

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 9274 of 2021

In the matter of:

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

And

In the matter of:

Md. Jahsim Uddin Ahmed

...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. Moniruzzaman Sobuj, 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: 08.03.2026, 17.05.2026, 19.05.2026 ,
20.05.2026 and 21.05.2026**

Judgment on: 15.06.2026

This appeal, preferred under Section 10 of the Criminal Law Amendment Act, 1958 is directed against the judgment and order dated 23.11.2021, passed by the learned Special Judge, Court No. 8, Dhaka in Special Case No. 02 of 2020 arising out of Motijheel Police Station Case No. 29 dated 26.02.2019 corresponding to A.C. G.R. No. 52 of 2019 convicting the accused under Sections 420/467/468 and 471 of the Penal Code and sentencing him to suffer rigorous imprisonment for 01 (one) year with a fine of Taka 50,000/-, in default to suffer simple imprisonment for 01(one) month more.

The facts, relevant for disposal of the appeal, in short, are that PW 1, Md. Abdul Kader Bhuiya, Assistant Director, Anti-Corruption Commission (ACC), Head Office, Dhaka lodged a First Information Report (FIR) with Motijheel Model Police Station on 26.02.2019 alleging *inter alia* that the accused secured employment as a Junior Assistant Cum Typist with Jiban Bima Corporation on 01.10.1979 by submitting a fabricated Secondary School Certificate (S.S.C.) as genuine and continued in service until his retirement on 30.06.2017. During the inquiry, the inquiry officer came to learn from the Head Master of Mograpara HGGS Smriti School that the accused, Jashim Uddin Ahmed sat for the

S.S.C examination in 1974 in the Humanities group but had failed. Thereafter, the said Certificate was subsequently sent to the Controller of Examinations of Dhaka Board who opined it to be forged and pursuant to the direction of the higher authority the instant case was instituted against the accused.

On closure of the investigation, the investigating officer submitted charge sheet No. 234 dated 09.07.2019 against the accused under Sections 420/467/468 and 471 of the Penal Code.

Subsequently, the case was transferred to the learned Special Judge, Court No. 8, Dhaka which was registered as Special Case No. 02 of 2020. Upon hearing the parties, learned Special Judge, Court No. 8, Dhaka thereafter framed charges against the accused under sections 420/467/468 and 471 of the Penal Code on 14.09.2020 to which the accused pleaded not guilty and claimed to be tried.

In course of the trial, 11(eleven) prosecution witnesses were examined while the defence examined none. The accused was examined under Section 342 of the Code of Criminal Procedure when he repeated his innocence.

Upon conclusion of trial and hearing the parties, the learned Special Judge, Court No. 8, Dhaka convicted the accused under

Section 420/467/468 and 471 of the Penal Code and sentenced him to suffer rigorous imprisonment for 01 (one) year with a fine of Taka 50,000/-.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence the convict preferred this instant Criminal Appeal before this Court. This Court enlarged the appellant on bail on 22.12.2021, which was lastly extended till disposal of the appeal on 04.12.2022.

Mr. Md. Khurshid Alam Khan, the learned Senior Advocate along with Mr. Md. Moniruzzaman Rana, the learned Advocate appearing on behalf of the appellant contends that there is a critical discrepancy which exists between the signature on the application for appointment (Material Exhibit-III) and joining letter (Material Exhibit-IV). The court did not take any step for opinion of a handwriting expert to review the signature. Furthermore, the appointment letter as Junior Assistant dated 03.12.1979 (Exhibit-VI) references a prior application dated 24.08.1978 which the Investigating Officer failed to seize. This omission casts a grave doubt on the authenticity and integrity of the prosecutions documentary evidence.

He further submits that the Special Judge framed charges under sections 420/467/468 and 471 of the Penal Code; but it was defective under the proviso of section 222 of the Code of Criminal Procedure, so it vitiates the entire proceeding, as such the conviction and sentence may kindly be set aside.

He next submits that the P.W.1 namely Md. Abdul Kader Bhuiyan, in his cross-examination stated that "সত্য নয় যে, আসামী অত্র জাল সার্টিফিকেট চাকুরীতে যোগদান এর সময় জমা দেয়নি, তিনি PRL এ যাবার পর অত্র জাল সার্টিফিকেট ঢুকিয়ে অত্র মামলা দায়ের করা হয়।" This testimony creates doubt as to when the certificate was submitted and who submitted it. Furthermore, P.W.11 in his cross examination stated that "সত্য নয় যে, অত্র আসামী অল্প শিক্ষিত বিধায় তিনি কিছু বুঝতেন না, যা দাখিল করেন তা তার বড় ভাই দাখিল করেন" considering that the appeal may kindly be allowed for the ends of justice.

He next argues that PW 5, namely Topon Kumar Sarker, who was the former controller of examinations, in his cross-examination stated that he did not know who fabricated the certificate as such the statement creates doubt and raises a question as to who is the main culprit in the commission of this alleged offence and no hand-writing expert was called to establish that the appellant was the fabricator.

Learned Advocate contends that P.W. 6 namely Md. Delowar Hossain, in his cross-examination admitted that he is the elder brother of the appellant and he filed the complaint to the Anti-Corruption Commission vide Exhibit No.06/01; because there was a land dispute between them and for that reason several notices were served upon him and arbitration was also held by the concerned local authority. Due to that reason he became furious, and filed the complaint with *mens rea*. Moreover, from the evidence of P.W-6, it is clear that the matter is a family dispute with regard to the land. A family dispute does not come within the schedule offences of the Anti Corruption Commission.

He further contends that P.W. 11 namely Md. Abdul Kader Bhuiyan, stated in the cross-examination that the accused was appointed on an *ad hoc* basis and he failed to recover or produce any formal recruitment notice or circular under which the appellant was appointed. The appellant was appointed by the concerned Managing Director (M.D.) under Jiban Bima Corporation at his own choice without publishing any circular. The essential prerequisite that submission of an SSC certificate was a mandatory condition for employment has not been proven.

This crucial lacuna creates doubt as to the involvement of the accused with *mens rea* in commission of the alleged offence.

He argues that the elder brother of the appellant filed the complaint to the Anti-Corruption Commission, having *mens rea* and thus there is a doubt about the involvement of the accused. In support of his contention, the learned Advocate referred to the decision passed in *Mahbub Hossain Vs. The State*, reported in 33 BLD (HC)(2013)83.

He next submits that in connection with this case no act of forgery was committed and who prepared the forged document was not proved. In this connection he referred to the case of *Manu Mia and others Vs. the State*, reported in 42 DLR 191.

He next submits that the appellant performed his official duties with the complete satisfaction of the concerned authority. As to the service rules, previous job experience and satisfaction of the authority the appellant was promoted from time to time, and thereafter, retired from the service. So, he has the legitimate expectation of the service benefit at his last stage of life as the Hon'ble High Court Division held in *Asaf Khan and others vs. the Court of Settlement, First Court and others*, 8 BLC (2003) 1; otherwise, he is suffering a lot considering his humanitarian

condition of life the appeal may kindly be allowed for the ends of justice he is entitled to be acquitted from the charge levelled against him..

He submits that the definition of forgery has been given in section 463 of the Penal Code. Accordingly, to the definition, it appears that the forgery has not been duly proved by adducing oral and documentary evidence as such the conviction and sentence is not sustainable in the eye of law.

He submits that from the trend of evidence, it appears that out of grudge with regard to the land dispute, P.W-6 lodged the case only for the humiliation of the convict-appellant and as such, the instant case is engineered by some vested quarter. The matter has been ended by an order of conviction and sentence which creates doubts regarding the bonafideness of the conviction as such the benefit goes to the convict-appellant and he is entitled to the benefit of Section 114 (g) of the Evidence Act.

He submits that the appellant is a man of advanced age and about 70 years old and there is no previous criminal record against the convict. He has been suffering mental agony since 04.05.2017, though he did not commit the alleged offence.

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

Per contra, Mr. S.M. Iqbal Bahar Bhuiyan, the learned Advocate appearing on behalf of the respondent No. 2, contends that the appellant had submitted an application for employment on 25.05.1979 to the Jiban Bima Corporation wherein he mentioned his educational qualification that he was S.S.C pass bearing 2nd Division which is evident from Material Exhibit No. III and the appellant did not deny the application dated 25.05.1979.

He further submits that the charges of the instant case under Sections 420/467/468/471 of the Penal Code were validly framed against the convict-appellant. In view of the provision laid down in Section 6(1) of the Criminal Law Amendment Act, 1958, the provisions of the Code of Criminal Procedure, 1898, should in so far as they are not inconsistent with the Act, apply to the proceedings of the Court of a Special Judge. That the said Act, 1958 does not state anything about the charge and therefore, the provisions of Chapter XIX of the Code of Criminal Procedure, 1898 with the heading "OF THE CHARGE" are applicable to the proceedings of the Court of a Special Judge.

He next submits that the learned Special Judge upon proper assessment of the evidence and materials on record, found the appellant guilty under Section 420/467/468/471 of the Penal Code and thus, rightly convicted him and therefore, the Judgment dated 23.11.2021 is liable to be sustained.

Mr. Bhuiya submits that on a plain reading of the depositions of the P.W's, all the prosecution witnesses supported the FIR case and although they were cross-examined but the defence could not deviate them from their depositions and relying upon such depositions the learned Special Judge convicted the appellant by the Judgment dated 23.11.2021 which needs to be upheld by this Hon'ble Court.

He further submits that in view of the Exhibits particularly the Material Exhibit Nos. I, II and III the convict-appellant forged his S.S.C. certificate which he used to be employed in the Jiban Bima Corporation and he is the ultimate beneficiary of such forged certificate and therefore, the conviction is liable to be sustained and the criminal appeal may kindly be dismissed.

He next submits that the cited decisions are distinguishable and hence are not applicable in the instant case.

Mr. Bhuiyan contends that the accused used the SSC certificate as a genuine document knowing it was a forged one and he is the sole exclusive beneficiary of the forged document and the allegations against the accused under Sections 420/467/471 and 468 of the Penal Code have been proved and as such the instant appeal is liable to be dismissed.

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 the proper adjudication of the matter and analysis of the facts on record the prosecution's evidence is reviewed as follows:

PW1, Abdul Kader Bhuiyan, Assistant Director, Anti-Corruption Commission, informant deposed that he was entrusted with the investigation of the instant case. Upon receipt of the competent authorities sanction order, he proceeded with the investigation. Consequently, he lodged the First Information Report (F.I.R) with Motijheel Police Station on 26.02.2019. During the investigation, he established that the accused, Jashim Uddin had procured employment with Jiban Bima Corporation on 01.10.1979 by utilising a forged Secondary School Certificate (SSC). The Head Master of HGGS Memorial School informed

that Md. Jashim Uddin had appeared for the S.S.C examination in 1974 but had failed. The Controller of Examination of Dhaka Board opined that the subject certificate was a forgery. The accused illicitly served at Jiban Bima Corporation from 01.10.1979 to 30.06.2017 by leveraging the said forged SSC certificate, which prompted the lodging of the case.

He proved the sanction letter as Exhibit-1, and the FIR as Exhibit-2.

During cross-examination, he stated that the accused proceeded on Post Retirement Leave (PRL) on 01.07.2017 and the case was lodged against him thereafter. The accused submitted character certificate and testimonial of school at the time of joining the service. He denied the suggestion that the accused had not submitted the forged certificate. Upon his initial appointment, it was interpolated. He further denied the suggestion that the former Upper Divisional Assistant had submitted the forged certificate due to enmity arising from a land dispute.

He stated that it was untrue that the forged certificate was produced at the time of appointment and that it was only retained and the case lodged when the accused proceeded on PRL.

PW 2, Md. Helal Uddin, the Deputy Controller of Examination, Dhaka Board, deposed that the register reflected that one Jashim Uddin (Roll No. 40842, Registration No. 28111 of 1972) was recorded as “unsuccessful”. The Assistant Director of the Anti-Corruption Commission seized the tabulation sheet for the S.S.C examination of 1974.

He proved the seizure list as Exhibit 3.

PW 3, Din Dawal Ram, Office Assistant at Dhaka Board and a seizure list witness stated that the Assistant Director of A.C.C seized a register from Md. Helal Uddin at his presence. Subsequently, the officer of A.C.C retained the seized register in his custody by executing a *Jimmanama* (custody bond).

He proved the *Jimmanama* as Exhibit-4.

PW 4, Kazi Sohel, another Office Assistant at Dhaka Board and a seizure list witness deposed that the Assistant Director of the Anti-Corruption Commission arrived on 30.04.2019 and seized a register in his presence. Thereafter, it was placed in the custody of Ram Dawal. He signed the *Jimmanama* which was exhibited and marked as Exhibit 4/4.

PW 5, Tapan Kumar Sarker, former Controller of Examinations deposed that the alleged certificate was verified by

him and found that the accused Jasim Uddin had not passed the examination.

In cross-examination he stated that although the accused appeared for the examination and he failed. He admitted that he possessed no knowledge regarding the identity of the author or fabricator of the disputed certificate.

PW 6, Md. Delwar Hossain, former Upper Divisional Assistant, Jibon Bima Corporation deposed that he submitted a written complaint before the Chairman of the Anti-Corruption Commission alleging that the accused secured employment in service by submitting a forged certificate. He further stated that he forwarded a copy of the said complaint to the Managing Director of Jiban Bima Corporation.

He proved the complaint as Exhibit 6.

In cross-examination, he deposed that the accused is his younger brother and he lodged the complaint with the Anti-Corruption Commission on 04.05.2017. He denied the suggestion that he had facilitated the accused's employment at Jiban Bima Corporation in 1978. He also denied the suggestion that he lodged the complaint with the ACC due to a land dispute. He admitted that he lodged the complaint first and only thereafter did the

dispute arise. He stated that the residential address of the accused and himself is the same and he could not recall when he first learned that the accused obtained an appointment using a forged certificate. He denied the suggestion that he himself forged the SSC certificate and submitted it. He further denied the suggestion that he secured a position for his younger brother and later lodged the complaint due to enmity.

PW 7, Premankar Sarkar, Manager (law) and a seizure list witness proved the seizure list as Exhibit 7.

He produced the impugned SSC certificate as Material Exhibit I, the testimonial as Material Exhibit II, the application for appointment as Material Exhibit III, the Joining letter as Material Exhibit IV, the application for PRL as Material Exhibit V and the permanent and temporary appointment letter as Material Exhibit VI.

In cross-examination, he denied the suggestion that PW 6 (Delwar, the brother of the accused) had submitted the documents exhibited as material Exhibits I through VI. He stated that he could not verify who actually submitted the certificates into the concerned section.

PW 8, Md. Hafizur Rahman, Office Assistant and seizure list witness stated that the Assistant Director of A.C.C seized certain documents and entrusted them to Din Dayal Ram. He signed the *Jimmanama* and proved his signature thereon as Exhibit 4/3.

PW 9, Md. Ali Hossain, Deputy Manager at Jiban Bima Corporation and seizure list witness deposed that the Assistant Director seized several documents produced by Premankar Sarkar. He signed the seizure list and proved the same as Exhibit 07/02.

PW 10, Moni Mohan Mondal, Office Assistant and seizure list witness was tendered and declined to cross examination by the defence.

He proved his signature as Exhibit 07/03.

PW 11, Abdul Kader Bhuiyan, Investigating Officer deposed that he visited the place of occurrence, seized the materials and recorded statements under Section 161 of the Code of Criminal Procedure.

He proved sanction letter as Exhibit 8.

He stated that upon receipt of the sanction letter, he submitted charge sheet No. 234 dated 09.07.2019 against the accused under sections 420/467/468 and 471 of the Penal Code.

In cross-examination, he stated that the complaint was lodged by PW 6, Delowar Hossain, who is the elder brother of the accused. He conceded that he did not recover the appointment circular pursuant to which the accused was appointed. He denied the suggestion that no educational certificate was required at the time of the accused's appointment. He also denied the suggestion that the certificate was submitted by the elder brother of the accused owing to the latter's limited education. He further denied the suggestion that the accused had not submitted any documents whatsoever.

It appears from the testimony of the Investigating Officer (PW-11) who candidly admitted that the official appointment circular or recruitment notice pursuant to which the accused was inducted into service, was never recovered during the course of the investigation. He stated in his cross-examination that "আসামী এডহক ভিত্তিতে চাকুরীতে যোগদান করেন। আসামী যে চাকুরীতে যোগদান করে তার কোন নিয়োগ বিজ্ঞপ্তি, সার্কুলার ছিল পাননি। আসামী যখন চাকুরীতে যোগদান করেন উক্ত সময়ে জীবন বীমার M.D. নিজ ক্ষমতাবলে ০২/০৪ জন কর্মচারী নিতে পারতেন- সঠিক।"

The above admission assumes considerable significance. Since the prosecution has failed to produce the foundational

employment circular, it cannot be conclusively established that the submission of a Secondary School Certificate (SSC) was a mandatory prerequisite for the post. The prosecution's failure to produce this primary document creates a material lacuna failing to establish that the accused used the certificate intending to wrongfully gain employment by practising deception upon the employer.

It further appears that Delwar Hossain (PW-6) admitted during cross-examination that he is the elder brother of the accused and that they reside at the same ancestral address. Crucially, PW-6 conceded that deep-seated enmity exists between them stemming from an ongoing land dispute.

Furthermore, the record reveals that the initial complaint is a non-speaking one and the same was lodged before the Anti-Corruption Commission by PW-6 in his personal capacity, rather than by the aggrieved employer, the Jibon Bima Corporation. This circumstance casts severe suspicion on the bona fides of the prosecution's case. It highly probabalizes the defence's contention that the instant complaint was maliciously motivated by personal animosity, designed primarily to penalize the accused and

maliciously deprive him of his service benefits, gratuity, and pension.

It is also evident from the record that PW-5, the former Controller of Examinations of the Board of Intermediate and Secondary Education, Dhaka, categorically stated in cross-examination that he possessed no personal knowledge as to the identity of the individual who allegedly fabricated the impugned certificate. Perusal of the record confirms that not a single prosecution witness has advanced any testimony identifying the author of the alleged forgery. Furthermore, the prosecution has failed to adduce an iota of evidence to demonstrate that the accused had knowledge of the certificate's allegedly spurious nature, or that he used it with dishonest or fraudulent intent. Absence of any evidence linking the accused to either the fabrication or the intentional knowing use of a forged document, the charges under the penal law cannot be sustained. Without proving who forged the document, the Court cannot presume that the appellant was the forger, specially when the complaint is lodged by a brother with a history of animosity.

It also depicts that there is no evidence to show that the accused had either committed alleged forgery or he knowingly used forged document as genuine in getting his employment.

The appellant served the state enterprise for a prolonged period, nearly four decades without a single scandal on his administrative record, retiring after standard promotions. Depriving a citizen of liberty and his accrued post-retirement security on the basis of an investigation marred by missing foundational links and motivated by *malice* violates the core principles of safe criminal adjudication. The prosecution has failed to produce any contemporaneous evidence showing that at any stage during such service period any objection was raised regarding the genuineness of the certificate allegedly submitted by him and clear the threshold of proof beyond a reasonable doubt.

The cumulative effect of the material discrepancies in the prosecution's evidence, the absence of the foundational recruitment circular, the personal animosity driving the complaint, and the failure to prove the identity of the forger, all create a pervasive and reasonable doubt regarding the alleged guilt of the

appellant. The benefit arising from such reasonable doubt must necessarily enure to the accused.

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 are found to be perverse, based on conjectures and unsupported by legally sustainable evidence and cannot be sustained in law, and is liable to be set aside.

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

In the result, the appeal is allowed.

The judgment and order dated 23.11.2021 passed by the learned Special Judge, Court No. 8, Dhaka in Special Case No. 02 of 2020 is hereby set aside.

The appellant, Md. Jashim Uddin Ahmed is acquitted of the charges brought against him.

The convict-appellant is hereby discharged from his bail bond.

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

(Justice *Md. Bashir Ullah*)

Md. Ariful Islam Khan
Bench Officer3