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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 10561 of 2019

In the matter of:
An Appeal under Section 10(1)(a) of the Criminal Law Amendment Act, 1958.

And

In the matter of:

Md. Shafiqul Islam
... **Convict-Appellant**

-Versus-

The State and another
... **Respondents**

Mr. Md. Atiqul Haque(Salim), Advocate with
Most. Sharifa Sultana, Advocate
... For the Appellant

Mr. Kazi Mohammad Joynal Abedin., 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: 14.07.2026, 15.07.2026, 20.07.2026, 21.07.2026, 29.07.2026, and 03.08.2026
Judgment on: 04.08.2026

This appeal, preferred under section 10(1)(a) of the Criminal Law Amendment Act, 1958 is directed against the judgment and order dated 29.08.2019 passed by the learned Special Judge, Rangpur in Special Case No. 03 of 2013 arising out of Mithapukur Police Station Case No. 33 dated 18.04.2008, corresponding to G.R. No. 150 of 2008 convicting the accused-appellant under Sections 409/109 of the Penal Code, read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to suffer rigorous imprisonment for 05(five) years with a fine of Taka 10,000/-(ten thousand), in default to suffer rigorous imprisonment for 03(three) months more. The convict-appellant was also directed to deposit a sum of Taka 2,76,450/- into the Government treasury within 30 days.

The facts relevant for disposal of the appeal, in short, are that one Md. Hasan Ferdous Sarker, Upazila Senior Fishery Officer, Mithapukur, Rangpur lodged the First Information Report (FIR) with Mithapukur Police Station on 18.04.2008 alleging *inter alia* that the accused persons were selling the 'রেনু পোনা' (fish carp/spawn) in the Mithapukur area at prices substantially higher than the Government-fixed rate. The Government-fixed rate was Taka 1,300/- per unit, but they were selling the same at Taka 2,500/- to 2,800/- per unit. Upon receipt of such information, a team of the Rapid Action Battalion (RAB) apprehended the accused persons at the scene. It was further alleged that they were selling the "রেনু পোনা"(carp/spawn) by using forged money receipts. They had been committing the offence for a long time. Thus they had misappropriated Government revenue amounting to Taka 2,76,450/- and thereby committed offence under Sections 406/420/409/467/471/109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947.

Upon closure of the investigation, the investigating officer submitted report bearing charge sheet No. 442 dated 29.11.2012 against the accused-persons under Section 409 of the Penal Code, read with Section 5(2) of the Prevention of Corruption Act, 1947.

Subsequently, the case was transmitted to the learned Special Judge, Rangpur and the same was registered as Special Case No. 03 of 2013. The charge was framed against the accused persons under Section 409 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 on

12.05.2013 and the accused-persons pleaded not guilty and claimed to be tried when the charge was read out and explained to them.

In the course of the trial, as many as 14 prosecution witnesses were examined to prove the indictment while the defence adduced none. The accused-persons were examined under Section 342 of the Code of Criminal Procedure and they reiterated their innocence.

Upon conclusion of the trial and hearing the parties, the learned Special Judge, Rangpur convicted the accused-persons under Section 409 and 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act and sentenced them to suffer rigorous imprisonment for 05(five) years with a fine of Taka 10,000/-(ten thousand) in default, to suffer rigorous imprisonment for 03(three) months more by judgment and order dated 29.08.2019.

Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence, the convict preferred the instant Criminal Appeal before this Court. This

Court enlarged the appellant on bail for a period of 06(six) months on 26.11.2019.

Mr. Md. Atiqul Haque (Salim) along with Most. Sharifa Sultana, the learned Advocates appearing on behalf of the appellant contend that the purchasers of the carp being PW7, PW9 and PW11 categorically testified that they had purchased the fish carp/spawn at the Government-fixed rate. Specifically, PW7 in his cross-examination stated that he did not pay any amount exceeding the fixed rate.

He further contends that PW2, who is an owner of a press, deposed in his examination-in-chief that the seized money receipts had not been printed at his press, and those are computer composed, printed by a digital printing process. He gave evidence which was adverse to the prosecution case concerning the alleged forged receipts, however, he was not declared hostile by the prosecution, thereby rendering his testimony admissible and undermining the prosecution's case regarding the forged receipts.

He further contends that the co-accused, Md. Rezaul Bari, who was alleged to be the principal offender, and manager of the Hatchery preferred Criminal Appeal No. 10477 of 2019 before this Court, which was allowed and he was acquitted by a judgment dated 17.10.2023. Challenging the judgment and order of acquittal, the Anti-Corruption Commission preferred Criminal Petition for Leave to Appeal No. 1605 of 2024 before the Honourable Appellate Division. Upon hearing the parties, the Apex Court dismissed the Criminal Petition for Leave to Appeal on 11.12.2024. As the appellant stands on the same footing and as such he is entitled to the same benefit of the said acquittal.

He submits that the prosecution hopelessly failed to prove the case beyond reasonable doubt and the convict-appellant is entitled to be acquitted of the charge leveled against him.

He finally prays for allowing the appeal.

Per contra, Mr. Kazi Mohammad Joynal Abedin, learned Advocate appearing on behalf of respondent No. 2, submits that the prosecution examined as many as 14 witnesses and established the prosecution case by adducing both oral and documentary evidence.

He further contends that there is no illegality, impropriety or infirmity in the impugned judgment and order of conviction and sentence.

He finally submits that the trial Court very rightly and legally passed the impugned judgment and order of conviction and sentence, the appeal is devoid of merit and as such the appeal is liable to be dismissed.

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

For a proper adjudication of the matter and analysis of the facts on record of the prosecution's evidence are being reviewed as follows:

PW1, Md. Hasan Ferdous Sarkar, informant Upazila Senior Fishery Officer, Mithapukur deposed that RAB instructed him to go to Shathibari by phone. Upon arrival, he found that the UNO and AC (Land) were present there. On inquiry, Rajaul Bari and Shafikul informed him that they were selling carp at a price higher than the Government-fixed price.

The carp was being sold at Taka 2,500/- to 2,800/- instead of the Government-fixed rate of Taka 1,300/-. They were selling using an unauthorised money receipt. In his presence, RAB seized the money receipt. Taka 19,000/- was recovered from accused No. 2, Shafikul Islam. The accused persons had misappropriated Taka 2,76,409/-. He proved the FIR as Exhibit 1.

In cross-examination, he admitted that the Shathibari Fisheries was not under his control.

PW2, Md. Maminur Rashid, businessman, and owner of a printing press deposed that the seized money receipts had not been printed at his press. The money receipts were printed in Digital printing press and composed in computer. He had a letter printing machine in his press but it remained there until 2009.

PW3, Md. Abdur Rauf, District Fishery Officer, deposed that RAB personnel showed him two money receipt books but they did not obtain his signature on the seizure list.

In cross-examination, he deposed that he did not know as to where the alleged fabricated money receipt had been printed.

PW4, Md. Rafiqul Islam Selim, Deputy-Director, LGED deposed that on 16.04.2008, he heard that a manager and staff had been apprehended by RAB on an allegation that they had sold fish carp illegally.

PW5, Abul Khayer Miah, Sub Inspector of Police, deposed that they received secret information that some persons were selling fish carp at the rate of Taka 2,500/- to 2,800/- instead of the Government-fixed rate of Taka 1,300/-. He seized some documents. Subsequently, the Fishery Officer lodged the FIR.

In cross-examination, he deposed that he did not personally see any sale of the carp at the price of Taka 1,500/- instead of Taka 1,300/-. He admitted that he did not see any money receipt showing an amount of Taka 1,800/- and Taka 2,500/- against the Government-fixed rate of Taka 1,300/-.

PW6, Sri Rabindra Nath Chakrabarti, deposed that he went to the place of occurrence under the leadership of Police Inspector Abdul Kuddush. The raiding party apprehended the manager and another staff. A seizure list was prepared in the presence of witnesses.

PW7, Md. Abu Sayed (purchaser), deposed that he went to the place of occurrence to collect fish carp and found RAB personnel there. RAB obtained his signature on a blank paper.

In cross-examination, he stated that he purchased the carp at the Government-fixed rate and had not paid any additional amount to the accused. He did not know the accused. When his signature was obtained, nothing was shown to him.

PW8, A K M Masuduzzaman, deposed that he served as UNO, Mithapukur from 28.07.2007 to 31.08.2008. Upazila Fishery Officer called him by phone at his office on 18.04.2008 and informed him that RAB personnel apprehended some officers.

In cross-examination, he stated that he had not witnessed the alleged occurrence.

PW9, Al Mahmud Hasan (purchaser), deposed that on 18.04.2008, he went to Shathibari Hatchery to collect carp. Then RAB personnel took his signature on a paper without showing him what had been written thereon.

In cross-examination, he stated that he had purchased the carp at the Government-fixed rate.

PW10, Md. Nur Hossain, Sub-Inspector of RAB deposed that upon receiving information, they went to the office of the Mithapukur Thana Fishery Officer. The team leader was DAD. The accused-persons were selling carp at a higher rate than the Government-fixed rate. He was a member of the raiding party.

In cross-examination, he deposed that the raiding party did not witness any actual purchase. He did not know under what allegation DAD lodged the case.

PW11, Md. Abdur Rahim, deposed that he went to Shathibari Fisheries on 18.04.2018 at about 11:00 a.m. to purchase fish carp. After he made the purchase, RAB personnel entered the place of occurrence and obtained his signature on a paper.

In cross-examination, he stated that he had purchased 01(one) kilogram of fish carp at the Government-fixed rate. He could not read the paper upon which his signature had been obtained. RAB kept them in their custody for about 2 to 3 hours.

PW12, Md. Mahbubur Rahman, Farm Manager deposed that, he served as Manager in the Shathibari from 2005 to 2008. Fish carp was ordinarily sold against money receipts. The accused-persons had misappropriated the Government fund by using private/personal money receipts.

In cross-examination, he stated that Shathibari Hatchery was not under his jurisdiction and he was not present at the time of occurrence.

PW13, Md. Abul Kalam Azad, Hatchery Associate deposed that he served at the hatchery in 2008. His duty was to supervise fish carp. RAB apprehended the Office Assistant for allegedly using a false money receipt.

In cross-examination, he stated that he did not know what had actually happened in the office. He did not know how much fish carp had been sold on the date of occurrence.

PW14, Dr. Md. Zahirul Huda, the Investigating Officer deposed that he was entrusted with the investigation of Mithapukur Police Station Case No. 33 dated 18.04.2008. He submitted charge sheet No.442 dated 29.11.2012, after obtaining sanction letter from the authority. He recorded the statements of the witnesses. Accused Rejaul Bari had not sold carp by using the approved money receipts. His Office Assistant deposited Taka 50,700/- through three chalans without using any money receipt. It was revealed from the seized materials that carp worth Taka 3,04,380/- (three lac four thousand three hundred-eighty) had been sold whereas only Taka 50,700/- had been deposited, leaving a balance of Taka 2,53,680/- (two lac fifty-three thousand six hundred-eighty) allegedly misappropriated. On the date of occurrence, RAB personnel recovered Taka 19,000/- (nineteen thousand) in cash whereas the carp had been sold at Taka 22,770/- (twenty-two thousand seven thousand-seventy) by using a false money receipt and the total Taka 2,76,450/- (two lac seventy-six thousand four hundred-fifty) was allegedly misappropriated.

In cross-examination, he admitted that he had not seized any money receipt himself.

On a careful and critical appraisal of the evidence on record, it appears that the prosecution case substantially rests upon the allegation that the accused-persons sold fish carp/spawn at a higher price than the Government-fixed rate and by using unauthorised or forged money receipts, intending to misappropriate Government revenue. However, the evidence of the material purchasers assumes considerable significance in determining whether the foundational allegation of overpricing has been established.

PW7, Md. Abu Sayed, purchaser of 'রেনু পোনা'(carp/spawn) who categorically deposed that he purchased the 'রেনু পোনা'(carp/spawn) at the Government-fixed rate. In his evidence, he stated that: "আমি ঘটনাস্থলে মাছের রেনু পোনা নিতে যাই, আমি মাছ/পোনা নিয়ে বের হয়ে RAB লোকদের দেখি। ... তবে একটি কাগজে তারা আমার সই নিয়েছে।" In cross-examination he stated that "আমি রেনু পোনাগুলো সরকারী Rate অনুসারেই সেদিন কিনেছিলাম যতদূর মনে পড়ে ১২০০/১৩০০/- টাকা নিয়েছিলাম। সরকারী Rate-এর বাইরে আসামীদেরকে কোন টাকা দেইনি। তাদেরকে আমি চিনিওনা। আমার সই নেবার সময় কোন কাগজাদী দেখানো হয়নি।"

Similarly, PW9, Al Mahmud Hasan also purchased 'রেনু পোনা' (carp/spawn) on 18.04.2008 from the accused. He also categorically deposed that he purchased the 'রেনু পোনা' (carp/spawn) at the Government-fixed rate. In his evidence, he stated that: “আমি শঠিবাড়ী মৎস্য খামারে মাছের পোনা নিতে গিয়েছিলাম। RAB-এর লোকেরা একটি কাগজে আমার সই নিয়েছে। কাগজে কি লেখা ছিল দেখানো হয়নি।” In cross-examination he stated that: “... সরকারী রেট অনুযায়ী আমি রেনু-পোনা কিনেছিলাম।”

PW11, Md. Abdur Rahim was another purchaser. He deposed that he purchased carp/spawn from the accused at the Government-fixed rate. He stated that: “ঘটনার তাং ১৮/০৪/০৮, সকাল ১১.০০ টার দিকে মৎস্য বীজ কিনতে শঠিবাড়ী খামারে যাই। মাছ কেনার পরে RAB-এর গাড়ী ঢোকার প্রাক্কালে তারা একটি কাগজে আমার সই নিয়েছে।” In cross-examination he deposed that: “...আমি ০১ কেজি পোনা সরকারী Rate-এ খরিদ করেছিলাম। যে কাগজে আমার সই নিয়েছিল-তা পড়িনি। আমাদেরকে RAB কর্তৃক ২/৩ ঘন্টা আটক করে রাখা হয়েছিল।”

The above-mentioned three material witnesses (PW7, PW9 and PW11) who were purchasers of carp/spawn consistently and categorically stated that they purchased the carp at the Government-fixed rate. Their testimony directly contradicts the foundational allegation of alleged overpricing and is fatal to the prosecution’s case. Their subsequent detention by the RAB and the obtaining of their signatures on blank papers casts serious doubt on the integrity of the investigative process.

The circumstances, in which their signatures were obtained, coupled with their categorical denial of having paid any excess amount, materially affect the evidentiary value of any document purportedly prepared or exhibited based on their signatures. Their evidence therefore cannot be brushed aside without cogent and convincing reasons.

The prosecution's case hinges upon the use of forged money receipts. However, PW2, Md. Maminur Rashid, the owner of a printing press explicitly stated that: "... জব্দকৃত এই রশিদ বহি আমার প্রেসে ছাপানো নয়। কারণ এটি কম্পিউটার কম্পোজকৃত ও ডিজিটাল মেশিনে ছাপানো। আমার প্রেসে ২০০৯ সাল পর্যন্ত লেটার মেশিন ছিল। " The prosecution's failure to declare this witness hostile and to challenge his testimony through effective cross-examinations only strengthens the case of the defence. The said evidence does not advance the prosecution case regarding the alleged forgery of the money receipts.

PW10, Md. Nur Hossain deposed in his evidence that the raiding party did not see any purchaser of the carp at the time of occurrence. He candidly stated in his cross-examination that: "আমরা ০৭ জন ঘটনাস্থলে গিয়েছিলাম। খামারে গিয়ে আমরা কোন ক্রেতার দেখা পাইনি। DAD সাহেব কি অভিযোগের প্রেক্ষিতে মামলা করেছেন, তা আমার জানা নাই।"

To convict a person, there should be unimpeachable evidence of a reliable witness beyond any reasonable doubt. If any doubt arises in a criminal case, then the benefit of doubt should be given to the accused. Suspicion, however strong, cannot substitute proof.

It is an admitted fact that co-accused Rejaul Bari was the Manager of the Hatchery and the alleged principal offender and the appellant was clerk-cum-typist. The principal accused was acquitted by this Court in Criminal Appeal No. 10477 of 2019 on 17.10.2023. Being aggrieved, the Anti-Corruption Commission preferred Criminal Petition for Leave to Appeal No. 1605 of 2024 before the Honourable Appellate Division. Upon hearing, the Appellate Division dismissed the Criminal Petition for Leave to Appeal on 11.12.2024. The appellant, being a subordinate employee (clerk-cum-typist) stands on an even better footing than the principal accused who has already been acquitted. This precedent further strengthens the case for the appellant's acquittal. The principle of parity becomes relevant, provided that no distinct and incriminating evidence is available against the present appellant.

It is also significant that the appellant was a clerk-cum-typist. In the absence of reliable evidence establishing that the appellant had entrusted property or dominion over the Government property in his capacity as a public servant, or that he had dishonestly misappropriated or converted such property to his own use, the essential ingredients of criminal breach of trust punishable under Section 409 of the Penal Code cannot be said to have been established merely on the basis of suspicion.

Considering the aforesaid facts and circumstances of the case, absence of direct evidence, contradictions and inconsistencies in prosecution evidence, and failure to prove the guilt of the convict-appellant beyond reasonable doubt by the prosecution and the principle of parity, the appellant is entitled to the acquittal.

This Court finds that the material purchasers did not support the allegation of overpricing, the alleged money receipts were not satisfactorily proved to be forged, the Investigating Officer did not himself seized the alleged receipts; and the evidence concerning the alleged amount of misappropriation is not free from discrepancy. These deficiencies go to the root of the prosecution case and create reasonable doubt as to the appellant's guilt. I find sufficient substance in the appeal.

Accordingly, the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Rangpur suffers from illegality, impropriety and infirmity and cannot be sustained in law.

In the result, the appeal is allowed.

The judgment and order dated 29.08.2019 passed by the learned Special Judge; Rangpur in Special Case No. 03 of 2013 is hereby set aside.

The convict-appellant, Md. Shafiqul Islam is hereby acquitted of all charges leveled against him.

The convict-appellant is released from his bail bond.

Let a copy of this judgment along with the Lower Court Records (LCR) be communicated to the Court concerned forthwith.

(***Md. Bashir Ullah, J***)

Md. Sabuj Akan
Assistant Bench Officer.