed that the equipment was supplied and installed. He denied the suggestion that the supplier supplied the equipment following the tender.

P.W. 17 Md. Robiul Islam is the Joint Secretary of the Ministry of Science and Technology. In 2014, he was the Deputy Secretary of the Ministry of Information. On 01.07.2014, a committee was formed to enquire about the irregularity regarding the purchase of the equipment of the BFDC. He was a member of the committee. The committee, after inspection, submitted the report on 10.08.2014. He proved his signature on the report as Exhibit 7/3. The Project Director and the M.D of the BFDC paid the L.C. value of the equipment, although those were not supplied following the tender. They also did not take any action against the supplier. He affirmed that during the enquiry, the enquiry committee did not send any requisition for a report from the mother company. He denied the suggestion that the equipment was supplied following the tender.

P.W. 18 Md. Abdul Khalek Mollik was the Deputy Chief of the Ministry of Information in 2013. He was a member of the evaluation committee regarding the purchase of the Digital Audio Dubbing, Mixing, and Recording Digital Audio Optical Transfer Machine. At the time of

submitting the report, he was abroad for which he could not sign the report. A three-member committee was formed regarding the irregularity of the purchase. The enquiry committee submitted the report on 18.09.2014, and he sent the report to the M.D of BFDC. He proved the forwarding as exhibit 8 and his signature on the forwarding as exhibit 8/1. During cross-examination, he stated that his clerk typed the forwarding. He was only discharged official job.

P.W. 19 Mamunur Rashid is the Head of the Camera and Light, BFDC. On 25.10.2016, the Deputy Director Farid Ahmed Patwary of ACC seized documents mentioned in serial No. 05 of the seizure list, and the seized documents were handed over to the custody of Md. Moniruzzaman Khan, Assistant Engineer, BFDC. A departmental proceeding was initiated against him, and on 11.12.2016, those documents were handed over to him. He proved the documents as material exhibit I series. He submitted a total of 03 files, and there are a total of 374 pages. There are total of 135 pages, and a note sheet is available on page 235. He denied the suggestion that he did not take custody of the equipment following the rules.

P.W. 20 Md. Farid Ahmed Patwary is the Deputy Director, Anti-Corruption Commission, Head Office, Dhaka. He stated that on 05.11.2015, when he was discharging in the said post, he was appointed as Investigating Officer. He received the case docket on 23.12.2015 from the previous Investigating Officer. Thereafter, he visited the place of occurrence, perused the FIR and the documents. On 25.10.2016 at 11.00 am, he seized documents from Md. Moniruzzaman Khan, Assistant Engineer, BFDC. The seized documents were mentioned in column No. 05 of the seizure list. On the same date, he handed over the documents to the custody of said Md. Moniruzzaman. He proved the seizure list as exhibit 3 and his signature on the seizure list as exhibit 3/4. He proved the Jimmanama as exhibit 4 and his signature on the Jimmanama as exhibit 4/4. During the investigation, he recorded the statements of

witnesses. He found the truth of the allegation against the accused persons and submitted the charge sheet against the FIR-named three accused persons and submitted the final report considering the application of accused Pijush Bandopaddhay, M.D, BFDC. The Anti-Corruption Commission had given approval on 23.02.2017 to submit charge sheet. He proved the approval as Exhibit 9. Thereafter, he submitted the charge sheet against the accused persons, John Noel, Khandaker Shahidul Islam, and Md. Shafiqul Islam. The accused persons, in connivance with each other, misappropriated total Tk. 3,46,58,520 of the BFDC Modernization and Extension Project. During cross-examination, he admitted that, following all the procedures, the international tender was invited. Messrs Novelco of Malaysia was selected as the lowest tenderer. He admitted that all the proceedings of the tender were taken with the approval of the Head of the Procuring entity. The equipment receiving committee was formed to receive the equipment. He admitted that the Project Director, following the rules, formed the committee. He denied the suggestion that the pre-shipment inspection agent did not submit any adverse report. He denied the suggestion that since the pre-shipment and Post-shipment reports were correct, the BFAC received the equipment. He admitted that in the tender total of seven countries, Japan, the USA, Finland, Taiwan, Malaysia (Local), and Germany were written. He admitted that in the tender, there is a column 'Country of origin'. He also admitted that there is no column of 'Made in'. He did not receive any report regarding the country of origin of the equipment. He denied the suggestion that the Country of origin and the quality of the goods were maintained, for which he did not submit any report. In the tender, the brand name has been mentioned. During the investigation, he did not receive any report from the mother company. BFDC sent a requisition to the supplier regarding the equipment. He is not aware of the fact that 20 experts discharged duty with the BFDC. He could not say whether the Digital Audio Dubbing

Machines were installed. He also could not say whether the Digital Audio Optical Transfer Machines were installed. He could not say the total number of the machines. He did not seize any equipment. He could not say the value of the Digital Audio Optical Transfer Machine. He denied the suggestion that the USA-based company set up a factory in different countries, which is recognized as made in the USA, or that, without knowing anything, he falsely implicated the accused.

Learned Advocate Mr. Md. Nazimuddin appearing on behalf of the appellant Khandaker Shahidul Islam submits that there was no condition in the tender as well as in the offer submitted by the Novelco that equipment made in UK or Japan would be supplied and pursuant to the letter dated 19.11.2013, the Novelco had given explanation stating that the manufacturer relocated their factory to China and there was no allegation that the equipments were produced by the Chinese company and the PSI Agent of the BFDC issued a certificate on 27.11.2013 stating that the equipments are in order and after acceptance of the explanation by the M.D of BFDC, a letter was issued on 24.11.2013 by BFDC to proceed with accordingly and the equipments were supplied following the offer. After delivery of the equipment on 05.12.2013, the BFDC is admittedly using the equipment without any complaint. The prosecution failed to prove the charge against the accused, Khandaker Shahidul Islam, beyond all reasonable doubt.

Learned Advocate Mr. Md. Shamsul Islam, appearing along with learned Advocate Mr. Shamsur Rahman on behalf of the appellant Md. Shafiqul Islam submits that in the tender, there was no condition that the equipment made in Japan or the USA would be supplied, and the proposal submitted by Novelco was accepted by the evaluation committee. There was no condition in the proposal submitted by Novelco that they would supply the equipment made in Japan or the USA, and the imported equipment was accepted by the BFDC with prior approval of the M.D of BFDC, complying with all legal requirements,

and the BFDC has been using that equipment without any complaint. He further submits that before acceptance of the equipment, the Managing Director had given official approval to accept the equipment. The M.D of the BFDC issued the cheque for payment of the value of the L.C. and the accused Md. Shafiqul Islam signed the cheque in his official capacity, and the Investigating Officer submitted the final report in favour of Pijush Bandopaddhay, the then M.D of BFDC, who had approved to accept the equipment. The prosecution failed to prove the charge against the accused Md. Shafiqul Islam, beyond all reasonable doubt, and the trial Court, without considering the evidence of the prosecution witnesses and the reply submitted by the accused at the time of examination under section 342 of the Code of Criminal Procedure, 1898 illegally passed the impugned judgment and order. He prayed for allowing the appeal.

Learned Advocate Mr. ASM Kamal Amroohi Chowdhury appearing on behalf of the respondent No. 2 (ACC) in both the appeals submits that in the offer submitted by the Novel co, it has been stipulated that the equipments USA and Japan origin will be supplied and there was a variation in the equipments regarding the country of origin and the model number and the equipment receive committee refused to receive the equipments and the enquiry committee formed by the concerned Ministry reported (exhibit 7) that there was a variation of country of origin and the model number of the equipments supplied by the Novelco. The accused persons, in connivance with each other, by supplying the Chinese-origin equipment, committed a breach of trust and misappropriated the total amount of Tk. 91,26,060, and the trial Court, considering the evidence of the prosecution witnesses, legally passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Md. Nazimuddin, who appeared on behalf of the appellant Khandaker Shahidul Islam, Mr. Md. Shamsul Islam who appeared along with

learned Advocate Mr. Shamsur Rahman, on behalf of the appellant Md. Shafiqul Islam and the learned Advocate Mr. ASM Kamal Amroohi Chowdhury, who appeared on behalf of the respondent No. 2 (ACC) in both the appeals, perused the evidence, impugned judgment and order passed by the trial Court, and the records.

At the very outset, it is noted that during the trial, the prosecution proved three files regarding the tender invited by the BFDC and approval regarding the purchase and supply of equipment by the Novelco, and all those documents were proved as material exhibits I series without marking particular exhibit.

On perusal of the evidence, it reveals that Md. Syed Nur Alam, Project Director and Director (Technical and Engineering) invited a international tender which was published on 31.12.2012 in the Daily Janakantha and in the Daily Star on 04.01.2013 for procurement of Digital Audio Dubbing, Mixing and Re-recording Equipment and Digital Audio Optical Transfer Machine for use of the BFDC and John Noel Michael Dajie, Chief Executive Officer, Novelco (M) SDN BHD, Malaysia submitted offer on 02.04.2013 to supply those equipments and the offer of the Novelco was accepted as lowest tender and the evaluation committee made the recommendation on 04.06.2013 to the Managing Director of the BFDC and the BFDC issued the notification of award on 16.06.2013 and the PSI Agent of the BFDC in its letter dated 14.11.2013 informed the PD, Bangladesh Film Development Corporation that there is a variation in eight equipments regarding the country of origin and model number. Thereafter, the PD Md. Shafiqul Islam of the BFDC, by letter dated 19.11.2013, requested Novelco to give clarification regarding the said report of the PSI Agent. Thereafter, the Novelco by letter dated 20.11.2013 had given an explanation stating that the manufacturer of the equipment relocated their factory to China and there is no factory of the manufacturer in Japan or the USA. Thereafter, the PD initiated an office note on 21.11.2013 regarding the

explanation given by the Novelco regarding the country of origin of the equipment, and the then Managing Director, Pijush Bandopaddhay, on 24.11.2013, accepted the explanation of the Novelco, and on the same date, the accused Md. Shafiqul Islam issued a letter to the PSI Agent to proceed with the equipment, and on 27.11.2013 the PSI agent issued the PSI certificate. Thereafter, the equipment was received by the BFDC on 05.12.2013.

On perusal of the tender invited by Md. Syed Nur Alam, PD of the BFDC, it appears that the tender was invited for the procurement of the Digital Audio Dubbing, Mixing and Re-recording Equipment, and Digital Audio Optical Transfer Machine. The tender submitted by Novelco was accepted by the evaluation committee as the lowest tender, and the BFDC issued the notification of award to supply that equipment at a price of Tk. 3,38,000 URO, equivalent to Tk. 3,46,58,520. The tender value of the Digital Audio Dubbing, Mixing and Re-recording Equipment was 43,250 URO, equivalent to 86,500 URO (two sets), and the tender value of the Digital Audio Optical Transfer Machine was 2,07,000 URO, equivalent to Tk. 2,12,25,780. There is no dispute regarding the supply of the Digital Audio Optical Transfer Machine.

In the international tender, invited by the then PD of BFDC, no condition was stipulated that the equipment made in the USA or Japan was required to be supplied. In the offer submitted by Novelco, it has been stated that the equipment of USA and Japanese origin would be supplied. The prosecution's case is that in the offer letter, the accused Novelco stated that the equipment of Japanese and USA origin would be supplied. The defence case is that there is no factory of the manufacturer of the Digital Audio Dubbing, Mixing and Re-recording Equipment in Japan and America, and their factory were relocated to China. Admittedly, the disputed eight items of equipment made in China, manufactured by the Japanese and American companies were supplied by the Novelco. There is no dispute that American and Japanese

companies are the manufacturers of the equipment supplied by Novelco. In the offer submitted by Novelco, it has been stipulated that the equipment of Japanese and the USA origin would be supplied. No condition was stipulated in the offer letter submitted by Novelco that the equipment made in Japan and the USA would be supplied. During cross-examination, the Investigating Officer P.W. 20 Md Farid Ahmed Patwary, admitted that in the tender, there was a column of country of origin. He also admitted that in the tender, 'made in' was not written. He did not receive any report regarding the country of origin of the equipment supplied by Novelco. He also stated that he did not receive any report from the mother company, which manufactured the equipment supplied by Novelco. BFDC sent a requisition for a report of the supplied equipment, and he also did not send the equipment for a report by the expert. During the investigation, he did not seize any equipment.

On perusal of the evidence, it transpires that the Ministry of Information formed a three-member committee, headed by P.W. 15 S.K. Firoj Ahmed, Joint Secretary, Ministry of Information, P.W. 16 Md. Laisur Rahman and P.W. 17 Md. Robiul Islam was a member of the said committee, and after enquiry, the said enquiry committee submitted a report on 10.08.2014 (exhibit 7). In the report dated 10.08.2014 (exhibit 7), it has been alleged that the equipment made in China has been supplied in place of the USA. P.W. 15 S.K. Firoj Ahmed stated in cross-examination that he is not aware whether the accused misappropriated any amount. P.W. 16 Md. Laisur Rahman admitted in cross-examination that the equipment was also installed. P.W. 17 Md. Robiul Islam, during cross-examination, admitted that during the enquiry, they did not send any requisition to the mother company regarding the equipment.

On perusal of the evidence of the prosecution witnesses, it reveals that P.Ws 6, 9, 10, 13, 14, and 15 stated that the BFDC received the equipment, and those are being used by the BFDC without any complaint. It appears that the accused Md. Shafiqul Islam initiated an

office note on 21.11.2013 regarding the explanation submitted by Novelco for approval of the M.D, BFDC. Thereafter MD, BEDC by office note dated 24.11.2013 accepted the explanation of the Novelco directing to take step for issuing PSI certificate and with prior approval of the MD, BEDC the equipment were accepted by the FFDC.

The explanation given by Novelco that the manufacturer relocated their factories to China, and there is no factory of the manufacturer in the USA and Japan, has been accepted by the M.D of BFDC, and he issued the cheque for payment of the L.C value. Although the then M.D Pijush Bandopaddhay was named in the FIR but the Investigating Officer submitted final report in favour of Pijush Bandopaddhay. Nothing has been stated in the tender and the offer submitted by Novelco that the equipment made in Japan and the USA would be supplied by Novelco. Therefore, I do not find any substance in the prosecution's case that Novelco supplied the equipment made in China instead of made in the USA and Japan.

At the time of examination of the accused under section 342 of the Code of Criminal Procedure, 1898, the accused Md. Shafiqul Islam, the then PD of the BFDC, stated that “উল্লেখ্য দরপত্র দলিলে কান্ট্রি অব অরিজিন শিরোনামে কলাম ছিল, মেড ইন শিরোনামে কোন কলাম ছিল না। তদন্ত কর্মকর্তা মাদার কোম্পানির কাছ থেকে কোন প্রত্যয়ন/মতামত গ্রহণ করেনি বলে জানিয়েছে।” During investigation, no requisition was sent to the mother company of the manufacturer that the supplied equipments were not manufactured by the USA and Japanese companies. The evidence discussed hereinabove depicts that Novelco supplied the equipment following the tender dated 31.12.2012 and 04.01.2013. There is no variation of the equipment stated in the offer submitted by Novelco and the equipment supplied by Novelco. The trial Court without considering the statement of the accused Md. Shafiqul Islam made during examination under section 342 of the Code of Criminal Procedure, 1898 arrived at a wrong decision as to the guilt of the accused persons.

In view of the above evidence, facts and circumstances of the case, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the accused-persons Md. Shafiqul Islam and Khandaker Shahidul Islam beyond all reasonable doubt.

I find merit in the appeals.

In the result, the appeals are allowed.

The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Md. Shafiqul Islam and Khandaker Shahidul Islam are hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.