

In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL APPEAL NO. 831 OF 1999

Md. Enayet Karim.....Convict-appellant

-Versus-

The State and Anti-corruption Commission, Dhaka
.....For the Respondent

Mr. Sk. A.K.M. Moniruzzaman Kabir, Advocate
.....For the convict-appellant

Mr. Md. Saiful Malek Chowdhury, Advocate
.....For the respondent No. 2 (ACC)

Mr. Md. Anichur Rahman Khan, DAG with
Mrs. Tashrifa Sultana Jali, AAG and

Mr. Md. Emdadul Hoque, AAG

.....For the state

Heard on: 28.01.2026, 19.04.2026, 20.04.2026 and
21.04.2026

Judgment on: The 4th of May, 2026

ABU TAHER MD. SAIFUR RAHMAN, J.

This appeal, at the instance of the convict-appellant, is directed against the judgment and order dated 28.04.1999 passed by the learned Divisional Special Judge, Khulna Division, Khulna in Special Case No. 39 of 1997, arising out of Doulatpur Police Station Case No. 10 dated 31.08.1994, whereby the appellant was convicted under sections 409/109 of the Penal Code and sentenced to suffer simple imprisonment for 4 (four) years and to pay a fine of **Tk. 1,000/-** (Taka one

thousand), in default to suffer simple imprisonment for a further period of 3 (three) months.

For disposal of this appeal, the relevant facts, in brief, are as follows:

The prosecution case, in short, is that the accused Md. Zahiduzzaman, while serving as a Deputy Food Inspector and being in charge of Government food godowns P-37 and P-38 during 1993–1994, was entrusted with the custody, storage and distribution of Government wheat. In that capacity, he received large quantities of wheat from different officers and stored the same in the godowns after weighment and verification. According to the prosecution, after distribution of wheat to various beneficiaries under Government programmes, a subsequent physical verification and stock-taking revealed serious discrepancies between the recorded stock and the actual stock available in the godowns. Upon reconciliation of the stock position of the concerned godowns, a shortage of 55.751 metric tons of wheat was detected, which exceeded the permissible limit prescribed by Government circulars. It was alleged that the accused-appellant, in collusion with co-accused Md. Enayet Karim, Food Inspector/Block Inspector, misappropriated Government wheat valued at **Tk. 3,95,832.10/-** thereby committing criminal breach of trust.

Upon completion of the investigation by the Inspector of DAB, Khulna, and after obtaining the requisite sanction, charge-sheet was submitted against the two accused, namely, Md. Zahiduzzaman and Md. Enayet Karim, under sections 409/109 of the Penal Code and section 5(2) of the Prevention of Corruption Act, 1947. Charges were framed accordingly, to which the accused pleaded not guilty and claimed to be tried.

At the trial, the prosecution examined 7 (seven) witnesses, while the defense adduced no evidence. Upon consideration of the oral and documentary evidence on record, the learned Divisional Special Judge, by the impugned judgment and order dated 28.04.1999, found both accused guilty of the charges and convicted and sentenced them as stated above.

Being aggrieved by and dissatisfied with the said judgment and order, the present appellant preferred this appeal. The co-convict, Md. Zahiduzzaman, also preferred a separate appeal, being Criminal Appeal No. 943 of 1999. Owing to the absence of a proper office note, that appeal was heard earlier and was allowed by this Court presided over by Mr. Justice Siddiqur Rahman Miah, setting aside his conviction and sentence and acquitting him of the charges.

Mr. Sk. A.K.M. Moniruzzaman Kabir, the learned Advocate for the accused-appellant, submits that, against the

selfsame impugned judgment, the principal accused, Zahiduzzaman, preferred Criminal Appeal No. 943 of 1999, which was allowed by this Court, presided over by Mr. Justice Siddiqur Rahman Miah, resulting in his acquittal. He contends that the present appellant stands on a better footing than the said co-convict, as no evidence has been adduced by the prosecution linking him to the alleged offence, nor has any prosecution witness implicated him in their testimony. He, therefore, submits that the impugned judgment and order of conviction and sentence are unsustainable in law and liable to be set aside, and that the appellant be acquitted of the charge.

As against this, Mr. Md. Saiful Malek Chowdhury, the learned Advocate for the Anti-corruption Commission, vehemently submits that the learned trial Court upon a thorough, meticulous and judicious appraisal of the evidence on record correctly found the accused-convict-appellant guilty of the offence charged and lawfully convicted him which does not call for any interference by this Court.

Mr. Md. Anichur Rahman Khan, the learned Deputy Attorney General, concurs with the submissions made by the learned Advocate for opposite party No. 2.

Heard the submissions of the learned Advocates for the respective parties and perused the evidence and materials on record.

The sole point for determination in this appeal is whether the judgment and order of conviction and sentence dated 28.04.1999 passed by the learned Divisional Special Judge, Khulna Division, in Special Case No. 39 of 1997, are sustainable in law.

On a careful scrutiny of the record, it appears that the instant case was initiated against two accused persons, namely, Md. Zahiduzzaman and the present appellant, Md. Enayet Karim. The learned trial Court found both of them guilty and convicted them under sections 409/109 of the Penal Code.

It has also been brought to the notice of this Court that during the pendency of the instant appeal the sole appellant, Md. Enayet Karim, died on 17.10.2024. Subsequently, upon an application duly filed before this Court, his legal heirs were substituted as co-appellants and have continued the appeal.

It further appears that the principal accused, Md. Zahiduzzaman, preferred Criminal Appeal No. 943 of 1999 against the same judgment, which was heard and disposed of earlier by this Court presided over Mr. Justice Siddiquer Rahman Miah. By judgment and order passed therein, the conviction and sentence of the said accused were set aside and he was acquitted of the charge. In the said judgment, this Court categorically held that the prosecution had failed to establish the essential ingredients of the offence under section 409 of the

Penal Code, particularly the element of dishonest misappropriation or criminal breach of trust. Rather, the evidence of P.Ws. 2, 5 and 6, read together with Exhibit-8 series, demonstrated that the shortage of wheat had occurred due to leakage of rainwater, damp and unsuitable storage conditions, prolonged preservation and severe insect infestation, resulting in natural deterioration of the stock.

So far as the present appellant, Md. Enayet Karim, is concerned, the evidence on record reveals that he was merely serving as a Block Inspector/Food Inspector and was not entrusted with the custody, control or management of the concerned godowns. The prosecution has failed to prove any specific overt act on his part. No witness has deposed that he participated in removal of wheat, manipulation of stock registers, illegal disposal of Government property or any act amounting to intentional aid or instigation. Except for a vague and omnibus allegation of "collusion" made in the charge-sheet, there is no substantive evidence connecting him with the alleged offence. When the principal offence itself has not been proved and the alleged shortage has already been judicially explained by natural causes and defective storage conditions, the very foundation of the allegation of abetment ceases to exist. In the absence of proof of criminal breach of trust by the principal accused and in the absence of any independent evidence of abetment against the present appellant, his conviction under sections 409/109 of the Penal Code cannot be sustained.

The evidence on record, therefore, unmistakably demonstrates that the present appellant was implicated merely because of his official position, without any reliable evidence establishing criminal intention or participation. It is trite that

suspicion, however grave, cannot take the place of legal proof, and criminal liability cannot be founded upon conjectures or mere association.

In view of the discussions made above and having regard to the findings already arrived at by this Court in Criminal Appeal No. 943 of 1999, I am of the considered opinion that the prosecution has miserably failed to prove the charge against the deceased appellant, Md. Enayet Karim.

Accordingly, the appeal is allowed.

The judgment and order of conviction and sentence dated 28.04.1999 passed by the learned Divisional Special Judge, Khulna Division, in Special Case No. 39 of 1997, so far as it relates to the deceased appellant, Md. Enayet Karim, are hereby set aside. Had he been alive, he would have been entitled to an honorable acquittal. Consequently, his substituted heirs are discharged from any liability to pay the fine imposed upon him.

The Lower Court Records (LCR) be sent down at once.

Let a copy of this judgment be transmitted to the Court concerned forthwith for information and necessary action.

